

PACE UNIVERSITY SCHOOL OF LAW

PROPERTY
DEAN HUMBACH
FINAL EXAMINATION

VERSION A

DECEMBER 18, 1985
TIME LIMIT: 3 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 30 multiple choice 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 blackening 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 and this question booklet.

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.

Assume that the applicable period of limitations on ejectment is ten years.

1. Willy Whitestone was the owner of Blackacre at his death in 1979. Under Willy's will, his nephew, Clive, received a life estate in Blackacre with the remainder to Clive's brother, Darrel. Last summer, Bobby Broadaxe intruded into Blackacre without permission and chopped down about three acres of walnut trees, reducing the fair market value of Blackacre by \$100,000. Clive is a young man.

1. Under the almost universal rule, Clive should be able to recover \$100,000 in damages from Broadaxe.

2. For Clive to recover \$100,000 from Broadaxe, Clive would have to rely on a jus tertii under which he cannot claim.

3. As a result of Broadaxe's behavior, Clive's actual loss, in monetary terms, is the \$100,000 depreciation in fair market value of the land.

4. As a result of Broadaxe's behavior, Clive's actual loss, in monetary terms, is significantly less than the \$100,000 depreciation in fair market value of the land.

2. Assume again that Clive has a life estate in Blackacre with the remainder held by Clive's brother, Darrel. Last summer, Bobby Broadaxe intruded into Blackacre without permission and chopped down about three acres of walnut trees, reducing the fair market value of Blackacre by \$100,000. In order to compute the amount of Clive's loss for purposes of determining the compensation to which Clive is ultimately entitled, which additional facts would we need to know?

1. Clive's age, Broadaxe's age, the applicable discount (interest) rate, and the chances that Clive will outlive Darrel.

2. Clive's age, the applicable discount (interest) rate, and the chances that Clive will outlive Darrel.

3. Clive's age and the applicable discount (interest) rate.

4. None of the above. No additional facts would be needed.

3. Assume again that Clive has a life estate in Blackacre with the remainder held by Clive's brother Darrel. Last summer, Clive chopped down and sold about three acres of walnut trees, reducing the fair market value of Blackacre by \$100,000.

1. Darrel would have a trespass action against Clive.

2. Clive's actions leading to the destruction of the trees should make Clive liable to Darrel under the doctrine of waste.

3. Clive's actions leading to the destruction of the trees should be privileged because a life tenant has the right to take reasonable estovers.

4. As life tenant with sole possession of the trees, all decisions about what to do with the trees during Clive's lifetime are properly reserved to Clive.

4. Assume again that Clive has a life estate in Blackacre with the remainder held by Clive's brother, Darrel. Assume also again that Bobby Broadaxe intruded into Blackacre without permission last summer and chopped down about three acres of walnut trees, reducing the fair market value of Blackacre by \$100,000. If the court did allow a recovery of \$100,000 from Broadaxe, what might be a suitable disposition of the money recovered, giving due recognition to the losses of all concerned?

1. Invest the \$100,000 and allow Clive to use the interest earned on it during his lifetime, with the principal to be paid to Darrel at Clive's death.

2. Pay Darrel the present value of the right to receive \$100,000 at Clive's death, as predicted by mortality tables, and pay the rest of the \$100,000 to Clive.

3. Either of the above should be a suitable disposition, giving due recognition to the losses of all concerned.

4. None of the above. Clive has only a life estate with no rights at all with respect to the trees, apart from the right to take reasonable estovers.

5. Under Willy Whitestone's will, his nephew, Clive, received a life estate in Blackacre with the remainder to Clive's brother, Darrel. Blackacre remained vacant after Willy's death until 1980, when Hugh B. Housetile entered into actual adverse possession of Blackacre. Last summer, Bobby Broadaxe entered Blackacre without anyone's permission and chopped down about three acres of walnut trees, reducing the fair market value of Blackacre by \$100,000. Hugh has sued Broadaxe in trespass.

