

Note: The questions on this exam draw heavily on exams given 1999-2010

PACE UNIVERSITY SCHOOL OF LAW

PROPERTY
PROFESSOR HUMBACH
FINAL EXAMINATION

May 4, 2011
TIME LIMIT: 4 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 multiple choice questions ~~and true-false questions~~. Answer the multiple-choice ~~and true-false questions (if applicable)~~ on the answer sheet provided.

- Write your examination number on the “name” line. *Write it NOW.*
- Mark "A" in the “Test Form” box on the right side of the answer sheet. *Mark it NOW.*
- Also write your examination number in the boxes where it says "I.D. Number" on the right side. Use **only** the first 4 columns and *do not skip columns*. Then carefully mark your exam number in the vertically striped area below. You should mark only one number in each of the first four columns. *This is part of the test.*

If you successfully took the Estate System Proficiency test and have a “word,” write your “word” *above your exam number* on the “name” line of the answer sheet (and, of course, you don’t have to do the true/false questions). **Do not write the “word” anywhere else on the answer sheet.**

Answer each question selecting the *best* answer. Mark your choice on the answer sheet with the special pencil provided. *Select only one answer per question.* **If you change an answer, be sure to fully erase your original answer** or the question may be marked *wrong*. You may lose points if you do not mark **darkly** enough or if you write at the top, sides, etc. of the answer sheet.

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

Unlike in some recent previous years, **there is no “re-answer” feature on this test.**

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. **Unless otherwise specified, assume that: (1) the period of limitations on ejectment is 10 years; and (2) the signed-writing requirement in the statute of frauds applies to “leases of more than one year.”**

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 obsolete doctrines such as the Rule in Shelley's Case, the Doctrine of Worthier Title and the destructibility of contingent remainders. Ignore the possibility of dower and, for perpetuities purposes, ignore the possibility of posthumous children in gestation.

1 Hoskins was out on horseback looking for wild horses (which you may assume are “ferae naturae”). He spotted large stallion and commenced pursuit. When he was just about to get a rope on the stallion, Elmont appeared out of nowhere and intercepted it, eventually roping the stallion. Despite Hoskins’s protests, Elmont took it. Hoskins has brought an action against Elmont

- a. Hoskins would be entitled to the stallion as against Elmont if Hoskins had a reasonable prospect of capturing it.
- b. Hoskins would be entitled to the stallion as against Elmont if these events had occurred on Hoskins’ land, and Elmont was trespassing.
- c. Both of the above.
- d. Hoskins would be entitled to the stallion because he was the first to see and go after it.
- e. All of the above.

2 Thornton told his friend, Riehl, that Riehl could hunt and fish on Thornton’s land any time he wanted to. Recently, however, Thornton has learned that Riehl has discovered an outwash on Thornton’s land where there are many ancient arrowheads, relatively easy to dig out. Riehl has been digging out the arrowheads and selling them to collectors. Assume that the arrowheads are not considered a part of the soil or “mislaid” property:

- a. Thornton can have no claim to the arrowheads unless he can show either that he had previously known they were there or that he himself had put them in the outwash.
- b. Thornton can have no claim to the arrowheads since Riehl was on the land with his permission.

- c. If a court agrees that the scope of Riehl’s license from Thornton was for hunting and fishing only, it should follow that Thornton would have the better claim to the arrowheads.
- d. Even if digging out the arrowheads was a technical trespass, Riehl would be entitled to them because he was the finder.

3 As Anthony Allhoapes was walking down the street, a \$50 bill flew out of the window of a passing car. Allhoapes reached up and tried to grab the money as it sailed past, but he barely grazed it and succeeded only in deflecting it toward a shopping bag carried by Margaret Playne. The money landed inside the shopping bag, but Margaret didn’t even notice. Allhoapes dashed up to Margaret pointing at the bag and saying, “Give me that. It’s mine!” Confused, Margaret looked down, saw the \$50 bill and picked it up. Allhoapes grabbed it from her hand and started to run off, but he was tackled by a police officer. Nobody saw the license plate on the passing car, and no one has come forward claiming to be the true owner of the money.

- a. As long as all this occurred on a public street, and Allhoapes was not trespassing, Allhoapes is entitled to the \$50 bill.
- b. Allhoapes has a better claim to the \$50 bill than Margaret because he was the first to spot and touch it.
- c. Neither Margaret nor Allhoapes has any legal claim to the \$50 bill because, obviously, neither one of them owns it.
- d. Margaret should have the best claim to the \$50 bill because she was the most recent known possessor of it.

4 Victor needs to do some repairs to the side of his house. Because his lot is small, he'll have to use a couple of feet of the neighbor's property for ladders, equipment, and materials. Recently, however, Victor has been quarrelling with his neighbor and the latter has refused to allow any intrusions or encroachments on his land, no matter how minor or temporary.

