

**Note: The questions on this exam draw heavily on previous exams in 2010-11**

**PACE UNIVERSITY SCHOOL OF LAW**

PROPERTY  
PROFESSOR HUMBACH  
FINAL EXAMINATION

December 16, 2011  
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. Answer the questions on the answer sheet provided.

- 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 successfully took the Estate System Proficiency test and have a “word,” write your “word” *above your exam number* on the “name” line of the answer sheet. **Do not write the “word” anywhere else on the answer sheet.**

Answer each question selecting the *best* answer. Mark your choice on the 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 attending a baseball game as a spectator, Tryon Ketchem found himself in the direct path of a foul ball, which he made an effort to catch (using a mitt he'd brought along, just in case). The ball struck the top in his mitt, and flew up in the air, and another fan, Timmy, jumped up in an effort to intercept it. Timmy held the ball momentarily but he then dropped it when he slipped on an errant beer cup. Ketchem grabbed the ball as it rolled past his feet:

- a. Since Timmy actually held the ball first, he would have a better claim to it than Ketchem.
- b. If Timmy was entitled to the ball, he could bring a replevin action to recover damages from Ketchem.
- c. Both of the above.
- d. Since Ketchem was first to come into contact with the ball, the court would almost certainly conclude that Ketchem has the better legal claim.

2 Over a period of several years, Beachmont went onto unoccupied land owned by Bush Timber Co. and harvested more than 300 tons of mushrooms, at a considerable personal profit. Now Bush would like to bring an action against Beachmont for trespass.

- a. Beachmont probably could successfully defend by showing that Bush wasn't making any use of the mushrooms anyway, so it suffered no loss.
- b. As owner of the land, Bush would be deemed in constructive possession of the land purposes of suing Beachmont for trespass, even if Daniel Owen had adverse possession of it at the time.

c. As owner of the land, Bush could maintain an action in trespass against Beachmont whether or not it had any sort of possession of the land.

d. As owner of the land, Bush would be deemed in constructive possession of the land for purposes of suing Beachmont for trespass, provided there was no adverse possession.

**Facts for Bowman-Frank questions.** While waiting for his rental horse to be saddled at Klip Klop Stables, Bowman noticed something shiny in the grass. It turned out to be a jeweled key ring that someone had *lost*. Bowman reported it to, Davie Frank, the owner of Klip Klop. Frank was surprised and said he had no idea whose it might be. However, Bowman agreed to leave the ring with Frank "in case the person who lost it comes back to get it." After a month or so, Bowman called Frank and asked about the key ring. Frank said nobody had come back for it so last week he just went ahead and pawned it, for \$500, at the Good Time Friday Night pawnshop.

3 When Bowman heard how much Frank had gotten from the pawnbroker, he demanded that Frank let him have the \$500 "or at least share it." Frank refused saying: "Hey, dude, it was on my private property." If Bowman sues Frank for the \$500:

- a. Most courts would let Frank keep the whole \$500.
- b. Some courts would decide that Bowman has a legal right to the money even though the key ring wasn't his in the first place.
- c. Most courts would probably decide that neither Bowman nor Frank was entitled to the money.
- d. Bowman may have a replevin action against Frank, but definitely not a trover action.

4 Bowman decided he'd rather have the key ring than the \$500. Bowman explained the circumstances to Wayne, the owner of Good Time Friday Night. However, Wayne refused to give the ring to Bowman, claiming that he bought it in good faith and with no reason to believe that Frank was not the rightful owner. The local law of finding generally follows the so-called American rule:

- a. Wayne would be a converter.
- b. Bowman would have an action in replevin against Wayne.
- c. Wayne would be absolutely liable to Bowman if he redelivered the ring to Frank.
- d. All of the above.

5 After Bowman called Frank and threatened a lawsuit, Frank decided he'd better get the ring back out of hock. Frank got possession of the ring again. A little later, Bowman sued Frank to recover possession of the ring. Bowman pointed out that, although he found the ring in a private area on Frank's property, he was not a trespasser there inasmuch as he was a customer waiting to be served. The court decided that the true owner had *lost* the ring.

- a. In many states, Frank would probably have the better claim to the ring as owner of the locus in quo, even if Bowman was not trespassing.
- b. In many states, Bowman would probably have the better claim to the ring as long as he was not a trespasser at the time he found it.

c. Both of the above.

d. Since neither Bowman nor Frank is the owner of the ring, the best thing for the court to do is simply leave it with the person that has it.

