

## PACE UNIVERSITY SCHOOL OF LAW

PROPERTY  
PROFESSOR HUMBACH  
FINAL EXAMINATION

May 13, 2015  
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 61 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. Do it carefully. *This is part of the test.*

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

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 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 ejection 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 and answer based on the traditional rule.

1. Otis was hunting on a friend's farm. He spotted some wild ducks swimming in a pond on the neighboring property. If Otis goes over on the neighboring property without permission and takes some of the ducks, the neighboring owner should be able to recover the ducks or their value from Otis:

- a. By reason of *ratione soli*.
- b. Because Otis should not be allowed to benefit from his own trespass.
- c. Both of the above.
- d. Because it makes sense to say that owners of land own the wild animals that are on it.
- e. All of the above.

2. In the preceding question, Otis would have a better claim to the ducks than the neighboring owner if:

- a. Otis had a valid hunting license issued by the state.
- b. Otis had a license from the neighboring owner to hunt on the land.
- c. The neighboring owner was not interested in hunting ducks anyway.
- d. Otis was in the trade or business of hunting ducks and supplying them to market.
- e. All of the above.

3. A hiker was crossing a narrow stream in a woods that is open to public access. He noticed a small fur-bearing animal (a muskrat)

caught in a trap. Seeing that the animal was still alive, the hiker released it from the trap and took it home to nurse it back to health. The trapper discovered what had happened and sued the hiker. Who has the better legal right to the animal?

- a. The hiker because he was first to take actual physical possession.
- b. The trapper because he was first to attain occupancy.
- c. The hiker because the animal was still alive when he took it.
- d. The trapper because trapping is considered a trade or business, which the law protects from interference.
- e. The hiker because he nursed the animal back to health.

4. Astor Industries uses natural gas in its business. It buys the gas from interstate pipelines and stores it in an underground cavity that once contained naturally occurring gas (long since depleted). The cavity lies under Astor's land and also extends under the land of a neighbor, Myron Filch. It was recently discovered that Filch has tapped into the cavity, pumped out some of the gas and sold it. Astor is suing Filch, and Filch has counterclaimed for trespass.

- a. Some courts, applying the doctrine of capture, would say that the gas ceased to be Astor's property once it was pumped back into the ground.
- b. It would be illogical to consider Astor a trespasser because, under the doctrine of capture, the gas it pumps back into the ground no longer belongs to Astor.
- c. Even if Astor still owns the gas after it's pumped into the ground, Astor would not be a trespasser as long as it causes no economic injury to Filch.

d. Filch would be entitled to take the gas that is under his property because Astor forfeits it under the law of trespass.

5. If the natural gas purchased by Astor in the preceding question is treated like *ferae naturae*, then it would be logically consistent:

a. To consider it “fair game” and legally available for anybody to capture and sell after Astor pumps it back into the ground.

b. Say it remains the property of Astor even after Astor has pumped it back into the ground where such gas naturally occurs.

c. Say that it has *animus revertendi*.

d. All of the above.

6. Ehrwald owns a home in a large residential development. A coal company owns the right to mine coal under the area. The mining sometimes causes subsidence and the state recently passed a law requiring those who mine under residential areas to leave enough coal in the ground to prevent subsidence of the surface. In a similar landmark case before the Supreme Court:

a. The law was upheld as a safety measure.

b. The law was struck down because the public interest in protecting private houses did not justify so great a limitation on mining certain coal.

c. The law was upheld so that property owners like Ehrwald would not be deprived of economic due process.

d. The law was struck down because it constituted a physical appropriation of privately owned coal.

7. Rhapsody Pharmaceutical Co. makes cold medication that contains an ingredient used in cooking a popular (and illegal) psychoactive drug. The state adopted a law prohibiting the manufacture or sale of the cold medication, which has had a big negative impact on Rhapsody’s profits. Rhapsody could probably succeed in challenging the law if:

a. There are many other sources of the ingredient in question, so the new law probably wouldn’t reduce the availability of the illegal drug anyway.

b. The new law has a substantial negative impact on the value of Rhapsody’s plant and other property.

c. Rhapsody could show that the benefit of the cold medication exceeds the detriment caused by the illegal drug.

d. None of the above.

