PACE UNIVERSITY SCHOOL OF LAW

PROPERTY
PROFESSOR HUMBACH August 14, 2020
FINAL EXAMINATION—VERRSION S TIME LIMIT: 3½ 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 49 multiple-choice questions. It also has one essay question that you may answer *instead of* multiple-choice questions 46-49 (more instructions below). If 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.

The multiple-choice questions are to be answered on the Answer Document that is attached to the same email as this exam. For each question, type in the *one* letter you think is the *best* answer. You should type your answers in the Answer Document *without changing the formatting or layout in any way*. Be very careful about this. *It is part of the test.*

- Write your **examination number** on the "number" line of the Answer Document. *Write it NOW*.

When you have finished the examination and reviewed your answers,, submit your Answer Document by sending it as an *attachment* to: sdellaruffa@law.pace.edu. Send it as a WORD document (and definitely not as a PDF or image). Other than your Exam Number, do not put any personal identifying information in the Answer Document.

The exam is 3½ hours in length. You may take the exam during any *continuous* 3½-hour period after you receive by it email (at about 10:00 a.m.). Mark the time when you actually begin the exam and the time when you finish in the spaces indicated on the Answer Document. Submit your Answer Documents *promptly* after you finish (an undue delay may raise issues). In any case, all Answer Documents must be emailed promptly on the day of the exam.

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 and answer based on the traditional rule.

1. J.K. Walker bought an old and frayed tweed jacket for $7.50 at a garage sale. About 20 minutes after the sale, the seller's mom came running out of the house shouting "My jewelry, my jewelry!" She was referring to the $2,000 worth of earrings, bracelets, rings, etc. that she kept hidden in the lining of the jacket (a trick to mislead burglars). So far, Walker is still unaware of the jewelry. As a result of this sale transaction (pick the best answer):

a. Walker got possession and ownership of the jacket but only possession of the jewelry.

b. Walker got possession and ownership of the jacket and the jewelry.

c. Walker got possession and ownership of the jacket but got neither ownership nor possession of the jewelry.

d. Walker got possession and ownership of the jacket and the revocable ownership of jewelry.

2. Walker took the jacket to a dry cleaner without having discovered the jewelry. The cleaner accepted the jacket unaware of the jewelry in the jacket. Pick the best answer:

a. The cleaner can be considered bailee of the jewelry because he has unconscious possession of it.

b. The cleaner cannot be considered bailee of the jewelry until he knows he has it.

c. Even if the cleaner later discovers the hidden jewelry, he cannot be considered bailee of the jewelry unless he contractually agreed to accept responsibility for it.

d. The cleaner would be liable for a loss of the jewelry whether or not he is "bailee" of the jewelry

3. Assume in the preceding question that Walker returns to the cleaner for his jacket and the jacket itself has inexplicably disappeared.

a. The cleaner would not be liable to Walker unless Walker could prove misdelivery.

b. The cleaner *would* be liable to Walker unless the cleaner could prove that he had *not* misdelivered it.

c. There would be a presumption of negligence if Walker proved the bailment of the jacket and a failure to return it.

d. The cleaner would not be permitted to present evidence to rebut the inference of negligence that arose from the unexplained disappearance of the jacket.

4. Suppose in the preceding question the cleaner managed to find the jacket in a stack of old rags. As he picked it up, the jewelry tinkled out onto the floor. In a jurisdiction that follows the so-called "English rule" as to finders:

a. The cleaner, as the owner of the locus in quo, should have a better right to possession than Walker.

b. Walker should be able to recover the jewelry from the cleaner in a replevin action.

c. The cleaner would have no obligation to return the jewelry to Walker because Walker is not the owner of the jewelry.

d. The cleaner must hold the jewelry until the true owner claims it.

5. Walker bought a farm in 2002. The seller (grantor) delivered him a deed that described the farm by metes and bounds ("starting from a duckberry bush…"). The farm was a single parcel consisting of two fields known as Eastfield and Westfield. Eastfield is swampy and Walker has never used it. He rarely even goes there. Suppose, however, that Walker immediately moved into a house on Westfield and has lived there ever since, regularly and openly growing crops on Westfield every year. If Walker's grantor did not have title to the farm:

a. Walker could nevertheless still now have a ripened title to Westfield (but not Eastfield).

b. Walker could nevertheless still now have a ripened title to both Westfield and Eastfield.

c. Walker would not yet a ripened title to either Westfield or Eastfield.

d. Walker would not need title by adverse possession because he has a deed.

