PACE UNIVERSITY SCHOOL OF LAW

PROPERTY - Version A
DEAN HUMBACH
FINAL EXAMINATION

May 17, 1985
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 35 multiple choice questions and two essay questions, each with subparts. The weight of the essay questions equals, in aggregate, about 5/12 of the examination. 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 blackening through the appropriate number 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 your bluebook(s) and this question booklet.

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

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

1. Claudia and her husband, David, were waiting in the line for the Opera House coat checkroom. David handed his coat to the checkroom attendant and received his claim check. While the attendant had her back to the counter, Claudia laid her own fur coat over the counter and said: "Put this with my husband's, on the same check." Both Claudia and her husband had departed by the time the attendant turned around and said: "Sorry. We can't take furs here," pushing the fur back across the counter. The next person in line, Sally Stelth, said "Oh, my mistake," took the fur coat and left with it. In an action against the checkroom management for the value of the coat:

1. Claudia should win because the checkroom was clearly a bailee of the fur coat and made a misdelivery of it.

2. Though the checkroom was clearly a bailee of the fur coat, Claudia could win only if the checkroom were negligent in making the misdelivery, since bailees are liable only for loss due to negligence.

3. Even if it were not entirely clear whether the checkroom was a bailee of the fur coat, Claudia should win a damage award if she could show that the checkroom attendant were negligent in dealing with the fur, proximately causing its loss.

4. It is not clear whether the checkroom became a bailee of the fur coat. Claudia could win damages for the loss of her fur coat only the checkroom were a bailee of the coat.

2. Suppose that David's coat, which the checkroom attendant did accept, contained (unbeknownst to the attendant) a money clip with $452 in it. The money could not be found when David returned:

1. If the checkroom still had the coat, it could not it be liable for the loss of the money since, under the better reasoned rule, the checkroom would not have been a bailee of money that it did not know about.

2. If the checkroom still had the coat, it should not be held liable for the loss of the money even though, under the better reasoned rule, it would be considered a bailee of the money inasmuch as the money was in its possession.

3. Under the view that the checkroom is <u>not</u> bailee of the money, it should not be liable for the loss of the money even if, due to a misdelivery, both the coat and the money were missing when David returned.

4. Under the view that the checkroom <u>is</u> bailee of the money, it should not be liable for the loss of the money even if, due to a misdelivery, both the coat and the money were missing when David returned.

3. Claudia and David took a taxi home after the opera and Claudia found a gold lighter wedged in between the seatback and the seat. She showed it to David, and the taxi driver asked: "Whatcha got there, Bud?" David told him, and the driver said: "I don't know where that came from, but I'll take it."

1. Following the principle of the so-called English rule, the driver should be entitled to possesson of the lighter.

2. Following the principle of the so-called American rule, Claudia should be entitled to possession of the lighter.

3. If the local jurisdiction makes and follows the supposed distinction between lost and mislaid property, then the driver would have a good case to claim possession of the lighterif it were found to be mislaid.

4. All of the above.

4. Suppose that, after finding a lost lighter in the taxi, Claudia said to the driver: "You keep it so we can see if anyone calls for it at your taxi terminal. If nobody shows up in a couple of weeks, then I'll come and get it." The taxi driver agreed. While the lighter was in the driver's possession at the taxi terminal, Leonard Lightfinger showed up and claimed the lighter, though it was not his. The driver delivered the lighter to Lightfinger. If these facts all come out in a trover action by Claudia against the driver, and the local jurisdiction follows the so-called American rule:

1. Claudia should be able to recover the value of the lighter from the driver.

2. Claudia should not be able to recover anything from the driver, since the driver was really an involuntary bailee of this lost property, and there was no personal entrusting by or understanding with the true owner.

3. Claudia should not be able to recover anything from the driver because she was not the owner of the lighter and therefore suffered no loss.

4. Claudia should not be able to recover anything from the driver since, under the so-called American rule, the driver had better rights to the lighter than Claudia, in any event.

