PACE UNIVERSITY SCHOOL OF LAW

PROPERTY - VERSION B
DEAN HUMBACH
FINAL EXAMINATION

DECEMBER 10, 1984
TIME LIMIT: 2 1/2 HOURS

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 EACH EXAMINATION BOOK AND SIGN OUT WITH THE PROCTOR, SUBMITTING TO HIM OR HER YOUR EXAMINATION BOOK(S) AND THE QUESTIONS AT THE CONCLUSION OF THE EXAMINATION.

DO NOT UNDER ANY CIRCUMSTANCES REVEAL YOUR IDENTITY ON YOUR EXAMINATION PAPERS OTHER THAN BY YOUR EXAMINATION NUMBER. ACTIONS BY A STUDENT TO DEFEAT THE ANONYMITY POLICY IS A MATTER OF ACADEMIC DISHONESTY.

GENERAL INSTRUCTIONS:

This examination consists of 30 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 in NOW.

Answer each multiple choice question selecting the best answer. Indicate your choice on the answer sheet by blackening through the appropriate nuumber 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.

Except as otherwise specified, all conveyances are to be considered as if made, in each case, by a deed having the effect of a bargain and sale, after the Statute of Uses, but ignoring the effects of "modernizing" statutes and rules (e.g. which eliminate the Rule in Shelley's case, the Doctrine of Worthier Title or the destructibility of contingent remainders). Assume that the applicable period of limitations on ejectment is 10 years and, unless otherwise specified, ignore the possibility of dower.

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1. Noah Zarque had long been interested in boating and decided to open a small boating odds-and-ends shop near the shore, in the close vicinity of several marinas. Zarque noted that one of the marinas had a small unused outbuilding set upon a graveled area of about 2500 sq. feet, lying between the marina's main building and the street. Eventually Zarque and the marina owner signed a lease to the outbuilding. The lease included "a non-exclusive right to use the graveled area for parking of Lessee's customers." This parking area was a very important factor in Zarque's decision to sign the lease:

1. The marina should be free to park big boats (on trailers) in the graveled area, provided that the number and duration of such uses of the area do not result in a substantial interference with Zarque's use for parking of his clientele.

2. The marina should be free to park big boats (on trailers) in the graveled area, even if the number and duration of such uses of the area result in a substantial interference with Zarque's use for parking of his clientele.

3. The marina should not be free to park big boats (on trailers) in the graveled area at all (except, perhaps, for de minimus periods of time), as the area is included in the lease they made to Zarque.

4. The marina should not be free to park anything at all in the graveled area (except, perhaps, for de minimus periods of time), as the area is included in the lease they made to Zarque.

2. Suppose that Zarque and marina owner, Thurston Swett, carefully negotiated a ten year lease to Zarque of a building on the marina land but, due to lawyers' delays, neither had signed the lease before Zarque moved in, on July 1, 1984. In fact, as of now, December 10, 1984, neither party has signed the lease yet, though the local Statute of Frauds applies to all leases in excess of one year. Nevertheless, each month Zarque has faithfully paid the agreed rent in advance. Assuming no breaches of conditions or the like, then probably the earliest date (from now) that Swett can terminate Zarque's tenancy is:

1. Anytime, upon reasonable notice.

2. December 31, 1984.

3. January 31, 1985.

4. June 30, 1985.

3. Suppose that Zarque and marina owner, Thurston Swett, carefully negotiated a lease to Zarque of a building on the marina land but that their agreement provided explicitly that Zarque was to have a tenancy from month to month. Still, due to lawyers' delays, neither had signed the lease before Zarque moved in, on July 1, 1984 and, as of now, December 10, 1984, neither has signed yet. Nevertheless, each month Zarque has faithfully paid the agreed rent in advance. Assuming no breaches of conditions or the like, then probably the earliest date (from now) that Swett can terminate the lease is:

1. Anytime, upon reasonable notice.

2. December 31, 1984.

3. January 31, 1985.

4. June 30, 1985.

4. Suppose that Zarque and marina owner, Thurston Swett, negotiated and signed a five year lease to Zarque of a building on the marina land. If, without Swett's permission to hold over, Zarque does not move out until several days after the lease technically expires (in five years), then:

1. Under the traditional common law rule, Swett would be entitled to hold Zarque for a new term.

2. Under the traditional common law rule, Swett would be entitled to treat Zarque as a trespasser and maintain ejectment or other appropriate proceedings to recover possession from Zarque.