6. Suppose in the preceding question that, in 2009, Walker had found a squatter's shed hidden in a little clump of trees in Eastfield. Even though Walker was still an adverse possessor at the time, he brought an ejectment action against the squatter.

a. The action should have been dismissed because Walker had not yet acquired title by adverse possession.

b. The action should have been dismissed because Walker had neither ownership nor possession of Eastfleld, so the squatter was not a trespasser.

c. Walker should have won the ejectment action.

d. None of the above.

7. Suppose again that Walker bought and took possession of a farm in 2002 but the seller did not have title. Suppose also that, in *2001*, the farm's true owner had leased it for 20 years (i.e., until 2021) to a tenant who never took possession or, even, visited the place. If Walker is found to have been in actual possession of the farm of since 2002, sufficient to acquire a ripened title in 2012:

a. His title in 2012 would be good as against both the true owner and the tenant.

b. His title in 2012 would be good as against the true owner but not the tenant.

c. His title in 2012 would be good as against the tenant but not the true owner.

d. His ripened title would be suspended under the lease expires in 2021.

8. Two years ago, Walker bought a piece of land containing a small block building where he could run his ornamental wrought iron business. About 9 years before, the highway in front had been straightened and, as it turns out, the state still had title to the portion of the land where the building sits at the time when Walker bought. Walker can prove that the seller (previous owner) had owned and occupied the property in its present configuration for 8 years before Walker's purchase. Walker has occupied ever since. The state now wants to demolish the building.

a. Walker has no serious claim to ripened title by adverse possession because he has had possession for only 2 years.

b. If Walker received a deed to the land, he should be able to tack his possession on to the previous owner's possession to establish a ripened title in this case.

c. Under the majority rule, Walker would not have a ripened title to the land—even with tacking—under these facts.

d. As long as Walker bought in good faith, he would have the better claim to the land

9. A few years after Walker bought an empty lot as an investment, he found out that a neighbor had built an underground sewer line across the land (which he was unaware of at the time he bought). When Walker sued to have the sewer removed, the neighbor claimed she had an easement by prescription. Walker responded that, because he was never aware of the underground intrusion, it is unfair to saddle him with an easement across his land.

a. There is no way that an underground sewer line can be "open and notorious" and, so, Walker probably has a pretty good case to defeat the prescriptive easement.

b. If the neighbor planned to claim a prescriptive easement for the sewer line, he should have notified Walker and his predecessor about it years ago.

c. If there are visible manhole covers allowing access to the sewer line on Walker's property, the neighbor would have a good case for a prescriptive easement.

d. For practical reasons, the "open and notorious" requirement does not apply to underground uses.

10. Eight years ago, Walker bought a summer cabin near a lake. The shortest (but not only) access was a driveway across land belonging to one of his neighbors. The person who sold to Walker had built the driveway without the neighbor's permission and she had

used the driveway regularly on weekends during the summer during her last 6 years of ownership. Walker has made similar seasonal use ever since. Can the neighbor legally block the driveway?

a. Yes, because the adverse use described here does not even come close to being "continuous."

b. Yes, because tacking is not allowed for easements but only for adverse possession.

c. Probably not.

d. Clearly not because Walker would have an easement by necessity.

11. Walker entered into adverse possession a piece of land in 2010. The owner of the land was 10 years old at the time. Using a 21-year statute of limitations with a 10-year disability period, like the one we studied in class, Walker would acquire a ripened title in:

a. 2020

b. 2028

c. 2031.

d. 2039

12. Walker bought and took possession of a certain piece of land in 2012. Unbeknownst to him, the seller was a fraudster who didn't own the land, so Walker did not actually have title. Recently, a wrongdoer negligently caused a fire that badly damaged a structure on the land. Walker hired a lawyer to sue. The wrongdoer alleged the defect in Walker's title as a defense.

a. Some courts would allow Walker to recover full damages from the wrongdoer just as though he were the true owner.

b. If the court follows the rule applicable to chattels (the *Winkfield* principle), it would allow Walker to recover full damages from the wrongdoer.

c. Both of the above.

d. Walker cannot sue for injury to the property until his adverse possession has ripened into title.

13. A tenancy at will is:

a. An leasehold estate that is created by a will instead of by a lease.

b. An estate that lasts as long as the tenant wants it to continue.

c. An estate that is to last until either the landlord or the tenant terminates it.

d. Essentially just a permission for the tenant to use land in the possession of the landlord.