1. The suit will be dismissed. As an adverse possessor, Hugh has no standing to recover damages in trespass for injury to land which he does not own.

2. Clive, as an owner of the land, would be deemed in constructive possession and therefore should be allowed to sue in trespass, now that courts no longer follow the outmoded rule requiring actual possession to sue in trespass.

3. Under the almost universal rule, Hugh would be able to recover \$100,000 in damages from Broadaxe.

4. Some cases would not allow not Hugh to recover \$100,000 from Broadaxe, thereby allowing Broadaxe to defend by asserting a jus tertii under which he cannot claim.

6. Assume again that, under Willy Whitestone's will, his nephew, Clive, received a life estate in Blackacre with the remainder to Clive's brother, Darrel. If Blackacre remained vacant after Willy's death until 1980, when Hugh B. Housetile entered into actual adverse possession of Blackacre:

1. Hugh can acquire a full (fee simple) ripened title to Blackacre in 1990.

2. Hugh cannot acquire a full (fee simple) ripened title to Blackacre until at least ten years after Clive's death.

3. In 1990, Hugh can acquire a ripened title to Blackacre which will entitle Hugh to possession against the whole world until Clive's death.

4. Both of the above.

7. Assume that Willy Whitestone's will purported to leave a life estate in Blackacre to his nephew, Clive, with the remainder to Clive's brother, Darrel. If Hugh B. Housetile entered into actual adverse possession of Blackacre in 1980, two years before Willy's death:

1. Hugh can acquire a full (fee simple) ripened title to Blackacre in 1990.
2. Darrel's right to sue in ejectment might be extinguished by the Statute of Limitations before Darrel is ever in a position to assert it.
3. If Darrel dies intestate in 1988, within three weeks after the death of Clive, Darrel's sole heir, Marcus, will still have until 1990 to bring an ejectment action against Hugh.
4. All of the above.

8. Assume again that Willy Whitestone's will purported to leave a life estate in Blackacre to his nephew, Clive, with the remainder to Clive's brother, Darrel. If Hugh B. Housetile entered into actual adverse possession of Blackacre in 1980, two years before Willy's death:

1. As sole beneficiary of all of Hugh's property under his will, Nelly Notorius could acquire a ripened full (fee simple) title to Blackacre in 1990 even if Hugh dies intestate in 1986 before the deaths of Darrel and Clive.
2. As sole beneficiary of all of Hugh's property under his will, Nelly Notorius could acquire a ripened full (fee simple) title to Blackacre in 1990 even if Hugh dies intestate in 1988 after the deaths of Darrel and Clive.
3. Both of the above.
4. None of the above. Prior to 1990, if not later, Hugh could have no property rights in Blackacre, and no interest in Blackacre could pass as property under Hugh's will.

9. Assume that in 1978, Willy Whitestone, while owner and possessor of Blackacre, had made conveyances by deed of the west half of Blackacre to his nephew, Clive, and of the remaining land to Clive's brother, Darrel. Neither Darrel nor Clive ever took possession of his respective parcel, but Clive erroneously believed that he was the sole owner of all of Blackacre. In 1980, Clive delivered a deed to Hugh B. Housetile, purporting to convey all of Blackacre to Hugh. Hugh then entered into possession, but he has had actual possession only of a portion of the western half of Blackacre.

1. Hugh would appear to have sufficient actual or constructive possession of Blackacre to remove squatters who might set themselves up on an unoccupied part of the western half (which he owns).

2. Hugh would appear to have sufficient actual or constructive possession of Blackacre to remove squatters who might set themselves up on an unoccupied part of the eastern half (which he does not own).