5. Suppose that, after finding a lost lighter in the taxi, Claudia let the driver keep it so they could see if anyone called for it at the taxi terminal. While the lighter was in the driver's possession at the taxi terminal, Leonard Lightfinger stole it. If the local jurisdiction follows the so-called American rule:

1. The driver should be able to recover the possession of the lighter from Lightfinger.

2. The driver should be able to recover the value of the lighter from Lightfinger.

3. Claudia should be able to recover from the driver whatever the driver was able to recover (possession or value of the lighter) from Lightfinger.

4. All of the above.

6. Suppose again that, after finding a lost lighter in the taxi, Claudia let the driver keep it so they could see if anyone called for it, and Leonard Lightfinger then stole it from the driver's possession. If the local jurisdiction follows the so-called American rule, then:

1. If the driver succeeds in recovering possession of the lighter from Lightfinger, Claudia should be able to recover the possession of it from the driver.

2. If the driver succeeds in recovering possession of the lighter in a replevin action against Lightfinger, Claudia would still be able to recover the value of it in a trover action against Lightfinger.

3. Both of the above.

4. The driver should not be able to recover the value of the lighter from Lightfinger, as the driver has no ownership of it whatever.

7. Tryon Ketchem was fishing on a stream at a point where it flows over lands belonging to Crestwell when he hooked some driftwood floating on the stream. Tangled in the driftwood was a silver locket and chain, which Ketchem took. The ownership of the locket remains unknown. If Ketchem had no express permission from Crestwell to be on Crestwell's land:

1. Ketchem still could almost certainly retain the locket as against Crestwell if Ketchem rowed in, fished from a boat, and retrieved the locket from a boat, and never once touched Crestwell's land in doing so, since he would not be trespasser without touching the land.

2. Ketchem still would not be a trespasser in fishing where he did if Crestwell had for many years allowed fishermen such as Ketchem to fish on his stream.

3. Even if Ketchem had an implied license to engage in fishing where he did, he still should be regarded as a trespasser by exceeding his license when he engaged in the additional activity of taking the locket which he happened across while fishing.

4. Even if Ketchem were a trespasser, he should still be entitled to keep the locket as against Crestwell if the jurisdiction follows the so-called American rule, since the finder has better rights against all but the true owner.

8. Assume again that Tryon Ketchem was fishing on a stream at a point where it flows over lands belonging to Crestwell. If Ketchem had no express permission from Crestwell to be on Crestwell's land:

1. Any fish which Ketchem catches, even while trespassing, should belong to him as against Crestwell, since fish are ferae naturae.

2. Any fish which Ketchem catches, provided he is not trespassing, should belong to him as against Crestwell, since fish are ferae naturae.

3. Provided Ketchem is not trespassing, any fish which he catches should belong to him, and his ownership continues even in fish which, once caught, jump out of Ketchem's boat and back into the water.

4. Any fish which Ketchem catches, trespassing or not, should belong to Crestwell since fish are ferae naturae and belong to the owner of the land on which found.

9. Assume again that Tryon Ketchem was fishing on a stream at a point where it flows over lands belonging to Crestwell. Neither Ketchem nor Bart Bolt, another fisherman, had any license from Crestwell to be on Crestwell's land:

1. If Ketchem catches five fish while trespassing and Bart Bolt then rows up, tips over Ketchem's boat and takes the fish, Ketchem should be able to recover the value of the fish from Bolt in trover.

2. If Ketchem catches five fish while trespassing and Bart Bolt then rows up, tips over Ketchem's boat and takes the fish, Ketchem should (theoretically at least) be able to recover possession of the fish from Bolt in replevin.

3. Both of the above.

4. If Ketchem catches five fish while trespassing and Bart Bolt then rows up, tips over Ketchem's boat and takes the fish, Bolt should be able to win a trover action by Ketchem with the defense that Ketchem, as a trespasser, had no better right to the fish than Bolt -- i.e., their rights are equal.

10. The application of the rule that wrongdoer may not defend by asserting a jus tertii under which he cannot claim:

1. Is essentially a 'real party in interest' rule.

2. Permits owners to recover for wrongful injury to property without being required to establish a chain of title running back to original acquisition.

3. Places an adverse possessor in essentially the position of 'owner', except as against the true owner, from the moment the possession begins.

