Master copy

VERSION B

PACE UNIVERSITY SCHOOL OF LAW

PROPERTY (Evening)
Dean Humbach
FINAL EXAMINATION

December 15, 1982
PAGES TO THIS EXAM: 12

IN TAKING THIS EXAMINATION, YOU ARE REQUIRED TO COMPLY WITH THE SCHOOL OF LAW RULES AND PROCEDURES FOR FINAL EXAMINATIONS. YOU ARE REMINDED TO PLACE YOUR EXAMINATION NUMBER ON THE ANSWER SHEET AND SIGN OUT WITH THE PROCTOR SUBMITTING TO HIM OR HER YOUR ANSWER SHEET AND THE QUESTIONS AT THE CONCLUSION OF THE EXAMINATION.

YOU WILL HAVE 4 HOURS TO COMPLETE THE ENTIRE EXAMINATION

GENERAL INSTRUCTIONS:

This examination consists of 60 multiple choice questions. The multiple choice questions are to be answered on the answer sheet provided. Write your examination number on the answer sheet in the space provided. Write it NOW.

Answer each multiple choice question selecting the best answer. Indicate your choice on the answer sheet by blacking through the appropriate letter with the special pencil provided. Select only one answer per question; if more than one answer is indicated, the question will be marked wrong.

If you want to change an answer, you must fully erase your original answer and blacken through the one which you consider correct.

When you complete the examination, turn in the answer sheet together with this question booklet.

Unless the context otherwise requires (such as where the facts are specifically stated to arise in New York), base your answers on general common law principles as generally applied in American common law jurisdictions. Do not assume the existence of any facts or agreements not set forth in the questions.

Facts for questions 1 to 9.

About 12 years ago, Delrin purchased a summer home in a wooded area west of town. The house is on 6 acres of land and is located at the end of a 600' driveway that winds from the main road through a dense woods. Last month, the house next door changed hands, and a survey was made showing that about 40' of Delrin's driveway is on the neighbor's land. Assume a 10 year period of limitations on ejectment.

1. If the deed to Delrin expressly created an easement to use the 40' of driveway, such easement would presumptively:

a. Pass to a grantee of Delrin, if he sold the house and 6 acres.
b. Be an appurtenant affirmative easement.
c. Give Delrin the privilege of going on the neighbor's land to make repairs on the driveway.
d. All of the above.

2. Suppose Delrin's deed did not mention any easements. In order to show that Delrin had acquired an easement created by implied grant over the 40' it would be important to prove:

a. That the parties discussed giving Delrin an easement before the closing, even if the deed omitted mention of it.
b. That Delrin himself purchased directly from the person who owned the neighboring parcel 12 years ago.
c. That the driveway was in use to reach the house portion of Delrin's land before Delrin's land was severed from the neighboring parcel.
d. All of the above.

3. The theory of recognizing an easement by implied grant or reservation is that:

a. A deed may omit mention of incidental interests which both parties must have intended if they had given the obvious pertinent facts proper consideration.
b. Whenever a person buys land with somebody else's driveway on it, the buyer should know that a claim to use the driveway would probably be asserted by the person for whom it is useful; therefore, such claims are equitable.
c. The Statute of Frauds does not apply to transactions which are valid under the parol evidence rule.
d. Appurtenant easements are automatically transferred with the dominant tenement, absent language to the contrary.

4. If Delrin now bought a fee simple interest in the portion of the neighboring land which has the 40' of driveway on it:

a. Any easement over the 40' of driveway would be extinguished.
b. Delrin could be said to have a quasi-easement over the 40'.
c. Both of the above.
d. None of the above.

5. Suppose that the deed to Delrin did not mention any easements and that the driveway was built in 1969 by Delrin's predecessor in title, one year before Delrin bought. Assume also that when Delrin's predecessor had bought the 6 acres it was an unused empty parcel, and he put the driveway where it was because a deep ravine made a more direct route somewhat more expensive to construct. On these facts:

a. Delrin's predecessor seems to have made a serious mistake.
b. Delrin's predecessor likely acquired an easement for the 40' by implication.
c. Delrin likely acquired an easement for the 40' by implication.
d. Delrin likely has an easement by necessity for the 40'.