- a. As long as any incursions by Victor or his contractor are reasonable and cause no real damage, the neighbor would not have a legal right to object to this minor use of his land.
- b. As long as the incursions are for necessary repairs to Victor's house, Victor would be recognized as having an easement by necessity in most jurisdictions.
- c. If Victor goes ahead and uses part of his neighbor's yard in making the repairs, he could be held liable to his neighbor in trespass.
- d. If Victor goes ahead and uses part of his neighbor's yard in making the repairs, he would be liable to his neighbor in nuisance.

5 Bradley owns a dairy farm and supplies water to his herd from a natural spring. The Coe Coal Company (CCC) owns a large parcel nearby. As CCC has mined deeper, it has needed to pump out seeping groundwater that tends to flood its mine. The mining and pumping has lowered the water table and, as a result, Bradley's spring dries up during the warmer months, forcing Bradley to have water hauled in at great expense.

- a. Bradley probably has an action against CCC under the so-called American Rule.
- b. Bradley probably has an action against CCC under the so-called English Rule.

- c. Both of the above.
- d. None of the above.

6 Gruff owns a parcel of land bisected by a small stream that is navigable in fact. Kevin and Marie went down the stream in a canoe even though Gruff had told them he didn't want them coming through his property. As owner of the surrounding land, Gruff owns the bed and banks the stream.

- a. Gruff would have a trespass action against Kevin and Marie because they did not have his permission to travel down the stream.
- b. Gruff would not necessarily have a trespass action against Kevin and Marie even if, from time to time, they touched the bed or banks of the stream.
- c. Gruff would have a trespass action against Kevin and Marie unless the stream was deemed to be navigable in law.
- d. Gruff would have a trespass action against Kevin and Marie because they were in his airspace.

7 Lincoln owns an apartment building. Four months ago, he made an oral lease of an apartment to Gilman. The lease was for an agreed term of 9 months, reserving a rent of \$1200 per month. Gilman has moved in and has been duly paying the rent each month:

- a. Gilman has a term of years.
- b. Gilman has a monthly tenancy.
- c. Gilman is a tenant at will.

d. Gilman is a licensee.

8 Suppose that Lincoln orally leased to Gilman creating a month-to-month tenancy that commenced August 28, 2010. Lincoln wants to terminate the tenancy as soon as possible. Suppose that Lincoln hand-delivers Gilman a notice today (May 4, 2011) stating that the tenancy will terminate May 27, 2011.

a. The notice should be effective according to its terms, and Gilman would be unlawfully holding over if he were still in occupancy on May 28.

b. The notice would *not* be effective according to its terms, but Gilman would nonetheless be unlawfully holding over if he were still in occupancy on May 28.

c. The notice would *not* be effective to end the lease in May, but Gilman would nonetheless be unlawfully holding over if he were still in occupancy on June 28.

d. The notice would not be effective to terminate Gilman's tenancy.

9 Assume now that Lincoln made a *written* lease of an apartment "to Gilman for two years reserving a rent of \$2000 per month" and that Gilman entered into possession. Assume that the lease contained the usual covenants and agreements found in residential leases.

a. The result would be that Lincoln and Gilman would be in privity of estate and privity of contract.

b. The primary effect of the words "reserving a rent of \$2000 per month" would be to impose a *contract* obligation pay rent.

c. At common law, Gilman's right to possession and seisin of the premises would be automatically terminable if he failed to pay the rent.

d. All of the above.

10 Beckman occupies his apartment under a written two-year lease. Seven months into the lease his employer decided to move him to another city. Beckman's co-worker, Jones, is willing to take over the apartment. Beckman's lease contains an assignment clause stating that he may assign only with the landlord's consent. The lease says nothing about subletting. The landlord has told Beckman that he will not consent to an assignment unless he receives an additional \$100 per month rent.

a. As long as Beckman retains a reversion, he would not need the landlord's consent.

b. Some courts would allow the landlord to withhold consent for any reason (other than an "illegal" reason) or for no reason.

c. Some courts would hold that the assignment clause doesn't let the landlord withhold consent just because the tenant won't agree to pay a higher rent.

d. All of the above.

11 In the preceding question,

a. If Beckman sublets to Jones, he would become the landlord of Jones.

b. If Beckman validly assigns to Jones, he would become the landlord of Jones.

c. If Beckman validly assigns to Jones, Beckman would no longer have any liability for the rent.

d. All of the above.

12 Six months ago, Fenster *orally* leased his house to Ventana for an agreed term of two years, reserving a rent of \$3000 per month. Ventana moved in, and continues to occupy the house, duly paying the rent each month.

a. Ventana has a term of years.

b. Ventana probably has a tenancy from month to month.

c. Ventana probably has a tenancy from year to year.

d. There is no legal basis for assuming that Ventana has anything but a tenancy at will.