4. All of the above.

11. Early in 1960, Engelhaupt built a small boathouse and dock on the shore of Lake Tamarack, at a point where the shore of the lake was close to the highway. The construction was within the fenced-in perimeter of an obviously very old wire fence, and Engelhaupt replaced part of the fence with a gate in order to get access from the road. Since 1960, Engelhaupt has regularly and frequently used the dock and boathouse, undisturbed except by occasional trespassers (whom he chased away), and at one time or another he has used most of the area within the perimeter, e.g., to park his car and sometimes his boat (on its trailer), for occasional picnics, etc. Other than use by Engelhaupt, the area within the fence has been unused and unoccupied. Last week, Shelton Sloth appeared, asserted record ownership and ordered Engelhaupt to get off the land.

1. On these facts, it would be improper for the court to direct a verdict against Engelhaupt in an ejectment action by Sloth.

2. On these facts, Engelhaupt would have no chance of claiming title by adverse possession against Sloth, since Engelhaupt has never taken possession and has only used the land.

3. On these facts, Engelhaupt would have no chance of claiming title by adverse possession against Sloth, since Engelhaupt's acts of possession, though regular and frequent, have not been "continuous".

4. Both 2 and 3 above.

12. In the foregoing question, if Engelhaupt's activities could (perhaps supplemented with other additional activities, as necessary) form the basis of a claim for ripened title in Engelhaupt, the area to which Engelhaupt could acquire title, based solely on possession, without color of title:

1. Would likely include the entire area within the fence perimeter if Engelhaupt regularly and frequently used most of that area.

2. Would likely include the entire area within the fence perimeter even if Engelhaupt's regular and frequent activities involved use only of about 10% of that area, and the rest (extending away from the lake) were entirely unused by Engelhaupt.

3. Both of the above.

4. None of the above. Without color of title, title could not ripen in Engelhaupt; color of title is one of the five elements of adverse possession.

13. Assume in the preceding question that, in 1962, Engelhaupt approached a neighboring farmer and asked who owned the land he was using. The farmer said (falsely) that he did and, after negotiations, the farmer delivered Engelhaupt a deed to the entire fenced-in area, which was owned by Sloth. If title has ripened in Englehaupt, the area to which such ripened title pertains:

1. Would likely include the entire area within the fence perimeter if Engelhaupt regularly and frequently used most of that area.

2. Would likely include the entire area within the fence perimeter even if Engelhaupt's regular and frequent activities involved use only of about 10% of that area, and the rest (extending away from the lake) were entirely unused by Engelhaupt.

3. Both of the above.

4. None of the above. The deed from the farmer was fraudulent or a forgery. Either way it cannot prevail over the rights of the true owner.

14. Harv and Marv were next door neighbors. In 1965 they put up a fence at their joint expense, intended to run along the line between their two lots. In 1977 Marv died and his executor sold his house (in 1977) to Larv, who moved in. Just before Larv took title, a survey was done and it was revealed that the fence was actually 2 feet on the Marv/Larv side of the record property line. Harv was apologetic and shared with Marv's executor the cost of moving the fence two feet over (towards Harv) to run along the actual record boundary. Larv's deed described the boundary with Harv to be the record property line.

1. Even if the local adverse possession law does not protect the "honest claimant", Harv should have no difficulties claiming a two-foot strip on the Larv side of the newly-moved fence.

2. If the local adverse possession law DOES protect the "honest claimant" then Harv seems to have allowed the fence to be moved between him and a two-foot strip of his property.

3. Even if the local adverse possession law DOES protect the "honest claimant", Harv could relinquish his claim to the adversely acquired strip by allowing the fence to be moved between him and the strip.

4. Both 2 and 3 above.

15. In 1962, Forster went into adverse possession of lands belonging to Crant, as life tenant, with the remainder interest in Morrison. Crant died in 1977 having taken no action against Forster, who is still in possession.

1. Between 1972 and 1977, Forster had what amounted to a life estate pur autre vie.

2. Morrison's title appears to have been extinguished before he even got to enjoy his right of possession.

3. Morrison could and should have brought an ejectment action in his own nate against Forster prior to 1972, once it became apparent that Crant was going to do nothing.

