

PACE UNIVERSITY SCHOOL OF LAW

PROPERTY
PROFESSOR HUMBACH
FINAL EXAMINATION

May 5, 2014
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 60 multiple-choice questions to be answered on a Scantron answer sheet.

- Write your **examination number** on the “name” line. *Write it NOW.*
- Mark "A" in the “Test Form” box on the right side of the answer sheet. *Mark it NOW.*
- Also write your examination number in the boxes where it says "I.D. Number" on the right side. Use **only** the first 4 columns and *do not skip columns*. Then carefully mark your exam number in the vertically striped area below. You should mark only one number in each of the first four columns. *This is part of the test.*

If you have successfully completed the online Estate System Proficiency Test, **write your “word” on your Scantron answer sheet.** This copy of the exam does not include the true-false questions covering the estate system (which you do not need to do).

Answer each question selecting the *best* answer. Mark your choice on the Scantron answer sheet with the special pencil provided. *Select only one answer per question.* **If you change an answer, be sure to fully erase your original answer** or the question may be marked *wrong*. You may lose points if you do not mark **darkly** enough or if you write at the top, sides, etc. of the answer sheet.

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

Unlike in some recent previous years, **there is no “re-answer” feature on this test.**

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. **Unless otherwise specified, assume that: (1) the period of limitations on ejectment is 10 years; and (2) the signed-writing requirement in the statute of frauds applies to “leases of more than one year.”**

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 obsolete doctrines such as the Rule in Shelley's Case, the Doctrine of Worthier Title and the destructibility of contingent remainders. Ignore the possibility of dower and, for perpetuities purposes, ignore the possibility of posthumous children in gestation.

1. While scavenging along a freeway, Arthur Godwin found a diamond ring. The true owner is unknown. Arthur took the ring to a jeweler to have it cleaned. The jeweler now refuses to return it. Arthur wants to recover the ring from the jeweler:

- a. Arthur should sue in trover.
- b. Arthur can recover the ring by asserting a *jus tertii*.
- c. Arthur should not be able to recover the ring because he has no more right to it than the jeweler.
- d. The jeweler may not defend by asserting a *jus tertii* under which he does not claim.

2. Evans, a person in good health and not expecting to incur any unusual risks, had a collection of rare LP records. He wanted to give them to his nephew, Jim. He asked Jim to stop by and, when he did, Evans delivered the LPs to Jim.

- a. The gift was presumptively *causa mortis*.
- b. The gift was presumptively *inter vivos*.
- c. The gift was presumptively revocable.
- d. The gift was presumptively testamentary.

3. Suppose in the preceding question, Evans did not deliver the LPs to Jim but, instead, signed a will bequeathing them to Jim. Later, he told Jim that he could borrow them to listen to at home. Evans now visits Jim from time to time to listen to the LPs. Under these facts:

- a. There has been a completed *inter vivos* gift of the LPs, which are now the property of Jim.

b. There has been a completed testamentary gift of the LPs, which are now the property of Jim.

c. So far, it looks like the LPs are still the property of Evans.

d. The will gives Jim a future interest in the LPs.

4. Suppose Evans wrote and signed a letter to Jim stating that he was giving Jim a certain painting, worth \$5 million. The letter also said, "However, I'd like to keep it in my home as long as I'm alive." Evans left the painting where it was hanging in his home and, at his death, his estate refused to turn it over to Jim. If the court interprets the letter as creating a life estate and remainder:

a. Evans was still legally able (after the letter) to transfer the painting to the Metro Museum for the remainder of his lifetime.

b. Jim did not receive an ownership interest in the painting until Evans's death.

c. The delivery of the letter to Jim immediately reduced Evans' net worth by \$5 million.

d. The delivery of the letter to Jim had no immediate effect on Evans' net worth.

5. Balmer bought a piano to give to his wife, Christina. He paid for it with money he'd earned as an investment banker. He had piano delivered to the couple's home on Christina's birthday. At the birthday party, later that evening, he announced to all present that the piano was hers.

- a. Under these facts, there could not be a completed gift of the piano because Balmer never delivered to Christina.
- b. Under the common law rules, the piano half belongs to Christina anyway because it was bought with money earned by her husband.
- c. Courts tend to relax the delivery requirements in cases such as this, involving gifts of large objects between members of the same household.
- d. Most courts waive the delivery requirement entirely when a donor announces a gift in the presence of a number of people.

