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PACE UNIVERSITY SCHOOL OF LAW

PROPERTY
DEAN HUMBACH
FINAL EXAMINATION

MAY 18, 1983
TIME LIMIT: 4 Hours
Version B

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

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

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

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

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

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

1. Oliver conveyed Blackacre "to Lamont for life, then to Wanda, Lamont's wife, if children are born alive from their marriage." Lamont and Wanda were and are still childless. Pick the best answer:

   A. Wanda has a contingent remainder.

   B. Wanda has a remainder in fee simple on condition subsequent.

   C. Oliver has no retained interest.

   D. Before the Statute of Uses, Wanda would have had nothing.

2. Douglas conveyed Whiteacre "to Reston for life, remainder to Reston's heirs."

   A. Reston would have a fee simple absolute under the Rule in Shelley's-Case.

   B. Reston's heirs would have a contingent remainder if the Rule in Shelley's Case has been abolished by statute.

   C. A purchaser from Reston would probably be willing to pay more for Whiteacre if the local jurisdiction still follows the Rule in Shelley's Case.

   D. All of the above.

3. Turpet conveyed Greenacre "to Crystel and his heirs so long as the land is used for agricultural purposes."

   A. Turpet retains a right of entry.

   B. Crystel holds subject to a condition subsequent.

   C. The conveyence results in a possibility of reverter due to the special limitation.

   D. The conveyance could be effective as written only after the Statute of Uses.

4. After the Statute of Uses, Easton bargains and sells Blackacre "to Stern for life, then to Michaels and his heirs one week after the death of Stern."

   A. Easton has a reversion.

   B. Michaels has an executory interest.

   C. Both A and B above.

   D. Michaels has a remainder and Easton has a reversion.

5. Among its enduring effects, the Statute of Uses:

   A. Greatly limited the use restrictions that could validly be imposed on grantees of real estate.

   B. Made it possible to convey possessory freeholds in land by written instrument and without livery of seisin.

   C. Made it possible for feoffees to receive springing and shifting legal interests (executory interests) by direct feoffments to them.

   D. Both B and C above.

Facts for questions 6 to 12

Lester leased Parkacre to Trent pursuant to an oral agreement. Trent entered into possession immediately, on February 1, 1983, paying a month's rent in advance. The agreed term of the lease was until January 31, 1986, although the local Statute of Frauds requires leases of more than one year to be in writing and signed by the party to be charged.

6. If the agreed rent was $400 per month, and Trent has paid it faithfully on the first of each month so far, then probably the earliest date (from today) as of which:

   A. Trent can terminate the lease is June 30, 1983.

   B. Lester can terminate the lease January 31, 1986.

   C. Trent can terminate the lease May 31, 1983.

   D. Lester can terminate the lease is June 18, 1983 (i.e. one month from today).

7. The reason for the answer in the preceding question is:

   A. The lease is a tenancy at will.

   B. The lease was a tenancy at will which became a periodic tenancy as a result of the regular payment and acceptance of rent.

   C. The lease was a void arrangement which became a term of years, as agreed, once the parties acted pursuant to their agreement.

   D. The law generally provides a one month notice period for the termination of leases for indefinite terms.

8. In the preceding two questions,

   A. Trent as possessor would also have the seisin.

   B. Trent as tenant could be held liable for rent only if he actually remained in possession.

   C. Trent as possessor could generally maintain successful actions against Lester for trespass and nuisance, the same as though Lester were a stranger to title.

   D. Trent is really a sort of licensee with a contractual right to a continuing license of occupancy.

9. Suppose that the lease, described earlier, was in writing and signed by both Lester and Trent.

   A. Trent could transfer his possessory rights to Fred only with Lester's consent, unless the lease provided to the contrary.