6. On the facts of the preceding question, Delrin may well now have an easement by prescription:

a. Even if he later had another driveway which he also frequently used in the last 8 years.
b. Even if he almost never used the house or encroaching driveway since he bought.
c. Only if the neighboring owner did not object to his use of the driveway (under the majority -- and New York -- rule).
d. Only if he regularly used the driveway throughout the year.

7. Assuming that Delrin now has an easement over the 40' of driveway, the neighboring owner may use the area covered by the driveway:

a. For no purpose whatsoever.
b. For any purpose whatsoever.
c. As a driveway (e.g. as a segment connecting at either end to other driveway areas on his own property).
d. Both b and c above.

8. In the preceding question, if Delrin sold a "landlocked" corner of his 6 acres to Scappold, and the deed mentions no easements:

a. Scappold probably could not lawfully use the 40' as part of the access hook-up to his land.
b. Scappold probably could lawfully use the 40' as part of the access hook-up to his land.
c. Scappold probably has an easement by implied reservation over the whole driveway.
d. Delrin's act of selling to Scappold may well result in a forfeiture of his driveway easement.

9. Suppose Delrin acquired an easement over the 40' 12 years ago, but that he has only used an alternate route to his house, entirely on his own land, for the last 11 years. On these facts:

a. Delrin has probably lost his easement by abandonment.
b. Delrin's easement has probably been extinguished by prescription.
c. Such mere non-use probably does not extinguish the easement.
d. The neighboring owner would be privileged to remove the driveway.

Facts for questions 10 to 16.

Ellison's house was full of old junk and he decided to hold a garage sale. He carted a lot of stuff down to his garage, advertised on local trees, and had a great turnout. At the end of the day, he had $724 cash and a potpourri of legal problems.

10. One of the items offered for sale was an old and frayed tweed jacket, which Ellison sold and delivered to Glee for $7.50. About 20 minutes after the sale, Ellison's wife, Ellie, came screaming out of the house and ran into the garage shouting "My jewelry, my jewelry!" She was referring to the $2,000 worth of earrings, bracelets, rings, etc. which she kept in the lining of the jacket as a trick to mislead burglars. As a result of the sale transaction (pick the best answer):

a. Glee got possession of and title to the jacket and possession of the jewelry.
b. Glee got possession of and title to the jacket and the jewelry.
c. Glee got possession of and title to the jacket and the jewelry, but the title to the jewelry is revocable.
d. Glee got possession of and revocable title to the jacket and the jewelry.

11. Glee took the jacket to a dry cleaner before discovering the jewelry and the cleaner accepted the jacket unaware of its presence in the jacket. Pick the best answer:

a. The cleaner is a bailee of the jewelry.
b. The cleaner is not a bailee of the jewelry because he is unaware of it.
c. The cleaner would not become a bailee of the jewelry even if he discovered it, unless he agreed to accept responsibility for it.
d. The cleaner would probably be held liable for $2,000 if there is an unexplained disappearance of the jewelry from the jacket.

12. Assume that Glee returns to the cleaner for the jacket and the jacket itself inexplicably disappeared.

a. The cleaner would not be liable to Glee unless Glee could prove misdelivery.
b. The cleaner would be liable to Glee unless the cleaner could prove that there was no misdelivery.
c. In order for Glee to recover from the cleaner under the general rule, Glee would have to show a bailment, a failure to return the bailed object, and a prima facie case of either misdelivery or negligence.
d. Courts commonly would require a bailee in the cleaner's position to present evidence to rebut the inference of negligence which arises from the unexplained disappearance itself.