6. Balmer said to Terry: "Here's a gold cigar clipper that I want to give to your brother Ray. Please see that he gets it." Terry accepted possession of the clipper but, before he could take it to Ray, Balmer unexpectedly fell out of a tree and was killed.

- a. If Terry is deemed to be acting as Ray's agent, Ray owns the cigar clipper.
- b. If Terry is deemed to be acting as Balmer's agent, Ray owns the cigar clipper.
- c. Both of above.

d. Whether Terry is Balmer's agent or Ray's agent, he is still able to make the gift complete by handing the clipper to Ray.

7. Emily lent an umbrella to her co-worker Lucy and also lent her \$10 cash to take a taxi home. As a result there was probably:

- a. A bailment of the umbrella and the cash.
- b. A bailment of the umbrella and a transfer of title to the cash.
- c. A transfer of title to both the umbrella and the cash.
- d. A bailment of the cash and a transfer of title to the umbrella.

8. Davy found a wallet on the floor of a supermarket in a "public or semi-public" location. As finder, Davy would probably have a claim to the wallet that is:

- a. Good against supermarket owner.
- b. Good against the whole world.
- c. Enforceable by Davy even if he was trespassing at the time he made the find.
- d. All of the above

9. Prestwick lent a rare old violin to Boe, who later took it to a music shop for routine repairs. The shop owner cracked the neck of the violin and, embarrassed, refused to return it. Boe sued in trover and the shop owner paid a judgment for full damages for conversion of the violin. Prestwick now claims the violin from the shop owner. The shop owner should be entitled to retain the violin:

- a. Because he has paid full damages to the bailee.
- b. Only if he has held the violin for a period of the statute of limitations on recovering possession.
- c. Because shop owner never dealt directly with Prestwick, which means Prestwick's claim is, in effect, a *jus tertii*.
- d. None of the above. The shop owner should not be entitled to retain the violin.

10. Daubery decided to give a gold bracelet to Patricia. He handed it to her and she tried it on, but the clasp would not stay closed. Daubery said: "Let me take it back to the jeweler to have it fixed. But this bracelet is yours." Patricia returned the bracelet to Daubery.

- a. There is no way on these facts that a court could properly find that the delivery requirement was met.
- b. It appears that the donor has become the donee of the bailee.
- c. It appears that the donor has become the bailee of the donee.
- d. The gift is legally in suspension until Daubery redelivers the bracelet to Patricia.

11. Hammond Deggs decided to give an engagement ring to Marcy. For the occasion he took her out to *La Jambe de Grenouille*, a very fancy restaurant. Secretly, Hammond handed the ring to the waiter with instructions to bring it to Marcy perched on top of a chocolate mousse dessert. The real value of the ring greatly exceeded its apparent value. Before the waiter could bring the ring to Marcy, he somehow lost it. Hammond sues to recover for the loss of the ring:

- a. The waiter could be liable for, at most, the apparent value of the ring.
- b. Negligence on the part of the waiter would be presumed.
- c. Hammond would have to prove negligence as part of his prima facie case.
- d. There can be no liability in this case because the bailment was gratuitous.

12. Randolph visited his very ill Aunt Elizabeth who believed she was on her deathbed. He commented admiringly on an old tea tray lying on a table across the room. She said: "I want you to have that. It's yours." Randolph took the tea tray with him when he left later that same afternoon. Aunt Elizabeth regained her full health shortly thereafter.

- a. The attempted gift was probably not complete because nothing in these facts indicates that there was a delivery.
- b. The attempted gift was probably not complete because nothing in these facts indicates that there was donative intent (as opposed to testamentary intent).
- c. Aunt Elizabeth would probably (under the usual presumption) have the right to get the tea tray back now that she has regained her full health.
- d. All of the above.

13. Liddelton owns a piece of rural land with a stream running through it. For many years he has raised no objection when people from the surrounding area come on his land to fish in the stream. Recently, he has discovered that his neighbor, DuCran, has been maintaining a trap line to catch fur-bearing animals along the stream.

Liddelton sues DuCran to recover the value of the furs obtained from animals caught on Liddelton's land:

- a. Liddelton should be able to recover on the ground that he is the owner of the wild animals located on his land.
- b. Liddelton should be able to recover on the principle that trespassers should not profit from their trespasses.
- c. Liddelton should not recover since he implicitly gave people licenses to come on his land to fish.
- d. Liddelton should not recover since, under the rule of “occupancy,” wild animals are the property of whoever captures them.

