

PACE UNIVERSITY SCHOOL OF LAW

*Master
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EXAMINATION IN PROPERTY
PROFESSOR HUMBACH

DECEMBER 16, 1980
PAGES TO THIS EXAM: 17

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.

YOU WILL HAVE 3 HOURS TO COMPLETE THE ENTIRE EXAMINATION

GENERAL INSTRUCTIONS:

This examination consists of 35 multiple choice questions and two essay questions. The multiple choice questions are to be answered on the answer sheet provided. Write your examination number on the answer sheet in the space provided. Write it NOW.

Answer each multiple choice question selecting the best answer. Indicate your choice on the answer sheet by blacking through the appropriate number with the special pencil provided. Select only one answer per question; if more than one answer is indicated, the question will be marked wrong.

If you want to change an answer, you must fully erase your original answer and blacken through the one which you consider correct.

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

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 that existence of any facts or agreements not set forth in the questions.

(Continued)

MULTIPLE CHOICE

1. While shopping for groceries at the A & P one afternoon, Dexter Dorp found a notebook belonging to his classmate, Sally Singe, lying on the floor. As he passed through the check-out line, the cashier tried to charge Dexter for the notebook, but Dexter adamantly asserted that it was "his"--pointing out that it contained 38 pages of Property notes. The store manager came over and claimed the right to keep the notebook, observing that Dexter was obviously not "Sally Singe" whose name was written on the cover.
 1. Dexter would probably have a better right to possess the notebook than the A & P in a jurisdiction following the so-called English rule.
 2. Dexter would probably have a better right to possess the notebook than the A & P in a jurisdiction following the so-called American rule.
 3. Both 1 and 2 above.
 4. Both 1 and 2 above, but only if the jurisdiction applied the special rule applicable to "mislaid" property.

2. If, in the preceding question, Dexter had found the notebook in the back-room while running after his 2 1/2 year old Pek-anese named Pixie, then:
 1. In an American-rule state, it would be important for Dexter to be able to show that, under the circumstances, he had a license to be present in the back-room.
 2. In an English-rule state, it would be important for Dexter to show that, under the circumstances, he had a license to be present in the back-room.
 3. Both 1 and 2 above.
 4. Neither 1 nor 2 above.

3. Assume that, right or wrong, the A & P insisted on keeping possession of the notebook and Dexter agreed, accepting a receipt for it. Later that day, Sally called the A & P and, at her request, the manager said that he would hold it for her. The next day, Dexter's girlfriend showed up and said she was Sally Singe and the A & P manager let her take the notebook. Later Sally came in, found out what had happened and became furious. Sally has:
 1. A good replevin action against the A & P.

2. An action for damages against the A & P even if the A & P was not negligent in letting Dexter's girlfriend have the notebook.
 3. No action for damages against the A & P because the bailment was gratuitous.
 4. No action for damages against the A & P because the A & P was Dexter's bailee, not hers.
4. Suppose in the preceding question that, after Sally called, the A & P burned to the ground and the notebook was lost in the conflagration (instead of turned over to Dexter's girlfriend).
1. Sally would still have a good replevin action against the A & P.
 2. Sally might well have an action for damages against the A & P, but she would have the burden of proving that the A & P was negligent.
 3. Same as 2 above, except the A & P would have the burden of proving that it was not negligent in order to avoid liability.
 4. Sally would have no action against the A & P because this was a gratuitous bailment.
5. Franklin Farber, a dyer by trade, accepted a bolt of raw cloth worth \$75 in payment of a bill and, by skillful dyeing with 15 cents' worth of dye, increased its value three-fold. The cloth had been stolen (unbeknownst to Dyer) from Clinton Clame.
1. Clame may recover the cloth under the doctrine of specification.
 2. Apart from the doctrine of specification, this is a case where the equities would clearly favor Farber.
 3. Clame cannot replevy the cloth as this would give him possession of dye belonging to Farber.
 4. As a bona fide purchaser for value, Farber's right is superior to Clame's.

6. Straight sold a watch to Rippoff and delivered possession against Rippoff's promise to pay the price in full on the first day of the following month.
 1. If Rippoff does not pay, Straight can replevy the watch.
 2. If Rippoff does not pay, Straight can rescind the transaction even if Rippoff has resold the watch to a bona fide purchaser for value.
 3. If Rippoff does not pay, but truly intended to pay, Straight has only a contract action for the price.
 4. All of the above.