13. If the cleaner manages to find the jacket in a stack of old rags, and the jewerly tinkles out of it onto the floor, then in a jurisdiction which follows the so-called "English rule" as to finders:

a. The cleaner, as the owner of the locus in quo, should have a better right to possession than Glee.
b. Glee should be able to replevy the jewelry from the cleaner.
c. The cleaner would have no obligation to return the jewelry to Glee because Glee is not the true owner of the jewelry.
d. Glee is the true owner of the jewelry, and the cleaner must therefore return the jewelry to Glee.

14. Suppose, in the preceding question, the cleaner refuses to return the jewelry to Glee and Glee sues the cleaner in trover:

a. Glee should lose; he has no action in trover.
b. If Glee wins the action in trover, Ellie Ellison could still replevy the jewelry from the cleaner, since she remains the true owner of it.
c. If Glee wins the action in trover, and the cleaner pays full damages to Glee, the cleaner would have an answer to any suit by Ellie Ellison.
d. Glee's action should be sustained, but as an action for replevin, since trover is unavailable against a wrongful possessor.

15. During Ellison's garage sale, Bella Ringer found a gold cigarette lighter on the floor. She asked the price and Ellison said: "Why, it isn't mine. I don't know how it got there." The lighter was not in the garage when the sale had commenced that morning. Assuming that the lighter was lost and not mislaid, as between Ellison and Ringer:

a. Ringer would probably have a better right to the lighter under the so-called American rule.
b. Ellison would probably have a better right to the lighter under the so-called English rule.
c. Both a and b above.
d. None of the above.

16. Assume, in the preceding question, that Ringer had found the lighter in the Ellison's upstairs bathroom which she, like several other earlier customers, had specially asked for permission to use. Assuming that the lighter was lost and not mislaid, as between Ellison and Ringer:

a. Ringer would probably have a better right to the lighter under the so-called American rule.
b. Ellison would probably have a better right to the lighter under the so-called English rule.
c. Both a and b above.
d. None of the above.

17. Ladley has raised a wild crow which he found, when it was a baby, on land belonging to Satter. As betwen Ladley and Satter, Ladley has the better right to the crow:

a. If it is still in Ladley's possession.
b. If it has animus revertendi to Ladley.
c. If Ladley was hunting on Satter's land with Satter's permission when he found the crow.
d. None of the above.

18. Suppose that subsequently, while the crow was flying free (out of Ladley's cage), it was captured by Michaels. In an action by Ladley to replevy the bird, which of the following additional facts would, if proved, be helpful to Ladley?

a. The crow customarily returned to Ladley's cage, on its own or whenever Ladley whistled.
b. Michaels captured the crow while trespassing on Ladley's land.
c. The crow had a ring on its leg identifying it as Ladley's.
d. All of the above would be helpful to Ladley's case.

Facts for questions 19 to 21.

Noomis bought a farm in 1962. The deed described the farm by metes and bounds, and it consisted of three fields, popularly called Eastfield, Middlefield and Westfield. Noomis immediately moved into the house, located on a corner of Westfield, and has lived there ever since, regularly cultivating Westfield and Middlefield. Eastfield is a swampy marsh and Noomis has never used it and has seldom even gone there. The local period of limitations on ejectment is 10 years.

19. Suppose the seller to Noomis did not have title to all three fields. Based on Noomis' own possessary acts, and ignoring disabilities, Noomis could now have a ripened title to Eastfield:

a. If Middlefield and Eastfield were parts of a single parcel to which Smart had title in 1962 and since (until Noomis' title ripened).
b. If Middlefield and Eastfield were separately owned by Smart and Stout, respectively, in 1962 and since (until Noomis' title ripened).
c. Under no circumstances if Noomis never entered into actual possession of Eastfield.
d. Only if Noomis at least got good title to Westfield in 1962.