6 Again assume that Frank got the key-ring back out of hock. Further assume that the case arises in an "American-rule" state that recognizes the distinction between lost and mislaid property. If the jury concludes that the ring got into the grass by falling out of the owner's pocket without his knowledge, then:

- a. Frank would probably have a better claim to the ring as the owner of the locus in quo.
- b. Bowman would probably have a better claim to the ring as the person who actually found it.
- c. The court would probably order that the ring be sold and the proceeds be split between Bowman and Frank.
- d. Bowman would have the better claim to the ring because it was "mislaid" rather than "lost."

7 Suppose that Frank urgently needed some cash and so he re-hocked the key ring at the pawnbroker. The available evidence shows that the key ring was worth as much as \$1,800. As is usually the case, however, Frank got a lot less than that from the pawnbroker. In fact, Frank only got \$500. If Bowman were able, on some sort of legal theory, to succeed as finder against Frank for conversion of the ring, the amount of damages he could recover from Frank:

- a. Would probably be nominal because Bowman was a mere possessor and not the owner of the ring and, therefore, he hasn't suffered much actual injury.
- b. Would probably be limited to the \$500 that Frank received for the ring from the pawnbroker.
- c. Should be equal to the full fair value of the ring, as found by the jury—perhaps as much as \$1800.
- d. Would probably be nil unless Bowman could prove that Frank pawned the ring with full knowledge that he didn't have any legal right to it.

8 Lacy Eaton, a successful lawyer, left her new Infiniti M56 automobile at Basham Parking Garage while attending a deposition for a client. The garage was operated with a valet parking arrangement, which made it a bailee of the car. When Eaton returned after the deposition, the power mirror was missing from the car's passenger side. She complained. One of the attendants ran upstairs and returned with missing mirror, which he handed to Eaton.

- a. Basham is strictly liable for the damage to the mirror.
- b. Basham is liable only if the mirror was broken off due its failure to use ordinary care.
- c. Basham is liable for "misdelivery" of Eaton's car.
- d. None of the above. There could be no bailment of the mirror (as distinguished from the car) unless the attendant actually knew that it was on the car when he accepted the bailment.

9 Suppose in the preceding question that Eaton, not wishing to look too ostentatious at the deposition, left her \$75,000 diamond bracelet in the car's trunk. She did not mention this to the Basham attendant when she'd left off her car. When she went to put the broken-off mirror in the trunk, however, she noticed that the bracelet was missing. She told the attendant, who replied: "You gotta be kidding, lady!" Eaton sues for both the broken mirror and the value of the bracelet. As to the bracelet:

- a. Some courts would accept the argument that there was no bailment of the bracelet if nobody at Basham had knowledge that it was in the trunk.
- b. Even if Basham had a bailee's duties with respect to the bracelet, the duty of care could be fulfilled by doing essentially nothing special to protect the bracelet since nobody at Basham even knew it existed.
- c. Both of the above.
- d. Eaton should have no problem in recovering the value of the bracelet since there is a "presumption of negligence" whenever a bailee cannot return the object that was bailed.

10 Two people were fishing from a boat floating down a stream. After they had already caught two fish, the person who owned the land on both sides of the stream (and the streambed) saw them from the shore. He shouted for them to pull over. The landowner demanded that the boaters give him the two fish and get their boat out of there "now."

- a. If the stream was "navigable in fact," then the boaters would not be trespassers for merely navigating on it.

- b. The navigation servitude means that the boaters would not be trespassers *unless* they touched the privately-owned bottom or banks of the stream.
- c. Both of the above.
- d. The boaters would have been trespassing by floating their boat over the landowner's streambed unless the stream was "navigable in law."

11 A group of commercial fishermen found an injured dolphin a few miles off shore. They brought it to Waterland Gardens. Waterland nursed the dolphin back to health in a special pen than was next to (but fenced from) the bay. During a storm, the fence was breached and the dolphin escaped to ocean. Later, a dolphin was found by other commercial fisherman who then "sold" it to SeeSea Park, a competitor of Waterland. Under the rules applicable to *ferae naturae*:

- a. Waterland probably lost its rights in the dolphin when it regained its natural liberty.
- b. Waterland would have the better claim to the dolphin if it had *animus revertendi*.
- c. Both of the above.
- d. SeeSea could not have a legal right to the dolphin if it was the same dolphin that escaped from Waterland.

12 Warbler owned a 3-acre parcel of mountain land abutting a small lake. The lake was the one of the few remaining habitats for Kenisaw blind trout, a rare and endangered species. Under the state's Protected Species Act, a special permit is needed to build on any

land where the construction might affect the habitat of an endangered species. Warbler has been told he may not erect any structure that might pollute the runoff into the lake, require the creation of a septic system within 500 yards of the lake or involve cutting any trees bigger than 4" in diameter. These restrictions severely limit what Warbler can build on his land. Nearby similar (but fully buildable parcels) are worth over \$50000 per acre. Warbler has a claim under the takings clause if:

- a. His land has been substantially reduced in value.
- b. The restrictions deprive his land of all economically viable use.
- c. Both of the above.
- d. He cannot erect any structure that would be actually habitable.
- e. All of the above.