14. Barker raises and trains foxes to perform in TV commercials. His foxes all have ear brands showing they belong to Barker. A few weeks ago, several of Barker's foxes chewed through their cage grills and got away. Later on, a hiker found one of them, still alive, in one of DuCran's traps (this one located with permission on land belonging to Anton). Similar foxes occur naturally in the vicinity.

- a. Barker should be entitled to the fox if it has animus revertendi.
- b. Barker’s right to regain possession of the escaped fox is known as “animus revertenti.”
- c. The hiker should be entitled to the fox since it was the hiker who found it.
- d. There is no way for Barker to claim a continued interest in the fox once it had escaped.

15. Rhonda lent her car to her sister, Elaine, so she could drive to her college reunion, 350 miles away. On the way, Elaine was involved in

an accident caused by the sole negligence of Sam. There was \$4000 damage to Rhonda's car and, so far, there have been no damages recoveries:

- a. Sam is liable to Rhonda for the \$4000 damage to her car.
- b. Sam can be held liable to Elaine for the \$4000 damage to Rhonda's car.
- c. Both of the above.
- d. Elaine is liable to Rhonda for the \$4000 damage to her car.
- e. All of the above.

16. Ken owns property that contains wetlands. Recently a small rare songbird known as the left-winged twiddler has been found living there. After Ken bought his property, the legislature passed a new law to prevent the destruction of twiddler habitat. Ken would have a good chance of showing a compensable taking under the U.S. Constitution:

- a. If the new habitat law deprives Ken's land of all of its economic value.
- b. If the state requires Ken to let the public use a small part of his land (say, 5%) as a public accessway to a twiddler sanctuary.
- c. Both of the above.
- d. If the new habitat law imposes use restrictions that deprive Ken's land of a substantial part (say, 40%) of its economic value.
- e. All of the above.

17. Merriman owns land with a beautiful stand of hazelbrush trees that add lots of value to the property. However, hazelbrush has just deemed to be an invasive species, difficult to control. To prevent harm to neighboring owners, the state agricultural agency has ordered Merriman to cut down all of his hazelbrush trees under the state's Invasive Species Act. According to the Constitution:

- a. The state cannot require Merriman to cut down the trees because that would be a deprivation of property without due process of law.
- b. The state *can* require Merriman to cut down the trees, but he is entitled to just compensation.
- c. The state *can* require Merriman to cut down the trees, and he is *not* entitled to compensation.
- d. The state cannot require Merriman to cut down the trees just to benefit other *private* owners.

18. In 2005, Jackman began adverse possession of land belonging to Forbes. Needing money, Forbes "sold" the land to Clermont in 2012. Clement never took possession or even visited the land. The earliest that Jackman can acquire a ripened title by adverse possession would be:

- a. 2015.
- b. 2022.
- c. 2025.
- d. Answer cannot be determined from the facts given.

19. In 2006, Ben Foyle made a contract to buy Greenacre but never received a deed. Nonetheless, he took possession and built a small cabin there. When Foyle died in 2008, his son and sole moved into

the cabin. If the true owner brings an ejectment action against Foyle's heir, the heir could win and retain possession if the action is brought:

- a. After 2016.
- b. After 2018.
- c. Today.
- d. Answer cannot be determined from the facts given.

20. Suppose in the preceding question that Foyle's heir did not assume possession at Foyle's death in 2008 but, instead, the land was taken over by Dan Surper, who owned the land next door. If the true owner brings an ejectment action against Surper, the true owner could win and obtain possession as long as the action is brought:

- a. Before 2016.
- b. Before 2018.
- c. Anytime, since Foyle did not have a deed to Greenacre.
- d. Anytime, since Surper does not have a deed to Greenacre.

21. Raemour owned a farm bordered on two sides by state forest preserve lands. On a third side was land held by Larrimy, who had leased it from the state 25 years ago but had never used it. For over 12 years, Raemour has been planting corn and other crops on a section of the Larrimy parcel, taking the harvest for himself. Last year, Larrimy bought the leased parcel from the state and now is suing Raemour for trespass and a declaration confirming ownership in Larrimy.

- a. In most states Raemour would lose simply because Larrimy bought the land only last year
- b. In many states Raemour would lose because Larrimy bought the land *from the state* only last year.
- c. Both of the above.
- d. On these facts, there is no legal reason why Raemour should not win, in any state.

