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YOU WILL HAVE 3 HOURS TO
COMPLETE THE ENTIRE EXAMINATION

PACE UNIVERSITY - SCHOOL OF LAW

EXAMINATION IN PROPERTY

DATE: MAY 23, 1977

THERE ARE 14 PAGES TO THIS EXAMINATION

NUMBER: _____

PLUS AN ANSWER SHEET

PROFESSOR HUMBACH

GENERAL INSTRUCTIONS:

This examination contains 30 multiple choice questions and 2 essay questions. The multiple choice questions will count one half of your grade on this examination and the essay questions will count one-half (each part counting 1/8). It is recommended that you devote no more than ½ of the allotted time to the multiple choice questions.

The multiple choice questions are to be answered on the answer sheet attached to this booklet. You may tear out the answer sheet. Write your examination number on the answer sheet in the space provided. Write it NOW.

Answer each question selecting the best answer. Indicate your choice on the answer sheet by making an "X" through the appropiate letter. Select only one answer per question; if more than one answer is indicated, the question will be marked wrong. DO NOT CIRCLE THE ANSWER YOU SELECT: MAKE AN "X" THROUGH IT.

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

When you complete the examination, turn in the answer sheet with your examination 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 question.

* * * * * *

FACTS FOR QUESTIONS 1 to 6

Cracker left his car with Hammer's Garage for the day in order to have some repairs done on it. The estimated cost of the repairs was $100. Hammer let Cracker borrow a "loaner" car while Cracker's own car was being worked on.

(1) The repairing by Hammer of Cracker's car would:

A. Give Hammer (as a matter of common law and apart from any statutes) a right to retain the car until Cracker paid the reasonable charges for repairs.

B. Give Hammer a mechanic's lien on the car by statute, but not at common law.

C. Give Hammer a common law right to sell the car if Cracker refused to pay the reasonable charges for repairs.

D. Give Hammer a common law right to retain the car until Cracker paid up his account in full - including all past amounts due.

(2) Hammer is embarrassed that he cannot locate Cracker's car at the end of the day when Cracker comes to pick it up. Cracker's car is never found. Select the best statement:

A. Cracker should be advised to sue Hammer in replevin.

B. If Cracker sues for the value of the car, the burden will be on Cracker, in making his prima facie case, to produce evidence that Hammer's negligence or misfeasance caused the loss of the car.

C. Hammer can successfully defend a suit for the value of the car by proving that it was delivered mistakenly (but in good faith) to Speed, who produced an apparently valid but nonetheless forged registration showing title to the car in Speed's own name.

D. In holding possession of Cracker's car, Hammer owed Cracker a duty to exercise only ordinary care under the circumstances.

(3) In the glove compartment of Cracker's car there was a money clip containing 16 one-hundred dollar bills. Cracker had forgotten about them and did not disclose their existance to Hammer when he delivered the car for repairs. If Cracker sues for the loss of the money, which of the following lines of argument is least likely to succeed in defending Hammer?

A. Hammer never became bailee of the money since he never knew of it.

B. Hammer was a gratuitous bailee and therefore had only a limited duty of care.

C. The car was taken by a group of teen-age punks who had threatened Hammer with a gun.

D. All of the above lines of argument are highly likely to succe

(4) While driving to his office in the loaner car supplied to him by Hammer, Cracker was involved in a small accident with another car. The right front fender of the loaner car was smashed. Which of the following is true?

A. Cracker will be liable to Hammer for the damage even if the accident was the sole fault of the other driver (who was a stranger to Cracker).

B. Cracker will be liable to Hammer for the damage irrespective of fault because wrecking the loaner car was an unauthorized use so Cracker is a converter for wrecking it.

C. If the loaner car supplied to Cracker had been left with Hammer for repairs by another customer, Hammer is liable to the owner of the loaner for the pre-smash value of the car.

D. Cracker was a gratuitous bailee.

(5) Cracker parked the loaner car in a public parking lot near his office. A sign on the wall, and a note on the ticket given Cracker, read as follows: "Not liable for negligent loss to vehicles." While Cracker was at work, a parking lot employee (having a subconscious symmetrical sense) smashed into the loaner car's left fender while parking another automobile. Cracker sues the lot owner for the damage to the loaner car. The lot owner's best defense is:

A. Cracker parked and locked the loaner car himself and took the keys, and the lot at no time assumed any control over it.

B Cracker did not own the loaner car and thus has no standing to bring the action.