13 A bag of cement fell off the back a truck belonging to Hardrock Contracting Co. Before Hardrock's driver could circle back to retrieve it, the bag was spotted by a driver for Bass Builders, who picked it up off the street and threw it in his own truck, intending to use it on a job. A short time after that, however, the bag slipped off the Bass truck and was found by Harry Holen, who put it in his car and took it home. The whole series of events was captured by on-street video cameras, and copies of the tapes are in the possession of Hardrock's lawyer:

- a. Since neither Bass nor Harry ever owned the cement, Bass would have no better right to it than Harry.

- b. One bag of cement is pretty much like any other (of the same brand), so even if Hardrock originally owned the cement, Hardrock would have lost title to it once it fell off Hardrock's truck.
- c. Both of the above.
- d. If Hardrock doesn't want the cement, Bass should be able to recover it from Harry.

14 Last spring Ray Tomai planted a crop of genetically modified corn on his 255-acre farm. Later, in June, the county commissioners adopted an ordinance prohibiting genetically modified grains on the ground they might cross-pollinate with crops of nearby "organic" growers. That could cause the latter's crops to be unsalable at "organic" prices, which are generally much higher. The commissioners wanted to protect a valuable county reputation for organic foods. Pursuant to the new ordinance, a team of county ag agents went out and plowed under all of Tomai's corn, causing a loss in the \$100,000s. Under the U.S. Constitution:

- a. Tomai is not entitled to compensation for a taking.
- b. Tomai would be entitled to compensation if he could show that his crop was planted before the neighboring organic farmers planted theirs.
- c. Tomai would be entitled to compensation if he could show that his crop was on the whole more valuable than the organic farmers' crops.
- d. Tomai would be entitled to compensation, period.

15 Wanda McMuck bought a 10-acre parcel of tidal wetland. She got it at a very favorable price because of the development restrictions imposed under state law. Now Wanda is challenging the development restrictions on the ground that they constitute an unconstitutional taking of private property. Although she's had offers from conservancy groups to buy the land for over \$100,000, she argues that it would be worth over \$1,000,000 if she could use it to build luxury seaside homes. The most difficult counter-argument that she's likely to face is:

- a. She bought the land with the intention of challenging the restrictions.
- b. The land manifestly retains substantial value, as evidenced by the offers to purchase.
- c. The building of more luxury homes is not a particularly socially compelling use.
- d. There can be no compensation for mere regulation without an actual physical taking of land.

16 Samson owns a suburban house and lot. A railroad formerly ran behind his property, separating it from the property of his neighbor in back. For a number of years, no trains have run on this line and, in fact, the railroad company has even removed the tracks. Research at the recording office shows that, over 100 years ago, the farmer who owned the area had delivered a deed to the railroad granting "a right of way 25' wide and running from [east] to [west]. The deed also stated: "This right of way is granted for railroad purposes." Samson would like to make use of the portion of the 25' strip behind his house. Most likely:

- a. The railroad would have received an easement under the original deed from the farmer, an incorporeal interest that has very possibly been terminated by abandonment.
- b. The railroad would have received a fee simple under the original deed from the farmer, an estate in the land that would still be in existence.
- c. The railroad would have received an easement under the original deed from the farmer, an estate in the land that would still be in existence.
- d. The railroad would have received an executed parole license under the original deed from the farmer, a license that could now be revoked by Samson.

**Facts for William-George questions.** William owned a house near the ocean but did not have direct access to the beach. His neighbor across the street, Mr. George, had property that was right on the beach. In exchange for a payment of \$300, Mr. George delivered a deed granting William “a right to use the pathway along the fence at the eastern edge of my property for passage between the public street and the beach.”

17 If William sells his house in the future:

- a. The easement would be presumptively extinguished.
- b. The easement would presumptively still belong to William.
- c. The easement would presumptively go to the buyer of the house as part of the dominant tenement.

- d. The easement would presumptively belong to the owner of the servient tenement.

18 Suppose the deed from Mr. George also stated: “This right of way shall be personal to William.”

- a. In light of the reference to “personal,” the interest received by William could be an easement in gross.
- b. In light the reference to “personal,” the interest received by William could be a license, in which case it would be revocable by the neighbor at any time.
- c. If the reference to “personal” had not been in the deed, William would presumptively have received an easement appurtenant.
- d. All of the above.