3. Swett's rights against Zarque under the traditional common law rules would not depend on the reasons that Zarque unlawfully held over for the extra time.

4. All of the above.

5. Suppose that Zarque and marina owner, Thurston Swett, negotiated and signed a five year lease to Zarque of a building on the marina land. If the lease contained a promise by Swett to paint the leased building within two months of the lease commencement, and Swett fails to keep the promise:

1. Zarque would have a contract action for damages against Swett.

2. Zarque would be within his rights to retain possession and withhold the rent, or an aliquot part of it, under the traditional common law rule, as an inducement to Swett to keep his promise.

3. Both of the above.

4. Zarque would have a contract action for damages against Swett as well as a right to remain in possession and withhold the rent or an aliquot part of it under the common law rules as traditionally understood, provided that the rent withholding would be allowed only if Swett's failure to paint was a material breach.

6. Suppose that Zarque and marina owner, Thurston Swett, negotiated and signed a five year lease to Zarque of a building on the marina land. Suppose further that the leased building badly needs a coat of paint, and Swett refused to paint it after Zarque's repeated demands. If Zarque acts within a "reasonable" time, then under the usual rules for non-residential leases (that is, ignoring warranty-of-habitability developments):

1. Zarque would be within his rights to abandon possession and regard the rent obligation as suspended, irrespective of whether 1) the need for paint rendered the building untenantable or 2) Swett had a contract obligation to Zarque to paint the building.

2. Zarque would be within his rights to abandon possession and regard the rent obligation as suspended, provided that the need for paint rendered the building untenantable, but irrespective of whether Swett had a contract obligation to Zarque to paint the building.

3. Zarque would be within his rights to abandon possession and regard the rent obligation as suspended, provided that 1) the need for paint rendered the building untenantable and 2) Swett had a contract obligation to Zarque to paint the building.

4. None of the above. Under the usual rules for non-residential leases (apart from statutes) the tenant never has a lawful basis for withholding the rent, absent an actual eviction by the landlord.

7. Suppose that Zarque and marina owner, Thurston Swett, negotiated and signed a five year lease, on usual terms, demising a building on the marina land to Zarque. If, without legal justification, Zarque simply moves out after only 2 years, and ceases to pay the rent:

1. A reletting of the premises by Swett to Newboye should extinguish privity of estate between Swett and Zarque, but it would not necessarily (in many states) have the effect of extinguishing privity of contract between them: Thus, Zarque could still be held liable on his contractual obligation to pay rent under the lease.

2. Under the traditional common law rules, Swett could allow the premises to lie vacant and recover the full agreed rent from Zarque, as it accrues, even if Swett has other opportunities to relet the premises at a higher rent.

3. If the original lease contained a "survival clause" for cases of unjustified abandonment, Swett could relet the premises to Newboye and still require Zarque to pay, as contract damages, the difference between the rent agreed to in Zarque's lease and the (lesser) amount received from Newboye.

4. All of the above.

8. Suppose that Zarque and marina owner, Thurston Swett, negotiated and signed a five year lease to Zarque of a building on the marina land. If, after 2 years, Zarque contracts to sell his business to Sinker Schwinn, and Schwinn agrees to accept an assignment of Zarque's lease:

1. Swett would have no right to object to the assignment if the lease to Zarque contained no prohibitions on subletting or assignment.

2. Swett would have no right to object to the assignment even if the lease to Zarque contained an express prohibition on subletting.