4. Both 2 and 3 above.

16. Suppose that in 1962, Forster went into adverse possession of lands belonging to Tollison in fee simple. Tollison died later that year devising the lands in question to Crant for life, remainder to Morrison. Crant died in 1977 having taken no action against Forster, who is still in possession.

1. Between 1972 and 1977, Forster had what amounted to a life estate pur autre vie.

2. Morrison's title appears to have been extinguished before he even got to enjoy his right of possession.

3. The ripening of Forster's title would not have been affected by the transfer of title from Tollison to Crant and Morrison, since Forster could tack his possession against Tollison onto his possession against Tollison's devisee(s).

4. Both 2 and 3 above.

17. Asa Surve, the tennis pro, was on the court with Melita Mopp, showing her some of the fine points of returning lobs when he received an urgent phone call. Melita, who had just slammed all three balls they were playing with into the net, was picking them up. Surve shouted over his shoulder: "Just keep the balls. You can have them -- they're yours -- if I'm not back in ten minutes." If Surve had bought the balls and brought them to the tennis court, and Melita was holding them when Surve shouted the above, then:

1. Surve's words would have effectuated a gift to Melita of Surve's rights to and title in the balls, since Melita's possession of them satisfies the delivery requirement.

2. Surve's words would not have been sufficient to effectuate a gift to Melita of Surve's rights to and title in the balls, since Surve never handed the balls over to Melita with the object of making a gift of the balls to her.

3. Surve's words would not, in this case, have been sufficient to effectuate a gift to Melita of Surve's rights to and title in the balls, since Surve seemingly lacked in-praesenti donative intent.

4. Both 2 and 3 above.

18. Later that evening, Surve and Melita were dining near the pool and it occurred to Surve that Melita's mood might improve if he gave her a little something -- and he decided upon the large diameter racquet that was in his locker 700 yards away, by the tennis courts. He reached into his pocket, pulled out a key to his locker and handed it to Melita, saying: "I'm giving you the tennis racquet in my locker. Here's the key so that you can get it out of my locker." If Surve changes his mind and, before Melita actually gets the racquet, he decides not to give it to her:

1. Melita's case for asserting ownership of the racquet would probably be considerably worse if Surve had in his possession a second key to the locker.

2. The racquet should nonetheless be hers provided she promptly expressed acceptance of the gift, since the offer and acceptance should be binding without delivery.

3. Handing over the key would normally be regarded as an effective symbolical delivery of the contents of the locker; thus, Surve could not lawfully withhold the racquet from Melita.

4. It would be basically irrelevant to Melita's case for the racquet that the the locker was located in an area locked for the night and inaccessible to Surve and Melita at the time when Surve wanted to make the gift.

19. Suppose that Surve decided to give Melita a racquet located in the trunk of Surve's car, and he handed it to her in person, stating: "Here, it's yours." Melita said thanks and bounced the face of the racquet off the palm of her hand, breaking one of the strings. Surve said "Oops", and offered to take the racquet back to have it restrung in his pro shop (which Surve owned). Melita took him up on the offer and handed back the racquet. As of that point:

1. Title to the racquet is back in Surve.

2. Title to the racquet is still in Surve, having never yet left him.

3. Melita, having entrusted the racquet back to Surve, has made an oral trust of the racquet.

4. The donor is now the bailee of the donee.

20. Assume that Surve took Melita's own racquet to his pro shop to have it restrung. Surve's shop not only repairs damaged tennis racquets, but also sells from an inventory of new and used racquets. If Surve's shopboy, Snapp, accidently sold Melita's racquet to a customer:

1. Merely allowing the pro shop to have possession of the racquet clothed the shop management with such indicia of ownership that Melita should be estopped, under the common law rules, from asserting her rights to the racquet against the customer.

2. Melita should still be able to replevy the racquet from the customer under the common law rules.

3. The customer did not get title to Melita's racquet. Once he took possession, however, it ought to be covered with respect to theft by others under the theft portion of his homeowners' policy -- which indemnifies for "all losses due to theft of personal property of the insured."