19 A portion of William’s property lies between Mr. George’s house and the nearest utility pole. When Mr. George, signed up for cable TV service, it was necessary to install a new pole. Mr. George asked William if he could install the pole on a corner of William’s property. William said “sure,” and the pole was installed at a cost to Mr. George of about \$700. Now, however, after William’s teenage son backed into the pole twice with the family car, William wants the pole removed. Having gone to law school for several weeks, he announced to Mr. George: “Your license is revoked!”

- a. Mr. George may well be able to claim a right to keep the pole in place on the theory that he has received an executed parole license.

- b. Mr. George may well be able to claim a right to keep the pole in place on the theory that he has received an easement by estoppel.
- c. Both of the above.
- d. Because the agreement for the pole was not in writing, Mr. George could not have acquired an irrevocable right to use William's land for purposes of the pole.

20 William needed a place to park his boat trailer. Mr. George sold him a strip of land running along the entire road frontage of Mr. George's lot. Even though Mr. George's driveway cut across the strip, the deed did not mention it. Mr. George wants to claim an easement by implication to use the portion of the driveway that's on the strip conveyed to William:

- a. He wouldn't be allowed to because such an easement would be in derogation of the grant.
- b. Mr. George could claim an easement by necessity since the easement is necessary for him to use his driveway.
- c. On these facts there was a quasi-easement that has now probably become an actual easement.
- d. Mr. George could claim a quasi-easement to use the driveway, but not an actual easement.

**Facts for Hackley-Caseman questions.** Hackley owned a piece of country land. It had a septic field to the east of the house. Being underground, the septic field was not visible to a surface observer. When Hackley sold the eastern part of his property to Caseman, the new boundary line ran through the septic field. About half of the

underground facility is on the land that Hackley conveyed to Caseman. This fact was discovered when Caseman dug to lay a foundation for a planned new garage.

21 Caseman demands that the septic field be removed from his property, something that would cause great expense to Hackley.

- a. Hackley could not claim an easement by implied reservation from prior use because there was no quasi-easement.
- b. If Hackley claims an easement by implied reservation from prior use (as opposed to an easement by necessity) he would not have to show that the easement was necessary.
- c. If Hackley claims an easement by implied reservation from prior use, the requirement of apparentness would be satisfied because Caseman now knows about the septic field.
- d. If Hackley claims an easement by implied reservation from prior use, he would have to show that the easement was reasonably necessary—in some states *strictly* necessary.

22 Suppose in the preceding question that Caseman tried to build his garage (and learned about the septic field) more than 10 years after the conveyance. Hackley probably could not successfully claim an easement by prescription for the septic field because:

- a. His use of Caseman's land over the 10-year period was permissive.
- b. His use of Caseman's land over the 10-year period was not open and notorious.

- c. His use of Caseman's land did not meet the requirement of "hostile."
- d. None of the above. Hackley probably *could* successfully claim an easement by prescription.

23 Hackley and Caseman reached a settlement on the septic field, allowing it to remain in place. A couple of years later, Hackley bought some wooded acres located on the other (west) side of his property. Because his present house is a bit ramshackle, Hackley wants to tear it down and build his dream home on the new wooded acreage. To save money, however, he plans to connect the new house to the existing septic field. Caseman wants to know if he has a legal right to object to the use of the septic field in connection with the new house.

- a. Caseman has no legal right to object if the physical burden would be essentially the same as with the existing house.
- b. Caseman has no legal right to object even if the physical burden would be somewhat greater than with the existing house.
- c. Caseman *does* have a legal right to object but the court might deny an injunction on equitable grounds.
- d. Caseman *does* have a legal right to object and the court should grant an injunction as a matter of course.

**Facts for Copley questions.** Copley and his family started camping on a certain area of vacant land over 15 years ago. Copley never built a dwelling on the land (using camping trailers instead), but he's made a number of durable improvements that enhance convenience.

He cleared an area of about 3 acres, which he and his family use fairly intensively. In addition, they frequently use the trails in a larger area (up to 100 acres), picking berries and mushrooms and also hunting in the larger area. Others also use the larger area, for purposes similar to those of the Copley and his family.

24 The land (if any) to which Copley may have acquired a ripened title is:

- a. Quite possibly the 3 acres, but probably not the 100 acres.
- b. Quite likely not only the 3 acres but also the 100 acres.
- c. Most likely neither the 3 acres nor the 100 acres.
- d. Whatever Copley has constructively possessed.

25 If Copley wants to claim a ripened title by adverse possession:

- a. It is practically essential to success that Copley has told other people that he's the owner of the land
- b. It is practically essential to success that Copley gave actual notice to the true owner that he was claiming the land by adverse possession.
- c. The hostility requirement could be met if Copley can show that he acted on the land as though he's the true owner.
- d. Copley could not have a ripened title to any of this land by adverse possession because he never actually lived there.

