

YOU WILL HAVE 3 HOURS TO  
COMPLETE THE ENTIRE EXAMINATION

1976-77

C.1

PACE UNIVERSITY - SCHOOL OF LAW



EXAMINATION IN PROPERTY

DATE: MAY 23, 1977

THERE ARE 14 PAGES TO THIS EXAMINATION

NUMBER: \_\_\_\_\_ *ms*

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  $\frac{1}{2}$  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 appropriate 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 existence 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 succeed.

(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 accidentally 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 is 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 downturned 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 return of the photograph.

- A. Lastwell probably will not be able to win if Hope is dead.
- B. Lastwell will probably be able to 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 attempt 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 evidentiary 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.

\* \* \*