4. Both 2 and 3 above.

21. Assume that Surve took Melita's own racquet to his pro shop to have it restrung. If it turns out that Melita's racquet was restrung with string stolen from Tip-Top String Co., then (assuming the string would be considered part of the racquet -- not removable without effectively destroying the string):

1. Melita would probably be considered owner of the strung racquet (including the new string).

2. Melita might be considered owner of the strung racquet, though only if Surve's shop were an innocent accessioner, i.e., placed the string on Melita's racquet without knowledge that it was stolen.

3. Melita might be considered owner of the strung racquet, though only if putting the string on the racquet could be considered to change the string "in kind".

4. None of the above. Under the facts, Tip-Top could still replevy the string from Melita.

22. Due to the negligence of its driver, a large flatbed trailer overturned dumping a load of cast iron pipe onto land belonging to Brinkman. The owner of the pipe is Lexel Steel Co., which is in no way legally responsible for the accident. Over $700 damage occured to shrubbery and other plantings on Brinkman's land. An estimated further $100 damage would result from the use on Brinkman's land of the machinery required to remove the pipe. The driver is judgment-proof.

1. Brinkman cannot refuse Lexel permission to remove the pipe without, by such refusal, becoming a converter of the pipe.

2. Lexel may simply go onto Brinkman's land to remove its personal property without becoming a trespasser.

3. The Restatement of Property would confer a qualified privilege on Lexel to retrieve its personal property, provided Lexel were willing to reimburse Brinkman for all damage sustained by Brinkman as a result of the incident, viz. $800.

4. The Restatement of Property would confer a qualified privilege on Lexel to retrieve its personal property, provided Lexel were willing to reimburse Brinkman for all damage sustained by Brinkman as a result of the retrieval, viz. $100.

23. Potamas Pringle delivered a deed conveying Blackacre (which he owned in fee simple absolute) "to Caroline Clout and her heirs so long as the land is used for progressive primary-school education." Under the usual interpretation of the words of grant:

A. Clout would have a fee simple determinable and Pringle would have a possibility of reverter.

B. Clout would have a fee simple on special limitation and Pringle would have a possibility of reverter.

C. Clout would have a fee simple on condition subsequent and Pringle would have a possibility of reverter.

D. Clout would have a fee simple on condition subsequent and Pringle would have a right of entry.

E. The words "and her heirs" would be words of limitation and not words of purchase.

Select answer to this question from the following:

1. A, B, and E are correct.

2. A and E are correct.

3. A, B, D are each equally likely to be correct.

4. A, B & D are each about equally likely to be correct and E is correct.

24. Potamas Pringle delivered a deed to conveying Blackacre (which he owned in fee simple absolute) "to Caroline Clout and her heirs so long as the land is used for progressive primary-school education, and if the land ceases to be so used, then to Xerxes and his heirs." Under the usual interpretation of the words of grant:

A. Clout would have a fee simple determinable and Pringle would have a possibility of reverter.

B. Clout would have a fee simple on executory limitation and Xerxes would have a possibility of reverter.

C. Clout would have a fee simple on executory limitation and Xerxes would have an executory interest.

D. Clout would have a fee simple on condition subsequent and Xerxes would have an executory interest.

E. If the land ceases to be used for progressive primary-school education after Clout's death, seisin will shift to Xerxes (or his legal successor).

Select answer to this question from the following:

1. B and C are each about equally likely to be correct and E is correct.

2. B and E are correct.

3. C and E are correct.

4. A, C & D are each about equally likely to be correct and E is correct.

25. Oliver Otterbein, holder of a fee simple absolute, made the following conveyance: "to Breathewaite for life, then to Plover and his heirs beginning one year after Breathewaite's death".

1. Plover's interest would be invalid if the conveyance were made by livery of seisin to Breathwaite PRIOR TO the Statute of Uses.

2. Plover's interest would be invalid if the conveyance were made by livery of seisin to Breathwaite AFTER the Statute of Uses.

3. Plover's interest would be valid if the conveyance were made by bargain and sale AFTER the Statute of Uses.

4. All of the above.

26. Oliver Otterbein, holder of a fee simple absolute in two parcels, made the following conveyances of them by livery of seisin prior to the Statute of Uses:

A. to Breathewaite for life then to Castor and his heirs if Castor gives Pollux a suitable burial.

B. to Breathewaite for life then to Castor and his heirs if Castor provides sustenance to Breathewaite's widow for six months' time following Breathewaite's funeral.

