

PACE UNIVERSITY SCHOOL OF LAW

PROPERTY I -- VERSION A
PROFESSOR HUMBACH
FINAL EXAMINATION

December 20, 1999
TIME LIMIT: 3 1/2 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 multiple choice questions, true-false questions and an essay question, which counts 16%. Answer the multiple choice questions and true-false questions on the answer sheet provided. Write "Version A" on the answer sheet. *Write it NOW.* Also write your examination number on the answer sheet. Answer the essay question in a Bluebook.

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*. Make sure your answer marks are **dark**. You may lose points if you do not mark darkly enough.

When you complete the examination, turn in the answer sheet and Bluebook(s) together with this question booklet.

Every even-numbered multiple choice question asks you to *reanswer* the preceding odd-numbered question. Question 2, for example, asks you to reanswer question 1. If you are fairly confident about your answer to the principal question, mark the same answer for the "reanswer" question. If you can narrow the choice down to two answers, however, and cannot decide which of the two is the better one, you may wish to mark a different answer on the "reanswer" question. **IMPORTANT NOTE: If you decide to mark a different answer on a "reanswer" question, at least one of your two answers will be wrong.**

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 the period of limitations on ejection is 10 years.**

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 "modernizing" statutes and rules (e.g. which eliminate the Rule in Shelley's Case, the Doctrine of Worthier Title or the destructibility of contingent remainders). Ignore the possibility of dower and, for perpetuities purposes, ignore the possibility of posthumous children in gestation.

1. Haskell bought a piece of unsubdivided land. At the time of purchase, the local zoning would have allowed Haskell to subdivide the land into as many as 6 lots and to build one house on each lot. As a result of newly adopted wetlands regulations, however, Haskell can now build only 4 houses on the land, reducing the land's value by roughly one-third. The amount of compensation to which Haskell is entitled under the U.S. Constitution is:

- a. The amount by which his land value has been reduced.
- b. An amount equal to the value of two building lots.
- c. Either of the above would be an appropriate measure of compensation.
- d. Nothing.

2. Reanswer the previous question.

3. Suppose again that Haskell owns unsubdivided land on which the local zoning would allow 6 one-house lots. Suppose also that the city has decided to widen the road on which Haskell's land is located. The widening would take 2000 sq. ft. of Haskell's land. It would, however, still leave him with the ability to create 6 building lots, and it would cause only a 2% reduction in the overall value of his land. The amount of compensation to which Haskell is entitled under the U.S. Constitution is:

- a. The amount required to give Haskell "just compensation" for the land that would be taken from him to widen the road.
- b. Nothing because his land has not lost any appreciable portion of its value.
- c. Nothing under the "anti-segmentation" rule.
- d. Nothing because there has not been anything close to a "total taking" of all value or beneficial use.

4. Reanswer the previous question.

5. Bowman shot and killed a deer while trespassing on land belonging to Green. While Bowman was driving home, the deer came loose from the top of Bowman's car and fell off, landing in the snow filled ditch at the side of the road. A short while later, Powell noticed the deer lying by the side of the road. Powell put the deer on his own car. Bowman, returning to look for the deer, caught a glimpse of Powell's license plate as Powell's car drove off, with the deer on top. Now Bowman, Powell and Green are all parties to a single legal action to obtain possession of the deer (which is held by Powell in his freezer). Bowman is able to identify the deer positively because of distinctive markings on the deer and the locations of the wounds:

- a. Bowman should be awarded possession of the deer as the first captor.
- b. Green should be awarded possession of the deer on the basis of *ratione soli*.
- c. Powell should be declared entitled to possession of the deer since Bowman's rights ceased when he ceased to have possession of the deer.
- d. The right to possession of the deer will probably be determined on the basis of *animus revertendi*.

6. Reanswer the previous question.

7. Danforth owns a piece of land through which flows a creek that is legally considered to be "navigable in fact." Recently, Danforth learned that local fishermen were rowing up the creek from downstream and catching trout within Danforth's boundaries. Under local law, Danforth is considered the owner of the bed of the creek. He feels that he is entitled to any trout caught from "his" section of the creek. Which of the following is true?

- a. The fishermen are probably trespassing merely by rowing their boats upstream over streambed land that belongs to Danforth.
- b. Danforth should be entitled to any trout caught by fishermen who catch the fish while standing without permission on Danforth's shore.
- c. Both of the above.
- d. The fish living wild in Danforth's section of the creek are the property of Danforth because they are *ferae naturae*.
- e. All of the above.

8. Reanswer the previous question.

9. Martin was quail hunting on land belonging to Danforth. Martin would be considered a licensee rather than a trespasser:

- a. If Martin had previously sought and received permission from Danforth to go hunting on Danforth's land.
- b. If Martin had previously sought and received permission from Danforth to engage in birdwatching on Danforth's land.
- c. Both of the above.

- d. If Martin had a valid state hunting license.
- e. All of the above.

10. Reanswer the previous question.

11. Suppose that Danforth gave permission to Martin to hunt on his land but denied such permission to Jack. One day, just as Martin was about to shoot a deer that he had been observing on Danforth's land, Jack (who was standing just outside Danforth's property), discharged two blasts from a shotgun and caused the deer to bolt out of Martin's range, ruining Martin's shot.

a. Martin would probably have no action against Jack for damages if Jack discharged his gun solely for the purpose of shooting some wild turkeys that Jack had spotted nearby.

b. Martin would probably have an action against Jack for damages if Jack shot his gun maliciously, for no reason other than to prevent Martin from taking the deer.

c. Both of the above.

d. Martin could not have any cause for legal complaint against Jack (i.e., it would be *damnum sine injuria*) as long as Martin did not yet have any legally protectable ownership rights in deer.