8. Howland Homes, Inc. bought a wooded tract of around 150 acres intending to divide it into lots and build 300 vacation homes. Before it could do so, however, the local town board amended the zoning to require minimum lot sizes of at least 4 acres. This reduced the number of homes that Howland could build from 300 to fewer than 40, and it reduced the market value of the land by 75%:

a. Howland probably has a claim under the takings clause for the amount by which the value of its land was reduced.

b. Howland probably has a substantive due process claim that the new law is invalid is “unduly harsh or burdensome.”

c. The new law would probably be upheld, and Howland's loss would be uncompensated.

d. The new law would be valid only if it did no more than duplicate the result that could have been achieved in the courts under the law of nuisance or the like.

9. The reason (or, at least, one of the important reasons) for the answer in the preceding question is that:

a. The requirement of "economic due process" forbids laws that are "unduly harsh or burdensome."

b. A compensable "regulatory taking" occurs whenever the government substantially reduces the value of land.

c. Building homes is a socially valuable activity and could not be considered a nuisance at common law.

d. Government could hardly go on if it could not change property rights and affect property values without paying for the change.

10. Johnson found an old coin in a public park. He took it to a coin dealer to have it appraised. After inspecting the coin, the dealer refused to return it. Johnson has sued the coin dealer.

a. Since neither Johnson nor the dealer was the owner of the coin, the court would probably not get involved in their dispute.

b. Johnson should be able to recover the coin in replevin but the dealer could not be made to pay its value to Johnson since Johnson is not the owner.

c. The dealer should be able to win the lawsuit by asserting a jus tertii.

d. Johnson should be able to prevail whether he's sued to recover the coin or in trover.

11. Suppose in the previous question that Owen was the true owner of the coin. He'd lost it in the park. However, before the fact of Owen's ownership was known, a court made the coin dealer pay the full value of the coin to Johnson:

a. The dealer can be required to pay the full value again, this time to Owen.

b. The dealer should win if Owen later sues for damages but he would lose if Owen sues to recover the coin itself.

c. Having paid full value, the dealer would have an answer to any later action brought by Owen.

d. Since Johnson was a finder in good faith, he can not properly be held liable to Owen.

12. While having breakfast at a donut shop, Liz spotted a bracelet under one of the benches along the wall. She held it up and shouted: "Whose is this?" Nobody answered, including the shop owner, Jamie. Assume it is established at trial that the bracelet was in the shop overnight (when the shop was closed):

a. Under the rule applied in some states the shop owner would have a strong argument that she has a better right to the bracelet than Liz.

b. Under the rule applied in some states Liz would have a strong argument that she has a better right to the bracelet than the shop owner.

c. Both of the above.

d. Liz would have a better right to the bracelet than the shop owner for the simple reason that Liz was the finder.

13. While waiting his turn for a manicure at a men's salon, Gregg noticed a lottery ticket mislaid among the magazines on a small table in the waiting area. He picked it up and handed it to the salon proprietor "in case the owner comes back." However, before anyone came back to claim the ticket, the lottery drawing was held and the ticket turned out to be worth \$500. Gregg demanded the ticket but the proprietor refused. Under these circumstances:

- a. Many courts would say that the proprietor should be allowed to retain possession because that is the rule better adapted to protect the true owner.
- b. Many courts would say that the proprietor should be allowed to retain possession because he had the earlier possession.
- c. Many courts would say that the proprietor should be allowed to retain possession since the general American rule favors proprietors.
- d. Almost no court would hold that the proprietor should be allowed to retain possession as long as Gregg's presence on the premises was not a trespass.