   B. A transfer today by Trent to Fred "for a period consisting of the next year" would be considered a sublease.

   C. A transfer today by Trent to Fred "until January 31, 1986" would be considered an assignment.

   D. Both B and C above.

10. If, in the preceding question, Trent assigned the lease to Fred:

    A. Fred would be liable for the rent so long as he remained in possession, even if he never agreed to pay it.

    B. Trent would cease to be liable for the rent if Fred "assumed" the lease and Lester accepted the assumption by Fred.

    C. Both A and B above.

    D. Fred's primary rental obligation would be to Trent and Trent, in turn, would be liable over to Lester.

11. Suppose the lease described earlier was in writing (and signed), and Trent did not sublet or assign the premises:

    A. Trent would generally, under the common law rules, remain liable for the whole rent for the whole term even if forced to move out earlier due to a transfer by his employer.

    B. Lester could extinguish Trent's liability for the rent, or at least for the full rent, by reletting to a new tenant in the event that Trent prematurely "abandons" possession.

    C. Lester could, if Trent abandoned, accept the proferred surrender and still hold Trent liable for damages in many states, especially if the lease contained a survival clause.

    D. All of the above.

12. Suppose in the preceding question that Parkacre were a residential apartment leased by Trent as his home.

    A. In most states, it has long been the rule that Trent would be relieved of liability for rent, or at least for the full rent, if Lester allowed the premises to become uninhabitable.

    B. Trent could be relieved of his rent obligation on the theory of constructive eviction, but only if the state recognizes the implied warranty of habitability.

    C. Under the traditional common law Trent could be held liable for certain types of deterioration of the premises on a theory of permissive waste.

    D. None of the above.

13. Allister and Bixler were wading in the shallows near the shore. Allister found and picked up a clam. He opened it finding a cut diamond, obviously lost by its owner. Bixler took the diamond "to look at it" and then kept the diamond (leaving the clam to Allister). Allister would have a good chance of recovering the diamond:

    A. Only if the state followed the so-called English rule.

    B. If the state followed the so-called American rule.

    C. Neither of the above. The law does not issue orders requiring ownerless items to be delivered from one person to another.

    D. None of the above answers could be selected as correct on the facts given.

14. Suppose that the area where the clam had been found was owned at the time by Bixler, under local law, as the owner of the adjacent upland. If Allister was trespassing at the time that he found the clam:

    A. Bixler would have a better claim to the diamond than Allister under the so-called American rule.

    B. Allister would have a better claim to the diamond than Bixler under the so-called American rule.

    C. The fact of Allister's trespass should be generally irrelevant since, in most states, neither Allister nor Bixler would be entitled to the diamond because it was not "mislaid".

    D. None of the above.

15. Suppose in the preceding question the local court would hold that, as between Bixler and Allister, Bixler would be entitled to the diamond. Suppose further that Bixler later allowed Allister to take the diamond to a jeweler to have it appraised, and that Allister left the stone with the jeweler. If the jeweler refused to return the diamond:

    A. Allister, but not Bixler, could recover possession of the stone in a replevin action against the jeweler.

    B. Bixler, but not Allister, could recover possession of the stone in a replevin action against the jeweler.

    C. Either Allister or Bixler could successfully maintain an action in trover against the jeweler.

    D. Either Allister or Bixler could recover the stone in replevin against the jeweler, but only Bixler could recover in trover.

16. Suppose in the preceding question that the jeweler did not refuse to return the diamond, but simply could not because the stone was in the possession of Stelt, who obtanined the stone by unlawful means. If Bixler sued the jeweler, the jeweler would be liable to Bixler.

    A. If Stelt broke in at night and stole the stone despite the more-than-reasonable precautions against burglarly taken by the jeweler.

    B. If Stelt criminally appropriated the stone, totally illegally, while it was on the counter where the jeweler left it while in the back room.

    C. Only if Allison had communicated the value of the stone to the jeweler.

    D. None of the above. The jeweler could not be liable to Bixler.

17. Suppose that the jeweler's assistant mistakenly sold the diamond to Carter. If the laws of agency make the jeweler responsible for the assistant's acts:

    A. The jeweler could be held liable to Bixler for the fair market value of the stone, irrespective of the amount received for it.