13 Kirby occupies an apartment under a 3-year lease. Shortly after he moved in, the landlord leased the apartment directly overhead to a group of college students. They are noisy, and loud sounds from above invade Kirby's apartment at all hours of the day and night (except mornings before 11:00 a.m. or so). Kirby wants to know whether, if he moves out before the end of his lease, he can continue to be held liable for rent.

a. Kirby should have no worries because tenants that move out early are not legally responsible for rent as long as they let the landlord keep the security deposit.

b. In order to assert constructive eviction, Kirby would have to show (among other things) that his apartment was untenable due to some breach of duty by the landlord.

c. Even if the noise did not make Kirby's apartment technically untenable, he would still be able to assert constructive eviction if he actually moved out.

d. A person can generally assert that he was constructively evicted even if the untenability is caused by acts of third parties and not by the landlord.

14 Dissatisfied by some of the limitations on the doctrine of constructive eviction, a number of courts have adopted the implied warranty of habitability and they've said they would treat leases as contracts. The effect of these changes in the law is to:

a. Extend the doctrine of "independence of covenants" so that it applies to leases.

b. Give tenants a more-or-less effective "rent weapon" to motivate landlords to perform their obligations under leases.

c. Require landlords to expressly spell out in the lease the services to which tenants are entitled, and to deny tenants any right to services that are not clearly spelled out.

d. Treat leases strictly in accordance with ordinary contract law, just as though they were purely contracts rather than conveyances.

15 After negotiating and agreeing to a 3-year lease, which neither party ever signed, Jackman entered into occupancy of premises owned by Thomas on March 15 of this year. The reserved rent was "\$2000 per month," and Jackman paid the rent for the first month in advance. He has continued paying the rent on or about the fifteenth day of each succeeding month. Today (May 4, 2011) Thomas received an attractive offer to buy the premises on the condition that they be delivered vacant. The earliest date as of which Thomas can terminate the lease would be:

- a. May 14.
- b. May 31.
- c. June 4.
- d. June 14.
- e. March 14, 2014.

16 If Coleman is a tenant under a lease and validly assigned the lease to Udall, who later reassigned to Roth:

- a. Coleman would still be liable for the rent under the lease.
- b. Udall would be liable for the rent during her occupancy whether or not she assumed the lease.
- c. After reassigning to Roth, Udall would continue liable for rent if she'd assumed the lease.
- d. All of the above.

17 Linkletter leased an apartment to Hanneford under a valid three-year lease. After seven months, Hanneford's employer moved his job to a distant city so he no longer has any use for the apartment. At common law:

- a. Hanneford may sublease or assign his lease without Linkletter's consent, unless the lease contains a provision to the contrary.
- b. Hanneford may surrender the premises back to Linkletter, and thereby terminate his obligation to pay any

future rent, even if Linkletter is unwilling to accept such a surrender.

- c. Hanneford would cease to be liable for rent under the lease if the landlord agrees to accept a return of the keys.
- d. All of the above.

18 Randi was standing in her living room with her daughter, Cleo, and pointed to a small carving on the wall saying: "I want you to have that as soon as you move into a place of your own. We'll leave it up there for time being, but once you get an apartment, it'll be yours." As of this point:

- a. Cleo owns the carving.
- b. Randi has made an unenforceable gratuitous promise.
- c. There may not have been an expression of *in praesenti* donative intent, but the delivery requirement would be dispensed with in a case like this.
- d. The gift is not yet complete, but Cleo would have a cause of action to recover it if Randi doesn't turn it over within a reasonable period of time.

19 Ambrose, in apprehension of death from a serious illness, said to Janis: "Here's my ring that I received when I was initiated into the secret society. I want you to have it." Janis took the ring and later left with it. Unexpectedly, Ambrose recovered from his illness, but when Janis tried to return the ring Ambrose refused, saying: "No, Janis, I gave that to you. I never meant to have it back. It's yours."

- a. The gift made by Ambrose in apprehension of death would have been presumptively *causa mortis*.

- b. Under the usual presumption, the gift by Ambrose would have been revocable by him even if he survived the illness.
- c. On the evidence here, Ambrose appears to have made an inter vivos gift of the ring.
- d. All of the above.

20 Ambrose, again on his deathbed (located in an apartment in the city), said to Janis: “Here’s the deed to my cottage out at Larch Lake. I want you to have it and all the furniture.” The deed conveyed to Janis a fee simple in the cottage real estate, subject to a life estate retained by Ambrose. The deed made no mention of furniture:

- a. As is usual, the furniture would be presumptively included with the conveyance of the real estate even though the deed made no mention of it.
- b. As heir of the cottage under the deed, Janis would naturally become the owner of the furniture.
- c. The delivery of the furniture would in any case be complete if Janis took possession of the cottage and furniture following the death of Ambrose.
- d. None of the above.

21 Ambrose, again on his deathbed, said to Janis: “Ten years ago I hid a bag of gold coins for a rainy day. Since I’m not going to be needing them now, I’m giving them to you. You should go get them as soon as you can.” Under the principles and policies generally applicable to “constructive delivery”:

- a. The delivery would be complete if Ambrose also handed Janis the only key to the distant safe deposit box where the coins were located.