14. Under the so-called American rule with respect to finding, Gregg in the preceding question would normally be deemed entitled to the ticket:

- a. Only if the proprietor did not want it.
- b. If the ticket was deemed lost and not mislaid.
- c. Even if Gregg could be considered a trespasser at the time he found the ticket.

d. None of the above. The *possessor* of the locus is quo is generally presumed to possess everything on his or her land.

15. Carol holds possession in a tenancy from month to month. She originally entered into possession on November 8, and her tenancy runs from the 8th of each month to the 7th of the next. As of today (May 13), the earliest date as of which Carol's landlord can lawfully terminate her tenancy is:

- a. May 31.
- b. June 7.
- c. June 30.
- d. July 7.

**Facts for Limbourne-Blakely questions.** Limbourne leased an apartment to Blakely for a term of 5 years.

16. The lease from Limbourne to Blakely provided that Limbourne was to supply heat, which was necessary to keep the premises livable. Under the traditional common law rules:

- a. The heat provision would essentially duplicate the law (which requires landlords to keep the premises in habitable condition anyway).
- b. Blakely could remain in possession and withhold rent without fear of eviction if Limbourne failed to supply the necessary heat.

c. The doctrine of constructive eviction would allow Blakely to abandon possession and legally cease paying rent if Limbourne failed to supply the necessary heat.

d. Blakely would have no legal recourse if Limbourne failed to supply the necessary heat because covenants in leases are independent.

17. Suppose that Blakely could not sleep at night because of noise emanating from a tavern in an adjacent building. He complained to Limbourne, but to no avail. If Blakely just moves out, he'd be in a better position to claim a constructive eviction based on the noise if (pick the best answer):

a. Limbourne was lessor of the tavern premises and had included in the tavern lease a requirement that the tavern not make excessive noise.

b. Limbourne was lessor of the tavern premises but had *not* included in the tavern lease a requirement that the tavern not make excessive noise.

c. Limbourne owned the building in which the tavern was located whether or not he'd included in the tavern lease a requirement against excessive noise.

d. Limbourne did not own the building in which the tavern was located.

18. Under the traditional common law rules, if Blakely moves out after 3 years, without just cause, and he mails the keys back to Limbourne:

a. Blakely's obligation to pay any further rent would be terminated.

b. Limbourne could hold Blakely liable to pay the full rent as it comes due for the remainder of the term of years.

c. Blakely would be liable to Limbourne only for the difference between the agreed rent and the (lesser) fair market value of the premises.

d. Blakely could be held liable to Limbourne for future rent only if Limbourne made a good faith effort to mitigate damages.

19. Under the traditional common law rules, if Blakely remains in possession without permission after the end of the 5-year term:

a. Limbourne can choose to hold Blakely for a new term.

b. Blakely would become a tenant at sufferance.

c. Limbourne could treat Blakely as a trespasser and remove him by an ejectment action.

d. All of the above.

20. Suppose that, when his lease had 2 years to run, Blakely needed to move to a different town. Fortunately, he had a friend who wanted to take over his apartment. Blakely wondered if he should sublease or assign. In a sublease (as opposed to an assignment):

a. Blakely would remain in both privity of estate and in privity of contract with the landlord.

b. Blakely would be relieved of the obligation to pay any further rents and that obligation would fall the new tenant ("subtenant").

c. The landlord's prior consent would be required as a matter of common law, even if the lease did not specify that such consent was required.

d. The landlord would be entitled to collect rents from either Blakely or the new tenant, whichever the landlord chooses.

21. Suppose that Blakely assigned his lease to his friend, Tom, when it still had 2 years to run. Five months after that, Tom assigned the lease to Marcus Potter. A few months later, Potter disappeared and stopped paying rent. If Limbourne can't mitigate, he should be able to recover the overdue rent from:

- a. Blakely.
- b. Tom, if he assumed the lease.
- c. Both of the above.
- d. Tom, whether or not he assumed the lease.
- e. None of the above. Marcus Potter is the only one who is now responsible for the rent.