3. Both of the above.

4. By continuing his current extent of possession, Hugh could be the sole owner of Blackacre by 1990.

10. Assume that in 1980, Willy Whitestone, while owner and possessor of Blackacre, had made conveyances by deed of the west half of Blackacre to Clive and of the remaining land to Clive's brother, Darrel. Both Darrel and Clive have been in possession since 1980, and both have erroneously believed that a fence running through the middle (almost) is the boundary between their respective halves of Blackacre. The actual boundary is parallel to the fence and 10' on Darrel's side of the fence. Nonetheless, Darrel has continuously possessed right up the fence, thus intruding on a 10' strip belonging to Clive. Even if the stated facts continued until 1992:

1. If Darrel learned the true location of the original boundary in 1992, Darrel could defeat the ripened title in himself by removing from possession of the strip, provided Darrel's possession was attributable essentially to an honest mistake of fact.

2. There are cases which would deny Darrel a ripened title to the strip if Darrel's possession was attributable essentially to an honest mistake of fact.

3. Prior to 1990, Darrel could defeat the ripening of title in himself by offering to allow Clive to use the strip whenever Clive asked to do so.

4. Clive should be able to succeed in defeating the ripening of title in Darrel by offering, before 1990, to allow Darrel to use the strip so long as Darrel wants.

11. Assume in the preceding question that title to the strip ripens in Darrel. If the Statute of Limitations on trespass to land is 3 years, then by suing Darrel in 1992:

1. Clive ought still to be able to recover damages for injuries to the strip and mesne profits for the three years up until the date of the suit.

2. Clive ought still to be able to recover damages for injuries to the strip and mesne profits between 1989 and the date in 1990 that title to the strip ripened in Darrel.

3. Clive would get nowhere since he would no longer have standing to maintain a trespass action with respect to the strip.

4. Clive ought be able to recover damages in trespass providing that he has at least gotten back possession of the strip by the date that he commences the action.

12. Richard N. Midas decided to make a gift of his ruby "pinky" ring to his friend, Dicky Dorque. Richard handed the ring to his secretary and told him that Dicky would be in later that day, and that the secretary should give the ring to Dicky. As a result of this:

1. There was a gift to the secretary of the ring, subject to a condition subsequent that the secretary re-give the ring to Dicky.

2. If the secretary took off to parts unknown with the ring, the secretary would be guilty of common law larceny.

3. The secretary became a bailee of the ring, with Richard as the bailor.

4. The secretary became a bailee of the ring, with Dicky as the bailor.

13. Suppose that Richard N. Midas, wanting to give his ruby "pinky" ring to his friend, Dicky Dorque, called Dicky on the phone and told Dicky to send someone over to pick up the ring. If a messenger employed full-time by Dicky picked up the ring on Dicky's instructions:

1. The messenger would probably be considered bailee of the ring for Dicky.

2. Richard could probably not effectively change his mind about the gift to Dicky, even if the messenger still has the ring.

3. Delivery of the ring was probably complete when it was handed to the messenger.

4. All of the above.

14. Suppose that Richard N. Midas, wanting to give his ruby "pinky" ring to his friend, Dicky Dorque, called Dicky on the phone and told Dicky "I'm giving you my ruby ring. Come over and pick it up". If Dicky said: "Great! I accept.", then:

1. Richard could still lawfully refuse to hand over the ring when Dicky comes to pick it up.

2. No delivery would be required to complete the gift if their conversation was recorded by Dicky, thereby giving incontrovertible other evidence of the gift.

3. Richard, the donor, has become the bailee of the donee.

4. The gift would presumptively be a gift causa mortis.

15. Randy Marathon, wanting to give his old running shoes to his friend, Curtis Canby, called Curtis on the phone and told Curtis "I'm giving you my running shoes which are in my safe-deposit box down at the bank. Come over and pick up the key to the box". Curtis Canby was curt as can be and said merely: "Accepted". He later picked up Randy's only key to the box.

1. Curtis would have title to the shoes.

2. No delivery would be required to complete the gift if their conversation was recorded by Curtis, thereby giving incontrovertible other evidence of the gift.

3. No delivery should be required to complete the gift because delivery of the key to the box gives sufficient evidence of the gift to satisfy the evidentiary requirement of delivery.