C. Cracker may have standing to sue, but his recovery is limited to his interest in the loaner car--which is nominal.

D. Cracker had seen and read the sign and had even commented: "You guys sure do protect yourself." (Assume that there is no applicable statute).

(6) Back at Hammer's shop that evening, Cracker and Hammer engaged in a spirited discussion of the day's events. At the time, Hammer was on his back under a 1977 Doozer automobile which he was working on. At one point, Cracker got so excited that, in lighting a cigarette, he burned himself with his gold Zippo lighter which he dropped to the floor. Preoccupied with his burn, he momentarily

ignored the lighter--and ultimately he left without it. Hammer later found the lighter and, assuming it had been accidently knocked out of the Doozer, he placed it in that car's glove compartment. The next day, Cracker remembered dropping the lighter and returned for it. He was told that the Doozer and the lighter were gone. Select the best statement:

A. Hammer did not, at any point, have the slightest duty of care with respect to the lighter.

B. Hammer became subject to a duty of care when he attempted to restore the lighter to the possession of the owner.

C. Hammer became strictly liable for misdelivery of the lighter when he delivered the Doozer to its owner.

D. Hammer became strictly liable for the misdelivery of the lighter when he assumed to place it in the Doozer.

* * *

FACTS FOR QUESTIONS 7 and 8

(7) Arlo Oil Co. owns a parcel of land under which there is a large natural cavity which formerly contained salt. Arlo had large quantities of crude oil shipped in, and Arlo stored it in this cavity. It was discovered that Arlo's neighbor, Driller, had been pumping and selling oil from under his own land. In an action by Arlo against Driller for conversion of Arlo's oil:

A. Arlo could surely win by showing merely that he was in "legal" possession of the shipped in oil immediately prior to the time it was pumped into the cavity.

B. Arlo's chances would be better if salt were generally known to be the only mineral occurring locally in the ground.

C. The fact that oil like Arlo's occurred locally in the ground should not affect Arlo's chances of winning.

D. Arlo could win only if he had purchased the oil from a person who was the true owner of the oil.

(8) After the litigation referred to in the preceding question, relations between Arlo and Driller deteriorated. The court found, based on geological testimony, that the oil taken by Driller was seepage from Arlo's cavity. However, even though Arlo was aware of the seepage, he continued to use the cavity to store oil. Arlo now insists on the right to enter Driller's land to recover "run-away" oil collecting there. Driller stipulates that the oil belongs to Arlo but resists Arlo's claim of right to physically regain the "run-away" oil. Select the best statement:

A. Driller must pump the oil from under his land and deliver it to Arlo or Driller will be liable for conversion of oil

under his land.

B. Arlo will be liable for trespassing if he enters Driller's land to recover the oil with Driller's consent.

C. Driller must let Arlo enter Driller's land if Arlo provides adequate indemnity for any loss which Driller might sustain as a result of Arlo's entry.

D. If Arlo places oil in the cavity after learning of the seepage, Arlo should not have a "qualified privilege" to enter Driller's land to recover "run-away" oil.

(9) Archcrankal conveyed Oldacre "to Smith and his heirs" by bargain and sale.

A. Prior to the Statute of Uses, Smith would have become trustee to the use of Archcrankal, who would have a "resulting use."

B. After the Statute of Uses, Smith could have thereupon compelled Archcrankal to enfeoff Smith by livery of seisin.

C. After the Statute of Uses, the conveyance would have operated in effect to transmit legal title to Smith.

D. None of the above.

(10) O conveyed Headacre by livery of seisin "to A for life, then to B and his heirs if B marries C".

A. Prior to the Statute of Uses, B would have received a shifting executory use.

B. If B ever marries C, it would not be possible for the beneficial enjoyment of the land to return to O under this conveyance.

C. Possession would necessarily revert to O if B dies before A.

D. The Statute of Uses would have had no effect on this transfer.

(11) Anatoli Pidgeon is a lover of birds. For several years he has operated a feeding station on his land which draws large numbers of both song and game birds to the vicinity. Anatoli discovers that his neighbor, Fromm Hunger, has been shooting the game birds as they cross over Fromm's land to reach Anatoli's parcel. Fromm is a poor dirt farmer whose family's diet is protein-deficient. They have been eating the birds. In an action by Anatoli against Fromm for the value of the birds shot, which of the following arguments would appear to be applicable and require a holding in favor of Anatoli?

A. Fromm's conduct is merely malicious and therefore actionable.

B. Anatoli's conduct is a humanitarian service.

C. The birds which were shot by Fromm were drawn to Anatoli's land (by the food), not to Fromm's land; therefore the birds belonged to Anatoli.

