

PACE UNIVERSITY SCHOOL OF LAW

PROPERTY II -- VERSION B
DEAN HUMBACH
FINAL EXAMINATION

MAY 22, 1986
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 25 true-false questions, 10 multiple-choice questions, and two Essay Question scenarios, with six subquestions. Each true-false question is worth one point, each multiple-choice question is worth 2.5 points, and each of the Essay subquestions is worth 5 points except subquestion 5 which is worth 10 points.

The true-false and multiple-choice questions are to be answered on the answer sheet provided. Write your examination number and the version (A or B) on the answer sheet in the space provided. Write them NOW.

In answering the multiple-choice and true-false questions, indicate your choice on the answer sheet by blackening through the appropriate box with the special pencil provided. Select only one answer per question; if more than one answer is indicated, the question will be marked wrong. Answer each multiple-choice question selecting the best answer.

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 and your bluebook(s).

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.

True-False Questions

Assume in each of the following cases that Otto Orville was the owner of Blackacre in fee simple absolute when he made the conveyances described.

Otto Orville conveyed Blackacre "to Comet Tarson and his heirs."

1. Tarson has a fee simple absolute.
2. Tarson's heirs have a remainder.
3. Otto Orville has no further interest in Blackacre.
4. The words "and his heirs" are words of purchase, not words of limitation.

Otto Orville conveyed Blackacre "to Comet Tarson for life, and then to Burnham Down and his heirs if Burnham Down marries Delores Just."

5. Otto Orville has no further interest in Blackacre.
6. Comet has a life estate.
7. Comet's life estate is an equitable life estate.
8. Comet holds in trust for Burnham.
9. Burnham has a remainder.
10. If Delores dies without ever marrying, then Otto will be entitled to possession of Blackacre at Comet's death.

Otto Orville conveyed Blackacre "to Comet Tarson for life, and then to Burnham Down and his heirs if Burnham Down marries Comet Tarson's widow."

11. Before the Statute of Uses, Otto would have a reversion.
12. After the Statute of Uses, Otto would have a reversion.
13. Burnham has an executory interest.
14. Burnham has a contingent remainder.
15. If Comet's widow dies without remarrying, then Otto will be entitled to retain possession of Blackacre at the death of Comet's widow.

Otto Orville conveyed Blackacre "to Comet Tarson for 10 days, and then to Burnham Down and his heirs."

16. Comet would be considered to have seisin in Blackacre.

17. Prior to the Statute of Uses, in order to make this conveyance operate as worded, we would have to regard Burnham as the landlord of Comet.

18. Comet would have a term of years.

Otto Orville conveyed Blackacre "to Comet Tarson for life and then to his heirs." Comet lived for five years following the conveyance.

19. According to the traditional interpretation of these words of conveyance, Comet would have received a fee simple absolute.

20. Under the modern trend (including modernizing statutes), these words of conveyance would create a contingent remainder in Comet's heirs.

21. On the day Comet accepted the conveyance from Otto, Comet could have had no heirs even if Comet had many living relatives.

Otto Orville conveyed Blackacre "to Tarot Down and Burnham Down and their heirs." Tarot and Burnham were, and still are, married to each other.

22. In some states which recognize the tenancy by the entirety, the individual creditors of Tarot could levy execution on Tarot's interest in Blackacre.

23. In some states which recognize the tenancy by the entirety, the individual creditors of Tarot could not levy execution on Tarot's interest in Blackacre.

24. In states (non-community property) which do not recognize the tenancy by the entirety, the individual creditors of Tarot could not levy execution on Tarot's interest in Blackacre.

25. In New York, the individual creditors of Tarot could not levy execution on Tarot's interest in Blackacre.

* * *

NOTE! The next question is numbered 51. Turn your answer sheet over, and mark your answer to the next question at #51.

Multiple-Choice Questions

For the following questions, pick the best answer and blacken the appropriate space on the back of your answer sheet, beginning at # 51.

Remember, each of the multiple-choice questions is worth 2.5 true-false questions.