7. In 1965, Dalton entered into adverse possession of land belonging to Smythe. In 1970, Arcon Reservoir Co. flooded a portion of the land with a "permanent" dam downstream. In 1975, Dalton acquired a ripened title to the land by adverse possession.
 1. Dalton had no action against Arcon in 1971.
 2. Dalton still had no action against Arcon in 1976.
 3. Smythe had an action against Arcon for damages equal to the permanent injury to the land in 1971.
 4. Dalton's claim against Arcon for damages equal to the permanent injury to the land would be recognized in some (but not all) jurisdictions even before his title ripened.

8. In an action for damages by a possessor of chattels against a wrongdoer whose negligence has injured the chattels:
 1. The rightfulness of the plaintiff's possession must be shown.
 2. The plaintiff's recovery is limited to the value of his interest in the chattels.
 3. The wrongdoer may not defend by asserting a jus tertii unless the plaintiff raises the issue.
 4. The wrongdoer may not attack the title of the plaintiff because, as against a wrongdoer, possession is title.

9. Anatoli Pidgen caught a wild dove. He kept it in a cage for six months, but it then escaped and flew to land owned by Gribb. As the dove sat on a tree branch, it was trapped and then taken by Fromm, who was on Gribb's land without permission.
 1. Anatoli has a better right to possession of the dove than Fromm or Gribb.
 2. Gribb has a better right to possession of the dove than Fromm or Anatoli.
 3. Fromm has a better right to possession than Gribb, but not better than Anatoli.
 4. Fromm has a better right to possession than Gribb or Anatoli.

10. A deed to Blackacre states that the conveyance is "to Pierson for life, remainder to his heirs." If the rule in Shelley's case applies:
 1. Pierson has a fee simple absolute.
 2. Pierson has both the life estate and a reversion.
 3. Both 1 and 2 above.
 4. The deed created a contingent remainder in Pierson's heirs.

Facts for questions 11 to 14.

On November 1, 1980, Harold Hope was sitting by the deathbed of Larry Lastwell. As the doctor left the room shaking his down-turned head, Lastwell said to Hope: "I want you to have this photograph which I purchased on 42nd Street. I won't be needing it anymore." Hope took the photo from Lastwell's outstretched hand and subsequently left with it.

11. Lastwell did not succumb to the illness, and now sues for the return of the photograph.
 1. Lastwell will probably be able to win if Hope is dead.
 2. Lastwell will probably be able to win even if Hope is alive.
 3. Both 1 and 2 above are correct.
 4. Lastwell has attempted a testamentary gift, and the gift has failed.

12. Suppose Lastwell did succumb to the illness and the photograph was found among his effects at death.

1. The attempted gift was presumptively inter vivos.
2. Hope will probably be unable to recover the photograph.
3. The delivery by Lastwell to Hope would have been incomplete because Lastwell did not give up control permanently (i.e., because Lastwell later took back possession).
4. No delivery would be required in this case since the attempt was to make, in effect, a testamentary gift.

13. Suppose that, rather than hand the photograph to Hope, Lastwell handed Hope the key to a bureau (next to the bed) where the photograph was kept. There were no other keys.

Select the best answer:

1. The gift would be complete when Lastwell held out the key to Hope and Hope first formed the intention to accept.
2. The gift would be complete when Hope accepted and took the key.
3. The gift would be complete when Hope used the key and took possession of the photograph, provided Lastwell were still alive when Hope did so.
4. The gift would be complete when Hope used the key and took possession of the photograph even if Hope did so several days later, after Lastwell's death.

14. The delivery requirement in the law of gifts arose:

1. As an evidentiary fact, to provide concrete evidence of donative intent.
2. As an operative fact, to give the donee a protected possessory interest which is at the root of the "title" concept at common law.
3. As an evidentiary fact, to impress the donor with the significance of giving.
4. As a operative fact, to prevent fraud on the courts by donors who change their minds.

* * *

15. Senghali Pete gave Sally Sweet
A ring, for they were to wed.
Then Sally Sweet met Harold Neet
And ran off with Harold instead.

1. In virtually all jurisdictions, as a matter of common law, Senghali Pete could recover the ring.
2. As a matter of common law, Senghali Pete could recover the ring in virtually no jurisdiction.
3. In New York, Senghali Pete could probably recover the ring (or its value).
4. None of the above.

* * *

Facts for questions 16 to 21.

T conveyed Blackacre "to W for life, then to A and his heirs, but if A dies before B, then to the brothers B and C and their heirs."
T died intestate.