D. None of the above.

(12) One of the birds in the preceding question was a turkey named Arnold. This bird was quite tame, answered to its name (by coming), and would eat bits of corn from behind Anatoli's ear. Fromm shot Arnold while both were standing on Anatoli's land. Which is true? (Pick the best answer)

A. Anatoli could have replevin even if Arnold has been (totally) consumed by eating.

B. Anatoli could have damages in trover even if Arnold had been (totally) consumed by eating.

C. Anatoli could have replevin even if Arnold had been made into buttons.

D. Both B and C above.

* * *

(13) Under statutes of limitations on ejectment of the type studied in this course, the effect of disabilities ia as follows:

A. If the owner is under a disability at any time during the period of adverse possession, the period for the ripening of title in the adverse possessor will invariably be extended.

B. If the owner is under a disability at the time the cause of action for ejectment accrues, the period for the ripening of title in the adverse possessor will invariably be extended.

C. If the owner is under a disability at the time the cause of action for ejectment accrues, the period for the ripening of title in the adverse possessor will sometimes be extended.

D. If the owner dies during the period of adverse possession, the statute of limitations will thereupon be automatically tolled.

(14) Lackpenny orally agreed to lease Slumacre from Swift for 11 months in a state having a Statute of Frauds like that of New York. The only agreed terms of the lease were the amount of rent ($100 per week) and the duration of the lease. After four months, in winter, the furnace broke, and Lackpenny's sole source of heat was the kitchen stove.

A. If Lackpenny ceases paying rent, Swift may evict him under the traditional common law rules.

B. If Lackpenny quits possession promptly, he can claim that the rent obligation was extinguished by constructive eviction under the traditional common law rules.

C. Either Lackpenny or Swift may terminate this lease by giving one week's advance notice.

D. In many states today, Lackpenny would have rights against Swift pursuant to an implied warranty of liability, even if nothing on the subject were expressly agreed to.

FACTS FOR QUESTIONS 15 to 18

On November 1, 1975, Harold Hope was sitting by the deathbed of Larry Lastwell. As the doctor left the room shaking his down-turned head, Lastwell said to Hope: "I want you to have this photograph which I purchased on 42nd Street. I won't be needing it anymore." Hope took the photo from Lastwell's outstretched hand and subsequently left with it.

(15) Lastwell did not succumb to the illness, and now sues for the reutrn of the photograph.

A. Lastwell probably will not be able to win if Hope is dead.

B. Lastwell will probably be able win because his survival of the illness would presumably revoke the gift.

C. Both A and B above are correct.

D. Lastwell has attempted a testamentary gift, and the gift has failed.

(16) Suppose Lastwell did succumb to the illness and the photograph was found among his effects at death.

A. The attempted gift was presumptively inter vivos.

B. Hope will probably be able to recover the photograph.

C. The delivery by Lastwell to Hope may have been complete even though Lastwell got back control before his death; however because Lastwell died in possession a court would probably hold against Hope.

D. No delivery would be required for Hope to win because the attemp was to make, in effect, a testamentary gift.

(17) Suppose that, rather than hand the photograph to Hope, Lastwell handed Hope the key to a bureau (next to the bed) where the

photograph was kept. There were no other keys. Select the best answer:

A. The gift would be complete when Lastwell held out the key to Hope and Hope first formed the intention to accept.

B. The gift would be complete when Hope accepted and took the key.

C. The gift would be complete when Hope used the key and took possession of the photograph, provided Lastwell were still alive when Hope did so.

D. The gift would be complete when Hope used the key and took possession of the photograph irrespective of whether Lastwell were still alive when Hope did so.

(18) The delivery requirement in the law of gifts arose:

A. As an evidentiary fact, to provide concrete evidence of donative intent.

B. As an evidentary fact, to impress the donor with the significance of giving.

C. As an operative fact, to give the donee a protected possessory interest which is at the root of the "title" concept at common law.

D. As an operative fact, to prevent fraud on the courts by donors who change their minds.

* * *

(19) Senghali Pete gave Sally Sweet
A ring for they were to wed.
Then Sally Sweet met Harold Neet
And ran off with Harold instead.

A. In virtually all jurisdictions, as a matter of common law, Senghali Pete could recover the ring.

B. As a matter of common law, Senghali Pete could recover the ring in virtually no jurisdiction.

C. In New York, Senghali Pete could probably recover the ring (or its value), unless he were already married to somebody else.