51. Eddie Turner entered into possession of Greenacre under a written lease with U. Ben Hadd, who (unbeknownst to Turner) owned only a life estate. The remainder interest in Greenacre was owned by Ima Waitin. The parties' agreement called for a three-year term. If Hadd dies after 14 months:

1. Turner's right to possession will terminate.
2. Turner ought to have an action against Hadd's estate under the implied covenant of quiet enjoyment in the lease.
3. Both of the above.
4. Turner can unilaterally assure continuation of his right to possession by offering to pay the original reserved rent, as it accrues, to Ima Waitin.

52. Eddie Turner entered into possession of Greenacre under a lease with U. Ben Hadd. The parties' agreement called for a term of three years. Assume this time, however, that Hadd owned Greenacre in fee simple absolute. If the local Statute of Frauds states, like that of New York, that a lease for a period greater than one year is void unless in writing and signed by the party to the charged:

1. Turner could not be legally considered a true tenant under the lease unless the lease was in writing and signed by Hadd and Turner.
2. Turner could be legally considered a true tenant even if the lease were in writing and signed only by Hadd.
3. Even if Hadd alone signed the lease, the lease ought not to be fully enforceable by Turner against Hadd, because Hadd could not fully enforce the lease against Turner.
4. If the lease were entirely oral then, under the Statute of Frauds, Turner would be essentially in the position of an adverse possessor.

53. Eddie Turner took possession of an apartment under a valid three-year lease with the landlord, U. Ben Hadd. After 14 months, Eddie got married to Ellen Wheels, and the two began living together in her apartment. Eddie had all of his furniture put into storage, emptied the apartment of all his other belongings, and quit paying his rent. Hadd kept the apartment locked, but told Eddie several times thereafter: "Whenever you want to come back, your apartment's waiting for you."

1. Under the traditional common law rule, Eddie would remain liable for the full rent as it accrues.
2. According to many recent cases modifying the traditional rule with respect to mitigation in the landlord-tenant context, Eddie would remain liable for the rent as it accrues.
3. By keeping the apartment locked, Hadd would generally be deemed to have accepted Eddie's proffered surrender.
4. If, in addition to keeping the apartment locked, Hadd made efforts (unsuccessful) to relet the apartment, Hadd would generally be deemed to have accepted Eddie's proffered surrender.

54. Assume, again, that Eddie Turner had possession of an apartment under a valid three-year lease with the landlord, U. Ben Hadd, and after 14 months Eddie got married to Ellen Wheels. If Eddie "sublet" his apartment to Winton Nekst for the entire remaining time under his lease,

1. The result (if effective) would be an assignment, not a sublease under the majority rule.
2. Hadd's permission would be required under the common law rule; otherwise, the sublet would be invalid.
3. Eddie would still be liable, based on both privity of contract and privity of estate, to pay the monthly rent to Hadd.
4. All of the above.

55. Assume that, in the preceding question, Eddie did in fact assign his leasehold interest to Winton Nekst, who took immediate possession.

1. Hadd could recover the rent from Nekst based on privity of estate after the assignment.
2. Unless Eddie's lease clearly contained no promise, express or implied, to pay rent, Hadd could still recover the rent from Eddie based on privity of contract, even after the assignment.
3. Unless Eddie's lease clearly contained no promise, express or implied, to pay rent, Hadd would have three potential defendants from whom he could recover rent as it accrued if Nekst later assigned to Ferd Derron, who took possession but did not assume the lease,

4. All of the above.

56. Sandy Rhodes is very dissatisfied with his apartment. Every time it rains hard, the windows leak so badly that a puddle forms on the floor of each of the two main rooms. The premises are untenable. In the lease, the landlord expressly agreed to keep the external walls and windows watertight and in good repair. If Sandy moved out reasonably promptly after he became aware of this condition, and of the landlord's persistent refusal to do anything about it:

1. He would probably remain liable for the rent, except in states which have adopted the modern tenant-protection departures from the traditional landlord-tenant rules.

2. The landlord's default under the lease would generally justify Sandy's abandonment of possession as a "constructive eviction" which terminates all liability for rent.

3. In most states, these facts would amount to a "constructive eviction", terminating liability for reserved rent (under privity of estate), but Sandy would remain liable on his contractual promise (if any) to pay rent monthly.

4. Under the traditional rule, Sandy would be entitled to withhold rent, to compensate him for the flooding of his apartment, but the lease obligations would go on.