- b. The delivery would be complete if Ambrose also told Janis the secret location where the coins were buried.
- c. The delivery would not be complete until Janis goes and takes actual physical possession of the coins before the death of Ambrose.
- d. To complete this gift, Janis would have to go and get the coins and bring them back so Ambrose could deliver them to her.

22 For several years, now, Banfield has kept his antique Model T Ford in a garage on Owen’s property, meaning that Owen was (as a favor to Banfield) the gratuitous bailee of the car. Last year, Banfield handed Owen a letter that said: “I hereby give you my Model T Ford, beginning from and after my death.” After Owen received the letter, the car continued to be kept in Owen’s garage until Banfield’s death. The delivery requirement could be considered to have been met:

- a. By handing over the letter.
- b. By virtue of the fact that the car was already in Owen’s possession.
- c. Both of the above.
- d. None of the above. Since this was, in effect, a testamentary gift the delivery requirement did not have to be met.

23 United Pyro Inc. is a large user of natural gas, all of which is piped in from far away. After the gas arrives, it has to be stored until needed. United places the gas into natural underground cavities that extend under its own land and neighboring parcels. Once back in the ground the gas tends to flow around under the neighboring parcels

until United pumps it back out again. Recently, United learned that one of its neighbors, Kellerman, has been removing gas from the ground. Chemical testing has revealed that the gas removed by Kellerman is the same gas as that was pumped into the ground by United.

- a. According to some of the cases, which purport to apply the doctrine of “capture,” the gas that United pumps into the ground would cease to belong to United.
- b. If United ceased to be the owner of the gas while it was flowing under neighboring parcels, it would not be logically possible to consider United a “trespasser” for storing the gas this way.
- c. Both of the above.
- d. It is almost universally held to be wrongful for a person to take valuable natural gas from the ground knowing that somebody else had bought the gas and placed it there.

Facts for Forrest questions: Calvin Forrest owns an automobile repair shop. One of his workers, Higgins, was repairing a car at the shop when he discovered \$25000 in recently issued currency hidden behind a door panel. Higgins handed the money to a co-worker, Mikhail, who took it to Forrest. The car belonged to Witherspoon, who’d bought it for \$1000 one week earlier. Witherspoon did not know that the \$25000 existed until Forrest asked him if it was his. Higgins, Mikhail and Witherspoon now all claim the money from Forrest.

24 Assuming that the court applies the distinction between lost and mislaid property and treats Forrest’s shop as the locus in quo, the money would probably (in the absence of its true owner) be awarded to:

- a. Forrest.
- b. Witherspoon.
- c. Higgins.
- d. Mikhail.

25 Assume that Witherspoon personally drove the car to Forrest’s shop. Assume also that the court does *not* apply the distinction between lost and mislaid property. Consistently with the so-called English rule for “finding” cases, the money should be awarded to:

- a. Forrest.
- b. Witherspoon.
- c. Higgins.
- d. Mikhail.

26 Assume again that the court does *not* apply the distinction between lost and mislaid property but, instead, follows the so-called *American* rule for cases of finding. If Witherspoon personally drove the car to the shop, the money would probably be awarded to:

- a. Higgins, unless “finding” is deemed to be part of his duties as an employee of Forrest.
- b. Witherspoon, if the car is deemed to be the locus in quo.
- c. Forrest, if his shop is deemed to be the locus in quo.
- d. Mikhail.

27 Leila Dellwood left her car at Ace's Valet Parking while she had dinner. When Dellwood came back to Ace, she spotted a computer thumb drive lying on the floor of the customer reception area, considered a "semi-public" portion of the premises. Mr. Ace, owner of the parking facility, now demands the thumb drive. The jurisdiction does not make a distinction between lost and mislaid property. Who has the better right to the thumb drive?

- a. Dellwood, if the jurisdiction follows the so-called American rule to cases of finding.
- b. Dellwood, if the jurisdiction follows the so-called English rule to cases of finding.
- c. Both of the above.
- d. Mr. Ace.

Facts for the "Marjorie's vase" questions: Marjorie had a porcelain vase that she'd received as a gift from an aunt. Unbeknownst to Marjorie, the vase was an antique, worth several thousand dollars. When her daughter's second grade class was making a diorama of pioneer life, Marjorie lent the vase to the teacher for use in the display. The teacher, also unaware of the value of the vase, let members of the class play with it. One of the second graders dropped the vase and it shattered

28 Marjorie brings an action against the teacher for the loss to the vase.

- a. The teacher would be liable to Marjorie for damages because she could not return the vase in the same condition in which it was lent to her.

b. The teacher would be liable to Marjorie for damages only if she were found to have been negligent in dealing with the vase.

c. The teacher could be held liable to Marjorie for damages only if her conduct could be considered to be a "conversion" of vase.

d. The teacher could not be held liable to Marjorie for damages.