4. All of the above.

16. Suppose that Randy Marathon, wanting to give his old running shoes to his friend, Curtis Canby, wrote Curtis a note stating: "I'm giving you my old running shoes. You may come over and pick them up at your convenience, but by this note I mean to make them yours." If Curtis has received the note, but has not yet responded to it, then:

1. Curtis would not yet have title to the shoes because, having not responded to the note, he has not met the requirement of acceptance.

2. Curtis would not yet have title to the shoes because there has neither been delivery nor acceptance.

3. No delivery of the shoes should be required to complete the gift because delivery of the note gives sufficient evidence of the gift to satisfy the evidentiary requirement of delivery.

4. No delivery of the shoes should be required to complete the gift because delivery of the note should serve in lieu of delivery of the shoes themselves.

17. When Albie Gonaway was about to undergo a serious and possibly fatal operation, he wanted his loyal servant, Jimmy Cracorn, to have his gold wristwatch after his death. In Jimmy's presence, Albie said: "I'm giving you my wristwatch" and handed the watch to Jimmy. Under the usual presumption for such cases:

1. Albie would be entitled to get the watch back at any time.
2. If Albie subsequently wrote a valid will, specifically bequeathing the same watch to Samantha, then Samantha should have a better claim to the watch than Jimmy after Albie's death in the operation.
3. If Albie had previously written a valid will, specifically bequeathing the watch to Samantha, then Jimmy should have a better claim to the watch than Samantha after Albie's death in the operation.
4. All of the above.

18. When Albie Gonaway was about to undergo a serious and possibly fatal operation he wanted his loyal servant, Jimmy Cracorn, to have his gold wristwatch after his death. In Jimmy's presence, Albie said: "I'm giving you my watch" and handed the watch to Jimmy. Under the usual presumption for such cases:

1. Jimmy should be entitled to the watch even if Albie dies in an automobile accident on the way to the hospital.
2. Jimmy should be entitled to the watch even if Albie dies in an automobile accident on the way home from the hospital after a complete recovery from the operation.
3. Both of the above.
4. Jimmy's estate should be entitled to the watch if Jimmy dies before Albie even undergoes the operation.

19. When Albie Gonaway was about to undergo a serious and possibly fatal operation, he wanted his loyal servant, Jimmy Cracorn, to have his gold wristwatch after his death. Albie wrote Jimmy a note stating: "I'm giving you my watch. You may come over and pick it up at your convenience, but by this note I mean to make the watch yours."

1. The watch should be Jimmy's if Jimmy picks up the watch prior to Albie's death.
2. The watch should be Jimmy's if Jimmy received the note prior to Albie's death, even if Jimmy has not yet responded to it.
3. The watch could be Jimmy's even if Jimmy received the note after Albie's death, but only if the note was subscribed by Albie and attested by witnesses in accordance with the Statute of Wills, and the court can find testamentary intent.
4. All of the above.

20. When Albie Gonaway was about to undergo a serious and possibly fatal operation, he wanted his loyal servant, Jimmy Cracorn, to have his gold wristwatch after his death. Albie wrote Jimmy a note stating: "I'm giving you my watch. You may come over and pick it up at your convenience, but by this note I mean to make the watch yours." The note was signed by Albie and attested by witnesses in accordance with the Statute of Wills:

1. If Jimmy received the note prior to Albie's death, title to the watch could have vested in Jimmy, subject to revocation, immediately upon receipt of the note.

2. If Jimmy did not receive the note until after Albie's death, title to the watch could have vested in Jimmy only at the moment of Albie's death, provided that a court could find testamentary intent.

3. Both of the above.

4. If Jimmy did not receive the note until after Albie's death, title to the watch could not have vested in Jimmy at all.