26 If Copley wants to claim a ripened title by adverse possession, the kinds of factors that would affect whether Copley's acts could result in a ripened title would include:

- a. The nature and situation of the property, the kinds of things it's useful for, and the kinds of uses that Copley plans to make if he is recognized as the owner.
- b. The nature and situation of the property, the kinds of things it's useful for, and the kinds of uses that an ordinary owner might make of land similarly situated.
- c. The nature and situation of the property, the kinds of uses that Copley plans to make, and the kinds of uses that the true owner proposes to make if the court lets him retain ownership.
- d. Mostly, whether Copley placed any sort of permanent dwelling on the land or a fence around it.

27 In 1990, Fitch put up a boundary fence around his land. He accidentally enclosed about 40 sq. ft. of land belonging to his neighbor, Rachael. Neither of them noticed the discrepancy. Rachael recently had a survey done and told Fitch about the encroachment. Fitch apologized and immediately removed the fence.

- a. If Fitch had already acquired a ripened title to the 40 sq. ft. by adverse possession, he could not undo it by merely apologizing and moving the fence.
- b. In some jurisdictions, Fitch's acts of apologizing and moving the fence might be taken as evidence that there never was a hostile claim of right in the first place.

c. The best way to clear up this situation is probably for Fitch to deliver Rachael a quitclaim deed to the 40 sq. ft.

d. All of the above.

28 Assume in the preceding question that Rachael was 8 years old when, in 1990, Fitch put up the fence and enclosed the 40 sq. ft. of Rachael's land. Using the statute of limitations that we studied in connection with disabilities (with a 21 year basic period and a 10 year disability period), and assuming the age of majority is 18 years, the earliest that Fitch could acquire a ripened title would be:

- a. 2008
- b. 2010
- c. 2011
- d. 2021

29 Corso's driveway crosses a bridge over a small brook running through his property. When this bridge washed out 2002, he began getting from the road to his house by means of a bridge on the property next door, the home of his neighbor, Cliff. However, Cliff was a tenant for years, holding under a 20-year lease from Hendricks. The lease expires in 2016.

- a. If Corso's use ripens into an easement by prescription in 2012, it will be good against Cliff for the duration of the lease.
- b. If Corso's use ripens into an easement by prescription in 2012, it will be good against Hendricks following the expiration of the lease.

- c. Both of the above.
- d. Until Corso's use ripens into an easement by prescription, either Cliff or Hendricks would have standing to bring a trespass action against Corso for making unpermitted use of the bridge.
- e. All of the above.

30 Some years ago Davis Gravel Co. received a deed to a parcel of gravel land known as Pebbleacre. They opened up a pit on the *east* side of Pebbleacre and have been extracting gravel from it. So far, however, they have made no move to develop or use the west side, which has remained unoccupied and unused. Now it turns out that the seller of Pebbleacre did not own it. The entire parcel belongs to the heirs of a certain Gump.

- a. Davis has a color of title to west side of Pebbleacre, but that provides Davis with no legal advantage.
- b. If Davis engages in sufficient acts of possession on one side of Pebbleacre to acquire a ripened title it, then Davis could thereby eventually get a ripened title to the whole parcel.
- c. Both of the above.
- d. Davis can only acquire title by adverse possession to the part of Pebbleacre that it *actually* possesses.

31 Lancome owns an apartment building. Four months ago, he made an oral lease of an apartment to Tepperman. The lease was for an agreed term of 9 months, reserving a rent of \$1200 per month.

Tepperman has moved in and has been duly paying the rent each month:

- a. Tepperman has a term of years.
- b. Tepperman has a monthly tenancy.
- c. Tepperman is a tenant at will.
- d. Tepperman is a licensee.

32 Suppose that Lancome orally leased to Tepperman creating a month-to-month tenancy that commenced August 28, 2011. Lancome wants to terminate the tenancy as soon as possible. Suppose that Lancome hand-delivers Tepperman a notice today (December 16, 2011) stating that the tenancy will terminate December 27, 2011.

- a. The notice should be effective according to its terms, and Tepperman would be unlawfully holding over if he were still in occupancy on December 28.
- b. The notice would *not* be effective according to its terms, but Tepperman would nonetheless be unlawfully holding over if he were still in occupancy on December 28.
- c. The notice would *not* be effective to end the lease in December, but Tepperman would nonetheless be unlawfully holding over if he were still in occupancy on January 28.
- d. The notice would not be effective to terminate Tepperman's tenancy.

33 Assume now that Lancome made a *written* lease of an apartment "to Tepperman for two years reserving a rent of \$2000 per month"

and that Tepperman entered into possession. Assume that the lease contained the usual covenants and agreements found in residential leases.