3. Both of the above.

4. None of the above. Without a statutory or lease provision which authorizes subletting or assignment by the tenant, the tenant may not, under the traditional common law rules, foist a substitute on the landlord.

9. Suppose that Zarque and marina owner, Thurston Swett, negotiated and signed a five year lease to Zarque of a building on the marina land. Suppose that, after 2 years, Zarque contracts to sell his business to Sinker Schwinn, and Schwinn agrees to "take over" possession under Zarque's lease:

1. If the transfer of possession to Schwinn were a sublease, Zarque would still be liable to Swett for rent under privity of estate and, if he promised to pay rent in his lease, under privity of contract.

2. If the transfer of possession to Schwinn were an assignment, Zarque would still be liable to Swett for rent under privity of estate, even though this would give Swett two persons from whom he could collect the rent.

3. If the transfer of possession to Schwinn were an assignment, Zarque would be, in effect, the landlord of Schwinn, though Schwinn might in reality pay the rent directly to Swett.

4. Schwinn could be, at best, a mere licensee with a contractual right to his license if Swett does not consent to a change of tenants.

10. Suppose that Zarque and marina owner, Thurston Swett, negotiated and signed a five year lease to Zarque of a building on the marina land. While Zarque is still lawfully in possession under the lease:

1. Zarque would not be regarded as having the seisin of the land, but merely possession, and therefore Zarque could not maintain ejectment if ousted from possession.

2. Zarque would not be regarded as having the seisin of the land, but merely possession. Nevertheless, Zarque could successfully maintain ejectment against Swett if the latter were wrongfully to oust Zarque from possession.

3. Zarque would not be regarded as having the seisin of the land, but merely possession. Nevertheless, Zarque could successfully maintain ejectment against anybody who might wrongfully oust Zarque from possession, excepting only Swett, who has the seisin.

4. Zarque would have no rights against Swett if Plunt, who turns out to have a better title than Swett, were to lawfully oust Zarque from possession.

11. Owen Monnee conveyed Blackacre "to Felix Flaymount and his heirs, so long as the land is used as a wildlife preserve, provided that if it ceases to be so used then to Orville Ordnox and his heirs."

1. The words "and his heirs" which appear twice in the conveyance are words of purchase; i.e. they indicate that this conveyance confers rights on the respective heirs of Felix and Orville.

2. The words "and his heirs" which appear twice in the conveyance are words of limitation; i.e. they indicate that the estates to which they refer are, or would be, estates in fee simple.

3. The words "and his heirs" which appear twice in the conveyance are words of limitation; i.e. they indicate that this conveyance confers rights on the respective heirs of Felix and Orville.

4. Each of the legal interests which Owen evidently intended here could have been directly created before or after the Statue of Uses (though by different types of conveyance).

12. Owen Monnee conveyed Blackacre "to Felix Flaymount and his heirs, so long as the land is used as a wildlife preserve, provided that if it ceases to be so used then to Orville Ordnox and his heirs."

1. If the words of conveyance had ended with the word "preserve", then Owen would probably have a possibility of reverter.

2. As the conveyance actually reads, it is Orville Ordnox who has the possibility of reverter.

3. Neither of the above are correct. As it reads, the conveyance gives Orville a right of entry, and Owen would have had the right of entry had the words of conveyance ended with the word "preserve".

4. It is not possible to determine, from the facts given, whether these words of conveyance, up to the word "preserve", would probably create a fee simple determinable or a fee simple on condition subsequent.

13. Simon Scion conveyed Greenacre "to Billy Blowdough for life, and then to Billy's son, Billy, Jr., and his heirs if he graduates from law school."

1. Simon Scion still has an interest in Greenacre.

2. Billy, Jr. has a contingent remainder.

3. Billy Jr. will not become entitled to Greenacre, even if he graduates from law school unless he does so before the termination of his father's life estate.