22. In 1999, 15 years ago, Tom entered into adverse possession of Bill's land. The local Statute of Limitations provides for a 21-year period to recover possession, with a 10-year "disability" period, just like the Statute of Limitations we studied in class. The time that it would take for Tom to acquire a ripened title to Bill's land:

- a. Would be more than 21 years if Bill had a disability at the time Tom entered possession and still has it.
- b. Would be more than 21 years if Bill had a disability at the time Tom entered possession and the disability was removed in 2003, 11 years ago.
- c. Would be 31 years if Bill had a disability at the time Tom entered possession and still has it in 2025.
- d. Could be more than 21 years if Bill first acquired a disability two years after Tom entered possession.

23. Suppose in the preceding question that Bill had a disability when Tom entered. The disability was removed in 2021. The earliest that Tom would acquire a ripened title would be:

- a. 2020.
- b. 2021.

- c. 2030
- d. 2031.

24. In early 1998, Wallace leased Brownacre to Randall under a 30-year lease. In 2002, Randall's neighbor installed cable television service and ran a cable from his house to the nearest utility pole. The cable cut across a corner of Brownacre (up in the air) for a distance of about 22 feet. Randall, the tenant, now demands that the neighbor remove the cable. The neighbor wants to claim an easement by prescription for the cable.

- a. The neighbor appears to have a basis for claiming such an easement against Wallace but not Randall.
- b. The neighbor appears to have a basis for claiming such an easement against Randall but not Wallace.
- c. The neighbor appears to have a basis for claiming such an easement against both Wallace and Randall.
- d. The neighbor appears to have no basis for claiming such an easement either against Randall or Wallace because the cable does not touch the ground.

25. Assume in the preceding question that the neighbor did succeed in establishing an easement by prescription for his cable. Its maximum duration would be:

- a. Presumably perpetual.
- b. Until 2028.
- c. Until 2032
- d. Until 2050.

26. In early 2003, Robert took actual possession of a 4-acre parcel of land believing that he owned it. In fact, the 4 acres belonged to Esther. After more than 10 continuous years of sole and open possession, Robert claimed a ripened title by adverse possession. Esther could defeat Robert's claim by showing that:

- a. Robert did not fully pay the property taxes accruing on the 4 acres during the 10 years of alleged adverse possession.
- b. Esther had a valid 1998 deed that clearly conveyed the land to her.
- c. Robert found out about Esther in 2008 and asked her to let him continue using the land for a few more years. Esther agreed.
- d. Robert never had a deed purporting to convey any part of the 4 acres to him.

Facts for Dave's Fence questions. Dave built a fence between his backyard and his next-door neighbor's. The fence was placed about 15 inches onto the neighbor's property (meaning that a 15" strip of the neighbor's property was now in Dave's possession). Dave has been cultivating a summer flower garden on this 15" strip ever since the fence was built. Recently Dave's neighbor had a survey done in connection with a sale his house. It showed the mislocation of the fence.

27. When the above facts were pointed out to Dave, he said: "After all this time, I think the fence should stay where it is."

- a. If Dave built the fence more than 10 years ago, it can probably stay where it is.
- b. If Dave built the fence more than 10 years ago, Dave's neighbor acquired an ejectment action that *accrued* 10 years after Dave built the fence.

- c. Both of the above.
- d. If Dave built the fence 7 years ago, the period of limitations would have to start over again if a new owner buys the neighbor's house.

28. Suppose that Dave built the fence over 10 years ago and placed it where he did due to an honest measurement error. Suppose also that, when the facts were pointed out to Dave, he apologized profusely, claimed he'd meant no harm, and promised to move the fence back to the property line as soon as warmer weather returned. Now Dave has changed his mind and does not want to move the fence.

- a. Dave might never have acquired a ripened title to the 15" strip (at least in some states) because his possession of the strip was apparently due to an honest mistake.
- b. By apologizing profusely and promising to relocate the fence, Dave might (at least in some states) have undercut his case for claiming a ripened title to the 15" strip.
- c. Both of the above.
- d. By apologizing profusely and promising to relocate the fence, Dave would (at least in some states) be deemed to have relinquished his ripened title to the 15" strip.
- e. All of the above.