29 In Marjorie's suit against the teacher, the issue arose whether the teacher was negligent in caring for the vase.

a. Ordinarily, the teacher (as bailee) would be presumed to have been negligent.

b. Ordinarily, it would be up to the teacher to come forward with evidence showing that the loss was *not* due to her negligence or showing some explanation for the loss.

c. Both of the above.

d. Marjorie, as plaintiff, would ordinarily be required to show a prima facie case for relief to be granted, meaning that the initial burden would be on Marjorie to prove that the teacher was negligent.

30 In Marjorie's suit against the teacher, the court is trying to formulate the charge to the jury on the question of whether the teacher properly cared for the vase. Which of the following (if any) would be *most* relevant to this issue?

- a. The actual fair market value of the vase.

- b. The apparent value of the vase in the eyes of an ordinarily prudent person.
- c. The value that the teacher actually thought the vase had.
- d. None of the above. Value would not be relevant on the question of whether the teacher properly cared for the vase.

31 In Marjorie's suit against the teacher, the court is trying to determine what to charge the jury with respect to the proper measure of damages. Assuming that the teacher is found to be liable, which value would be most relevant to the proper measure of damages?

- a. The actual fair market value of the vase.
- b. The apparent value of the vase in the eyes of an ordinarily prudent person.
- c. The value that the teacher actually thought the vase had.
- d. None of the above. Value would not be relevant to the proper measure of damages if the teacher did not know the actual value of the vase.

32 Irene lent a suitcase to her friend Rhonda, who was going on a cruise. When Rhonda returned the suitcase (in good condition) Irene suddenly remembered that she'd hidden some jewelry inside it, tucked in a secret compartment. When she checked, however, there was no sign of the jewelry. At the time Rhonda took the suitcase, she had no idea it contained jewelry. Under the better reasoned rule:

- a. There would have been no bailment of the jewelry to Rhonda.
- b. Rhonda would be deemed to have become a bailee of the jewelry and probably liable for its loss.

- c. Rhonda would be deemed to have become a bailee of the jewelry but probably would *not* be liable for its loss.
- d. Technically, Rhonda would be liable for misdelivery.

33 Raemour owned a farm bordered on two sides by state forest preserve lands. On a third side was land held by Longworth, who had leased it from the state 25 years ago but had never used it. For over 12 years, Raemour has been planting corn and other crops on a section of the Longworth parcel, taking the harvest for himself. Last year, Longworth bought the leased parcel from the state and now is suing Raemour for trespass and a declaration confirming ownership in Longworth.

- a. In many states Raemour would lose because Longworth bought the land from the state only last year.
- b. In most states Raemour would lose because Longworth bought the land only last year, and legally it could not really matter whom he bought it from.
- c. Both of the above.
- d. There is no legal reason to doubt that Raemour should win because, under the almost universal rule, he has rather clearly acquired a ripened title by adverse possession.

34 In the preceding question suppose that, under local law, Raemour could successfully claim a ripened title by adverse possession based on these facts. Even if he does, however:

- a. Longworth still should be able to recover mesne profits from Raemour for the time that Raemour unlawfully possessed in violation of Longworth's rights.

- b. Longworth still should be able to recover damages from Raemour for injuries to the land that Raemour caused during the time before the title ripened in Raemour.
- c. Both of the above.
- d. Longworth would not be able to either recover damages in trespass or mesne profits from Raemour.

35 Shirley owns a house and lot. The rear yard of her property abuts on a lot owned by Bob. There is a large garage on Bob's lot, almost as wide as his lot. The garage is 5 feet from the legal property line between Bob's lot and Shirley's. As a result, there is a 5' wide strip of Bob's land behind the garage that abuts Shirley's rear yard but that Bob essentially has no access to. For many years, Shirley actively occupied and used this 5-foot strip of Bob's land as though it were her own.

- a. If Shirley has adversely possessed the 5-foot strip long enough, she may have acquired a ripened title to it by original acquisition.
- b. Due to Shirley's occupancy and use of the strip, Bob's ownership may have been transferred to Shirley.
- c. Both of the above.
- d. Bob has nothing to worry about as long as he holds a valid deed showing that he is the legal owner of the 5-foot strip.

36 One of the main purposes of adverse possession law is to:

- a. Make it possible for people with little money to acquire land that is not being productively utilized by the person who is technically the owner.
- b. To protect expectations based on longstanding patterns of land occupation and use.
- c. To prevent legitimate ownership claims to land from being cut off due to the mere passage of time.
- d. All of the above.

37 Many years ago Rick donated a corner of his farm to the Lemon Township School District for construction of an elementary school. Years after the school was completed, the District built a small shed near the edge of its property. Unbeknownst to either the District or Rick, this shed was actually on Rick's side of the property line. When the mistake was finally noticed, more than 11 years later, the District apologized to Rick and moved the shed over to its own side of the line. Three years after that, however, the District (under a new board) decided to reclaim the area where the shed was originally located. Rick objects.

- a. The District cannot reclaim the area because it has returned to Rick whatever ownership it might have acquired by adverse possession.
- b. The District cannot reclaim the area because it has terminated its adverse possession by removing the shed and letting Rick take back possession of the land.
- c. The District cannot reclaim the area because it has abandoned the area.
- d. The District has a strong case for reclaiming possession of the area.