D. In New York, Harold Neet would probably become owner of the ring by the doctrine of seisin jure uxoris.

* * *

FACTS FOR QUESTIONS 20 to 24

Responding to an advertisement in the Sunday Times, Gristlethorpe negotiated to purchase a 6 acre wooded tract in Duchess County, New York. On June 1, 1976 the seller, Samuel Sharp, delivered a deed describing the boundaries of the tract, and Gristlethorpe paid Sharp $120,000. Gristlethorpe maintains an apartment in New York City. The 6 acre tract is used largely for camping and fishing.

(20) Gristlethorpe recently discovers a small shack inhabited by squatters on a remote corner of the 6 acre tract. An investigation reveals that the squatters have been there for about 5 years, maintaining adverse possession of the sort which can eventually ripen into title.

A. The purchase by Gristlethorpe will not in itself affect the time in which the squatters' title will ripen.

B. The purchase by Gristlethorpe will cause the period of limitations on ejectment to start over again.

C. The purchase by Gristlethorpe is of a void title (in the area occupied by the squatters) because the seller has lost title to the squatters and had no possession or ownership to transfer.

D. The purchase by Gristlethorpe is of a qualified title and is subject to the squatters' rights to be protected in their possession.

(21) Gristlethorpe decides to proceed against the squatters referred to in the preceding question. His lawyer tells him (correctly, you should assume) that the squatters have not acquired title by adverse possession.

A. If Sharp had taken possession of the tract prior to the arrival of the squatters, Gristlethorpe should be able to have ejectment against the squatters, even if he cannot prove that either he or Sharp had good title.

B. If Gristlethorpe has <u>not</u> taken possession of any part of the tract, he should not be able to have ejectment against the squatters, even if he can prove good title.

C. If Gristlethorpe waits until after the squatters' title ripens by adverse possession, he could still have damages for trespass against the squatters until the statute of limitations for trespass has run.

D. All of the above.

(22) Gristlethorpe discovers that on another corner of his tract there is a small pond which has been used for about 3 years for fishing by intruders without permission.

A. If he is the owner, Gristlethorpe may have damages for trespass even if he does not have actual possession.

B. Gristlethorpe may have damages for trespass if he is the possessor even if he cannot prove ownership.

C. It would not be appropriate to bring an ejectment action against the fishermen if they have not taken possession of of area where the pond is located.

D. All of the above.

(23) Gristlethorpe now discovers that the northern one-third of his supposed tract is claimed by his northern neighbor, Grummox. Title to this one-third was acquired by Grummox in 1934, and Grummox has never made a transfer of the title then acquired. However, due to an oversight by the draftsman, the deed under which Sharp took (on June 1, 1964) did include and purport to convey the one-third. The description in the deed to Sharp was repeated in the deed to Gristlethorpe. Ignore possible disabilities.

A. Gristlethorpe can prove title to the northern one-third by showing that Sharp actually possessed any part of the 6 acre tract for ten continuous years between June 1, 1964 and June 1, 1975.

B. Gristlethorpe can prove title to the northern one-third by showing that Sharp actually possessed any part of the northern one-third for ten continuous years between June 1, 1964 and June 1, 1975.

C. Gristlethorpe can prove title to the northern one-third by showing that Sharp claimed title thereto under color of title for ten continuous years between June 1, 1964 and June 1,1975.

D. All of the above.

(24) Assume that Gristlethorpe entered into possession of the entire 6 acre tract after succeeding, by litigation, in having all title problems resolved in his favor. Further assume that, thereafter, one of the fishermen referred to in question 22 finds a small box with a valuable ring at the side of the pond. Who would be entitled to the ring? (For this question, do <u>not</u> assume that the land is in New York State).

A. Gristlethorpe would be entitled as against the fisherman in a jurisdiction applying the so-called English rule.

B. The fisherman would be entitled as against the Gristlethorpe in a jurisdiction applying the so-called American rule.

C. The fisherman would be entitled to the ring as against Gristlethorpe in a jurisdiction having a special rule for "mislaid" property.

D. The ring is probably treasure trove and accordingly the fisherman would be entitled to it in virtually every jurisdiction.

* * *

(25) Whiteacre and Blueacre are adjoining parcels of land in a largely undeveloped suburban area. Blueacre was owned in fee by Blue from 1959 to 1964 when Blue sold it to B who still owns it. Whiteacre was owned in fee by White from 1940 to 1970 when White sold it to W who still owns it. In 1959, Blue covenanted with White that Blueacre would never be used for other than residential purposes.