    B. The jeweler could be held liable to Carter for breach of an implied warranty of title, if a court allowed Bixler to replevy the stone from Carter.

    C. Both A and B above.

    D. None of the above. As a "merchant" who deals in goods of the same kind, the jeweler had apparent authority at common law, by a kind of estoppel, to sell the stone.

18. Suppose that, before Carter bought the stone, Bixler and Allister had sold "any interest they may have" in the stone to the jeweler. If Carter acquired the stone by fraud:

    A. Carter would have a void title.

    B. A bona fide purchaser for value from Carter would have a good title, subject only to the jeweler's paramount rights.

    C. A bona fide purchaser for value from Carter would have a voidable title, just as Carter received.

    D. A gift of the diamond by Carter to his girlfriend would not affect the jeweler's rights to the stone, even if she were an entirely unsuspecting donee.

19. A thief who steals paint and applies it to his automobile:

A. Becomes the owner of the paint.

B. Loses title to the painted car by wringfully making his own property inseparable from that of another.

C. Is liable for the value of the painted car because the car is not changed in kind.

D. All of the above.

20. Gundry captured a previously never-captured partridge on land belonging to Percival. Although Percival had been the first to see the partridge and begin chasing it, Gundry's superior skill with his net prevailed. In an action by Percival against Gundry to recover the partridge, which of the following facts, if proved, would likely affect the outcome (taking each of the following facts by itself):

A. Gundry captured the bird while on Percival's land without permission, express or implied.

B. The partridge was not of a type commonly found wild locally.

C. Gundry was in the trade or business of catching and selling partridges.

D. Each one of the above taken alone, would likely affect the outcome.

21. Suppose in the preceding question that the partridge later escaped from the cage in which Gundry kept it and that it was afterwards captured by Percival on Percival's own land. Assuming that partridges of the same type are commonly found locally, which of the following facts would, if proved, be most helpful to Percival in defending a trover action by Gundry?

A. The partridge had developed animus revertendi while possessed by Gundry.

B. Percival captured the partridge on his own land.

C. Gundry had been negligent in allowing the partridge to escape.

D. None of the above facts would be particularly helpful to Percival's defense (which, incidentally, would be a pretty strong defense even without additional facts).

22. Which of the following would have the legal effects of an original acquisition?

A. Gundry's first capturing of the partridge.

B. Gundry's finding and taking possession of a broken cage on a street near his home.

C. Gundry's acquiring title by adverse possession to a border area of Percival's land.

D. All of the above.

23. Assume that, after first capturing the partridge, Gundry decided that he wanted Sue to have it, as part of an elaborate Christmas present. Several weeks prior to Christmas, at Gundry's house, Gundry showed the bird to Sue and said: "That's yours for Christmas and you'll be amazed to see what comes with it." Sue looked at the bird and said: "I can hardly wait!" On these facts, the legal title to the partridge probably did not pass to Sue because:

A. A lack of donative intent.

B. A lack of proper delivery.

C. Both A and B above.

D. None of the above. Title did not pass to Sue because of lack of title in Gundry in the first place.

24. Suppose Gundry made an effective gift to Sue of the partridge, along with a pear tree and eleven other sets of items, but cautioned: "I'm only doing this because we're going to be married in June." If, in June, Gundry marries May, whom he met in April (while out on march), then:

A. He could probably not get the partridge, etc. back in any jurisdiction following the common law on this issue.

B. He could probably get the partridge, etc. back in New York, even if he were at "fault" in the breakup.

C. Sue could probably keep the partridge, etc. under the condition subsequent which is implicit in gifts in contemplation of marriage.