Immediately following the conveyance:

16. T has

1. reversion
2. remainder
3. possibility of reverter
4. none of the above

17. W has

1. life estate
2. fee simple
3. determinable life estate
4. none of the above

18. A has

1. executory interest
2. fee simple subject to condition subsequent
3. vested remainder in fee simple subject to an executory limitation (executory interest)
4. contingent remainder in the fee simple absolute
5. none of the above

19. The concurrent estate of the brothers B and C, however otherwise described, would presumptively be:
 1. a joint tenancy
 2. a tenancy in common
 3. a tenancy by the entirety
 4. none of the above

20. B and C have
 1. executory interest
 2. contingent remainder in fee simple absolute
 3. vested remainder in fee simple, subject to divestment
 4. vested remainder in fee simple absolute
 5. none of the above

21. Some of the answers you have given above would be different if
 1. the common law prior to the Statute of Uses was in effect
 2. the Rule in Shelley's Case had been abolished
 3. the Doctrine of Worthier Title had been abolished
 4. the Doctrine of Destructibility of Contingent Remainders had been abolished

22. O conveyed Swampacre "to A for life, remainder to B and his heirs if B attends A's funeral." B has:
 1. nothing
 2. contingent remainder
 3. executory interest of the shifting type
 4. executory interest in the springing type
 5. none of the above

23. O conveyed Happyacre "to A and his heirs until the premises are no longer used as a massage parlor, then to O." Immediately following the conveyance
1. A has a fee simple on condition subsequent; O has a right of entry
 2. A has a fee simple determinable; O has a possibility of reverter
 3. A has a determinable life estate; O has a reversion
 4. A has a fee simple conditional; O has a reversion
24. If the final phrase in the preceding question ("then to O") had instead read "then to B and his heirs if B is then still alive, B would have
1. a vested remainder
 2. a contingent remainder
 3. an executory interest of the springing type
 4. an executory interest of the shifting type
 5. nothing
25. O conveyed Blackacre "to H and W and their heirs." H and W are married. Immediately following the conveyance (in a jurisdiction following the traditional common law interpretation):
1. H has a life estate (possessory) plus a right of survivorship
 2. H and W have a joint tenancy
 3. H and W have a tenancy by entireties
 4. H has an undivided 1/2 as tenant in common

26. O conveyed Greenacre "to Able, Baker and Charlie and their heirs as joint tenants with rights of survivorship and not as tenants in common." Later Charlie conveyed his interest to Baker.
1. If Baker dies first, Able will have sole title.
 2. If Able dies first, Baker will have sole title.
 3. Both 1 and 2 above.
 4. This question cannot be answered because it does not stipulate whether the conveyance by Charlie to Baker was "as joint tenant" or "as tenant in common".
27. If, after the above conveyance by Charlie to Baker, the sole occupant was Baker:
1. Under the majority rule, Baker would be liable to Able for mesne profits on a theory of constructive possession.
 2. Able's chances of recovering mesne profits would, under the majority rule, depend on his showing an ouster.
 3. Able will probably lose his right to possession if he does not act within the period of limitations on ejection.
 4. In most states, the Statute of Anne would be a basis, under these facts, for a recovery by Able from Baker.
28. In 1955, in order to grind corn, Spin placed a watermill on land he owned straddling the Rancor River. Last year, Dripp began using water from the river to generate steam, reducing the flow (and power generated at Spin's Mill) by 10%. Spin comes to you for advice. If the state applies the majority American common law rule, you would advise that:
1. Spin is probably protected on a "first in time, first in right" theory.
 2. Spin has probably acquired a right to the 1955 flow level by prescription (the local period of limitations on ejection is 20 years).
 3. Spin's rights as against Dripp with respect to the use of the steam would depend on whether Dripp's use "materially" reduced the the flow of the steam.
 4. Spin's rights as against Dripp with respect to the use of the steam would depend on whether the reduction in flow was indispensable to Dripp's reasonable use of the steam.

29. Blueacre and Greenacre are adjacent parcels. Four feet from their common boundary, on Blueacre, there is a 20 foot deep precipice or drop-off. The owner of Greenacre, whose house is two feet from the common boundary, is concerned that his house may collapse in a landslide into the depression. Blue, who owns Blueacre
1. Could not conceivably be liable for damage to the house in case of a landslide into the depression.
 2. Would probably have an obligation to shore up against a landslide even if the drop-off is a part of the natural contour of the land.
 3. Would be liable for injury to the house if he excavated the drop-off and, in doing so, failed to use ordinary care to prevent a landslide.
 4. May, according to some authorities, be absolutely privileged to excavate his own land without liability irrespective of any injury which may result to Greenacre or structures on it.