22. Suppose that, when his lease had 2 years to run, Blakely had wanted to sublease to his friend but Blakely never actually intended to ever move back into the apartment. He could accomplish the desired sublease:

- a. By transferring the apartment to his friend for the entire remaining duration of the lease minus one day.
- b. In some states, by transferring the apartment to his friend for the entire remaining duration of the lease but retaining a right of re-entry in case the friend defaults.

c. By retaining a reversion.

d. All of the above.

23. Carol Dudley also has an apartment in Limbourne's building. Assume that Carol would like to get out of her lease with Limbourne as soon as possible and she consults a friend who is studying for the bar. The friend tells her several things. Which is true?

- a. A term of years for less than one year can normally be terminated with one month's notice.
- b. A periodic tenancy from month to month can normally be terminated with one month's notice specifying a termination date that is the end of a period.
- c. A term of years for one year or more can normally be terminated with six month's notice specifying a termination date.
- d. All of the above.

24. Fashion Togs rented a storefront for 15 years under a lease with a clause that provided: "Tenant may not sublet without the landlord's consent." The lease contained the usual provision for a right of re-entry in case of tenant breach. Under the traditional common law rule,

- a. Fashion Togs would need the landlord's permission to assign the lease.
- b. If Fashion Togs were to sublet the premises in violation of this clause, both it and its subtenant would be at legal risk of eviction.

- c. The landlord would not be permitted to withhold consent unreasonably.
- d. All of the above.

25. Suppose the lease in the preceding question contained the usual promise to pay rent. Two years later, Fashion Togs moved to another location and (with the landlord's permission) assigned the lease for remaining term to Pet Plaza Shop. After occupying and paying rent for six years, Pet Plaza abandoned the premises without legal cause and has quit paying rent. The landlord cannot mitigate:

- a. If the landlord recovers overdue rent from Fashion Togs, then Fashion Togs would have a right to reimbursement from Pet Plaza (subrogation).
- b. The landlord would have a right to recover future overdue rent from either Fashion Togs or Pet Plaza based on privity of estate.
- c. The landlord would have a right to recover future overdue rent only from Pet Plaza.
- d. Neither Fashion Togs nor Pet Plaza would remain in privity of estate, so the obligation to pay rent would be extinguished (majority rule).

26. In 1994, Ruby Crane conveyed Blackacre to "Nathan and Norton Cranbury and their heirs." There was no mention of survivorship. The grantees presumptively received:

- a. A tenancy in common with each other and their respective heirs.
- b. A tenancy in common with each other.
- c. A joint tenancy with right of survivorship.

- d. A joint tenancy but without right of survivorship.

27. Assume that (by appropriate language in the deed) Nathan and Norton received a tenancy in common. Assume also that Norton entered into and has remained in sole possession:

- a. Norton would probably acquire a sole title by adverse possession if he stays in sole possession for 10 years.
- b. In most states, Norton would be presumptively liable to pay rent or damages to Nathan.
- c. Norton would not, by sole occupancy alone, be deemed to have committed an ouster of Nathan.
- d. Nathan's only remedy to assert his rights to possession would be partition.

28. If Norton *had* committed an ouster of Nathan:

- a. Norton would be liable to pay money (mesne profits based on rental value) to Nathan.
- b. Norton would be an adverse possessor and, ten years after the ouster, could acquire a ripened title making him the sole owner of Blackacre.
- c. Both of the above.
- d. Norton's right of survivorship would be destroyed.
- e. All of the above.

29. Assume that (by appropriate language in the deed) Nathan and Norton had received a *joint* tenancy in Blackacre and that Norton entered into and has remained in sole possession:



- a. The right of survivorship would be destroyed.
- b. The joint tenancy would be severed.
- c. Nathan would have an ejectment action against Norton.
- d. Norton and Nathan would become tenants in common.