29. Suppose the local statute of limitations on trespass is 6 years. Suppose also that a court decides Dave has acquired a ripened title to the 15" strip because the statute of limitations on ejectment has run:

- a. Dave's neighbor still should be able to recover damages for injuries to the 15" strip that occurred during the last 6 years before title ripened in Dave.

- b. Dave's neighbor still should be able recover damages for mesne profits that accrued from the 15" strip during the last 6 years before title ripened in Dave.
- c. Both of the above.
- d. Even if the trespass statute of limitations has not yet run out, Dave's neighbor can no longer recover damages in trespass against Dave with respect to the 15" strip.

30. In 2004, Patterson took actual adverse possession of 5 acres of Whiteacre. He erroneously believed that it was included in the deed under which he held his own adjacent land. Later some squatters moved a trailer home onto Whiteacre and began living there:

- a. Patterson would be able to remove the squatters in an ejectment action.
- b. Patterson would be able to remove the squatters in an ejectment action once he acquires a ripened title by adverse possession, but not before.
- c. Patterson would not be able to remove the squatters in an ejectment action because he is, in effect, also a squatter, and squatters cannot remove squatters.
- d. If Patterson brings an ejectment action to remove the squatters, they should be able to defend by pointing out that Patterson himself has no title or right to possess the land.

Facts for Miller-Dawes questions. Miller leased a downtown storefront to Dawes under a 10-year written lease at a rental of \$5,000 per month. The lease said nothing that either allowed or prohibited assignment or subletting. Dawes entered into possession and opened a flower shop.

31. Suppose that, three years later, Norton Realty Mgmt. offered Miller a very attractive price to buy the premises—on the condition that they be vacant (*i.e.*, no tenant). An effective way for Miller to unilaterally deal with the remaining seven years under the lease would be to:

- a. Send Dawes a notice of termination giving him at least one month's advance notification and then go to court for a judgment of eviction.
- b. Offer Dawes virtually identical premises that Miller owns across the street and move him there, with or without consent.
- c. Utilize a process of constructive eviction, which is a safer alternative than actual eviction.
- d. None of the above. There is no way that Miller can unilaterally eliminate the remaining 7-year term if Dawes objects.

32. Suppose that, after three years, Dawes found the flower business boring. Dawes decides to close the business and move out. Under the traditional rules:

- a. Even if Miller quickly relets the premises to somebody else, Dawes would still be liable for the full rent for the remaining 7-year term.
- b. If Miller leaves the premises empty, he would have a right to receive the full rent as it accrues for the remaining 7-year term.
- c. Miller would have no duty to mitigate damages, but under the *ordinary* contract rule, which many modern courts would apply, Miller has a "duty" to mitigate.

d. Dawes would be released from any further duty to pay rent once he ceased to occupy the premises.

33. Suppose again that, after three years, Dawes found the flower business boring. If Dawes sells the business to Alford:

- a. Dawes can assign the lease to Alford, but under the common law rules, the assignment would be lawful only if Miller consents to it.
- b. Dawes can sublet to Alford, but under the common law rules the sublease would be lawful only if Miller consents to it.
- c. Both of the above.
- d. None of the above. Under this lease, Dawes can either assign the lease or sublet without Miller's consent.

34. Assume in the preceding question that Dawes assigned the lease to Alford. After paying two months rent, Alford abandoned possession because he wanted a bigger store. Five more months have gone by, and Miller has already missed \$25,000 of rent.

- a. Dawes is liable to Miller for the \$25,000 under these circumstances.
- b. If Miller succeeds in collecting the \$25,000 from Dawes, Alford is totally off the hook.
- c. Both of the above.
- d. None of the above. Dawes cannot be held liable to Miller for the \$25,000 under these circumstances.

35. Assume that Dawes is about to transfer the premises to Alford (with seven years remaining on the lease), and that Dawes wants to

make sure that Miller, the landlord, cannot hold him liable for rent after Alford takes over the premises. The best way to achieve this result would be for Dawes to:

- a. Require Alford to "assume" the lease.
- b. Sublet to Alford instead of assigning.
- c. Either of the above would work.
- d. None of the above would work

36. Assume again that, after three years, Dawes sold Alford the flower shop business and, as part of the sale, is to transfer possession of the demised premises to Alford.