20. Suppose Noomis' 1962 deed not include Eastfield but that Noomis only thought that it did. If Noomis never used Eastfield and seldom went there, but he nevertheless put up and maintained a fence around it and tried to keep out trespassers:

a. Noomis would likely succeed in an ejectment action brought today against squatters who built a shack on Eastfield in 1970 and continuously occupied it since then.
b. Noomis would likely have succeeded in an ejectment action brought in 1978 against squatters who built a shack on Eastfield in 1970 and continuously occupied it until the time of suit.
c. Noomis would likely have succeeded in an ejectment action brought in 1971 against squatters who built a shack on Eastfield in 1970 and continuously occupied it until the time of suit.
d. Both b and c above.

21. Suppose, in the preceding question, Noomis is found to have been in actual possesssion of the bulk of Eastfield since 1962 but that, in 1961, the then owner of Eastfield conveyed it "to my son Sammy for life, remainder to Richards and his heirs." If Noomis never had dealings with Sammy, Richards, or anyone claiming under either of them, then ignoring disabilities, Noomis could acquire (or could have acquired) ripened title in fee simple absolute to Eastfield:

a. In 1972.
b. In 1982.
c. Ten years after Sammy's death.
d. Ten years after Richard's death.

22. A covenant which "runs with the land:"

a. Is just another name for equitable servitude.
b. Must, under the majority rule, be contained in a deed which conveys affected land between the convenantor and convanantee.
c. Is an unusual contractual arrangement in that the contractual rights and duties can extend to persons who never agreed to the contract.
d. Both b and c above.

23. An "equitable servitude"

a. Is a contractual promise concerning land which is binding on later purchasers of the land who purchase with notice of the promise.
b. Can run with the burdened land.
c. Is a legal device which forms the cornerstone of private land use planning.
d. All of the above.

24. Broward bought a ticket to the opera "Othello" for December 11, 1982, seat A 22 in the Balcony. Half-way through the first act, for no apparent reason, an usher told him that he would have to leave.

a. Broward may resist the usher since he has, in effect, a lease of the specified seat until "Othello" is over.
b. Broward may not resist the usher, but probably has an action for breach of contract.
c. Broward would have an action for unreasonable interference with his easement of view from the seat.
d. Broward would have no action for unreasonable interference with his easement of view from the seat unless the usher either actually forces Broward to leave or blocks his view of the stage.

25. Simmons and Timmons are next door neighbors. Along their common boundary, on Simmons' side, there is a driveway running from the street to Simmons' garage in the rear. Timmons wanted to build a garage just across the line from Simmons' garage and, because Timmons did not have room for a driveway on his land, he wanted to hook up via Simmons' driveway. Simmons orally agreed to this arrangement, and Timmons built the garage. On these facts, Timmons has a good case for asserting:

a. An executed parol license to use Simmons' driveway.
b. An easement by estoppel to use Simmons' driveway.
c. Both of the above.
d. Neither of the above; Timmons only could have a contract right to an easement, due to his reliance to his detriment.

26. U.B. Goode purchased a ring to give to his niece, and sole kin, Ima Waitin, for her birthday. On his way home from the store, Goode showed the ring, with Ima's name engraved in it, to his friend, C.Z. Stone, and said: "This is Ima's." Before Ima's birthday, Goode died unexpectedly with the ring still in his possession. On these facts:

a. Ima is entitled to the ring.
b. Ima has equitable but not legal title to the ring.
c. Goode's attempted gift causa mortis was revoked by his death.
d. There was no completed gift of the ring.

27. Suppose, Goode had showed the ring to Ima, and let her try it on, but took it back saying: "You'll have to wait till your birthday." Goode then died unexpectedly, still possessing the ring, as in the preceding question.

a. The gift would have failed for lack of requisite donative intent.
b. The gift is inter vivos and therefore requires no acceptance.
c. The gift would have succeeded and Ima is entitled to the ring.
d. The gift was presumptively causa mortis.

28. Suppose, in the preceding question, Goode had instead said: "Oh, the stone is loose. The ring is yours now, but let me take it back to the jeweler to have the stone secured." Goode then took the ring and died unexpectedly, still possessing the ring.

a. The gift would have failed for lack of requisite donative intent.
b. The gift would have failed for lack of requisite acceptance.
c. The gift would have failed for lack of requisite delivery.
d. None of the above.