Which of the conveyances would, if enforced, inevitably require seisin to spring from the transferor [feoffor] in the future?

1. A

2. B

3. Both A and B above.

4. None of the above.

27. Shortly after the Statute of Uses, Collander (holder of a fee simple absolute in Blueacre) made a conveyance of Blueacre, by bargain and sale, "to Astelthrope for life and then to Astelthrope's first son to reach age 21, and his heirs".

1. Astelthrope would initially receive an equitable life estate which would be instantaneously converted into a legal life estate.

2. Seisin would move from Collander to Astelthrope without any actual livery of seisin.

3. If Astelthrope dies with his eldest son at age 15, then the remainder will fail.

4. All of the above.

28. Shortly after the Statute of Uses, Collander (holder of a fee simple absolute in Blueacre) made a conveyance of Blueacre, by bargain and sale, "to Astelthrope for life and then to Astelthrope's first son, Lawrence, provided he reaches age 21, and his heirs". Lawrence was age 15 at the time of the conveyance.

1. The heirs of Astelthrope received a contingent remainder.

2. Lawrence received a vested remainder.

3. Once Lawrence reaches age 21, then -- if Astelthrope's life estate is still in effect -- Lawrence would have a vested remainder.

4. Under the Rule in Shelley's Case, Astelthrope would be able to convey a fee simple absolute.

29. In 1984, Collander (holder of a fee simple absolute in Blueacre) made a conveyance of Blueacre "to Astelthrope for life and then to Astelthrope's first son, Lawrence, and his heirs, provided he reaches the age of 21 years." Astelthrope is now age 50 and Lawrence is age 20.

1. If Lawrence dies intestate at age 30, while Astelthrope is still alive and enjoying his life estate, Lawrence's heirs would be entitled to eventual possession in fee simple absolute.

2. Once Lawrence reaches age 21, he will be legally able to convey a vested remainder to his university buddy, Giff, in satisfaction of a debt.

3. Once Lawrence reaches age 21, he will be legally able to convey a vested remainder to a stranger, but even if the remainder is vested, a buyer would not likely be willing to pay anything approaching the full value of Blueacre.

4. All of the above.

30. Nestor needed an apartment for 15 months and answered an ad put in the newspaper by Lunden. After seeing the place and hearing the rent, $400 per month, Nestor said "I'll take it." Lunden had mentioned a written lease but, when he heard how long Nestor wanted to stay, he said that Nestor could just go in on the first of the month "without a lease." If the local Statute of Frauds states that "a lease for a term exceeding one year is void unless in writing signed by the party to be charged", but Nestor nevertheless took possession on the first of the month:

1. Nestor is in the position of a squatter or tenant at sufferance, with no right to possession.

2. Nestor is initially a tenant at will, with a right of possession good against everyone, including Lunden.

3. Nestor's tenancy would be (ignoring statutory modifications of the tenancy at will) terminable at the option of either Nestor or Lunden, without any particular advance notice on the part of either.

4. Both 2 and 3 above.

31. Suppose Lunden orally agreed to lease an apartment to Nestor for 2 years beginning 8/1/84. The local Statute of Frauds states that "a lease for a term exceeding one year is void unless in writing signed by the party to be charged". If Nestor nonetheless took possession on 8/1/84 and, while in possession, has paid rent since, the earliest date as of which either party could terminate in most jurisdictions would probably be (assume today's date is 5/17/85):

1. Immediately.

2. May 31, 1985.

3. One month from today.

4. June 30, 1985.

32. Assume that Nestor and Lunden signed a lease demising Blueacre to Nestor for a 3 year term and Nestor promptly enters into possession of Blueacre. If it turns out that Lunden was a joint tenant of Blueacre with Lester, who did not know about or participate in the lease:

1. The lease is void, and Nestor is subject to eviction by Lester.

2. The lease is valid and Nestor is a tenant in common with Lester.

3. The lease is valid and Nestor is a joint tenant with Lester.

4. The lease is valid and Nestor now must pay the agreed amount of rental to both Lunden and Lester.

33. Assume again that Nestor and Lunden signed a lease demising an apartment, Blueacre, to Nestor for a 3 year term and Nestor enters possession promptly. If, after one year, Nestor is transferred by his employer to another city:

1. Nestor would, at common law, have a right to terminate his lease by offering to let Lunden keep the security deposit.

2. Nestor could be held liable for, at most, the amount by which the agreed rent exceeds the premises' fair rental value.