30. Assume again that (by appropriate language in the deed) Nathan and Norton had received a joint tenancy in Blackacre. If either of them separately conveyed his own interest to a third party, then:

- a. Neither would have a right of survivorship.
- b. The joint tenancy would be severed making it a tenancy in common.
- c. Both of the above.
- d. None of the above.

31. Assume again that Nathan and Norton had a *tenancy in common* in Blackacre. Norton leased his own interest in the premises to Fred for three years.

- a. The lease would constitute a ouster of Nathan if Nathan had not consented to it.
- b. Nathan would be entitled to share possession of the premises with Fred.
- c. The rights of survivorship would be destroyed.
- d. The lease would be unenforceable.
- e. All of the above.

32. Bert and Berry went together 50-50 and bought Whiteacre, a summer cabin near the sea. Later, Bert died intestate:

- a. Berry would now be the sole owner if the two had a joint tenancy.
- b. Bert's heir would now be entitled to an undivided one-half interest if Bert and Berry had a tenancy in common.
- c. Berry would be entitled to an undivided shared possession if the two had had a tenancy in common.
- d. All of the above.

**Facts for Bryson questions.** Jeff and Linda Bryson received a co-tenancy in Greenacre in 1980. Later, in 1990, Denton acquired Linda's undivided interest in Greenacre in satisfaction of a tort judgment against her. Nonetheless, Jeff and Linda have continued to reside on the property as they did before.

33. If Jeff and Linda Bryson were husband and wife and lived in a state that recognizes all three common-law concurrent estates, the common-law estate that they received in 1980 presumptively would have been:

- a. A tenancy in common.
- b. A joint tenancy.
- c. A tenancy by the entirety.
- d. Community property.

34. If the Brysons had acquired Greenacre as tenants by the entirety and their jurisdiction follows the New York (minority) rules for this estate, the interest that Denton acquired in 1990 would have included:

- a. A right to share possession of Greenacre with Jeff for Linda's lifetime (if Linda predeceases Jeff).
- b. A right to enjoy sole possession of Greenacre at Jeff's death if Jeff predeceases Linda.
- c. A right to maintain an ejectment action against Jeff if the latter refuses to allow Denton to share possession of Greenacre.
- d. All of the above.

35. If the Brysons held as tenants by the entirety and their jurisdiction follows the majority rule for this estate:

- a. Denton would not have been able to levy execution on Linda's undivided interest in Greenacre in the first place.
- b. Denton would have acquired in 1990 a right to share possession of Greenacre with Jeff for as long as Linda remains alive.
- c. Denton would have acquired in 1990 a right to maintain partition against Jeff.
- d. Denton would have become a tenant by the entirety with Jeff.

36. If the Bryson's estate had been a joint tenancy:

- a. Jeff's right of survivorship would be "indestructible."
- b. Jeff's right of survivorship would have been destroyed when Denton acquired his interest.
- c. Linda's right of survivorship could have been acquired by Denton.

- d. Denton would become the sole owner of Greenacre if Jeff predeceases Linda.

**Facts for Quimby questions.** Quimby bought an old chest of drawers and decided that it needed to be refinished. He left it at a furniture repair shop to get an estimate of the cost. At this point, no money changed hands. While the chest was in the shop awaiting the estimate, there was a fire and the chest was burned to a crisp.

37. As result of the legal relationship established between Quimby and the shop owner on these facts:

- a. The shop owner should be liable to Quimby if the loss resulted from the shop owner's failure to use ordinary care to protect the chest from fire.
- b. The shop owner should be liable to Quimby only if the shop owner could be considered to have converted the chest of drawers.
- c. The shop owner should not be liable to Quimby for the loss unless the shop owner actually started the fire.
- d. The shop owner should not be liable to Quimby for the loss unless the shop owner was guilty of gross negligence.

38. In an action by Quimby against the shop owner:

- a. The court would probably hold that shop owner was a gratuitous bailee.
- b. Quimby should have the benefit of an irrebuttable presumption of negligence.
- c. Quimby should have the benefit of a presumption of negligence, but the court should let the shop owner present evidence that he used due care.

d. There should be no presumptions about negligence and Quimby should have to prove every element of his case like every other plaintiff in a negligence action.