29. Suppose Goode was ill on his deathbed when he said to Ima: "I want you to have the ring over on my bureau. Take it; the ring is yours since I won't be needing it anymore." If Ima took the ring:

a. The ring would, presumptively, be Goode's if he recovered from his illness.
b. The ring would, presumptively, be Ima's even if Goode recovered from his illness.
c. The ring would probably be held to be Ima's if Goode died from his illness, even if Ima only tried on the ring and left it with Goode till his death.
d. None of the above.

30. In the preceding question, if Goode had died of his illness leaving a will, and if the gift of the ring to Ima were a gift causa mortis (pick the <u>best</u> answer):

a. The ring would be Ima's even if the will specifically bequeathed the ring to Muriel, irrespective of when the will was made.
b. The ring would be Ima's even if the will specifically bequeathed the ring to Muriel, only if the will was made before Goode purported to give the ring to Ima.
c. The ring would be Muriel's if the will specifically bequeathed the ring to Muriel, irrespective of when the will was made.
d. The ring could be Muriel's only if the purported gift to Ima never came to light.

31. Suppose U.B. Goode had acquired the ring by fraud and purported to give it, inter vivos, to Ima. If Ima took delivery while totally without knowledge of the fraud or reason to know of it:

a. Ima's title to the ring would be superior to that of the defrauded owner.
b. Ima would have a void title.
c. Ima would have a voidable title.
d. Ima would have a good title.

32. Suppose U.B. Goode, on his deathbed, handed Ima a key to a safe deposit box and said: "I don't have much longer. The bonds in this box are yours. Go get them out now." The only other key is locked in the box.

a. Even if Goode dies before Ima gets the bonds out, Ima would be entitled to the bonds.
b. Even if, after Ima gets the bonds out, Goode tells Ima and Muriel that he wants them to split the bonds -- "I'm giving half to Muriel" -- Ima would, under the usual presumption, be entitled to all of the bonds.
c. If Goode tries to revoke the gift to Ima, the attempt would be valid only if it occurs before Ima gets actual possession of the bonds.
d. All of the above.

33. Suppose, in the preceding question, Goode wanted to deliver the safe-deposit key to Ima, but he could not remember where it was. How else might Goode make an effective gift of the bonds to Ima?

a. Sign a written deed of gift transferring the bonds and deliver the deed to Ima.
b. Declare himself trustee of the bonds for the benefit of Ima.
c. Either of the above should be effective as a gift.
d. None of the above.

Facts for questions 34 to 39.

Latterbom's will left Blackacre "to Arthur, Betty and Cadwell and their heirs." Arthur, who had been living on Blackacre with Latterbom, remained in sole occupancy. Arthur, Betty and Cadwell had no agreements or understandings with respect to Blackacre, and the latter two have not tried to join Arthur in possession nor has Arthur tried to prevent them.

34. Under the applicable modern presumption, the three owners of Blackacre would be:

a. Tenants in common.
b. Joint tenants.
c. Tenants by the entirety.
d. Required to divide up Blackacre equitably into three separate parcels.

35. Assuming that Arthur, Betty and Cadwell were joint tenants, if Betty transferred all her right, title and interest in Blackacre to Cadwell, then:

a. If Cadwell died before Arthur, Arthur would be the sole owner of Blackacre.
b. If Arthur died before Cadwell, Cadwell would be the sole owner of Blackacre.
c. Both a and b above.
d. Arthur and Cadwell would, as a result of the transfer, be tenants in common with each holding an undivided one-half interest in Blackacre.

36. Assuming that Arthur, Betty and Cadwell are joint tenants, if Arthur leases (without express permission of the other two) the garage on Blackacre to a neighbor for one year:

a. Betty and Cadwell would become tenants in common of the garage.
b. Betty and Cadwell would each be entitled to one-third of the rental received.
c. Betty and Cadwell could occupy the garage concurrently with the neighbor.
d. Arthur's interest in Blackacre would be extinquished.