Facts for questions 30 to 35.

Conch decided to sell his house and asked Brackish, a real estate broker, to find him a purchaser. No written brokerage agreement was signed and no particular understandings were reached beyond Brackish's agreement to try to find a buyer. Shortly thereafter, Brackish produced Periwinkle, who orally offered to buy Conch's house for the asking price, to close "as soon practicable."

30. At this point:
1. Conch is liable for a commission on the above facts alone.
 2. Conch is liable for a commission if Periwinkle is ready, willing and able to purchase as he has offered to do.
 3. Conch would be liable for a commission only if he accepts Periwinkle's offer.
 4. Conch is legally obligated to sell to Periwinkle; indeed, the "offer" is really an acceptance of Conch's offer.
31. Subsequently, Conch and Periwinkle sign a standard form contract of sale (such as is used in this locality). At this point:

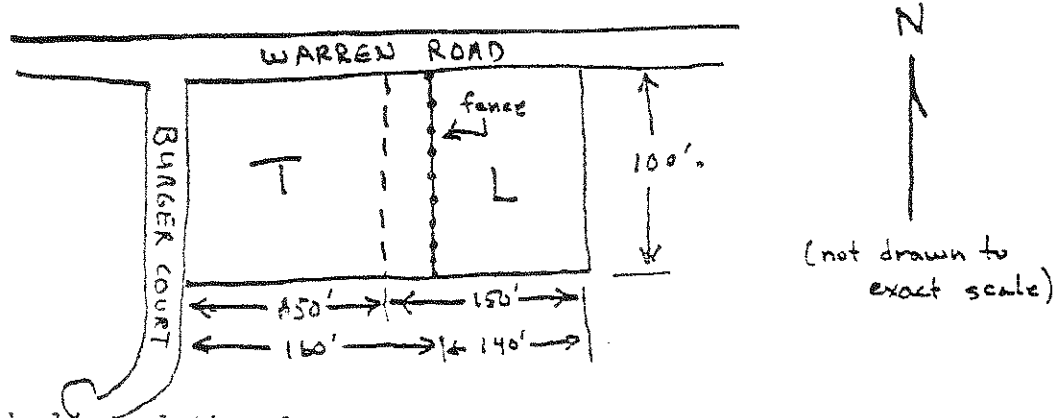
1. Conch is almost certainly liable for a commission if the contract contains no conditions relating to Periwinkle's "ability" to purchase (e.g. financing conditions).
 2. Conch and Periwinkle can begin serious negotiation of the details of the sale.
 3. Time is of the essence at law and equity, unless the contract provides to the contrary.
 4. All of the above.
32. The contract provides that Conch will convey title to Periwinkle. This title must be:
1. Conveyed by warranty deed, unless the contract provides for a different type of deed.
 2. Be insurable by a title insurance company without conditions (except as provided in the contract), unless provided to the contrary.
 3. Be free of reasonable doubt in law or fact, except as provided in the contract.
 4. All of the above.
33. If Conch's title turns out to be unmarketable, Periwinkle may:
1. Reject the title and refuse to close.
 2. Rescind the closing and get his money back.
 3. Both of the above.
 4. None of the above.
34. If Conch's property is subject to an equitable servitude restricting its use to residential purposes:
1. Periwinkle would be deemed to have notice of it and, as grantee, be bound by it if the restriction was contained in a recorded deed in the chain of title.
 2. Periwinkle could not reject the title, even if the contract did not provide for the title to be conveyed subject to it, since Periwinkle is buying for residential purposes.
 3. The title will revert to some remote grantor if the property is used for commercial purposes.

4. There must be a common plan or scheme of development covering Conch's neighborhood.
35. If there is a common plan or scheme of development covering Conch's neighborhood, Conch (or Periwinkle, as his successor) might be able to enforce the restriction on the neighbors:
1. As a covenant running with the land.
 2. On an extended version of third-party beneficiary theory.
 3. On an implied reciprocal equitable servitude theory.
 4. All of the above.