In order for W to enforce the covenant against B as a real covenant, several prerequisites for the running of covenants must be met. Which of the following is <u>not</u> a prerequisite to the running of the covenant?

A. An intention that the covenant be binding upon and inure to the benefit of the successors and assigns of the covenantor and covenantee, respectively.

B. That the covenant touch and concern the land.

C. Privity of contract between B and W.

D. Successive (or "vertical") privity of estate between White and W.

* * *

(26) O conveyed Bellyacre by feoffment "to T and his heirs to the use of A for life, remainder to B and his heirs if and when B reaches 21." B died intestate at age 27, three years before A's life estate terminated.

A. Before the Statute of Uses, O would be entitled to possession at A's death.

B. After the Statute of Uses, O would be entitled to possession at A's death.

C. Before the Statute of Uses, the beneficial enjoyment could not return to O under this conveyance.

D. After the Statute of Uses, B's heir would have had a vested legal remainder in fee simple absolute after B's death.

* * *

(27) Higgenbothem (A) purchased a ring, then (B) wrapped as a present with a tag reading "To my beloved niece, Gloria," and then (C) delivered the package to his chauffeur, Anton, and instructed him to deliver it to Gloria. The following day, (D) Anton complied with these instructions. Title to the ring was acquired by Gloria:

A. At (A)

B. At (B)

C. At (C)

D. At (D)

(28) Assume that Higgenbothem physically delivered the ring to Gloria in person with the intention of making a gift of it.

A. If Higgenbothem retook possession of the ring in order to have the size reduced, title would pass back to him.

B. If Higgenbothem grabbed the ring back after Gloria said "Thanks, Fatso," he would be liable for its value to Gloria.

C. If Gloria said "I believe this ring belongs to my sister, Beulah; I'll take it for her," there could at that moment be no gift to Gloria (assume the ring was not Beulah's).

D. If Higgenbothem said "Gloria, hold this ring for your sister Beulah until she goes to college," there could be no valid trust since Higgenbothem did not use the key works "in trust" or "as trustee".

* * *

FACTS FOR QUESTIONS 29 to 30

(29) In New York, Billsboro owned Whiteacre in fee simple absolute. By a 1972 deed, Billsboro conveyed Whiteacre "to Walters for life, then to my son, Alec, if he marries Jane Smith." Alec, who was married to Helen Holby, received:

A. a vested remainder.

B. a contingent remainder.

C. an executory interest.

D. nothing.

(30) Shortly after the conveyance by Billsboro in question 29, Walters conveyed Whiteacre to Carlisle "for a term of 10 years commencing fortwith." After this conveyance,

A. Walters has the seisin in Whiteacre.

B. Carlisle has the seisin in Whiteacre.

C. Billsboro has the seisin in Whiteacre.

D. Nobody has the seisin in Whiteacre; seisin is abolished in New York.

PROPERTY - PROFESSOR HUMBACH MAY 23, 1977

PART II

INSTRUCTIONS FOR ESSAY PORTION

Answer the following two questions in your examination booklet stating fully the reasons for your answers. Clearly identify all facts and legal principles which you believe are relevant. You can be graded only on your knowledge and reasoning ability which appears on your paper.

Each question consists of several parts. Number your answers to each part in correspondence to the numbered parts of the question.

A.

Shortly after their marriage in 1953, Milo and Millie Mitvik bought Greenacre, a tacky bungalow constructed on a 30' X 70' subdivision lot near Albany, New York. The granting clause of the deed of conveyance read "to Milo and Millie Mitvik and their heirs." The down payment was made entirely from Milo's personal savings. Both Milo and Millie were legally liable for repayment of the mortgage financing.

The ink on the deed was hardly dry when Arnold , who was Millie's high school sweetheart, came to town.* After some second thoughts about Milo, Millie left with Arnold. The divorce decree in Mitvik v. Mitvik became final in late 1955. Greenacre was nowhere mentioned, directly or indirectly, in the divorce decree, papers or proceedings.

Milo lived alone in the house for a number of years and then moved back to his mother's home on Staten Island. Greenacre was offered for lease by Milo. The most recent lessee, Arthur Rent, agreed to lease Greenacre from Milo for a term of two years, commencing August 1, 1975, at a rental of $400 per month payable in advance on the first of each month. The agreement between Milo and Arthur was concluded by a handshake. Arthur entered into possession of Greenacre on August 1, 1975 where he has remained, paying his rent regularly to Milo. The costs of maintaining Greenacre as a home and as an investment property, the taxes on Greenacre and the mortgage payments have all been paid by Milo.