37. If Arthur remains in sole occupancy of Blackacre for the period of limitations on ejectment:

a. He would not, on these facts, end up with sole title to Blackacre.
b. He would, on these facts, be liable to Betty and Cadwell for mesne profits under the majority rule.
c. He would, on these facts, be liable to Betty and Cadwell for rents under the majority rule.
d. He would, on these facts, be liable to Betty and Cadwell for their "just proportion" under the majority interpretation of the Statute of Anne.

38. Suppose Arthur, Betty and Cadwell join in a deed conveying Blackacre "to James and Jill Byland, husband and wife, and their heirs." Under the applicable common law (and New York) presumptions, an estate would arise which:

a. Would not be subject to partition at the unilateral instance of either James or Jill.
b. Would result in sole ownership in Jill if James were to predecease her.
c. Would be effectively immune from execution by the individual creditors of James or Jill in many states.
d. All of the above.

39. Suppose, in the preceding question, the deed conveyed Blackacre only "to James Byland and his heirs." In a state which recognizes "common-law dower"

a. James and Jill would have, in effect, a tenancy by the entirety.
b. Jill would have seisin jure uxoris.
c. A buyer from James should be sure that Jill also signs the deed from James.
d. All of the above.

40. James purchased a quantity of wire which he fashioned and welded into handy kitchen devices. A wholesaler paid him a total of $2,000 for the devices, though James had paid only $10 to the junk dealer who sold him the wire. It turns out that, unbeknownst to James, the wire was stolen, and Barrow, the true owner, has sued James and the wholesaler. If, under the doctrine of specification, the court finds that the kitchen devices are a "different kind" of thing from the wire:

a. The wholesaler would be liable only for $10.
b. The wholesaler would be liable for nothing.
c. James would be liable for nothing.
d. Both b and c above.

41. Temmelo's lease stated: "The landlord reserves a rent of $600 per month, and tenant promises to pay such rent promptly when due." The promise to pay rent has legal significance in that, among other things,

a. It provides a basis for holding Temmelo liable for rent even if he assigns the lease.
b. It provides an independent legal duty to pay rent in addition to the inevitable privity of estate obligation to pay reserved rent.
c. Both a and b above.
d. None of the above. The promise to pay rent has no legal significance.

42. When Temmelo leased an apartment from Lanthrop, the parties agreed that the lease should last for three years with a rental of $600 per month reserved by Lanthrop. The local Statute of Frauds requires leases for more than one year to be in writing and signed by the party to be charged. If Temmelo and Lanthrop did not reduce their agreement to writing,

a. Temmelo became a tenant at will when he entered possession.
b. There could be no valid lease between the parties, since a three year oral lease is absolutely void.
c. Temmelo may occupy the premises, until evicted, on a rent-free basis.
d. Both b and c above.

43. In the preceding question, if Temmelo entered possession under the oral lease on August 1, 1982, and has paid the $600 rent monthly, in advance, since that time:

a. Lanthrop may nevertheless evict Temmelo at the end of any month, without prior notice.
b. Lanthrop may nevertheless evict Temmelo at the end of any month, provided that he gives reasonable notice.
c. Lanthrop may probably evict Temmelo at any time, upon reasonable notice.
d. If Temmelo stays up to date with his rent, Temmelo could probably not be lawfully evicted by Lanthrop until January 31, 1983, even assuming that Lanthrop gives notice to terminate the tenancy as soon as possible.

44. Suppose that the three year lease in the preceding question was in writing, signed by both parties, and that Temmelo has been in possession, paying the $600 rent monthly, in advance, since August 1, 1982. The lease contains a covenant by Lanthrop to provide heat. Under the traditional common law rules, if Temmelo moves out tomorrow, and ceases to pay rent:

a. Lanthrop may let the premises lie idle and collect the rent from Temmelo, as it accrues, for the remaining term of the lease.
b. Lanthrop may accept the profferred surrender, terminating the privity of estate.
c. Temmelo's abandonment may be considered an eviction if Lanthrop has failed to supply heat, making the premises untenantable.
d. All of the above.