- a. The result would be that Lancome and Tepperman would be in privity of estate and privity of contract.
- b. The primary effect of the words “reserving a rent of \$2000 per month” would be to impose a *contract* obligation pay rent.
- c. At common law, Tepperman’s right to possession and seisin of the premises would be automatically terminable if he failed to pay the rent.
- d. All of the above.

34 Burke occupies his apartment under a written two-year lease. Seven months into the lease his employer decided to move him to another city. Burke’s co-worker, Jones, wants the apartment. The lease contains an assignment clause stating that Burke may assign only with the landlord’s consent. The lease says nothing about subletting. The landlord has told Burke that he will not consent to an assignment unless he receives an additional \$100 per month rent.

- a. As long as Burke retains a reversion, he would not need the landlord’s consent.
- b. Some courts would allow the landlord to withhold consent for any reason (other than an “illegal” reason) or for no reason.
- c. Some courts would hold that the assignment clause doesn’t let the landlord withhold consent just because the tenant won’t agree to pay a higher rent.

- d. All of the above.

35 In the preceding question,

- a. If Burke sublets to Jones, he would become the landlord of Jones.
- b. If Burke validly assigns to Jones, he would become the landlord of Jones.
- c. If Burke validly assigns to Jones, Burke would no longer have any liability for the rent.
- d. All of the above.

36 Six months ago, Fenster *orally* leased his house to Vineland for an agreed term of two years, reserving a rent of \$3000 per month. Vineland moved in, and continues to occupy the house, duly paying the rent each month.

- a. Vineland has a term of years.
- b. Vineland probably has a tenancy from month to month.
- c. Vineland probably has a tenancy from year to year.
- d. There is no legal basis for assuming that Vineland has anything but a tenancy at will.

37 Shelton occupies an apartment under a 3-year lease. Shortly after he moved in, the landlord leased the apartment directly overhead to a group of college students. They are noisy, and loud sounds from above invade Shelton’s apartment at all hours of the day

and night (except mornings before 11:00 a.m. or so). Shelton wants to know whether, if he moves out before the end of his lease, he can continue to be held liable for rent.

- a. Shelton should have no worries because tenants that move out early are not legally responsible for rent as long as they let the landlord keep the security deposit.
- b. In order to assert constructive eviction, Shelton would have to show (among other things) that his apartment was untenantable due to some breach of duty by the landlord.
- c. Even if the noise did not make Shelton's apartment technically untenantable, he would still be able to assert constructive eviction if he actually moved out.
- d. A person can generally assert that he was constructively evicted even if the untenantability is caused by acts of third parties and not by the landlord.

38 Dissatisfied by some of the limitations on the doctrine of constructive eviction, a number of courts have adopted the implied warranty of habitability and they've said they would treat leases as contracts. The effect of these changes in the law is to:

- a. Extend the doctrine of "independence of covenants" so that it applies to leases.
- b. Give tenants a more-or-less effective "rent weapon" to motivate landlords to perform their obligations under leases.
- c. Require landlords to expressly spell out in the lease the services to which tenants are entitled, and to deny tenants any right to services that are not clearly spelled out.

d. Treat leases strictly in accordance with ordinary contract law, just as though they were purely contracts rather than conveyances.

39 Orbis leased an apartment to Messer under a valid three-year lease. After seven months, Messer's employer moved his job to a distant city so he no longer has any use for the apartment. At common law:

- a. Messer may sublease or assign his lease without Orbis's consent, unless the lease contains a provision to the contrary.
- b. Messer may surrender the premises back to Orbis, and thereby terminate his obligation to pay any future rent, even if Orbis is unwilling to accept such a surrender.
- c. Messer would cease to be liable for rent under the lease if the landlord agrees to accept a return of the keys.
- d. All of the above.

40 Henrietta's grandmother pointed to some silver candlesticks and said: "These have been in the family since the Revolutionary War. When I die those will be yours."

- a. The grandmother has made a valid testamentary gift.
- b. The grandmother has made a valid inter vivos gift.
- c. The gift cannot yet be complete because Henrietta has not expressed acceptance.
- d. The gift does not appear to be complete because the donor has not expressed *in praesenti* donative intent.

41 After college, Keith moved back in with his parents. One day at the dinner table, Keith said to his high-school age sister: “Sis, since you like my Justin Bieber CD so much, you can have it.” The gift would be complete:

- a. Without need of anything further assuming the donor and donee live in the same household.
- b. If the CD were already in the donee’s possession, in her room.
- c. Both of the above.
- d. Only if Keith actually physically handed the CD to his sister,

42 Wharton and Yarrow were long time friends. A couple of years before his death, Wharton gave Yarrow a deed to his house, but retained a right to possess the house for life. He also told Yarrow: “You can have all the furniture in the house.” When Wharton died, however, his estate claimed the furniture.