- a. If Dawes transfers possession by sublease, Alford will become Miller's tenant in the place of Dawes.
- b. If Dawes transfers possession by sublease, Dawes will still owe Miller the full rent for each month in the remaining seven years of the lease.
- c. If Dawes wants to transfer possession by sublease, then Alford must receive the right to possession for the entire remaining duration of the lease.
- d. If Dawes wants to maintain better "control" over Alford (for example, if Alford is to pay Dawes \$7000 per month over the term of the lease), Dawes would be better off assigning the lease rather than subletting.

Facts for Tim's apartment questions: Tim leases a one-room "efficiency" apartment in a large building. For the past several weeks a leak from the upstairs neighbor's bathroom has dripped from Tim's ceiling. Several complaints to the landlord have produced no results. Meanwhile, the drip-drip-dripping all night long keeps Tim from

sleeping. He's gotten so bleary-eyed at work that his boss has threatened to fire him.

37. Assume that Tim moves out because he cannot sleep in the apartment (*i.e.*, that the apartment is untenable):

- a. If the landlord was legally responsible for stopping the drip, Tim should not have any further liability for rent under the doctrine of constructive eviction.
- b. Even if the dripping is the sole fault of the upstairs tenant and the landlord has no ability or duty to stop it, Tim still should not have any further liability for rent under the doctrine of constructive eviction.
- c. Both of the above.
- d. None of the above. Unless the landlord actually intended to evict Tim, the case would not be one of constructive eviction.

38. Assume that Tim cannot sleep in the apartment but he does not move out. If the implied warranty of habitability applies to his drippy "efficiency" apartment then:

- a. He could logically claim a constructive eviction without actually moving out.
- b. Tim should be able to hold the landlord responsible for fixing the drip even without moving out of the apartment.
- c. Both of the above.
- d. Tim would be considered responsible for keeping the apartment habitable.

39. Assume that Tim remained in possession of the apartment but withheld part of his rent, paying the landlord only what Tim felt to be the "fair" amount due.

- a. Under the traditional common law rule, the landlord could evict Tim for non-payment whether the lease provided for such eviction or not.
- b. Even if the lease didn't provide for non-payment eviction, many modern cases would hold that Tim's rent liability was reduced or abated because the landlord breached the implied warranty of habitability.
- c. Courts that hold as in b. above are, in fact, applying *ordinary* contract law to leases.
- d. Both b. and c. above.
- e. All of the above.

Facts for Henry Harmon questions. Henry Harmon went to the Lincoln Lounge, a tavern close to his school, in order to wash away some of the day's tensions. He threw his coat over a chair at one of the tables and sat down at the bar. While sitting there, Henry spied a silver I.D. bracelet bearing the inscription "BIPPY" on the floor behind the bar. A moment later he also caught sight of a quarter on the floor just under his seat. Henry picked up the quarter. The proprietor of the bar said that he "didn't know" who owned either of these items.

40. As against the bar owner:

- a. Henry is entitled to possession of both items.
- b. Henry is entitled to possession of the quarter but not the bracelet.

- c. Henry is entitled to the bracelet but not the quarter.
- d. Henry is entitled to possession of neither item.

41. Assume now that Henry had sneakily hopped over the bar, grabbed the I.D. bracelet from the floor and then was confronted by the bar owner. Pick the best answer.

- a. Under the so-called American rule, Henry would be entitled to the bracelet as against the bar owner.
- b. Under the so-called English rule, Henry would *not* be entitled to the bracelet as against the bar owner.
- c. Both of the above.
- d. None of the above.

42. Assume now that Henry sneakily hopped over the bar and grabbed the I.D. bracelet but that he relinquished possession of it to the bar owner. The next day a friend of Henry's showed up and said: "I'm Wallace J. Morrison, III. My friends call me Bippy. I think I lost a silver I.D. bracelet in here." The bar owner turns the bracelet over to Henry's friend not knowing he's not the "true owner." If the bar owner is treated as an ordinary bailee of the bracelet he could be held:

- a. Absolutely liable for misdelivery.
- b. Liable for misdelivery only if negligent.
- c. Under no liability, negligent or not.
- d. Entitled to a reward.

43. If the friend in the preceding question gets possession of the bracelet but is not the "true owner," the "true owner" could probably,

- a. Have replevin against Henry's friend.
- b. Have replevin against Henry.
- c. Have replevin against the bar owner.
- d. Any of the above, at the true owner's option.