39. Suppose that Quimby had the chest appraised at a passing “antique road show” before he took it to the repair shop. He learned that the chest had been in the family of President Fillmore and was therefore worth \$5000. However, to all appearances it looked like an ordinary used chest, worth only \$20-\$100 at most. Quimby purposely did not tell the shop owner the true value of the chest when he dropped it off. The shop owner should be liable to Quimby for:

- a. The \$5000 actual value if he did not use the ordinary care appropriate for a \$5000 chest (even if he used the care appropriate for a \$20-\$100 chest).
- b. The \$5000 actual value if he did not use the care appropriate for a \$20-\$100 chest.
- c. Nothing since Quimby, by his silence, deliberately misled the shop owner as to the true value of the chest.
- d. At most, the apparent value of the chest (\$20-\$100).

40. When Quimby left the chest at the repair shop for the estimate, he accidentally forgot to remove some silver coins that he’d placed in the chest’s hidden compartment. Quimby asked about the coins after the fire, but they were missing. Under the *better* analysis:

- a. The shop owner should not be considered a bailee of the coins because he had no knowledge of them.
- b. The shop owner should not be considered a bailee of the coins because he never had any kind of possession of them.

c. The shop owner should not be considered a bailee of the coins because he had accepted the chest only for purposes of making an estimate.

d. The shop owner should not be liable for the loss of the coins because he was not aware they were in his possession.

41. Assume you are in a state that has a 21-year statute of limitations on ejectment with a disability provision like the one we studied in class. O owned Blackacre in 1997. Suppose that A entered into adverse possession against O in 1997, and O died intestate in 2015, leaving H, age 2, as his sole heir. If O was insane *at the time that A entered*, and O remained insane until his death, then A will get a ripened title, at the earliest:

- a. In 2025.
- b. In 2028.
- c. In 2041 or so (10 years after H reaches majority at 18).
- d. 2018.

42. Trude went into adverse possession of Underwood’s forest, which bordered on Trude’s farm. Suppose that, last week, Trude acquired a ripened title to the forest by adverse possession:

- a. Trude would be entitled to a deed to the forest from Underwood.
- b. Underwood could still recover trespass damages from Trude for the time before Trude’s title ripened (when Underwood was still the owner).

c. Trude would have an ejectment action against Underwood if Underwood, on his own initiative, resumed possession of part of the forest.

d. All of the above.

43. Suppose that Underwood heard that title had ripened in Trude and Underwood promptly demanded that Trude withdraw from possession, displaying a survey that showed that Trude had been trespassing all along.

a. If Trude did withdraw, admitting he'd made an honest mistake, some courts might take that as meaning he was not hostile—and therefore title never ripened.

b. If Trude did withdraw, then title to the land would revert to Underwood.

c. Both of the above.

d. Title would not revert to Underwood unless Underwood went back into possession with Trude's acquiescence.

44. Suppose that Emory entered into adverse possession of certain land that Underwood held under a lease that still had 25 years to run. If Emory remained for 10 years and acquired a ripened title:

a. Emory would have a right of ownership that is only good against Underwood's landlord.

b. Emory would have a right of ownership that is good against both Underwood and his landlord.

c. Emory would have a right to possess that would last only as long as the remaining duration of Underwood's lease.

d. Underwood's landlord should have an ejectment action against Emory immediately after title ripens.

45. In the following conveyances, assume that B has one child at the time of conveyance. Which of the conveyances attempts to create a future interest that is void under the Rule Against Perpetuities?

a. To A for life then to B's first child to graduate from college.

b. To A for life than to B's first child to reach age 21.

c. To A for life than to B's first child now alive to reach age 25.

d. None of the above are void.