57. Suppose, in the preceding question, Sandy could not move out of his apartment because he had nowhere else to go and did not have time to seek a new apartment:

1. If ordinary contract rules were applicable to leases, he ought to be able to retain possession without paying any rent.

2. If ordinary contract rules were applicable to leases, he ought to be able to retain possession without paying any rent, but only if the landlord's default were considered a material breach of the lease.

3. If ordinary contract rules were applicable to leases, he ought to be able to retain possession without paying any rent, but only if the landlord's default were considered "waste".

4. If ordinary contract rules were applicable to leases, Sandy would -- by retaining possession -- lose the power to assert landlord's breach as an excuse for non-payment of the rent.

58. Every time it rains hard, the windows in Sandy's apartment leak so badly that puddles form on the floor of the two main rooms. In the lease, the landlord expressly agreed to keep the external walls and windows watertight and in good repair. The leakage has started since Sandy moved in, and it's getting so that the floorboards are deteriorating. If the landlord persistently refuses to do anything about the problem, after notice, then under the traditional rule:

1. Sandy should have a cause of action for damages against the landlord because of the landlord's failure to comply with the lease.

2. Sandy could lawfully withhold the rent until the landlord complied with the lease, since the landlord is not entitled to be paid for performance even though he does not perform.

3. The landlord would be disqualified from evicting Sandy for non-payment of rent so long as the landlord himself were in breach of the lease.

4. All of the above.

59. Every time it rains hard, the windows in Sandy's apartment leak so badly that puddles form on the floor of the two main rooms. This time, though, assume that Sandy's lease has no language which expressly makes the landlord responsible for leaky windows. The leakage has started since Sandy moved in, and it's getting so that the floorboards are deteriorating. If the landlord persistently refuses to do anything about the problem, after notice:

1. Sandy might well, under the traditional rule, be liable for permissive waste for not stopping the leakage.

2. Sandy might well, under the implied warranty of habitability, have a right to have the condition corrected by the landlord, even though the lease does not expressly so provide.

3. Sandy might well, under the modern decisions which also recognize the implied warranty of habitability, be entitled to a rent-reduction or rent-abatement because of the flooding of his apartment.

4. All of the above.

60. Assume in the preceding question that, under local law, Sandy is in the third month of a valid three-year lease and has no right to withhold rent, but Sandy nevertheless refuses, because of the flooding, to pay the rent for a couple of months.

1. The landlord would, under the traditional common law rule, be entitled to evict Sandy -- or at least have a judgment for possession -- based on the failure to pay rent.

2. The landlord would, under the traditional common law rule, be entitled to recover possession only if the lease contained language of condition or conditional limitation, which would operate to create a "security interest" in favor of the landlord.

3. The landlord would not be able lawfully to retake immediate possession (absent a lease provision to the contrary) because, at the beginning of the lease, Sandy is deemed to have received title to the entire three-year term in a conveyance by the landlord.

4. Both 2 and 3 above.

End of Multiple-Choice
Go on to the Essay Questions

I

Tom Sedgwick needed to sell his house because he was being transferred by his employer to another city. He visited the offices of Stella Artois, a local broker. She said that she knew of the house and that it would probably bring about \$175,000. Sedgwick said that would be fine, adding that he would be grateful if Stella would bring prospective buyers around on weekends and evenings.

Two weeks later, Gordon Knott gave Stella a deposit check in the amount of \$1000. A contract was later negotiated and signed by both Sedgwick and Knott. At the same time Knott increased his down payment to a total of \$17,500. The contract called for a May 1 closing, but it did not mention any possible defects in Sedgwick's title; nor did it specify that a marketable title would be required. The contract did, however, provide that Knott's obligation to purchase was conditioned on his receiving, within 30 days, a commitment for a 25-year mortgage in the amount of \$150,000 at 10% interest (or less).

In mid-April, Knott's lawyer telephoned Sedgwick's lawyer and demanded return of the down payment. According to Knott's lawyer, there were several problems:

a. The title records show that Sedgwick holds under a 1945 deed granting the premises "to Tom and Bob Sedgwick and their heirs, as joint tenants." All concede that Tom's brother, Bob, died in 1984, as conclusively shown by the appropriate official records. However, the title records also show that, in 1982, Bob mortgaged his interest in the land, though he paid off the mortgage in 1983. There is a third brother, Jim, still living, who would be Tom's only heir if Tom died today.

b. The deed to Sedgwick's grantor, delivered in 1923, stated:

"Grantee agrees on behalf of himself and his heirs never to use the premises conveyed hereby for a tannery or smelting."

c. Knott has not received a mortgage commitment from any lender.