44. Assume that when Henry left the bar (that first day) he found a wristwatch which was not his in the pocket of his coat (which he'd slung over a chair). The sweep-up person had found the watch on the floor near the coat, believed it had fallen from the coat, and put it in the pocket. Under the circumstances:

- a. Henry has what amounts to full ownership of the watch good against the whole world except the true owner.
- b. Henry is, in effect, a bailee of the watch (has rights and duties that are essentially those of a bailee).
- c. Both of the above.
- d. Henry is obligated to take whatever steps may be necessary to get the watch back into the hands of the true owner.

Facts for Dutton-Hightower questions: Dutton Doenutt sold Hightower Phone Co. a fee simple in a one-acre plot of hilltop land that was completely surrounded by Dutton's farm. The deed expressly provided that the grant included, as part of the conveyance, an "easement of way [over a specifically described lane] for travel between Highway 25 and the lands conveyed hereunder [the one-acre plot]."

45. As a result of this conveyance.

- a. Hightower received an easement by reservation.
- b. Hightower presumptively received an appurtenant easement.
- c. Hightower presumptively received an easement in gross.
- d. All of the above.

46. Following the conveyance:

- a. Hightower has, in effect, an estate in fee simple in the lane.
- b. Hightower would be presumptively entitled to use the lane for the purpose of running cables to antennas that it builds on the one-acre plot.
- c. Hightower would presumptively have an easement by implication to use the lane for the purpose of running cables to antennas it builds on the one-acre plot.
- d. None of the above.

47. If Hightower later conveys a fee simple in half of its one-acre plot “with all appurtenances” to Marscape Transmission Co., who will then own the easement and be entitled to make the uses included within its scope?

- a. Marscape (presumptively) and Hightower.
- b. Marscape (presumptively) but not Hightower.
- c. Hightower but not Marscape.

- d. Neither Hightower nor Marscape. Because Hightower attempted to subdivide the easement without permission, the easement was extinguished.

48. Dutton's deed to Hightower did not mention any reserved right for Dutton to make future use of the lane covered by the easement. However, the uses that Dutton may make of the lane probably include:

- a. Travel to and from interior portions of his retained land.
- b. Running cables to and from interior portions of his retained land.
- c. Recreational uses such as sledding down the slope of the lane during the winter.
- d. All of the above.
- e. None of the above.

49. Assume that the deed of conveyance from Dutton to Hightower made no mention of a right to run and maintain cables along the lane, but Hightower did so anyway. Now over 10 years have elapsed since cables were first installed:

- a. As a communications company, Hightower should have an easement by implication to maintain cables on the easement since such use is necessary for use of the one-acre hilltop parcel.
- b. As a communications company, Hightower should have an easement by necessity maintain cables on the easement, since such use is necessary for use of the one-acre hilltop parcel.

- c. Hightower should have an easement by prescription to maintain the cables along the lane.
- d. None of the above. If the deed of conveyance from Dutton to Hightower made no mention of a right to run cables, Hightower would have no such right.

50. Suppose that Dutton Doenutt sold Hightower Phone Co. a fee simple in a one-acre plot of hilltop land, completely surrounded by Dutton's farm, but the lawyers forgot to put any mention of easements in the deed from Dutton to Hightower:

- a. Hightower would probably have an easement by implication for ingress and egress if the lane had already been visibly used for that purpose before the conveyance.
- b. Hightower would probably have an easement by necessity to cross Dutton's land for ingress and egress.
- c. Both of the above.
- d. None of the above. Hightower would have to make second deal with Dutton in order to obtain a right of ingress and egress.

51. Ordinarily, to acquire an easement by implied grant based on prior use, it must be shown that:

- a. There was a quasi-easement corresponding to the claimed right of use.
- b. The claimed right of use is strictly necessary for the beneficial enjoyment of the alleged dominant tenement.
- c. The use of the alleged servient tenement for the claimed purpose was clearly visible at the time it was severed from the alleged dominant tenement.

- d. All of the above.

52. Fulton owns a parcel of country land ("Parcel A") on which he has a house. His access from the highway is by way of an easement, created by deed, across lands belonging to Young. Recently, Cullen sold Fulton 10 acres adjoining the back of Parcel A. Fulton plans to resell this 10 acres to Jake, who will build a home of his own there:

- a. Fulton can convey to Jake a right to share use of the easement as access to Jake's 10 acres.
- b. If Fulton tries to convey shared use of the easement to Jake (for access to the 10 acres), such use by Jake would be an unlawful overuse or misuse of the easement.
- c. Jake should be able to claim an easement by necessity across Young's land if his parcel would otherwise be landlocked.
- d. Fulton himself can lawfully use the easement to reach the 10 acres, but he cannot convey it to Jake.