21. Marv Ellis wanted his friend, Rita Booke, to have his 4 carat diamond brooch, which was worth \$8000. Marv wrapped the brooch in a package and called Reliable Deliveries Inc., a professional messenger service, to deliver the brooch to Rita. The wrapper on the parcel made it obvious that the package contained a very valuable piece of jewelry. While in possession of Reliable, the brooch inexplicably disappeared (the messenger is beyond suspicion). Assuming that Marv was still the owner of the brooch when lost, then if Reliable cannot find the brooch,

1. It will be liable for the loss.

2. It will be liable for the loss if it cannot prove that it exercised ordinary care in handling the brooch.

3. It may be liable for the loss, but only if Marv can prove that Reliable failed to use ordinary care in handling the brooch.

4. It will not be liable for the loss unless there was a misdelivery.

22. Marv Ellis wanted his friend, Rita Boone, to have his 4 carat diamond brooch, which was worth \$8000. Marv wrapped the brooch in a package and called Reliable Deliveries Inc., a professional messenger service, to deliver the brooch to Rita. The wrapper on the parcel was plain because, for security reasons, Marv did not want to make it obvious that the package contained a very valuable piece of jewelry. While in possession of Reliable, the brooch inexplicably disappeared from the package, which was delivered empty (the messenger is beyond suspicion). Under the better line of reasoning:

1. Reliable should not be liable for the loss because it was not aware that the parcel contained a brooch and, therefore, it was not a bailee of the brooch.
2. Reliable should not be liable for the loss if its unawareness that the parcel contained so valuable an object led it to take fewer precautions than it would normally take for an \$8000 object, provided its care corresponded to the apparent value of the package.
3. Reliable should not be liable for the loss because Marv deliberately defrauded Reliable as to the value of the parcel.
4. Reliable should be held liable for the loss.

23. Marv Ellis wanted his friend, Rita Boone, to have his 4 carat diamond brooch, which was worth \$8000. Marv called Reliable Deliveries Inc., a professional messenger service, to deliver the brooch to Rita. While in possession of Reliable (and still owned by Marv), the brooch was taken in a holdup by Malcolm Muggler. If Reliable can achieve service of process on Muggler:

1. Reliable should be able to recover the brooch from Muggler in replevin.
2. Reliable should be entitled to recover the value of the brooch from Muggler in trover.
3. Both of the above.
4. None of the above. Reliable is not owner of the brooch.

24. Marv Ellis wanted his friend, Rita Booke, to have his 4 carat diamond brooch, which was worth \$8000. Marv called Reliable Deliveries Inc., a professional messenger service, to deliver the brooch to Rita. While in possession of Reliable (and still owned by Marv), the brooch was taken in a holdup by Malcolm Mugger. The holdup was made possible by the negligence of Reliable's messenger, who took a shortcut through a dangerous neighborhood. Reliable was able to recover a jury verdict as full damages in a suit against Mugger for the value of the brooch:

1. If the amount of jury verdict were \$9000, Marv should be able to recover the \$9000 from Reliable.
2. If the amount of jury verdict were \$6000, Marv should be able to recover \$8000 from Reliable.
3. If the amount of jury verdict were \$6000, Marv would not be able to recover the remaining \$2000 from Mugger.
4. All of the above.

25. Marv Ellis called Reliable Deliveries Inc., a professional messenger service, to deliver a brooch to Rita. While in possession of Reliable (and still owned by Marv), the brooch was lost when it fell out of the messenger's satchel on a public bus. It was found by Tryon Dewbadd. At the time Dewbadd boarded the bus, it was empty except for the driver. In a replevin action by the bus company against Dewbadd (treating the bus as equivalent to a "private place"):

1. Dewbadd would have a better case for the brooch than the bus company, assuming he paid his fare and was rightfully on the bus, under the general approach applied in jurisdictions following the so-called American rule.
2. Dewbadd would have a better case for the brooch than the bus company, even if he refused to pay his fare and the driver had told him to get off, under the general approach applied in jurisdictions following the so-called American rule.
3. Dewbadd would have a better case for the brooch than the bus company, assuming he paid his fare and was rightfully in the bus, under the general approach applied in jurisdictions following the so-called English rule.
4. None of the above. Dewbadd has no case for the brooch under any respectable body of authorities.