Tom Sedgwick wants to know the following:

1. Assuming that any title defects can be cured before the scheduled closing, does he owe anything to Stella Artois if the sale does not go through due to Knott's refusal to accept (and pay for) a marketable title?

2. Wouldn't Bob's death make Tom the sole owner of the premises (even if he wasn't already)? Wouldn't Tom have marketable title as the sole owner in any event if he could show conclusively that he has been the sole occupant of the premises since 1945?

3. Does the "tanning or smelting" language in the prior deed give Knott any right to refuse title to these residential premises in a residential neighborhood?

4. Can Knott get out of the deal for lack of a mortgage commitment when he has not even applied for a mortgage? If Tom delivers the deed to

Knott on May 1 "on the condition that Knott pay the balance of the purchase price on June 1," who would be entitled to the land if Knott recorded the deed and refused to pay the balance?

II

Ray Sennpigs, a farmer, owned 100 acres that was bordered on the south by a paved road, Route 36, and on the north by a farm belonging to Cowan Bull. Ray's house and barns were located in the rear of his land, almost on Cowan's property line, and were connected to the paved road by a long lane. Cowan's farm bordered a town-maintained dirt road, but Cowan's trip to and from town was much shorter if he traveled over Ray's lane to Route 36. In 1961, Ray told Cowan it was "all right" for him to use the lane, and Cowan generally made one or two trips a day down the lane every day since then.

In 1967, Ray conveyed the front (i.e., south) 1/3 of his property (along Route 36) to Ralph Splitt, a local real estate developer. The deed made no mention of any easements, although the lane was clearly visible. Ralph divided the frontage land into three lots, which he sold to Benton, Denton and Quentin in 1967, 1968 and 1969 respectively.

Thus, in 1969, the properties looked as shown on the next page.

5. Since the sale to Splitt, and then Denton, Cowan and Ray have continued to use the lane to get access to Route 36. This state of affairs never pleased Denton very much, but so far he has done nothing except, once in 1976 and once in 1978, to write nasty letters to Ray and Cowan telling them to find another route. In 1985, Greenacres Development Corporation bought an option to purchase both of the farms. Greenacres believes that, realistically, it can sell lots in a subdivision of the two farms only if the subdivision lots are provided with direct access to Route 36 by a paved right of way over Denton's lot. It also needs to bring telephone and electrical service over Denton's lot from Route 36, and must, it figures, at least develop 120 lots in order to make the development go. The zoning regulations require a one acre minimum lot size. They calculate that at most 60 lots can be put on Ray's farm. Greenacres asks you to advise it as the legal problems of access, if any, it will face, and the feasibility of going forward with the purchases.

6. For a number of years prior to the sale to Splitt, Ray had gotten water from a spring on the land now held by Quentin. Both the well, and the pipe to Ray's land, were underground. Ray's deed to Splitt, recorded immediately after delivery, did not mention the spring or pipe. Assume that, under local law, an underground pipe can not be the basis of an easement by implication based on either prior use or necessity (and do not waste time or space considering these possibilities). Two weeks after Splitt bought, Splitt delivered a deed to Ray which included the following provision: "The undersigned [Splitt] hereby grants an easement in favor of Ray Sennpigs to take water from a spring on the parcel previously conveyed by Ray Sennpigs to the undersigned." Quentin consults you and says that

Ray still has a pipe there and watered his cows from the spring off and on when the weather was dry. The deed from Splitt to Ray was, unfortunately, recorded the day after Quentin received his deed from Splitt, but the day before he recorded it. Quentin bought without actual notice of the deed from Splitt to Ray. Greenacres has no use for the spring. Nevertheless, Quentin is now concerned that he must limit his own use of the spring, which he wants to develop into a trout pond, so it will remain available for use by Greenacres. Advise him of the nature of the interest held by Greenacres. [For maximum credit, describe any differences which depend on whether the jurisdiction has a notice or a race-notice recording act.]