ESSAY QUESTIONS

I

Montrose owned a wooded parcel of land which was divided into two parts by a fence running from north to south as follows:



Montrose believed the fence to be in the exact center of his property but, as shown above, it was not. In any event, in 1962, Montrose delivered a deed to Tremont conveying the western part of the parcel, describing the conveyed portion as:

Beginning at a point at the southeast corner of the intersection of Warran Road and Burger Court; running thence due East 150' to a fence; running thence due South a distance of 100'; running thence due West a distance of 150' to Burger Court; running thence due North along said Burger Court to the point or place of beginning.

Tremont did not record this deed until 1964. However, in 1963, Montrose delivered a deed to Lanthrop conveying the eastern part of Montrose's original parcel and describing the conveyed portion by courses and distances, without mentioning the fence. This course-and-distances description included all of Montrose's original parcel east of the broken center line shown on the drawing. Lanthrop recorded this deed immediately.

From 1962 until 1975, both parcels remained in their natural state, through Tremont posted "No Trespassing" notices on the fence (facing east), and occasionally he walked on and took firewood from the strip between the broken center line and the fence. In 1975, Lanthrop started to build a house on his parcel and, in preparation, had a survey made. The survey revealed what Lanthrop and Tremont had never before suspected, namely that the fence was only 140' from Lanthrop's eastern boundary and 160' from Burger Court. But both Lanthrop and Tremont had purchased on the express basis that the lot he was acquiring, respectively, was 150' wide.

A dispute as to the proper location of the boundary ensued. As an offer of compromise, Lanthrop offered to sell the disputed strip to Tremont for \$500, and Lanthrop even went so far as to prepare and sign a quitclaim deed to "any interest that I may have in lands west of the existing fence". At one point, in an effort to induce Tremont to accept his offer, Lanthrop let Tremont have the deed to read. Tremont never accepted the offer and never paid the \$500, but in 1976 he nevertheless had the deed recorded. In 1979, Tremont sold to Dupe, the deed containing the

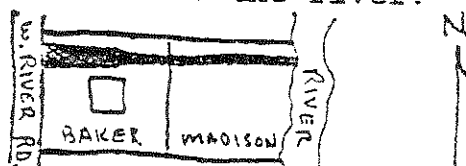
same description as the deed given by Montrose to Tremont. At the time, Dupe was totally unaware of the foregoing, except as set forth in the recorded deeds; however, now all of the facts are known and can be proved by admissible evidence.

Lanthrop has sued Dupe in ejectment to recover possession of the disputed strip. The local period of limitations on ejectment is 10 years.

Discuss.

II.

Connors owned some property down by the river. This property consisted of a strip of land running between the river and West River Road, which parallels the river. On this strip of land, near the road, there stood (and still stands) a house which overlooks the river. A visible unpaved driveway runs from the road to the house, and at the house the driveway becomes a wide and visible foot path which continues down to the river.



Owing to financial difficulties, Connors was forced to raise money by selling off assets. In this connection, Connors sold to Baker the western portion of the strip. The land sold bordered on the road and included the house which was located at the approximate center of the newly carved out lot. The land retained by Connors was accessible only from the river. However, Connors owned a boat which he kept on the river at an upstream boat yard, near his home.

Nothing was said in the deed to Baker concerning an easement of way across Baker's lot. The deed to Baker did contain the following provision:

"The grantee and his heirs and assigns shall have a negative easement of view over the lands retained by the grantor; and the grantor, on behalf of himself, his heirs and assigns, agrees that no structure shall ever be erected on the lands retained by the grantor which would interfere with or obstruct the view of the river from the house presently situated on the lands conveyed to the grantee hereunder. These restrictions are intended to be covenants running with the land constituting an equitable servitude and an easement upon the lands retained by grantor for the benefit of the land conveyed to grantee hereunder."

This deed was duly recorded immediately after the conveyance to Baker was made.

Connors experienced further financial difficulties and was forced to sell the remainder of his riverfront property to Madison about one month later. Madison proposed to build a house on his newly acquired land, and Madison's proposed house would obstruct Baker's view. In addition, Madison claims a right to drive his car across Baker's property, along the old driveway and foot path between the road and Madison's land. Baker opposes Madison's plans and consults you for advice.

A) On what possible basis (or bases), if any, may Madison be enjoined from building his house as proposed? If you believe there is more than one possible legal theory upon which an injunction may be based, be explicit about it.

B) On what possible basis (or bases) may Madison claim a right to drive accross Baker's land? Identify any weaknesses which may exist in possible arguments supporting Madison's claim to the right of way.

END OF EXAMINATION