4. All of the above.

14. Suppose that Simon Scion conveyed Greenacre "to Billy Blowdough for life, and then to Billy's son, Billy, Jr., and his heirs if he takes over his father's law practice after his his father's death." Billy, Jr. has not yet graduated from law school:"

1. Simon Scion would not have an interest in Greenacre.

2. Billy, Jr. has a contingent remainder.

3. Billy Jr. can become entitled to Greenacre even if he graduates from law school after the termination of his father's life estate.

4. All of the above.

15. Suppose that Simon Scion conveyed Greenacre "to Billy Blowdough and his heirs from and after his 21st birthday." Billy is now age 18:

1. Billy has a springing executory interest.

2. Billy has a shifting executory interest.

3. Billy has a contingent remainder.

4. Billy has no interest. A conveyance to take effect in the future is not valid.

16. Suppose that Simon Scion conveyed Greenacre "to Billy Blowdough for life, and then to Billy's heirs."

1. If the Rule in Shelley's Case does not apply, there is a contingent remainder in Billy's heirs.

2. If the Rule in Shelley's Case does not apply, there is a vested remainder in Billy's heirs.

3. If the Rule in Shelley's Case applies, then Billy has a life estate and his heirs have an executory interest.

4. If the Rule in Shelley's Case applies, then Billy has only a life estate and Simon Scion has a reversion.

17. Bobbie and Pat Collingwood bought Blueacre, their residence, 25 years ago, shortly after they were married. The mortgage is now fully paid off, entirely out of Bobbie's earnings since their marriage:

1. In a community property jurisdiction, Bobbie and Pat would share ownership of Blueacre equally.

2. In a common law marital property jurisdiction, Bobbie and Pat would presumptively be tenants by the entirety, even if the deed simply named one of them as grantee, provided that their jurisdiction recognizes the tenancy by the entirety.

3. In a common law marital property jurisdiction, Bobbie would presumptively be the owner as a tenant in severalty if the deed simply named the two of them as grantees, since Bobbie's money was the the sole source of funds used to buy the property.

4. In a community property jurisdiction, Bobbie and Pat would share ownership of Blueacre equally, but the proceeds of a sale would belong to Bobbie, since she contributed the funds which bought the property.

18. Darrell Rideout and Marvin Bronk were two friends who went in together to buy Brownacre, a barn and a few acres of land, which they intended to use in a horse boarding business. The granting clause of the deed read "to Darrell Rideout and Marvin Bronk and their heirs". Under the modern presumption:

1. Darrell and Marvin became tenants in common.

2. Darrell and Marvin became joint tenants.

3. Darrell and Marvin became tenants by the entirety.

4. Darrell and Marvin became owners of separate divided estates in Brownacre, subject to division of their respective interests.

19. Suppose that, under the language of the deed to them, Darrell and Marvin became joint tenants in Brownacre. If Darrell conveyed an undivided 50% of his share to Cindy Celibant, whom he met in a bar:

1. Marvin, Darrell and Cindy would now all three be joint tenants.

2. Marvin, Darrell and Cindy would now all three be tenants in common.

3. Darrell's right of survivorship would be extinguished, but Marvin's would not be affected.

4. Cindy and Darrell would be tenants in common sharing an undivided 50% interest in Brownacre, and Marvin would be a joint tenant with them as to the other 50%.

20. Suppose that Marvin, Darrell and Cindy went to a lawyer and had the lawyer fix it so that the three of them were joint tenants in Brownacre. Later, Darrell transferred his interest to Cindy. As a result:

1. Marvin and Cindy would now simply be tenants in common.

2. If Cindy then died, Brownacre would be owned by Marvin, as to an undivided two-thirds, and Cindy's heirs or devisees, as to an undivided one-third.

3. If Cindy then died, Brownacre would be owned by Marvin alone.

4. If Marvin then died, Cindy would own Brownacre together with Darrell again.

21. Suppose that Cindy and Marvin were tenants in common in Brownacre, and Marvin had been in sole possession for some time. If the period of limitations on ejectment is 10 years, and the period for trespass actions for mesne profits is three years, then under the majority rule:

1. Cindy probably could not recover mesne profits damages in trespass from Marvin unless he had ousted her, or refused her entry, within the last ten years.