53. Compton owns a house. In an earlier deed in Compton's recorded chain of title, the grantee covenanted to use the property solely for one-family residential purposes. Compton wants to build a "mother-in-law" apartment that would violate this restrictive covenant. His neighbor, Starr, objects. In order to enforce the restrictive covenant against Compton as a real covenant, Starr would have to be able to show that:

- a. Compton actually knew about the presence and contents of the restrictive covenant in the earlier deed when Compton bought his land.
- b. The restrictive covenant in the earlier deed touches and concerns the land.

c. There is privity of contract and estate between Starr and Compton.

d. All of the above.

54. In the preceding question, Starr would be able to enforce the restrictive covenant against Compton as an equitable servitude by showing that:

a. Compton bought with notice of the covenant, actual or constructive.

b. The covenant was contained in a duly recorded deed in Compton's chain of title.

c. Either of the above would permit enforcement.

d. None of the above. A restrictive covenant can only be enforced as a real covenant, and that requires privity of estate.

55. Ever since Maria and Morris inherited Blackacre from their mother, Maria has been in sole occupancy. Morris inquires about his rights.

a. Under the majority rule, Morris would be permitted to recover rent from Maria purely by virtue of her being in sole occupancy.

b. If Maria refuses to let Morris share occupancy with her, he could bring an ejectment action and have her removed from the premises.

c. If Maria refuses to permit Morris to share occupancy with her, his only remedy would be to sue for partition.

d. If Maria refuses to let Morris share occupancy with her, she would be liable to him for damages corresponding his share of the fair rental value of the premises.

56. Bea and See were co-tenants in Redacre.

a. If they were tenants in common and Bea died, then See would be the sole owner.

b. If they were joint tenants and Bea died, then See would be the sole owner.

c. If they were joint tenants and Bea conveyed her interest to Jake, then See and Jake would joint tenants.

d. If they were joint tenants and Bea tried to convey her interest to Jake, then See would be the sole owner.

57. Eileen and Elmore are married. Since Elmore was laid off several months ago, only Eileen has been working and bringing in a paycheck. Elmore has stayed at home and taken care of the couple's child and managed the household. They have, during this time, managed to save over \$2000.

a. In community property states, the \$2000 would presumptively belong to both Eileen and Elmore.

b. In common-law property states, the \$2000 would presumptively belong to both Eileen and Elmore.

c. Both of the above.

d. There is no way to determine, from the facts given, who the \$2000 would presumptively belong to.

58. Glover delivered a deed conveying Greenacre "to Bea, 'Ciel and Dee and their heirs." Under the modern interpretive presumptions:

- a. Bea, ‘Ciel and Dee would have a tenancy in common
- b. Bea, ‘Ciel and Dee and their respective heirs would have a tenancy in common.
- c. Bea, ‘Ciel and Dee would be joint tenants.
- d. Bea, ‘Ciel and Dee along with their respective heirs would be joint tenants.

59. Suppose that Bea, ‘Ciel and Dee were joint tenants.

- a. If Bea dies, then ‘Ciel and Dee would be co-owners as joint tenants.
- b. If Bea conveys her interest to Fred, ‘Ciel and Dee would be joint tenants as to an undivided $\frac{2}{3}$, and the two of them would be tenants in common with Fred as to an undivided one-third.
- c. If Bea conveys her interest to ‘Ciel, then ‘Ciel and Dee would be joint tenants as to an undivided $\frac{2}{3}$, and the two of them would be tenants in common with ‘Ciel as to an undivided one-third.
- d. All of the above.

60. Henry and Harriet are tenants by the entirety in Blueacre. Henry’s creditors are trying to get at his property in order to satisfy judgments they hold against him.

- a. Under the general rule, Henry’s individual creditors could levy execution on both his and Harriet’s interests in the property.

b. In none of the states that recognize tenancies by the entirety can the creditors of either co-tenant by the entirety levy execution on either co-tenant’s interests in the property.

c. In some (but not all) of the states that recognize tenancies by the entirety, Henry’s creditors would have no recourse to Blueacre to satisfy judgments against Henry alone.

d. It is the usual rule for tenancies by the entirety that a deed by either co-tenant alone would suffice to sever the tenancy and extinguish the right of survivorship.

<End of Examination.>