Millie has recently re-appeared and is making demands concerning her interest in Greenacre. Milo would like to terminate Arthur's tenancy as soon as possible in order to avoid unnecessary complications with Millie, who has already threatened legal proceedings against Arthur. However, the oral lease to Arthur included no provision for early termination of the agreed two-year tenancy.

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* This Arnold is not the turkey referred to in question 12, above.

Milo comes to you with several questions which you should answer in your examination booklet.

1. What is the earliest date upon which Arthur's right to possess Greenacre can lawfully terminate, and what steps, if any, should Milo take to be sure that Arthur's right to possession terminates on the earliest date?

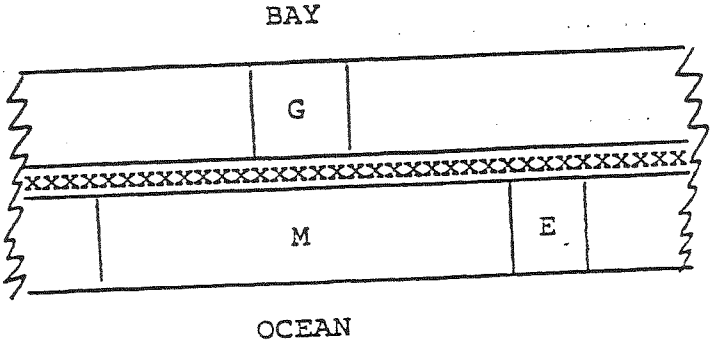
2. In the meantime, while Arthur remains in possession of Greenacre pursuant to his agreement with Milo, does Millie have any lawful right to possession of Greenacre which she can assert against Arthur? If so, describe Millie's rights to possession.

Disregard the possible effects of rent control or rent stabilization in giving your answers to question A.1 and A.2. You may assume that the court would apply "general" common law principles to resolve the potential legal controversies raised by these facts, but where you know of any New York statutory or case law deviations from the "general" common law rules, you should also discuss such deviations as well as "general" common law rules.

B.

Gerald Sincere is a stockbroker who made a handsome bundle in the bull market of the mid-sixties. One of the first perquisites of his nouveau richesse was a house in the Hamptons (on Long Island).

Sincere visited Marvin Mamaroneck, a real estate promoter in the area, and Marvin talked Gerald into buying a 175' X 200' lot. Title was taken by Gerald from Marvin in Spring, 1966. The lot was located on a long narrow sand-spit which runs parallel to the south shore of Long Island, separating a large shallow bay from the Atlantic Ocean. Along the center of this sand-spit is Dune Road, and the land on each side of Dune Road is divided into lots, each of which runs from the road to either the bay or the ocean.



G = Gerald's lot

M = Property retained by Marvin

xxxxxx = Dune Road

E = Public easement

Although Gerald's lot was on the bay side of Dune Road, it had a fabulous view of the ocean, as Marvin noted to Gerald several times in the course of negotiating for the extravagant purchase price. Gerald asked about access to the ocean, and Marvin said: "Oh, you can walk over my land just across the road; as you can see, it's vacant." Thusly assured, Gerald took and paid for his lot, built a beach house on it in June, 1966, and began using it on summer weekends and during his annual month-long summer vacations. While in the house, he and his guests enjoyed the ocean view and went to and from the ocean by walking across Marvin's property.

Last week, Gerald went out to open his beach house. He found that Marvin's property across the road now had a row of houses on it, just completed, and that his view of the ocean was blocked by a modernistic monstrosity that looked as though it were built in the fourth dimension. Furthermore, there was a fence, peppered with signs saying "Trespassers Will be Prosecuted", the entire length of the Dune Road side of what was Marvin's property. Earlier in the year, Marvin had built the houses and sold them to individual purchasers. No easements or servitudes were mentioned in any of the deeds just as none were mentioned in the deed to Gerald.

Gerald is distraught. If he cannot cross the land which was formerly Marvin's, the nearest access to the ocean is the public easement which is a quarter of a mile away.

1. Discuss the possible legal bases upon which Gerald may claim a right to continue using the portion of Marvin's former property (now owned by Spite) which he has used in the past to reach the ocean.

2. Assume that Gerald does have an easement of way across Spite's land, acquired otherwise than by express grant. If Gerald divides his lot into 10 tiny lots, selling each to a different buyer (without mention of easements in the deed), discuss the rights of Gerald and the buyers to use Spite's land for walking to and from the beach.

* * *