14. A colleague told Walker the location of a parcel of money he'd hidden in the forest, saying: "I want you to have the money. It's yours." The colleague passed away before Walker could retrieve the money. Walker is now being sued for the money by the colleague's estate. Walker's lawyer has found cases holding that, in situations like this, the donor makes a constructive delivery by telling the donee the location of a hidden item.

a. These cases make sense because, by telling the donee the location, the donor has effectively transferred dominion and control to the donee.

b. These cases are questionable because the donor still has dominion and control of the money even after telling the donee its location.

c. These cases make sense because telling the donee the locations can be interpreted as an oral deed in lieu of actual delivery.

d. These cases are questionable because the delivery requirement can be met only by actually handing over the item that is being given.

15. The major *difference* between inter vivos gifts and causa mortis gifts is that:

a. Gifts causa mortis are subject to a condition subsequent.

b. Gifts causa mortis are revocable.

c. Both of the above.

d. Inter vivos gifts require a delivery and gifts causa mortis do not

16. Suppose Walker was on his deathbed and he called his niece to the bedside and said: "Here's the crest ring that your grandfather used to wear. It has been in the family for 200 years. I want you to have it." Walker handed her the ring and she took it.

a. Walker has presumptively made a gift causa mortis of the ring.

b. Walker has presumptively made an inter vivos gift of the ring.

c. Walker has presumptively made a testamentary gift of the ring.

d. More facts would be needed to select among the above answers.

17. Suppose in the preceding question that Walker unexpectedly recovered from his illness and lived for five more years. After recovering, he told his niece she could keep the ring. At her insistence, however, he agreed to wear the ring as long as he was able. But as he put it back on, he again reiterated to her that "the ring is yours."

a. The deathbed gift cannot be interpreted as a gift causa mortis because Walker did not specifically use the words "causa mortis" at the time of the gift.

b. Walker's statements after he recovered are evidence of his intention at the time of the deathbed gift.

c. Walker could not get the ring back because, once delivery occurs, a gift causa mortis becomes the unconditional property of the donee.

d. When a donee takes back possession of an item after a completed inter vivos gift, the gift is automatically revoked.

18. Phillip dePage, a prolific novelist, wanted Maja to read his latest book so he lent her a copy. Maja started the book and told Phillip she liked it. Pleased to hear this, Phillip said: "You can keep it. It's yours." What more needs to be done to complete the gift and transfer the title to Maja?

a. Maja needs to physically return the book to Phillip so he can make a formal "delivery" with donative intent

b. Nothing because the gift was completed when Phillip handed the book to Maja in the first place.

c. Nothing because Phillip's clear expression of donative intent should be enough to complete the gift under these circumstances.

d. Maja needs to make a clear expression of acceptance to Phillip in order to convert the bailment into a gift.

19. Walker leased an apartment to Tenant under a 3-year lease. When the lease still had a full 2 years to run, Tenant's company offered him a position in its Honolulu office. Tenant found a friend who was willing to take over the apartment. Tenant's lease contained a clause that prohibited "assignment" of the lease without Walker's consent.

a. Most courts would interpret the clause to also prohibit subleasing.

b. In most states the clause would be void as a restraint on alienation.

c. Historically, such a clause would allow Walker to withhold consent for a good reason, a bad reason or no reason, just not an illegal (discriminatory) reason.

d. Even if the lease did not contain such a clause, a court would generally imply it into the lease in order to protect the interest of the landlord.

20. Same facts as preceding question except the lease did contain the clause prohibiting assignment. Tenant and his friend signed a document stating: "I, Tenant, do hereby sublet my apartment (Apt 9-J in Wedgewood Towers) to my friend, K-----, for the *entire* remaining term of my lease." The friend moved in. As a result of this transfer (in most states):

a. Walker is now the landlord of the friend, who is now the tenant under the lease.

b. Tenant (the original tenant) is still in privity of estate with Walker.

c. Tenant's friend has a duty to pay the rent to Tenant, not to Walker.

d. All of the above.

21. Suppose in the preceding question the court concluded that the arrangement between Tenant and his friend was a sublease.

a. Walker could sue for and recover rent directly from Tenant's friend.

b. Tenant would still be liable for rent based on privity of contract.

c. Tenant's friend would be deemed to have taken Tenant's place in the original Walker-tenant relationship.

d. All of the above.