2. There is no way, even with an agreement, that Cindy could have any monetary recovery from Marvin based on his sole possession, unless he had ousted her, or refused her entry, within the last ten years.

3. Cindy probably could recover mesne profits damages from Marvin if he has ousted her, irrespective of whether the ouster occurred within the last ten years.

4. Cindy would have an ejectment action to recover possession from Marvin, putting her into possession in Marvin's place, if he ousted her within the last ten years.

22. Suppose that Cindy and Marvin were tenants in common in Brownacre. Marvin, who held sole possession, made a contract to sell the land to Sid Simple, for $100,000. The contract did not mention Cindy's interest in Brownacre. Cindy did not sign, or for that matter know about, the contract or proposed sale till the day before the scheduled closing:

1. Cindy should, on these facts, be entitled to an injunction against the sale because she was not made a party to it.

2. Simple should, on these facts, be able to reject Marvin's tender of title, since it is unmarketable -- there being a rather significant "defect" in it, viz. Marvin only has a part ownership, as tenant in common.

3. After Simple has accepted the full quitclaim deed from Marvin, Simple should, on these facts, be able to recover damages from Marvin because of the rather significant "defect" in the title, even if Simple cannot prove fraud.

4. Simple should, on these facts, be able to hold both Marvin and Cindy to the contract if Marvin misled Simple as to the state of his title.

23. Drew D'Assene, an aspiring artist, decided that he needed the quiet of the country for inspiration. He entered into a contract with Frank Farmdout to buy a portion of Frank's place -- overlooking a beautiful river and the hills beyond. In order to preserve the magnificent view over the lands to be retained by Frank, Drew insisted that the deed include an easement of view for the benefit of Drew's new property. Once created by a deed from Frank to Drew, such an easement would, under the usual presumptions, be:

1. Appurtenant to the lands which Drew acquired under the deed.

2. A negative easement.

3. A burden upon subsequent purchasers for value of the lands retained by Frank, provided that Drew's deed was duly recorded.

4. All of the above.

24. Before signing a contract to buy part of Frank's land, Drew looked at the land (Drewacre) on three occasions. On these occasions, Drew reached Drewacre by using a well-worn lane running from the public road, across Frank's property and past Frank's house, and terminating somewhere in the middle of Drewacre. Although Drewacre touches the public road at one point, there is a relatively steep drop-off at that location, and building an entranceway there would be quite expensive -- almost as much as Drew paid for Drewacre (though only about 1/4 of the cost of house which Drew built there). On these facts:

1. Drew has a pretty good case for asserting an easement over the lane by implied grant based on prior use.

2. Drew has a pretty good case for asserting an easement over the lane by implied reservation based on prior use.

3. Drew has a pretty good case for asserting an easement over the lane by implication based on necessity.

4. Drew has a pretty good case for asserting any of above.

25. Assume that when Drew bought a portion of Frank's land he also acquired under the deed an express easement to cross over "the existing lane" on Frank's land to get to his own land. Suppose, though, that it was shorter for Drew to follow a somewhat different course to his new house, veering off the established lane for several hundred yards. If Drew were to create and regularly use a new spur off the lane:

1. He would be a trespasser in doing so.

2. He could eventually acquire a right to use the new shorter way to his house if he openly and regularly used the new way for a sufficient length of time.

3. Both of the above.

4. Drew would probably have had a right to use the new shorter route almost from the outset if Frank saw him using it and said nothing, thus indicating acquiescence by silence.

26. Assume that when Drew bought a portion of Frank's land he also acquired under the deed an express easement to cross over "the existing lane" on Frank's land to get to his own land. Suppose, though, that Frank decided to build a new outbuilding which would lie across the lane at its historical (and "existing") location, and that Frank wished to move a portion of the lane a few dozen feet over. If Frank interrupted the lane's original route with the outbuilding:

1. Drew would have no cause for complaint, provided that the interruption of the original route did not substantially interfere with Drew's reasonable access to or from his property.