26. Marv Ellis wanted his friend, Rita Booke, to have his 4 caret diamond brooch, which was worth \$8000. Marv called Reliable Deliveries Inc., a professional messenger service, to deliver the brooch to Rita. While in possession of Reliable (and still owned by Marv), the brooch mislaid when the messenger's satchel containing it was left on the seat of a public bus. In a replevin action by the bus company against Tryon Dewbadd, the finder (treating the bus as equivalent to a "private place"):

1. The fact that the brooch was mislaid rather than lost might help the bus company's case.
2. The fact that the brooch was mislaid rather than lost might help the Dewbadd's case.
3. The fact that the brooch was mislaid rather than lost is legally irrelevant in common law jurisprudence.
4. The court should hold that neither the bus company nor Dewbadd is entitled to the brooch because neither is the owner.

27. Ralston Rower was transporting a small boat on a trailer when his car broke down on the roadside. Ralston set off on foot to find help. Three boys in the neighborhood found the boat and, on a lark, dragged it to a small lake on land owned by Brown. The lake was surrounded by Brown's wheat fields. Rower now wants to enter Brown's land to retrieve the boat. Brown refuses to allow this unless Rower agrees to pay the \$150 damage to the wheat caused when the boat was dragged in, plus \$50 further damage which would result from removal of the boat. Under the better approach:

1. Brown should be recognized, as landowner, to have the absolute right to decide which other persons may and may not come on his land for purely private purposes. Thus, Rower may have to pay what Brown asks.
2. Rower, as chattel owner, should be recognized as having a qualified privilege to retrieve his boat, provided he reimburses Brown for all \$200 of damage sustained by Brown.
3. Rower, as chattel owner, should be recognized as having a qualified privilege to retrieve his boat, provided he reimburses Brown for the \$50 of damage to be sustained by Brown in the course of the retrieval.
4. Rower's rights as chattel owner to priority in possession of his chattel should be recognized, and if Brown acts in derogation of Rower's ownership rights then Brown should be liable for conversion.

28. Ralston Rower was transporting a small boat on a trailer when his car broke down on the roadside. Ralston set off on foot to find help. Three boys in the neighborhood found the boat and, on a lark, dragged it to a small lake surrounded by land belonging to Brown. While the boat was still floating where the boys left it on Brown's lake, Eubie Hadd (who had watched the boy's actions) came up to Brown and said the boat was his, which Brown reasonably believed. Brown allowed Hadd to take the boat and now is being sued by Rower for the boat's value:

1. Brown should not be liable for the value of the boat if his actions did not constitute negligence.
2. Brown should be absolutely liable for misdelivery of the boat.
3. By deciding to allow Hadd to take the boat, Brown exerted dominion and control and, thus, should be treated as a bailee of the boat.
4. Both 2 and 3 above.

29. Dalton Dubbledipp, a weekend sportsman, caught three fish while fishing from a small lake on land owned by Brown. The lake is surrounded by Brown's land but is connected by various streams to the ocean, 1000 miles away:

1. The three fish belong to Dalton.
2. The three fish could belong to Dalton, but only if Brown had given Dalton permission to fish from the lake.
3. The three fish should belong to Dalton if Brown had long acquiesced in pleasure fishing from the lake by members of the public generally.
4. The three fish belong to Brown.

30. Dalton Dubbledipp, a weekend sportsman, caught three fish while fishing from a small lake on land owned by Brown. The lake is surrounded by Brown's land but is connected by various streams to the ocean, 1000 miles away. The previous week Brown had told Dubbledipp "You're catching all of my fish and I don't like it. Don't ever set foot on my property again!":

1. The three fish belong to Dalton.
2. The three fish would probably belong to Dalton if Dalton reached the lake by rowing in on the connected stream, from a point where it crosses a public highway, without ever once touching the shore or the bottom of waters on the land of Brown.
3. The three fish would belong to Dalton if Brown had long acquiesced in public pleasure-fishing from the lake and still acquiesced in pleasure fishing by others.