38 In the preceding question, which is the strongest argument *against* allowing the District to reclaim the area where the shed originally was located (at least in some jurisdictions)?

- a. The possession by the District was not open and notorious.
- b. The possession by the District has not been continuous.
- c. The possession by the District was not hostile.
- d. The possession by the District was not actual and exclusive.

39 Davison bought a house and 25 acres near Compton Lake. A few months later Davison leased this property out to Stenholm, for a 12-year term. Almost immediately thereafter Fillmore fenced in and planted crops on a portion of the 25 acres, and he continued this use and occupancy for many years. After ten years of thus adversely possessing the land, Fillmore could acquire a ripened title:

- a. But the title thus acquired would only be good against Stenholm.
- b. But the title thus acquired would only give him a right to possess for 2 additional years.
- c. Both of the above.
- d. And the title would be good against both Davison and Stenholm.

40 In 1998 Foster entered into adverse possession of Greenacre. At the time, Greenacre was owned by DeVere, who was 16 years old. Assume for this question that the limitations period on ejection is

21 years and the statute of limitations has a disability clause like the one we studied in class. Foster's title would ripen:

- a. In 2019.
- b. In 2029.
- c. In 2010.
- d. In 2013.

41 Ballydales Department Store had a large parking lot. At the back corner of the lot Ballydales informally allowed a charity, Clothes-for-the-Unclad, to maintain a small collection box for garments donated to the needy. This arrangement continued on an informal basis for over 21 years. Then Megabucks Enterprises, a national chain, bought out Ballydales. Megabucks wants Clothes-for-the-Unclad to remove its collection box. The charity is represented *pro bono* by Jane Goodhardt. She wants to claim that Clothes-for-the-Unclad has acquired a ripened title to use the location.

- a. Clothes-for-the-Unclad probably does not have a ripened title because, as a licensee, its use was permissive and in subordination to Ballydales.
- b. Clothes-for-the-Unclad probably does not have a ripened title because, as a licensee, its use was not hostile and under claim of right.
- c. Both of the above.
- d. None of the above. Clothes-for-the-Unclad probably has a ripened title after its 21 years of uninterrupted use of the location.

42 O conveyed “to A for life and then to B’s first child to reach age 25.” B has one child, X, age 2. Shortly after the conveyance, B had a second child, Y. Under the traditional rule against perpetuities:

- a. The future interest is valid, and X can serve as the life in being.
- b. The future interest is valid, and either X or Y can serve as the life in being.
- c. The future interest is void.
- d. The future interest would not have been valid even if the words “first child” had read, instead, “first child now alive.”

43 The purpose of the rule against perpetuities is to:

- a. Prevent the creation of potentially perpetual interests in land.
- b. To place limits on intergenerational transfers of wealth and, therefore, the rule cannot be applied to commercial transactions.
- c. To prevent people from avoiding estate taxes.
- d. To help assure that the intentions of transferors are carried out.
- e. None of the above.

44 The City of O conveyed “to Gray Bell Corporation, its successors and assigns, so long as the land is used for a manufacturing plant ...” There would be a perpetuities problem if the words of conveyance concluded (after the “...”):

- a. “and if the land ceases to be so used it will revert to the grantor.”
- b. “and if the land ceases to be so used, it shall go to C and his heirs.”
- c. “but if it ceases to be so used then the grantor may re-enter as of its previous estate.”
- d. All of the above.

45 When the bridge for Corbin’s driveway washed out 2002, he began getting between the road and his house by using a bridge on the neighboring property, which was the home of Cliff. However, Cliff was a tenant for years, holding under a 20-year lease from Hendricks. The lease expires in 2016.

- a. If Corbin’s use ripens into an easement by prescription in 2012, it will be good against Cliff for the duration of the lease.
- b. If Corbin’s use ripens into an easement by prescription in 2012, it will be good against Hendricks following the expiration of the lease.
- c. Both of the above.
- d. Either Cliff or Hendricks has standing to bring a trespass action against Corbin if he has been making unpermitted use of the bridge.
- e. All of the above.

46 Douglas owned a country home on a lovely piece of land. Alban offered him \$100,000 for a remote corner of the property on which Alban desired to build a house. Douglas agreed to sell but insisted

that Alban covenant never to use the acquired land for anything but residential purposes. Based on this and other terms, Douglas and Alban signed up the deal and closed. Later, Alban sold his land to Edward, who intends to convert the dwelling into a small deli.

- a. Edward could be required to comply with this restriction to residential use if he bought with either actual or record notice of it.
- b. The only way for Edward to be bound by “notice” would be if Alban’s promise were contained in a deed recorded at the county recorder’s office.
- c. The only way for Edward to be bound by “notice,” would be if he had actual notice from observable facts on the ground.
- d. There is no way on these facts that Edward could be bound to comply with the restriction to residential use.