D. None of the above. Gundry had no title to the partridge in the first place.

25. Suppose that a court would find Gundry to be the owner of the partridge, but the partridge becomes ill and Gundry is forced to leave it with a veternarian. Suppose, also, that while the bird is still at the vet, but recovering, Gundry tells the vet to hold the bird for Sue and deliver it to her. Gundry knows that Sue loves the bird very much. The vet agrees to comply. Before Sue even knows about these instructions to with the vet:

    A. This could be no valid legal gift, because there is no acceptance.

    B. There may be no valid legal gift, because the fact of delivery -- turning on whose agent the vet is -- is somewhat unclear.

    C. Both A and B above.

    D. There could be no valid legal gift because, on these facts, there is no way to find a delivery.

26. Suppose that Gundry, in the preceding question, was on his deathbed, and the partridge was at his house, in the same room with him. Suppose further that Gundry said to Sue: "Take the partridge and care for him when I'm gone. He's yours" and Sue took the partridge with her when she left:

    A. The gift would be inter vivos since delivery was complete during Gundry's lifetime.

    B. The gift could only have been made by a properly executed will.

    C. The partridge could have been recovered by Gundry, under the usual presumption, if he survived his illness.

    D. The words of gift would not effectuate a title transfer to Sue until Gundry's death.

27. In the preceding question, Sue would probably not be entitled to the partridge:

    A. If it were found to have been in Gundry's possession at the time of his death, three days later.

    B. If Gundry, before his death, but after the purported gift to Sue, wrote a valid will in which he left "all my animals and birds to my cousin Clarence."

    C. If Sue, two days's after taking it, decided that she could not keep the bird and to return it, even if Sue still had the bird at Gundry's death. (She has since then changed her mind again.)

    D. All of the above.

Facts for questions 28 to 32

In 1972, Rafnel conveyed an empty tract of land called Greenacre to Arabel, who intended to cultivate it. Prior to 1972, due to a surveying error one year before, a fence to enclose Greenacre was placed seventeen feet east of the eastern border of Greenacre, and Arabel believed that his deed gave him title up to the fence. In fact, his deed describes the conveyed land as not merely Greenacre, but also Verdacre, which is the parcel next to Greenacre on the east. Verdacre had been sold by Rafnel to Vellum in 1970, at which time Rafnel retained Greenacre. At and after the time Arabel purchased, Vellum has openly occupied the eastern portion of Verdacre up to the fence.

28. If Arabel promptly recorded his deed, then immediately afterwards:

A. He may well have had a better title to all of Verdacre than Vellum if the latter did not record.

B. He could tack his possession onto Rafnel's in order to establish a continuous ten years of adverse possession of the portion of Verdacre west of the fence.

C. Possession of a part of Greenacre could have given Arabel sufficient actual possession and constructive adverse possession to acquire a ripened title to all of Verdacre after the applicable time period.

D. Possession of a part of Greenacre could have given Arabel sufficient actual possession and constructive adverse possession to acquire a ripened title to the portion of Verdacre to the west of the fence after the applicable time period.

29. If, in the preceding question, you believe that possession of a part of Greenacre could not have given Arabel the basis of a ripened title to all or part of Verdacre, what could eventually result in a ripened title to at least part of Verdacre?

A. Question inapplicable. I believe that C or D is the correct answer to the preceding question.

B. Actual possession of a part of that portion of Verdacre west of the fence would provide Arabel a basis for eventual ripened title to the part of Verdacre actually possessed.

C. Actual possession of a part of that portion of Verdacre west of the fence, would provide Arabel a basis for eventual ripened title to the entire portion of Verdacre west of the fence.

D. None of the above. There is no way that Arabel can acquire a ripened title to any part of Verdacre while its owner openly occupies another part of it.