22. Same facts as preceding question except that now suppose a court would conclude that the arrangement between Tenant and his friend was an assignment. The friend subsequently decided to move in with his fiancé. Bill Borden agreed to take over the apartment. When the transfer to Bill occurred, the original 3-year lease had precisely 421 days to run. Which of the following would make the transfer to Bill a sublease rather than an assignment?

a. The written agreement that documented the transfer to Bill specified that he received a right to possession that was to last for a period of 420 days.

b. The written agreement that documented the transfer to Bill says "Sublease" at the top and also says that the friend was "subletting" the apartment to Bill.

c. The friend retained a right of entry allowing him to terminate Bill's right to possession if Bill committed a breach (in most states).

d. All of the above.

23. Suppose in the preceding question that *both* the arrangement between Tenant and his friend as well as the one between the friend and Bill were assignments (not subleases). If Bill later did not pay the rent to Walker as it came due:

a. Walker could recover the unpaid rent from Tenant's friend because he was the one who assigned the lease to Bill.

b. Walker could recover the unpaid rent from Tenant's friend *only* if the latter had "assumed" the lease.

c. Walker could not recover the unpaid rent from Tenant's friend if the latter had assigned his duty to Bill.

d. As possessor, only Bill is responsible to pay rent to Walker, not Tenant or his friend.

24. Walker rented a storefront downtown to carry on a small retail business. Several months into the lease the roof started to leak. It got so bad that it made the place untenantable. Walker can successfully claim a constructive eviction:

a. Even if he stays in possession.

b. Only if Walker's landlord, had a duty to keep the roof in repair.

c. Whether or not the landlord had a duty to keep the roof in repair inasmuch as the roof is a principal part of the premises.

d. Under the implied warranty of habitability.

25. Suppose a certain plot of land was conveyed by deed "to Walker and Weller and their heirs."

a. Walker and Weller would have a tenancy in common.

b. Walker and Weller would have a joint tenancy.

c. Walker, Weller and their various heirs would all share a tenancy in common.

d. Walker, Weller and their various heirs would all share a joint tenancy.

26. If Walker and Weller want to receive a joint tenancy:

a. The deed to them should say "to Walker and Weller and their heirs as joint tenants."

b. In some states it would be necessary to explicitly also specify "with rights of survivorship.

c. Both of the above.

d. A grant simply "to Walker and Weller and their heirs" should suffice.

27. Suppose Walker and Weller have a tenancy in common in a parcel of land. If Weller dies intestate and then, later, Walker dies intestate, the land would belong to:

a. Walker's heirs only.

b. Walker's heirs and Weller's heirs as tenants in common.

c. Weller's heirs only.

d. The land would go back to the grantor.

28. Suppose Walker and Weller have a tenancy in common in a parcel of land. Weller has occupied the land by himself for the past 9½ years because Walker chose to live in a different town. On these facts, under the usual (majority) rule:

a. Weller would not owe rent to Walker

b. Weller *would* be liable to Walker for one-half of the fair rental value.

c. Weller would be liable to Walker for the *full* fair rental value.

d. There are no set rules and it is up to the court to decide what is fair.

29. For Walker to recover rent from Weller in the preceding question, it would be helpful if Walker could prove (in addition to the latter's sole occupancy) that:

a. Weller had committed an ouster against Walker.

b. Weller had agreed to pay rent to Walker.

c. Either of the above would be helpful to Walker.

d. None of the above. Under the majority common-law rule Walker could recover rents from Weller based on sole occupancy alone.

30. Walker owns a large tract of land in the country. He has sold a landlocked back corner of the land to a buyer from the city who wants to build a weekend getaway. There is no visible lane or access to the buyer's parcel, and neither Walker nor the buyer (nor the deed) mentioned the possibility of such an accessway. The buyer probably has:

a. A good case for an easement by estoppel.

b. A good case for an easement by implication from prior use.

c. A good case for an easement by necessity.

d. A big problem because he has no basis to claim a right of access to his land.

31. J.D. Walker was hunting on a friend's farm. He spotted some wild ducks swimming in a pond on the neighboring property. If Walker 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 Walker:

a. Base on the doctrine of ratione soli.

b. Because persons should not benefit from their own trespasses.

c. Both of the above.

d. Because it makes sense to say that the neighboring owner also owned the wild animals on his land.

e. All of the above.