3. Nestor could surrender the premises to Lunden, and Lunden could not unreasonably withhold consent to such a surrender.

4. Nestor could, under the traditional rule, be held liable for the full rent, as it accrues, even if he vacated the premises and Lunden could easily relet them.

34. Assume again that Nestor and Lunden signed a lease demising Blueacre to Nestor for a 3 year term and, after one year, Nestor is transferred by his employer to another city. Nestor signs a paper entitled "Sublease" which states: "I hereby sublease my apartment to Carstel for the entire remaining term of my current lease", and Carstel takes possession:

1. Nestor would have remained in privity of estate with Lunden had he sublet to Carstel for one day less than the remaining term of his current lease.

2. Nestor would have remained in privity of estate with Lunden if, in turning the apartment over to Carstel, Nestor had retained a reversion.

3. Nestor would presumptively remain liable for rent to Lunden based on privity of contract.

4. All of the above.

35. Common law courts which have, in the past, refused rent abatements or reductions for tenants in possession whose apartments become unfit for reasonable habitation:

1. Would have surely held otherwise had they been willing to treat leases like ordinary contracts.

2. Treated leases as conveyance transactions and were, therefore, in a distinct minority.

3. Would have generally relieved the tenant of the obligation to pay rent if the premises' unfitness were caused by the landlord's breach of duty and the tenant actually abandoned possession because of the unfitness.

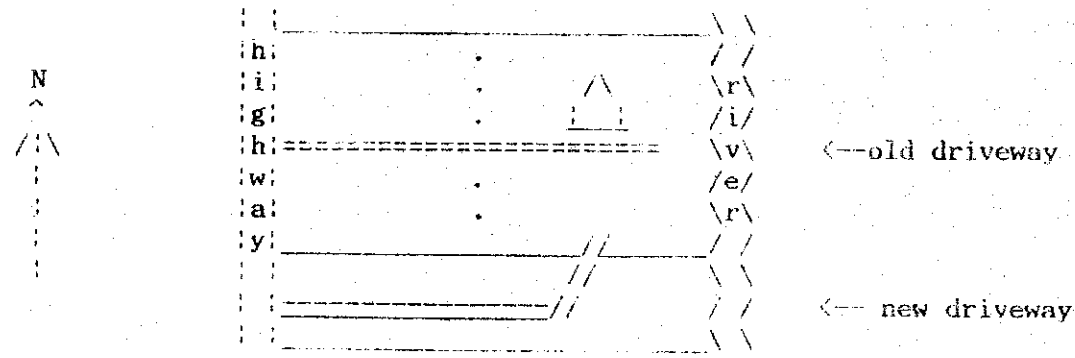
4. Both 2 and 3 above.

CONTINUED ON NEXT PAGE

ESSAY

I

Gormanly Grizzle owned a piece of country land in fee simple absolute. His parcel was bounded on the east by a river and on the west by a highway. Gormanly lived in a house located on the side of his land towards the river:



There is a visible driveway, shown as "old driveway" on the map, which Gormanly used for many years to reach his house from the highway.

Twelve years ago, Gormanly conveyed the western one-half of his land (shown on map) to Penelope Plump. The deed to Plump mentioned no easements, though Gormanly continued to use the driveway after the conveyance, as he would otherwise have had no reasonable means of access to his retained land and house. The deed to Plump did, however, state that:

> "Grantor agrees that no building shall be constructed on the lands to be retained by grantor if such building would obstruct the view of the river from lands being conveyed hereunder. Replacement of existing building excepted."

Six months following the sale to Plump, Gormanly conveyed his remaining land, the portion by the river, to Bart Baite, a downtown lawyer and fishing enthusiast who already owned the land just to the south. From the time of the conveyance, Baite used only the "new driveway", shown on the map, to reach the lands acquired from Gormanly. Baite did not, however, use the house.