30. Assume a 5-year disability period under a statute of limitation such as the one we considered in class. Suppose that Arabel took open adverse possession in 1972 of the entire portion of Verdacre west of the fence, believing erroneously that it was his. Title to the possessed area would ripen in 1982 unless:

    A. Vellum were 14 in 1972.

    B. Vellum were imprisoned in 1979.

    C. Vellum was a sane, free adult in 1972, but died in 1971 leaving Stanley, age 6, his sole heir.

    D. All of the above.

31. Assume that Vellum and Arabel decided to patch up their differences; they contractually agreed to a settlement in which Vellum would give Arabel a quitclaim deed to the portion of Verdacre west of the fence in exchange for $5000 to be paid by Arabel to Vellum. The quitclaim deed was drafted, and Vellum and Arabel got together for the closing. If properly worded, the deed became effective to convey title to Arabel (pick the earliest time):

    A. Once it was signed by Vellum, as grantor.

    B. At the moment Vellum handed it to Arabel at the closing so that Arabel could look it over and check the legal description.

    C. At the moment Vellum indicated, by words or acts, that he was satisfied to have title vested in Arabel.

    D. Once the deed was duly recorded at the local county recording office.

32. Very shortly after the deed became effective in the preceding question, it was discovered that (unknown to both Arabel and Vellum) an easement of way in gross, held prescriptively by Braque, ran across the conveyed portion of Verdacre. The location of the easement substantially detracted from the value of that conveyed portion. Vellum still has Arabel's check.

    A. If Arabel wants to rescind, and Vellum agrees, Arabel can just return the deed in exchange for the $5000 check.

    B. Generally speaking, Vellum would be liable for any loss sustained by Arabel as a result of the breach of implied warranty of marketability.

    C. Arabel would have been distinctly better off, in this turn of events, to have received a warranty deed.

    D. All of the above.

Facts for questions 33 to 39

Archacre was a large vacant country tract when bought by Archibald a little over seven years ago. One month later, Archibald built a summer cabin at the back of the land, as far as possible from the highway located along the western boundary of Archacre. Every summer since he bought it, Archibald had used the cabin and a small lane which he cut running to the cabin. Archibald has entered negotiations with Tim who wants to buy a portion of Archacre. The portion desired by Tim is called Laneacre because most of the lane (except the part right by the cabin) runs on it.

33. Assume that Tim buys Laneacre, and the deed to Tim mentions no easements.

A. If Laneacre also includes all of the highway frontage of Archacre, Archibald's property is probably hopelessly landlocked unless Tim will sell him an easement.

B. Archibald probably would have an easement by implication based on prior use, even if there is still a portion of Archacre touching the highway -- though without a lane across it.

C. Archibald would clearly have an easement by prescription to use the lane if he continues his use, without permission, for three more years (for a total of 10 years).

D. Archibald could probably have an easement by prescription to use the lane if he continues his use, without permission, for 10 more years.

34. Which of the following would, in the preceding question, be most helpful to Archibald in claiming an easement by implication based on prior use?

A. The retained portion of Archacre between the cabin and the highway has several deep ravines and cannot be made passable at anything close to a reasonable cost.

B. His state follows the "reciprocal" rules approach, or the Restatement of Property approach, and imposes the same degree of necessity for easements by implied grant and as for easements by implied reservation.

C. Both A and B above would be very helpful to Archibald.

D. Neither A nor B above would be very helpful to Archibald.

35. If, in question 33 an easement to use the lane had been expressly retained by Archibald in the deed, it would be:

A. A so-called negative easement.

B. An easement in gross, since Archibald acquired no land with the easement.

C. An easement by implied reservation.

D. An appurtenant easement.

36. Suppose, in question 33 that the deed mentioned no easement, but a court held that Archibald nevertheless had an easement as a result of the conveyance:

A. If the court based the easement on strict necessity and prior apparent use, the easement would probably continue even if, later, another convenient means of access to the cabin became available.

B. If the court based the easement on absolute necessity, irrespective of any prior use, the easement would probably continue even if, later, another convenient means of access became available.