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

a. Walker had a valid hunting license issued by the state.

b. Walker had a license from the neighboring owner to hunt on the land.

c. The neighboring owner was not interested in hunting ducks anyway.

d. Walker was in the trade or business of hunting ducks and supplying them to market.

e. All of the above.

33. Walker 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, Walker released it from the trap and took it home to nurse it back to health. The trapper discovered what had happened and sued Walker. Who has the better legal right to the animal?

a. Walker because he was first to take actual physical possession.

b. The trapper because he was first to attain occupancy.

c. Walker 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. Walker because he nursed the animal back to health.

34. Walker uses natural gas in his business. He buys the gas from interstate pipelines and stores it in an underground cavity. The cavity formerly contained naturally occurring gas of the same identical kind (long since depleted). It lies not just under Walker's land but also extends under the land of a neighbor. Recently Walker discovered that the neighbor has tapped into the cavity, pumped out some of the gas and sold it. Walker is suing the neighbor, and the neighbor has counterclaimed for trespass.

a. Some courts, applying the doctrine of capture, would say that the gas ceased to be Walker's property once it was pumped back into the ground.

b. It would be illogical to consider Walker a trespasser because, under the doctrine of capture, Walker ceases to own the gas he pumps into the ground.

c. Even if Walker still owns the gas after it's pumped into the ground, Walker would not be considered a trespasser as long as the gas in the ground causes no economic injury to the neighbor.

d. Walker's neighbor would be entitled to take the gas that is under his property because Walker forfeits it under the law of trespass.

35. If the natural gas purchased by Walker in the preceding question is treated like ferae naturae, then it would be logically consistent to:

a. Consider it "fair game" and legally available for anybody to capture and sell after Walker pumps it back into the ground.

b. Say it remains the property of Walker even after Walker has pumped it into the ground.

c. Say that it has animus revertendi..

d. All of the above.

36. Walker has a home in a large residential development. A coal company owns the right to mine coal under the area. Because the mining sometimes causes subsidence, 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 early 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 Walker would not be deprived of economic due process.

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

37. Walker makes a cold medication containing an ingredient that can be used to cook a popular (and illegal) psychoactive drug. The state adopted a new law prohibiting the manufacture or sale of the cold medication. The new law has a big negative impact on Walker's profits. Walker 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 Walker's factory t and other property.

c. Walker can show that the benefit of the cold medication exceeds the detriment caused by the illegal drug.

d. None of the above.

38. Walker bought a 150-acre wooded tract intending to divide it into lots and build 300 vacation homes. Before he 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 Walker could build from 300 to fewer than 40, and it reduced the market value of Walker's wooded tract by 75%:

a. Walker probably has a valid claim under the Takings Clause for the amount by which the value of the tract was reduced.

b. Walker probably has a winnable substantive due process claim that the new amendment is invalid because it is "unduly harsh or burdensome."

c. The new amendment would probably be upheld, and Walker's loss would be uncompensated.

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

39. The reason for the answer in the preceding question is that:

a. The rules of "economic due process" forbid 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 it therefore 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.

40. Lila Walker found a rare coin in a public park. She took it to a coin dealer to have it appraised. After inspecting the coin, the dealer refused to return it. Walker has sued the coin dealer.

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

b. Walker should be able to recover the coin in replevin but the dealer could not be required to pay her its value in money since she is not the true owner.

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

d. Walker should be able to prevail whether she sues to recover the coin itself or in trover.

41. Suppose in the previous question that the coin's true owner had lost it in the park. Not knowing the true owner's identity, a court ordered the dealer pay Walker the full value of the coin. If the true owner later sues the dealer for damages:

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

b. The dealer should win but he can nonetheless be required to return the coin itself to the true owner.

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

d. Since Walker was a finder in good faith (not a thief), he cannot properly be held liable to the true owner.

42. While having breakfast at a donut shop, Lila Walker spotted a bracelet on the floor under one of the benches along the wall. She held it up and shouted: "Whose is this?" Nobody answered, including the shop owner. Now Walker and the shop owner both claim the bracelet. It is established at trial that the bracelet was in the shop overnight (when the shop was closed):

a. Under the law on finders in some states, the shop owner should be deemed to have the better claim.

b. Under the law on finders in some states Walker should be deemed to have the better claim.

c. Both of the above.

d. The rule nationwide is that Walker would have a better claim to the bracelet than the shop owner for the simple reason that Walker was the finder.