On March 3, 1985, Plump mentioned to her friend, Sally Sincere, a real estate broker, that she (Plump) would like to sell her parcel, as she was being transferred by her employer to its office in Ulan-Bator. A week later, Sally introduced Plump to Arthur Auffer who said he would buy the parcel for $7000, the asking price which Plump had mentioned to Sally. Plump accepted Auffer's offer, and a contract of sale was signed -- though the contract mentioned no easements. Eleven and one-half years of disuse had caused the "old driveway" to become overgrown and unusable, though it is still apparent that there was an actively-used driveway there. Baite has just notified Auffer that he would like to repave and restore the driveway.

Now Auffer says the he will not perform the sale contract because Plump's title is not marketable. Though Auffer points to the alleged driveway easement as the basis for the unmarketability, Auffer's real concern is that Baite is planning to erect a large boathouse which will cut off most of the remaining view of the river. Baite claims that, though he bought with knowledge of the building restriction contained in the deed to Plump, he did not take subject to it because he never agreed to be bound by it.

Plump now comes to your firm for advice, and the partner in charge asks you to answer the following questions. Because Plump is not a wealthy client, you are told that the firm must keep your billable hours down. Therefore, ANSWER ONLY THE QUESTIONS ASKED.

1. Is there any likelihood that Plump can enjoin construction of the boathouse based on the restrictive covenant contained in her deed? (2.5 points)

2. Was Plump's land ever burdened by an easement of way over the "original driveway"? On what theory? (5 points)

3. Assuming that Plump's land was burdened by an easement for the "old driveway" 12 years ago, is it still? I.e., can Baite restore the "old driveway" and use it instead of the "new driveway" to reach his riverfront land (on both of these parcels)? (2.5 points)

4. If Auffer lawfully can, and does, reject Plump's title, does Plump still owe Sally a brokerage commission? (2.5 points)

Answer these questions in your bluebook, dividing your answer clearly into four parts.

CONTINUED ON NEXT PAGE

II

Bedford Brewster delivered a deed purporting to convey Barkeacre "to Harry and Helen Harkiss and their heirs." The delivery was under the clear oral understanding, agreed to by grantor and grantees, that if the grantees did not deliver to Brewster a valid mortgage for the purchase price within two days then the whole deal would be off and the conveyance would be void. Brewster said that he needed to rush the conveyance "for tax reasons", and that he felt that he "could trust a fine young couple" like the Harkisses. Harry and Helen were married at the time the deed was delivered to them.

Because of a sudden change of fortune, Harry and Helen decided not to go through with the purchase after all and, three days after delivery of the deed, an amicable settlement was reached with Brewster. The deed, which still had not been recorded, was marked "VOID" and torn up.

Later that same month, Harry negligently drove his car into the side of a car driven by Naomi Notary, who happened to be present when Brewster delivered the deed to the Harkiss's. Naomi was seriously injured and Harry's liability insurance had just lapsed for non-payment of premium. Naomi has brought suit against Harry and, it is obvious, her lawyer believes that the eventual judgment can be satisfied by levying execution against Barkeacre. Harry and Helen have, since the suit, delivered an instrument (called "Confirmatory Deed") quitclaiming all their right, title and interest in Barkeacre to Brewster, but under local law the deed would not be valid against an existing tort creditor, such as Naomi, unless she could not levy execution against the land anyway.

Brewster came blustering into your office yesterday and observed that "this silly thing should be open and shut -- any two-bit lawyer knows that Naomi Notary can't have satisfaction of a judgment against Harry by resort to Barkeacre". Brewster reasoned as follows:

1. The delivery of the deed was subject to a condition which never occurred and, in any event, the deed was cancelled before it was recorded by voiding it and destroying it, with the consent of both parties. (2.5 points)

2. Only Harry is liable to Naomi, not both he and Helen, and Barkeacre was conveyed to <u>both</u> of them. Everybody knows that a creditor of one co-owner cannot levy execution against property owned with somebody else. (5 points)

Comment on each of Brewster's reasons.