- a. The delivery of the deed to the house cannot, under the law of gifts, logically be treated as a “delivery” of the furniture.
- b. Even if Yarrow took possession of the house immediately upon Wharton’s death, it would be too late for such possession to be considered a “delivery” of the furniture.
- c. It might be easier for Yarrow to assert that there was a delivery of the furniture if he was living together with

Wharton in the house, though it would still count against him that he and Wharton were not related.

- d. All of the above.

43 Proctor, on his deathbed, took off his ruby ring and handed to Grimm, saying: “Here, I won’t be needing this anymore. You take it.” Grimm said thank you and left wearing the ring.

- a. The gift would be presumptively revocable.
- b. The gift would be presumptively causa mortis.
- c. Both of the above.
- d. Because Proctor was on his deathbed, the gift could not have been an “inter vivos” gift.
- e. All of the above.

44 About to go into the hospital for a serious and risky operation, Deaton handed his war medals to his grandson, Edward and said: “Eddy, I want you to have these.” In light of the purpose of gifts causa mortis, the gift should be considered revoked if:

- a. Deaton was in an auto accident while driving to the hospital and was killed instantly.
- b. Deaton survived the operation and went home.
- c. Both of the above.
- d. None of the above. The gift would not be revocable once completed.

45 Raskind, believing himself to be on his deathbed, wanted to give \$10,000 cash to his favorite nephew, Billy. The money was not, however, nearby or handily available for making an immediate hand-to-hand delivery.

- a. Assume the money was in a safe deposit box. If Raskind delivered the sole key to the box to Billy, then Billy (as opposed to Raskind's estate) should be entitled to the money even if Billy doesn't retrieve the money till after Raskind's death.
- b. Assume the money was concealed in a secret place out in the woods. If Raskind told Billy where to find it, this information should logically be treated as equivalent to the "sole key" to a safe deposit box so the money should be Billy's (as opposed to the estate's) even if Billy doesn't go retrieve the money till after Raskind's death.
- c. Both of the above.
- d. None of the above.

46 While over at Helen's house, Jim picked up a book from the end table and opened it. Helen said: "If you want it you can have it." Jim replied, "Oh thank you. That's very nice of you." Helen said, "I just have a few more pages to read." Handing the book to Helen, Jim said: "Fine, I'll pick it up next week."

- a. It looks like the donor became the bailee of the donee.
- b. There could be no completed gift under these facts.

c. There is nothing in these facts that could constitute a delivery.

d. By holding possession of the book overnight, the donor would have "undone" any gift that might have occurred based on the parties' actions and words.

47 Grandma was on her deathbed when she said to Maura: "I want you to have the 1000 shares of Bank of America stock that I've been keeping for a rainy day. Here's the key to the locked box where the stock certificates are located. Go get the stock as soon as you can. I don't want it to go in my estate." Shortly afterwards, Grandma passed away;

- a. Grandma's estate would probably be held entitled to the stock if the "locked box" was in the same room as Grandma and Maura, and Maura did not retrieve the stock before Grandma's death.
- b. Maura would probably be held entitled to the stock if the "locked box" was a distant safe deposit box at a bank, even if Maura did not go retrieve the stock before Grandma's death.
- c. Both of the above.
- d. Maura would have an equally strong case for the stock irrespective of where the "locked box" was located or whether Maura went to retrieve the stock before Grandma's death.

48 O conveyed "to A for life and, six months after A's death to B and her heirs if B has then reached age 17." Both A and B were alive

at the time of conveyance. Under the traditional rule against perpetuities:

- a. B's future interest is void.
- b. B's future interest is valid only if B reaches age 17 *before* A's death.
- c. B's future interest is valid and A can serve as the measuring life.
- d. B's future interest is *void* since B must serve as the measuring life.

49 O conveyed "to A for life, remainder to A's first child to reach age (see below) and her heirs." A is alive but childless at the time of conveyance. Under the traditional rule against perpetuities, the future interest:

- a. Is valid if the stipulated age is 18.
- b. Is valid if the stipulated age is 25.
- c. Both of the above.
- d. None of the above. The future interest is void.

50 Modern courts have endeavored to avoid the "remorseless" application of the rule against perpetuities in several ways. Which of the following is *not* among them:

- a. The "wait and see" rule.
- b. The "done and finished" rule.

- c. Savings clauses.
- d. Abolishing the "all or nothing" rule for class gifts.