47 Wally Ravenswood lived in a lavish home at the western end of Greenacre. The house had a sewer line that ran eastward across the property to connect with the municipal sewage system. In 1998, Ravenswood sold the eastern half of Greenacre to Elise Perron and kept the western half. Later, he sold the western half to Montague. The deeds did not mention easements. One day, Perron found her basement filled with sewage from a broken sewer line. For the first time, she realized the significance of the manhole cover in the lawn near her house. She sued to enjoin Montague from making any further use of the sewer line underneath her property. What result?

- a. Perron will likely lose on the ground that there is an easement, created by implied reservation, which is appurtenant to Montague’s estate.

b. Perron will likely win because there is no basis in these facts for finding that an easement for the sewer line was ever created.

c. Perron will likely win because any implied easement for the sewer line would have presumptively been in gross.

d. Perron will likely lose because Montague probably has an easement by necessity.

48 Before Ravenswood conveyed to Perron in the preceding question, the sewer line represented a use by Ravenswood of the eastern part of his land for the benefit of the western part. Looking back, we would call this use:

- a. an appurtenant easement
- b. an inchoate easement
- c. a veritable servitude
- d. a quasi-easement

49 Hemingway owned 20 acres that included a hilltop. Faulkner wanted to build a cell phone tower and purchased a one-acre plot on the top of the hill. The purchase was to include an easement granting Faulkner a right of ingress and egress to his parcel along an existing lane across Hemingway’s property. Later, when Faulkner attempted to bring in equipment, trucks and a backhoe in order to bury the cell-tower cable under the lane, Hemingway objected, claiming that the construction vehicles interfered with his “peace and quiet.” If there’s a lawsuit:

- a. Hemingway probably wins because the scope of the servitude does not expressly encompass construction vehicles.

- b. Hemingway probably wins because an easement of ingress and egress normally does not also authorize wires, cables and other conduits.
- c. Faulkner probably wins because, under these facts, he has an easement by implication from prior use or by necessity.
- d. Faulkner probably wins because he has an easement by estoppel.

50 Polly purchased an easement from Wendell “for the purpose of installing and maintaining a fiber optic cable beneath the existing 5-foot pathway across Wendell’s land.” The local gas utility (Gass) approached Wendell later and asked to bury some gas pipes in the part of the 5’ easement area that Polly wasn’t using. Wendell agreed but Polly sued Gass, claiming that Gass was encroaching on her rights to use the easement. What result?

- a. Polly wins because the owner of the dominant tenement determines the manner of the easement’s use.
- b. Wendell wins because, as servient owner, he has the fee simple and therefore he has the final say on the manner of its use.
- c. Gass wins because, after the conveyance to Polly, Wendell retained a transferable right to make any use of the servient land not inconsistent with reasonable use of the easement by Polly.
- d. Gass wins because the court would seek to maximize the usefulness of the servient estate.

Facts for Starr-Connelly questions. Kaye Starr lives in a residential area that had been developed Holmehall Development Co.

As Holmehall sold each lot, it placed restrictive covenants in the deeds. The covenants limited the use of the property to residential purposes, specifically, single-family houses. Starr’s neighbor, Connelly, is planning to create a “mother-in-law” apartment in the basement of his home, which will make it effectively a two-family house. There is a restrictive covenant in a duly recorded deed from Holmehall to Warren, the original owner of Connelly’s lot, and it purports to prohibit such a modification by Connelly.

51 In order to enforce the restrictive covenant against Connelly as a real covenant, Starr would have to be able to show that:

- a. Connelly actually knew about the presence and contents of the restrictive covenant in the deed to Warren when Connelly bought his land.
- b. The restrictive covenant in the deed to Warren touches and concerns the land.
- c. There is privity of contract and estate between Starr and Connelly.
- d. All of the above.

52 Starr would be able to enforce the restrictive covenant against Connelly as an equitable servitude if she is able to show that:

- a. Connelly bought with notice of the covenant, actual or constructive.
- b. The covenant was contained in a duly recorded deed in Connelly’s chain of title.
- c. Either of the above would permit enforcement.

d. None of the above. A restrictive covenant can only be enforced as a real covenant, and that requires privity of estate.

53 Suppose the court concludes that Connelly's lot was originally subject to the single-family house restriction, but Connelly points out that many of the homes in the restricted area have already been converted to multifamily use:

a. Connelly might still be able to create the "mother-in-law apartment" despite the restrictive covenants that the developer originally imposed.

b. Connelly would probably still be subject to the restrictive covenant because a person is not allowed to violate the law just because others do.

c. The fact that there have already been many conversions to multifamily use proves that the restrictive covenant never actually touched and concerned the land in the first place.

d. Connelly was personally never bound by the covenant because it was not set out in his deed.