46. Davis wanted to give a rowboat to his son, a college student who lives at home with his father. Davis's house is on a small lake that is bordered by several neighboring owners and a public road. Pointing to the boat, Davis said to his son: "I want to you have this boat." The boat was, at the time, sitting on Davis's land at the edge of the lake. The delivery requirement for this gift:

a. Could be accomplished by the son taking the boat out for a row around the lake.

b. Would not apply, since there is no practical way for Davis to actually deliver the boat to his son.

c. Could be accomplished by Davis handing his son one of the oars.

d. Could be accomplished only by means of a formal deed of gift.

47. In apprehension of death, Frederick gave a watch to Walther. Immediately afterward, Frederick went into the hospital to have a dangerous operation that he feared he might not survive:

- a. The gift should be treated as presumptively inter vivos.
- b. The gift should be treated as presumptively revocable.
- c. The gift should be treated as presumptively subject to a condition precedent.
- d. The gift should be treated as presumptively testamentary.

48. Frederick also made a gift causa mortis of a ring to Wilma just before Frederick went to the hospital for an operation. A few days later, before Frederick had recovered from the operation, he died of a sudden stroke. In light of the purposes of the gift causa mortis doctrine, the gift of the ring should be considered revoked:

- a. If the stroke was of unknown origin.
- b. If the stroke was found to be in no way medically related to the operation.
- c. If the stroke was caused by the operation.
- d. None of the above. The gift should not be considered as revoked on these facts.

49. Frederick, on his deathbed, wanted to give some bonds to Ella Biggs. The bonds were locked in Frederick's safe deposit box at a local bank. Frederick said to Ella: "Here is the key to my safe deposit box. The bonds in the box are yours. Take this key and get them." Frederick died before Ella went to get the bonds.

- a. The gift fails for lack of delivery.

b. A delivery of the key could count as a constructive delivery of the bonds.

c. The delivery of the bonds was accomplished by disclosing their location to the donee.

d. The gift could be upheld without a delivery by treating it as a testamentary gift.

50. Suppose Frederick signed and delivered a document to Pete Randall transferring certain bonds "to Pete Randall as trustee for Ella Biggs."

a. Ella would have equitable title but not legal title to the bonds.

b. The gift would not be effective until Frederick's death.

c. The gift would be revoked at Frederick's death.

d. Ella would have legal title but not equitable title to the bonds.

51. In order for an adverse possessor to acquire a ripened title, it is said that the possession must be open and notorious. This requirement:

a. Exists because it is contained in the statute of limitations for ejectment actions.

b. Requires the possessor to "show his flag" so an ordinary owner paying attention to the property would notice.

- c. Is constitutionally required under the Takings Clause.
- d. Requires that the true owner be aware that his or her land is held in adverse possession.

**Facts for Wilson-Germond-Allman questions.** In 1996, Wilson bought a 5-acre parcel of land. On March 1, 2005, Germond entered into adverse possession of the parcel.

52. Suppose that Germond died in 2009 and Allman promptly took adverse possession of the parcel, and he's remained ever since. Today (May 13, 2015), Wilson sues Allman in ejectment. Allman should prevail if:

- a. Allman was Germond's sole heir.
- b. Allman was named as the devisee of the parcel in Germond's will.
- c. Germond had delivered a deed conveying the parcel to Allman when Germond was on his deathbed.
- d. All of the above.
- e. None of the above. Allman cannot prevail because he has only possessed for about 6 years.

53. Suppose now that, when Germond died in 2009, Allman (who lived on adjacent land) happened to see that the parcel was vacant and promptly grabbed possession of it. He's remained ever since. Under these facts, the title would ripen in Allman in:

- a. 2009
- b. 2012
- c. 2015

- d. 2019.

54. Now suppose that Germond did not die in 2009 but that Wilson delivered Holbeck a deed of conveyance to the parcel in 2008 (while Germond was in adverse possession). Germond could have a ripened title by now (May 13, 2015):

- a. Because here was no privity of estate between Wilson and Holbeck.
- b. Because Holbeck could only have acquired a right of entry from Wilson and it would now be expired.
- c. Because Wilson held no interest that he could convey while the parcel was held by an adverse possessor.
- d. None of the above. Germond would not have a ripened title until 2018.