51 Grover and Hibbert are joint tenants. Grover has ousted Hibbert:

- a. In most states, Hibbert should be able to recover monetarily from Grover after the ouster.
- b. Hibbert should be able to successfully maintain an ejectment action against Grover.
- c. Both of the above.
- d. Grover's right of survivorship would be extinguished.
- e. All of the above.

52 Mike and Sandy Albertson, a married couple, bought Greenacre as tenants by the entirety in 2009. In 2010, Webb acquired Sandy's interest in Greenacre as satisfaction of a tort judgment. The jurisdiction follows the minority (and New York) approach to this kind of situation. Mike and Sandy have continued as the sole occupants of the property. Webb has:

- a. A right to share possession of Greenacre with Mike for as long as Sandy remains alive.
- b. A right to enjoy sole possession of Greenacre at Mike's death, provided that Mike predeceases Sandy.

c. A right to maintain an ejectment action against Mike if Mike ever refuses to let Webb join in possession of Greenacre.

d. All of the above.

53 Mike is wondering if, by being the only *owner* in occupancy of Greenacre, he could ever acquire a ripened title to sole ownership of the property. The answer is:

a. No.

b. Yes, no later than 2021.

c. Yes, in 2021 if Mike tells Webb today that he will “never let Webb join in actual possession of Greenacre.”

d. Yes, provided that he pays a fair rent to Webb.

54 Randall and Marcia Cantwell are married and live in a state that does *not* recognize the tenancy by the entirety. Since getting married, Randall saved some money from his job and bought a motorboat. Marcia took some of her personal inheritance and bought an SUV. Presumptively:

a. The SUV belongs solely to Marcia and the motorboat solely to Randall if they are in a community property state.

b. Both the SUV and the motorboat are shared 50-50 by Marcia and Randall if they are in a "common law" property state.

c. The SUV belongs solely to Marcia and the motorboat is shared 50-50 by her and Randall if they are in a community property state.

d. Both the SUV and the motorboat are shared 50-50 by Marcia and Randall if they are in a community property state.

55 A conveyance was made to "Pete and Woodrow Wilson and their heirs." The conveyance presumptively gave them:

a. A tenancy in common with each other.

b. A tenancy in common shared among themselves and their heirs.

c. A joint tenancy with right of survivorship.

d. A joint tenancy but without right of survivorship.

56 Assume that the conveyance was to "Pete and Woodrow Wilson and their heirs as joint tenants."

a. In some states the conveyance would give Pete and Woodrow a joint tenancy.

b. In some states the conveyance would give Pete and Woodrow a tenancy in common.

c. Both of the above.

d. In most states the conveyance would create a joint tenancy shared among Pete, Woodrow and their respective heirs.

57 Assume that Pete and Woodrow received a joint tenancy:

- a. If Pete mortgages his interest in order to get a loan, the joint tenancy would be severed.
- b. If Pete mortgages his interest in order to get a loan and then dies (predeceasing Woodrow), Woodrow would be the sole owner by right of survivorship.
- c. If both Pete and Woodrow both sign a mortgage of both their interests in order to get a loan, they would become tenants in common.
- d. All of the above.

58 Assume that Pete and Woodrow received a tenancy in common. Assume also that Pete entered into and has remained in sole possession:

- a. Pete could never acquire a sole title by adverse possession because his possession is deemed to be the possession of both him and his co-tenant.
- b. Pete would, under the majority rule, presumptively be liable for rent or damages to Woodrow, who is equally entitled to enjoy the benefits of possessing the land.
- c. If Pete committed an ouster of Woodrow and Woodrow did not sue or re-enter, Pete would probably be able acquire a sole title by adverse possession no later than 10 years after the ouster.
- d. All of the above.

59 Assume that Pete and Woodrow had a tenancy in common. Pete leased his own interest in the premises to Fred for three years:

- a. Such a lease would constitute an ouster of Woodrow unless Woodrow had consented to Pete's making the lease.
- b. The rights of survivorship would be destroyed.
- c. The tenancy in common would become a tenancy in severalty.
- d. Woodrow would be entitled to share possession of the premises with Fred.

60 Archie, Daniel and Millen were joint tenants of Bellyacre. Archie conveyed his interest to Grayne. If Grayne then dies intestate:

- a. Daniel and Millen will own the land in equal shares (50-50).
- b. The land will be owned in equal thirds by Daniel and Millen and Grayne's heir.
- c. The land will be owned by Daniel and Millen and Grayne's heir, and they all will be joint tenants with one another.
- d. Daniel will become the sole owner of the land if he survives Millen.

**Omitted: Questions re Estate System and Future Interests.  
See "Estate System-Review Questions" at [humbach.net](http://humbach.net).**

<End of examination>