C. If the court found an easement by implication based on prior apparent use, then the easement would be properly called a quasi-easement.

D. If the court found an easement by implication based on prior apparent use, then the easement would continue only so long as the lane remained passable without life-extending maintenance.

37. If, in question 33 Archibald is found to have an easement over Laneacre:

A. It would probably expire if Archibald sold the rest of Archacre to somebody else.

B. The location of the lane could be changed to suit Tim's convenience.

C. Tim could use the lane for passage from the highway to other portions of Laneacre only with Archibald's permission.

D. If Tim sold part of Laneacre to Mark, and retained the portion furthest from the highway, he could reserve an easement over the lane.

38. If, in the preceding question, Archibald divided Archacre into 20 separate lots,

A. The easement over Laneacre would probably be extinguished.

B. The easement over Laneacre could still be used by Archibald, as well as his grantees, but only so long as the overall physical burden on Laneacre did not increase substantially.

C. The easement over Laneacre would probably be appurtenant to each of the 20 separate lots.

D. The easement over Laneacre could probably still be used, but only by Archibald.

39. If, in the preceding question, Archibald began using a short-cut -- off the original lane:

A. The location of the easement would be automatically adjusted to reflect Archibald's actual use.

B. Archibald's easement would be extinguished.

C. In the majority of jurisdictions, Archibald could acquire a prescriptive easement to use the shortcut even if Tim objected to use of the shortcut and demanded that Archibald cease using it.

D. In the majority of jurisdictions, if Tim ordered Archibald to stop using the shortcut, no prescriptive easement could arise.

40. Pitter and Ditter were next door neighbors and agreed to erect a common driveway straddling the boundary between their respective properties. Both contributed money and labor to the effort, and each has regularly used the common driveway for the last seven years. Last night, Pitter placed a chainlink fence along the boundary, one inch on Pitter's own side of the boundary line.

A. The fence probably does not violate Ditter's rights.

B. Ditter probably has an easement by estoppel which the fence interferes with.

C. Ditter probably has an easement by prescription which the fence interferes with.

D. Both B and C above.

41. Suppose that, in the preceding question, Pitter and Ditter had exchanged formal written covenants to use their respective lots solely for residential purposes. If Pitter sold his lot to Pose and Ditter sold his lot to Dose:

A. Under the majority rule Pose could recover damages from Dose for breach of covenant (assuming that the breach could be proved).

B. Under the majority rule there is "privity of estate" between Pose and Dose.

C. Under the minority rule either Pose or Dose could recover damages from the other for breach of the covenant (assuming that the breach could be proved).

D. All of the above.

42. In the preceding question, if Pitter still owned his lot and wanted to enjoin Dose from putting a gas station on Dose's lot:

A. Pitter would have no chance in a majority rule jurisdiction unless the local zoning prohibited such use.

B. Even in a majority rule jurisdiction Pitter could enforce the use restriction as an equitable servitude, provided Dose took with notice of it.

C. Even in a majority rule jurisdiction, Pitter could enforce the use restriction as an equitable servitude if but only if Ditter's covenant had been recorded.

D. In a majority rule jurisdiction, Pitter could not enforce the covenant because there was not "horizontal" (or "simultaneous") privity of estate between Pitter and Ditter.

43. In order for a covenant to "run with" the burdened land and be binding, either at law or in equity, on a remote purchaser of the burdened land,

A. It must be intended to run with the land.

B. It must be contained in a deed which states that the covenant runs with the land.

C. There must be a common plan or scheme of development.

D. All of the above.

44. Pitter bought season tickets to the Yankee's games, entitling him to sit in seat R-310 for every home game. Pitter's interest is:

A. A revocable license, subject to contract remedies for damages.

B. A specifically enforceable contract right to a license.

C. An easement.

D. A leasehold interest in the seat with an easement of access.

45. Tartwell delivered a deed to Happyacre, a house and lot, to "Willa and Willis Waterpopp and their heirs." If Willa and Willis were married when the deed was delivered:

A. They would presumptively have a tenancy by the entirety at common law.

B. They would presumptively have a tenancy in common in New York.

C. They would presumptively each have a right to partition in an appropriate proceeding if the local jurisdiction recognizes them to have a tenancy by the entirety.