43. While waiting her turn in a dentist's office, Walker noticed a lottery ticket mislaid among the magazines on a small table in the reception area. She picked it up and handed it to the receptionist "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. Walker demanded the ticket but the dentist refused. Under these circumstances, many courts would say the dentist should be allowed to retain possession:

a. Because that is the rule better adapted to protect the true owner.

b. Because the dentist had constructive possession.

c. Because the general American rule on lost property favors the owner of the locus in quo.

d. None of the above. Almost no court would award the dentist possession as long as Walker's presence on the premises was not a trespass.

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

a. Only if the owner of the locus in quo did not want it.

b. If the ticket was deemed lost and not mislaid.

c. Even if Walker didn't have a dental appointment (i.e., was a trespasser).

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

45. The city developed a plan of "Midtown Revival" that involved buying key properties and then selling them to a developer for redevelopment. Properties that the city could not secure in voluntary transactions would be taken by eminent domain. Walker has a building in the redevelopment zone and she does not want to sell. She sues to prevent the city from taking her property. She will probably:

a. Win because the Takings Clause only allows government to take property for public use.

b. Win because the Takings Clause does not allow government to take private property from persons who are not willing sellers.

c. Lose because the city wants her property in connection with its pursuit of a public purpose.

d. Lose because there is no constitutional limitation on the government's power to take private property as long as it pays just compensation.

Special instructions: There is an essay question after question 49, below, and **you may answer the essay question *instead of* answering the next 4 multiple-choice questions (46-49).** If you answer the essay question, do *not* answer questions 46-49 (if you answer both, questions 46-49 will not be graded).

It is entirely up to you whether to answer the following 4 multiple-choice question (46-49) or the essay question.

The essay question is worth four points (= 4 multiple choice).

46. Walker wants to build an extension on his house but the proposed location is such that it will block the gravel driveway to his garage. Walker's neighbor is willing to let Walker use a portion of the neighbor's land for access to the garage and is willing to formalize the arrangement (in exchange for a consideration). To protect Walker's interest, his lawyer should advise him to formalize the arrangement by creating:

a. A license.

b. An easement

c. Either of the above would adequately protect Walker's interest,

d. None of the above.

47. Suppose the neighbor grants Walker an easement of access in the preceding question. If Walker then later sells his house to somebody else, and nothing is said in the deed about an easement of access:

a. The buyer would have to negotiate a new arrangement with the neighbor for access across the neighbor's land.

b. The easement would automatically pass to the buyer along with the conveyance of the dominant tenement.

c. Walker would still be the owner of the easement of access because he did not convey it.

d. The easement would be converted into an easement by estoppel (an executed parol license).

48. Walker and his neighbor went together to install an upgraded electric line from the highway to their homes, which are some distance from the road. The new line runs across Walker's property to his house, and then it continues across the back of Walker's property to the neighbor's house. Though the cost was considerable, the arrangement between Walker and his neighbor was never formalized in writing. Recently, Walker went totally solar and wants to take down the entire line on his property.

a. The neighbor would have a good case for claiming an easement for the line run across Walker's land.

b. The neighbor probably would have a good case for claiming an interest in Walker's that is sometimes known as an executed parol license.

c. Both of the above.

d. Walker probably has a right to cut off his neighbor's use of the electric line whenever he wants to.

49. Walker delivered a deed to another neighbor granting her an easement for light and air. The easement that the neighbor received:

a. Is an affirmative easement.

b. Is probably an easement in gross.

c. Will probably terminate when Walker sells his property.

d. Is a negative easement.

Essay question

As stated above. you may answer this essay question *instead of* answering the 4 multiple-choice questions numbered 46-49.

If you answer the essay question, type your answer in a *separate* Word document (.doc). **Do not forget to write your exam number on the essay answer.**

Your essay answer, in its separate Word document, should be double-spaced in 12 pt. type (New Times Roman). Send your essay attached as a *separate attachment* to the email containing your Answer Document.

The essay question is worth four points (= 4 multiple choice).

Facts for essay question: Arnie was out bird-watching on land owned by Baker, who gave him permission. He got confused about the property line and wandered onto a neighboring farm, where he had no permission to be. While there, he found a jade statuette, worth close to $2000 lying on a tree stump. He reported it to Baker who informed his neighbor, Carla. Everybody agreed, it was a mystery how the statuette got there. Now all three (Arnie, Baker and Carla) claim the statuette. Who has the better claim under the so-called English rule? Under the so-called American rule? Under the "lost and mislaid" rule? Briefly explain.