55. To establish an easement by implied grant based on prior use, it ordinarily must be shown that:

- a. There was a quasi-easement corresponding to the claimed right of use.
- b. The claimed right of use is reasonably necessary for the beneficial enjoyment of the alleged dominant tenement.
- c. Both of the above.
- d. There was a clearly visible prior use of the servient tenement for the benefit of the dominant tenement while they were both still held by the same owner.
- e. All of the above.

**Facts for Daniels-Hightower questions.** Daniels sold Exorbitant Cable TV Co. a fee simple in a small plot of hilltop land that was completely surrounded by a farm retained by Daniels. The deed expressly provided: “Included in this grant is an easement of way [over a specifically described lane] for vehicular travel between Highway 25 and the lands hereby conveyed” (*i.e.*, the small hilltop plot).

56. As a result of this conveyance:

- a. Exorbitant received an easement by reservation.
- b. Exorbitant presumptively received an appurtenant easement.
- c. Exorbitant presumptively received an easement in gross.
- d. Exorbitant received an easement by estoppel.

57. Following the conveyance by Daniels:

- a. Exorbitant has, in effect, an estate in fee simple in the lane.
- b. Exorbitant would have an express easement allowing it to use the lane for underground cables to antennas on the hilltop plot.
- c. Exorbitant would probably have an easement by implication to use the lane for underground cables to antennas on the hilltop plot.
- d. Exorbitant could convey the hilltop plot to another company and, if it did, its grantee company would presumptively be own the easement.

58. Suppose Exorbitant conveys *half* of its hilltop plot “with all appurtenances” to Socorro Transmission Co. Under the usual presumptions:

- a. Both Exorbitant and Socorro would be entitled to use the lane pursuant to the easement.
- b. Only Socorro would be entitled to use the lane pursuant to the easement.
- c. Exorbitant would still be entitled to use the lane in whatever ways it could before conveying to Socorro, but Socorro would not be entitled to use the lane.
- d. Neither Exorbitant nor Socorro would be entitled to use the lane because Exorbitant’s attempt to subdivide the easement without permission has caused the easement to be extinguished.

59. Assume that, in his deed to Exorbitant, Daniels did not expressly reserve a right to use the lane. Daniels is nevertheless still probably legally permitted to use the lane for:

- a. Vehicular travel from one portion to another of his retained land.
- b. Underground cables.
- 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.

60. Albie conveyed part of his land to Cutter. The conveyed parcel was landlocked (*i.e.*, it touched on no public roads). The deed did not

mention any easements. Cutter would probably have an easement by implication to use:

- a. An already existing and visible driveway running from a public road, across Albie's retained land to the parcel conveyed to Cutter.
- b. *Some* portion of Albie's retained land for access from the public road to Cutter's parcel even if there were no quasi-easements.
- c. Either one or the other of the above (*i.e.*, both answers are true).
- d. None of the above. Cutter would probably now have to make another deal with Albie to secure a right of access to his parcel.

61. Frisby owns a landlocked 5-acre parcel of country land on which he has a house. Frisby bought the parcel from Yonge, and Yonge granted Frisby an easement across Yonge's retained land to provide access to the highway. The easement was created to be appurtenant only to the 5-acre parcel. Recently, Morris sold Frisby an additional 10 acres adjoining the back of Frisby's 5-acre property:

- a. There is no reason why Frisby can't use the easement as his means of access to the 10 acres.
- b. For Frisby to use the easement to access the 10 acres would constitute an unlawful overuse or misuse of the easement.
- c. For Frisby to use the easement to access the 10 acres would constitute a trespass.

d. Both b. and c. above.

e. Frisby's easement would be extinguished if he attempted to use it as access to the 10-acre parcel.

<End of examination.>