D. All of the above.

46. If, in the preceding question, Willis and Willa were brother and sister:

A. They would presumptively have a tenancy by the entirety at common law.

B. They would presumptively have a tenancy in common under the modern interpretive presumptions.

C. They would presumptively each have a right of survivorship under the modern interpretive presumptions.

D. All of the above.

47. In the preceding question, if Willis entered sole possession of Happyacre, and personally remained in sole possession for eleven years:

A. Willis would probably now be the sole owner of Happyacre.

B. Willis would probably be liable to Willa for a share of mesne profits or for rents under the majority interpretation of the Statute of Anne.

C. Willa would be entitled to half of Happyacre on partition but not entitled to occupy Happyacre with Willis.

D. None of the above.

48. In the preceding question, Willa would have a better case for recovering rents or mesne profits from Willis.

A. If Willis had prevented her from entering joint possession six years ago and regularly since then.

B. If Willis had prevented her from entering joint possession ten and one-half years ago and regularly since.

C. Both A and B above.

D. None of the above. Willa has a perfectly good case for recovery for rents mesne profits in most jurisdictions without additional facts.

49. In question 46 if Willis leased Happyacre to Wallis under a 3 year lease, naming Willis alone as landlord,

A. Willa would be entitled to one-half of the rent.

B. Willa would be entitled to share undivided possession with Wallis.

C. Willa would be entitled to one-half of the rent and to share undivided possession with Wallis.

D. Willa would have a right to survivorship.

50. Assume that Tartwell delivered the deed to "Willa, Willie and Willis Waterpopp and their heirs, sister and brothers, as joint tenants with rights of survivorship." If Willis died, leaving Willa and Willie, then:

A. Willa and Willie would each have an undivided one-half as joint tenants.

B. Willa and Willie would each have an undivided one-half as tenants in common.

C. Willa and Willie would each have an undivided one-third as joint tenants and Willis' heir or devisee would have an undivided one-third tenant in common.

D. Willa, Willie and Willis' heir or devisee would each have an undivided one-third as tenants in common.

51. In the preceding question, if Willie transferred his interest to Willis before Willis died, then:

A. Willa would be the sole owner of Happyacre.

B. Willa would own an undivided two-thirds of Happyacre as tenant in common with Willis' heir or devisee.

C. Willis' heir or devisee would own two-thirds of Happyacre.

D. Willa and Willis' heir would each have an undivided one-half of Happyacre as joint tenants.

52. In jurisdictions which recognize tenancy by the entirety:

A. Neither tenant by the entirety can unilaterally make a transfer which destroys the right of survivorship of the other.

B. The tenancy and right of survivorship cannot be broken by the spouses during their joint lives, except by divorce.

C. Either spouse may transfer his or her own interest in almost all of such jurisdictions.

D. The tenancy is almost absolutely immune from levy of execution in about half of such jurisdictions.

53. Selwig telephoned his real estate broker friend, Harold Sincere, stated that he wished to sell his house and get at least $125,000 for it. Sincere said he would try to find a buyer at that price. Two weeks later, Sincere introduced Baker who offered to pay $130,000 for the house. Selwig and Baker signed a contract, Baker got a mortgage commitment, but the deal fell through because Baker changed his mind.

A. Selwig is not obligated to pay a commission to Sincere because he never offered or agreed to pay one.

B. Selwig is not obligated to pay a commission to Sincere because the sale did not go through.

C. Selwig is not obligated to pay a commission to Sincere because Baker was not "willing" (as in "ready, willing, and able") to purchase.