54 Ever since Maria and Morris inherited Blackacre from their mother, Maria has been in sole occupancy. Morris inquires about his rights.

a. Under the rule recognized by most courts, Morris would be permitted to recover rent from Maria purely by virtue of her being in sole occupancy.

b. If Maria refuses to permit Morris to share occupancy with her, he could bring an ejectment action and have her removed from the premises.

c. If Maria refuses to permit Morris to share occupancy with her, he would have no remedy except to sue for partition.

d. If Maria refuses to permit Morris to share occupancy with her, she would be liable to him for damages corresponding his share of the fair rental value of the premises.

55 Assume in the preceding question that Maria has held sole occupancy of Blackacre for slightly more than the normal period of limitations on ejectment:

a. By now she would probably have become the sole owner of Blackacre, since her period of sole occupancy would be treated as adverse possession against Morris.

b. By now she would probably have accumulated a very large rent liability to Morris under the rule applied in most courts.

c. Her sole occupancy would be treated, at least initially, as occupancy on behalf of both herself and Morris as long as she didn't commit an ouster of Morris.

d. All of the above.

56 Glover delivered a deed conveying Greenacre "to Bea, 'Ciel and Dee and their heirs." Under the modern interpretive presumptions:

a. Bea, 'Ciel and Dee would have a tenancy in common

b. Bea, 'Ciel and Dee and their respective heirs would have a tenancy in common.

c. Bea, 'Ciel and Dee would be joint tenants.

d. Bea, 'Ciel and Dee along with their respective heirs would be joint tenants.

57 Suppose that Bea, 'Ciel and Dee were joint tenants.

a. If Bea dies, then 'Ciel and Dee would be co-owners as joint tenants.

b. If Bea conveys her interest to Fred, 'Ciel and Dee would be joint tenants as to an undivided $\frac{2}{3}$, and the two of them would be tenants in common with Fred as to an undivided one-third.

c. If Bea conveys her interest to 'Ciel, then 'Ciel and Dee would be joint tenants as to an undivided $\frac{2}{3}$, and the two of them would be tenants in common with 'Ciel as to an undivided one-third.

d. All of the above.

58 Suppose Bea and Dee were also co-tenants in Redacre.

a. If they were tenants in common and Bea died, then Dee would be the sole owner.

b. If they were joint tenants and Bea died, then Dee would be the sole owner.

c. If they were joint tenants and Bea conveyed her interest to Jake, then Dee and Jake would joint tenants.

d. If they were joint tenants and Bea tried to convey her interest to Jake, then Dee would be the sole owner.

59 Henry and Harriet are tenants by the entirety in Blueacre. Henry's creditors are trying to get at his property in order to satisfy judgments they hold against him.

a. Under the general rule, Henry's individual creditors could levy execution on both his and Harriet's interests in the property.

b. In none of the states that recognize tenancies by the entirety can the creditors of either co-tenant by the entirety levy execution on either co-tenants' interests in the property.

c. In some (but not all) of the states that recognize tenancies by the entirety, Henry's creditors would have no recourse to Blueacre to satisfy judgments against Henry alone.

d. It is the usual rule for tenancies by the entirety that a deed by either co-tenant alone would suffice to sever the tenancy and extinguish the right of survivorship.

60 Eileen and Elmore are married. Since Elmore was laid off several months ago, only Eileen has been working and bringing in a paycheck. Elmore has stayed at home and taken care of the couple's child and managed the household. They have, during this time, managed to save over \$2000.

a. In community property states, the \$2000 would presumptively belong to both Eileen and Elmore.

b. In common-law property states, the \$2000 would presumptively belong to both Eileen and Elmore.

c. Both of the above.

d. There is no way to determine, from the facts given, who the \$2000 would presumptively belong to.

61 Haskell bought a tract of land that had never been subdivided. At the time of purchase, the local zoning would have allowed Haskell to

divide the land into 6 lots and to build one house on each lot. As a result of newly adopted wetlands regulations, however, Haskell can now build only 4 houses on the land, reducing the land's value by roughly one-third. The amount of compensation to which Haskell is entitled under the U.S. Constitution is:

- a. The amount by which the value of his land has been reduced.
- b. An amount equal to the value of two building lots.
- c. Either of the above would be an appropriate measure of compensation.
- d. Nothing.

62 Suppose again that Haskell owns a tract of land that has never been subdivided and on which the local zoning would allow 6 one-house lots. Suppose also that the city has decided to widen the road on which Haskell's land is located. The widening would take 2000 sq. ft. (a small fraction) of Haskell's land. It would, however, still leave him with the ability to create 6 building lots, and it would cause only a 2% reduction in the overall value of his land. The amount of compensation to which Haskell is entitled under the U.S. Constitution is:

- a. The amount required so Haskell will have "just compensation" for the portion of his land that is taken to widen the road.
- b. Nothing because his land has not lost any appreciable portion of its value
- c. Nothing because this is far from a "total taking" of all economic use.

d. Nothing because, under the harm-benefit doctrine, widening the road would be considered a benefit..

<End of Examination>

Omitted:

Since everyone has done the Estate System Proficiency Test, the usual true-false questions on Estate System and Future Interests are omitted.

See "Estate System-Review Questions" at humbach.net.