2. Drew's rights under his easement over the lane would be violated.

3. The wrongful interference with Drew's easement could, if maintained long enough, eventually become rightful, and Drew's easement over the original route would be, in part, extinguished.

4. Both 2 and 3 above.

27. Assume that when Drew bought a portion of Frank's land, Drewacre, he also acquired under the deed an express easement to cross over the lane on Frank's land to get to Drewacre. Suppose, that a couple of years later, Drew's good friend Phillip dePage, the aspiring author, bought a section of Drewacre from Drew. The deed granted dePage an easement "running from the end of the lane on Drewacre in a straight line to the nearest boundary between Drewacre and dePageacre", but said nothing about the use of the portion of the lane across Frank's land.

1. dePage would have to work out his own deal with Frank if he wanted to make regular use of the portion of the lane across Frank's land.

2. dePage would, under the usual presumptions, have a right to use the portion of the lane across Frank's land since he owns a part of the dominant tenement.

3. dePage would, under the usual presumptions, have a right to use the portion of the lane across Frank's land since Drew, as easement owner, has impliedly licensed him to make such use, and Drew is now estopped to deny such permission.

4. dePage should have an easement by necessity to use the lane on Frank's land because such use is absolutely necessary for dePage's use of his own property, i.e. the easement across Drew's land.

28. Suppose that Drew agreed to sell a portion of his land, Drewacre, to dePage, and that the boundary line was established without either of them realizing that the well which serves Drew's premises was on the portion of Drewacre to be acquired by dePage. Neither the well nor the pipe to Drew's house is visible from the surface. If Drew has now delivered a deed to dePage, mentioning no easements, and it would cost Drew over $3000 to drill a new well on his own side of the line:

1. Drew might have considerable trouble asserting an easement by implication because the prior use here was neither visible nor particularly apparent.

2. Drew might have considerable trouble asserting an easement by implication under the majority rule because the use of the servient tenement for the benefit of the dominant tenement would not be strictly necessary.

3. Both of the above.

4. Drew should have no trouble asserting an implied easement by necessity under these facts because, as everyone knows, water is absolutely necessary for life.

29. Suppose that when Drew was discussing the sale to dePage, Frank became concerned, as one of the neighbors, that a commerical establishment might eventually be placed on one of the lots. If Frank, Drew and dePage agreed that none of their respective lots should ever be used for non-residential purposes, and Drew placed reciprocal covenants to that effect in the deed which he delivered to dePage:

1. Drew ought to be able to enjoin the construction of a hotel on dePageacre by a person who later bought it from dePage with notice of the residential covenant in dePage's deed from Drew.

2. Ray Mote, who later bought Drew's remaining land from Drew, ought to be able to enjoin the construction of a hotel on dePageacre by a person who later bought it from dePage with notice of the covenant in dePage's deed from Drew.

3. There are jurisdictions in which Frank might have some trouble enforcing the covenant in dePage's deed from Drew against a buyer from dePage.

4. All of the above.

30. Suppose that in Frank's deed to Drew, Frank placed a covenant "forever" restricting the use of the land conveyed to Drew to residential purposes. If Drew recorded his deed and then subsequently sold separate portions of his land to dePage, deBosch and deRanged:

1. DePage, deBosch and deRanged would not be subject to the residential-use covenant unless they took with knowledge of it.

2. DePage, deBosch and deRanged would be subject to injunction for violation of the residential-use covenant, but not to any action for damages.

3. Enforcing the covenant as a real covenant, Frank should, as an injured neighboring owner, be able to recover damages for breach of the covenant against a purchaser from Drew who violated the covenant.

4. Although Frank could, as an injured neighboring owner, recover damages for breach of the covenant by enforcing the covenant as a real covenant, he could not get an injunction because the covenant cannot create an equitable servitude.

— END OF EXAMINATION —