D. None of the above.

54. Assume in the preceding question that the deal fell through because an easement of view, unknown to Selwig, was created via a recorded deed signed by Selwig's predecessor and still exists over Selwig's property.

A. Selwig would be liable to Sincere for his commission.

B. Selwig would have an action against Baker for breach unless the contract expressly required Selwig to convey "free of all easements and encumbrances".

C. Baker could have accepted the defective title and still have sued Selwig for breach of the implied warranty of marketability.

D. All of the above.

55. Suppose, in the preceding question, Selwig's lawyer noticed a reference to the easement as an "exception" in Selwig's title insurance policy, before he drafted the sale contract with Baker.

A. Selwig's lawyer should advise Selwig to sue his title insurance company because there is a defect in Selwig's title.

B. Selwig's lawyer should provide in the sale contract that Baker takes subject to the easement.

C. Selwig's lawyer should shut-up and hope that nobody else notices the easement.

D. Selwig's lawyer should draft the contract to provide for "insurable title" instead of "marketable title".

56. Assume that Baker is willing to take "subject to the easement" if his title insurance company will insure that he will not be adversely affected by it. In order to get Baker's title insurance company to remove its exception from coverage for the easement, the best argument (if supported by the facts) would be:

A. The easement has not been used for the last 15 years.

B. The easement of view was expressly stated to be from the window of a house on the neighboring lot, and the house has been destroyed and replaced by a warehouse with a high windowless wall facing Selwig's lot.

C. Three weeks ago, after the contract was made, the dominant tenant told Selwig that he relinquished the easement.

D. None of the above arguments should make any impression on Baker's title insurance company.

57. If the easement were discovered three weeks before the agreed closing date, and Baker threatened to reject title because he had not agreed to take subject to it:

A. Selwig still could transfer title free of the easement by simply providing a warranty deed.

B. Selwig has already breached the implied warranty of marketability since he did not have a marketable title at the contract date.

C. Selwig could probably have specific performance ordered against Baker even if the easement is not removed until three days after the agreed closing date.

D. Baker would be in breach because he has no right, unless expressly agreed, to reject title due to a mere negative easement.

58. Assume that one day before the closing, another hitch develops. A person named Cauby shows up and claims that the deed under which Selwig took 17 years ago was a forgery and that he, Cauby, is the sole heir of the then owner whose name was forged. Cauby has ample evidence to substantiate his claim. If Selwig can prove that he has been in continuous, undisturbed actual possession since he bought:

A. That proof, in an action against Baker, should get an order of specific performanace against Baker.

B. That proof, plus proof the Baker would win the ejectment action that Cauby is threatening, should get an order of specific performance against Baker.

C. This would be a good time for Selwig to offer to return Baker's downpayment.

D. Selwig would have no action against his title insurance company, since this title defect was not "of record".

59. Suppose, in the preceding question, that Selwig very much wants to close with Baker, that he has bought out the easement claimant and Cauby is willing to deliver a quitclaim deed to Selwig transferring "all his right, title and interest in the land for $1000". If Cauby's story appears true:

A. No purpose would be served by paying him the $1000 for the quitclaim deed.

B. Baker could have no objection to the title based on the Cauby claim once the quitclaim deed was delivered and recorded.

C. Baker would need time for a further title search before he could be sure of the title.

D. Cauby would be crazy to relinquish his claim without a fight.

60. Suppose, in the preceding question, that the closing is held and Cauby moves in and, while poking around in the attic, finds a diamond necklace hidden under the floorboards. If Selwig admits that he has no idea where the necklace came from:

A. He would have no chance, under any respectable body of authorities of recovering the necklace from Cauby.

B. Selwig could probably recover the necklace from Cauby in a jurisdiction which follows the so-called English rule.

C. Selwig could probably recover the necklace from Cauby in a jurisdiction which follows the so-called American rule.

D. Selwig could probably recover the necklace from Cauby in either an English-rule state or an American-rule state.