45. In the preceding question, if Temmelo signed a "sublease" to Subello, transferring possession to Subello "for the rest of the lease":

a. Temmelo would still be a tenant of Lanthrop.
b. The purported sublease would probably be deemed to be an assignment.
c. Temmelo would probably have no further obligation to pay rent to Lanthrop -- the obligation would pass to Subello.
d. All of the above.

46. The implied warranty of habitability:

a. Has long been applied in most residential lease arrangements.
b. Allocates responsibility for the condition of the premises between landlord and tenant in just about the same way as the older doctrine of permissive waste does.
c. Is an extension to residential leaseholds of the implied covenant of quiet enjoyment.
d. Probably better carries out the subjective intentions and expectations of most residential landlords and tenants than do the traditional rules regarding legal responsibility for the condition of the premises.

47. Oscar conveyed Greenacre by bargain and sale "to Anthony for life, then to Barlow and his heirs if Barlow reaches age 21." Anthony is 40 years old and Barlow is 15. After giving effect to the Statute of Uses:

a. Oscar has a reversion.
b. Barlow has a remainder.
c. Barlow has a contingent remainder.
d. All of the above.

48. If, in the preceding question, Barlow died intestate at age 25, and Anthony died intestate two years later:

a. Greenacre would revert to Oscar on Anthony's death.
b. Greenacre would go to Barlow's heirs on Anthony's death.
c. Greenacre would go to Anthony's heirs on Anthony's death.
d. Greenacre would revert to Oscar on Barlow's death.

49. Which of the following conveyances, by bargain and sale, would create an executory interest in Barlow (after giving effect to the Statute of Uses)?

a. To Anthony for life and then to Barlow and his heirs if Barlow reaches age 21 before Anthony's death.
b. To Anthony for life and then to Barlow and his heirs if Barlow marries Anthony's widow.
c. To Anthony for life, then to Barlow and his heirs.
d. All of the above.

50. The primary effects of the Statute of Uses were:

I. To abolish uses as valid legal devices.
II. To permit the transfer of title by a possessor without livery of seisin.
III. To permit the creation of legal springing interests and legal shifting interests.

Pick the best combination:
a. I, II, and III.
b. I and III.
c. II and III.
d. III only.

51. Eloise conveyed Brownacre "to Herbert for life, remainder to Herbert's heirs." Herbert then conveyed "all my right, title and interest" in Brownacre to Eloise. After Herbert's death intestate, his sole heir brings an ejectment action against Eloise. The heir should win (absent ripened title by adverse possession) if:

a. The Rule in Shelley's case is in effect.
b. The Doctrine of Worthier Title is in effect.
c. Both a and b above.
d. If there is a local statute abolishing the Rule in Shelley's Case and the Doctrine of Worthier Title.

52. If, in the preceding question, Eloise had conveyed Brownacre "to Herbert and his heirs so long as the land is used for agricultural purposes," then:

a. Eloise would have a possibility of reverter.
b. Herbert would have a fee simple on condition subsequent.
c. Herbert's heirs would have an executory interest.
d. All of the above.

53. To refer to the owner of a fee simple absolute as a "tenant," to the estate as "tenement" and to the ownership as "tenure":

a. Is simply wrong.
b. Reflects the medieval English view of land ownership according to which seisin was held of (i.e. held under subinfeudations from) higher lords, and, ultimately, held of the king.
c. Is an archaism which results from the extension of leasehold terminology to other types of ownership interests.
d. Results from an early confusion of the Statute Quia Emptores with the Statute De Donis.

Facts for questions 54 to 59.

Mitchell wanted to sell his urban house and lot, and went to the local office of Stripperm Realty Co. He told the authorized representative of Stripperm what he wished to do and the latter replied: "I think that we can find you a buyer."

54. Two weeks later, the Stripperm representative presented Richer, a potential purchaser, who orally offered $100,000 for the house. Mitchell orally accepted the offer and also accepted a "deposit" of $700. Assuming that these acceptances constituted "acceptance" of the purchaser,

a. Stripperm now has a right to a commission.
b. Stripperm will be entitled to a commission only if the sale is consummated.
c. Stripperm will be entitled to a commission only if either the sale is consummated, or the deal falls through due to fault of Mitchell.
d. None of the above. Stripperm is not entitled to commission because Mitchell never promised to pay any commission.

55. A simple contract of sale is prepared by Mitchell's attorney. As Richer's attorney, you notice that the contract makes no mention of restrictive covenants which you know to apply in the neighborhood where this property is located.

a. You should reject the contract because it cannot be valid without mention of the restrictive covenants.
b. You should also ask for the contract to specify a warranty deed, because only then will Richer take free from the restrictive covenants.
c. If the restrictive covenants impose a greater limitation on use than the generally applicable zoning and nuisance law, Richer may end up with a contract which is bindng only on Mitchell.
d. Mitchell would be violating the implied warranty of marketability by signing such a contract.

56. As Richer's attorney, you also notice that possession is to be delivered at the closing but the contract says nothing about the rights of the parties in the event the house is damaged or destroyed prior to closing. You may correctly inform Richer:

a. That Mitchell bears the risk of loss, if you are in a majority rule jurisdiction.
b. That Richer bears the risk of loss under the Uniform Act (e.g., in New York).
c. That Mitchell bears the risk of loss, if you are in a minority rule jurisdiction.
d. On these facts, Mitchell would bear the risk of loss in every (or almost every) jurisdiction.

57. If the contract fixes December 1 as the date for closing, and Richer tenders the purchase price on that date but Mitchell needs four additional days to clear up a title defect:

a. Richer can collect on his title insurance policy if he had the foresight to buy one.
b. Richer would be totally relieved of his obligation under the contract.
c. If Richer sues Mitchell for damages, Mitchell could probably counterclaim for specific performance since time is not of the essence at equity unless expressly agreed or circumstances so indicate.
d. Both b and c above.

58. Assuming the closing goes without a hitch, if Mitchell later dies and his sole heir purports to convey the same property to Garfoil, Richer should win an ejectment action brought by Garfoil:

a. If Richer has been in possession of the house and lot since the closing, irrespective of whether he recorded under the local "notice" statute.
b. If Richer has recorded his deed under the local "notice" statute, irrespective of when he recorded.
c. Under almost any conceivable circumstances (except if Garfoil subsequently got a ripened title by adverse possession) since the heir could not have inherited the property previously conveyed by his ancestor.
d. All of the above.

59. Assume that, at the closing, Richer is $15 short and Mitchell signed the deed (with acknowledgement) and said:"Here, take the deed -- on the condition of course that you pay me that $15 within 2 days." Richer takes the deed, but has not yet paid the $15.

a. The delivery was complete when Richer took the deed.
b. The delivery could never become complete if Mitchell died, without receiving the $15, the day after the closing.
c. The delivery was subject to a condition subsequent, and would become ineffective if the $15 was not paid within the stipulated time.
d. The transfer of title was effective at the moment when Mitchell signed the deed.

60. Hobart is a garage mechanic. He purchased a travelling salesman's car with 240,000 miles on it for its fair value, $15. He spent 85 hours rebuilding the motor, taking it entirely apart and reassembling it with $215 of new parts. He could now sell the car for $1,500. To Hobart's surprise, the car was stolen and Tuck claims it as "true owner". In a replevin action by Tuck:

a. Hobart should win under the doctrine of specification.
b. Hobart may well win, as an innocent accessioner, but not under the doctrine of specification.
c. Hobart should win because he has innocently caused the confusion of fungible goods.
d. If Hobart loses the replevin action, Tuck would have to take the car minus the parts installed by Hobart.