12. Reanswer the previous question.

13. While inside a bookstore belonging to Lillian, Fountaine found a package of uncut gems on the floor. The owner of the gems is unknown, and Lillian was very surprised when Fountaine brought them to her attention. Which of the following (if true) might help support Lillian's claim to the gems?

a. The package could be considered lost rather than mislaid lost property.

b. Lillian's bookstore had just opened up for the day and Fountaine was the first person (other than Lillian) to come into the bookstore that morning.

c. The jurisdiction ordinarily follows the so-called "American rule" with respect to lost and found property.

d. The jurisdiction's law of finding does not ordinarily recognize the rights of unconscious possessors.

14. Reanswer the previous question.

15. Grover bought an old tuxedo for \$25 at a garage sale. When he got the tuxedo home, he discovered that there was a hidden pocket in the jacket. On investigation, he found an envelope on which the tuxedo seller's name was written. The envelope contained bearer bonds worth \$10,000.

- a. Grover would probably be considered the owner of the bonds, since he is the finder.
- b. Grover would probably be considered the owner of the bonds, because they would be deemed to have been included in the sale.
- c. If Grover just decides to keep the bonds, he would be well within his rights in doing so.
- d. If Grover just decides to keep the bonds, he would probably be guilty of common-law larceny.

16. Reanswer the previous question.

Facts for "Phillip" questions

Phillip bought an old chest of drawers and decided that it needed to be refinished. He left it at a furniture repair shop in order to get an estimate of the cost. While the chest was in the shop awaiting the estimate, there was a fire and the chest was burned to a crisp.

17. As a result of the legal relationship established between Phillip and the shop owner under these facts:

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

18. Reanswer the previous question.

19. In an action by Phillip against the shop owner:

- a. The shop owner should probably be found to have been a gratuitous bailee.
- b. Phillip should have the benefit of a presumption of negligence in his favor, and the presumption would be irrebuttable.

c. Phillip should have the benefit of a presumption of negligence in his favor, though the shop owner should be permitted to present evidence rebutting the presumption.

d. Phillip would probably not have the benefit of any particular presumptions of negligence but, rather, he would have to prove every element of his case like every other plaintiff in a negligence action.

20. Reanswer the previous question.

21. Before taking the chest in for repair, Phillip had it appraised at a passing "antique road show." He learned that the chest was once in the family of President Millard Fillmore and, therefore, worth more than \$5000. However, to all appearances it looked like an ordinary used chest, worth only \$20-\$100 at most. Phillip purposely did not tell the shop owner the true value of the chest when he dropped it off to get the estimate.

a. The shop owner should be liable to Phillip for the \$5000 value if he did not use the ordinary care appropriate for a \$5000 piece of furniture (even if he used the care appropriate for a \$20-\$100 piece of furniture).

b. The shop owner should be liable to Phillip for the \$5000 value if he did not use the ordinary care appropriate for a \$20-\$100 piece of furniture.

c. The shop owner should not be liable to Phillip for anything since Phillip, by his silence, misled the shop owner as to the true value of the chest.

d. None of the above. The shop owner should be liable to Phillip, but only for, at most, the apparent value of the chest (\$20-\$100).

22. Reanswer the previous question.

23. When Phillip left the chest at the repair shop for the estimate, he accidentally forgot to remove some gold coins that he had placed in the chest's hidden compartment. Under the better analysis:

a. The shop owner should not be considered a bailee of the coins because he had no knowledge of them.

b. The shop owner should not be considered a bailee of the coins because he never had any kind of possession of them.

c. The shop owner should not be considered a bailee of the coins because he had accepted the chest only for purposes of making an estimate, and he had not actually taken it for purposes of doing the refinishing.

d. The shop owner should be considered a bailee of the coins because he had unconscious possession of them.

24. Reanswer the previous question.

25. Assume you are in a state that has a statute of limitations on ejectment like the one we studied in class in connection with disabilities, that is, one that provides a 21-year basic period and, for cases of disability, a 10-year period. O owned Blackacre in 1977. Suppose that A entered into adverse possession against O in 1977, and O died intestate in 1995, leaving H, age 2, as his sole heir. If O was insane *at the time that A entered*, and O remained insane until his death, then A will get a ripened title, at the earliest:

- a. In 2005.
- b. In 2008.
- c. In 2021 or so (10 years after H reaches majority at 18).
- d. None of the above. A's title ripened in 1998.

26. Reanswer the previous question.

27. Assume you are in a state that has a statute of limitations on ejectment like the one we studied in class in connection with disabilities, that is, one that provides a 21-year basic period and, for cases of disability, a 10-year period. O owned Blackacre in 1977. Suppose that A entered into adverse possession against O in 1977, and O died intestate in 1995, leaving H, age 2, as his sole heir. If O became insane two years after A entered, and O remained insane until his death, then A will get a ripened title, at the earliest:

- a. In 2005.
- b. In 2008.
- c. In 2021 or so (10 years after H reaches majority at 18).
- d. None of the above. A's title ripened in 1998.

28. Reanswer the previous question.

29. Assume again that you are in a state that has a statute of limitations on ejectment like the one we studied in class in connection with disabilities, that is, one that provides a 21-year basic period and, for cases of disability, a 10-year period. In 1977, A entered into adverse possession against L, who then held a life estate. In 1995, L died intestate, with R as the sole remainderman, in fee

simple absolute. A has remained in undisturbed possession. The earliest that A can get a ripened title good against R is:

- a. In 2005.
- b. In 2008.
- c. In 2016.
- d. None of the above. A's title ripened against R in 1998.

30. Reanswer the previous question.

31. Assume again that you are in a state that has a statute of limitations on ejectment like the one we studied in class in connection with disabilities, that is, one that provides a 21-year basic period and, for cases of disability, a 10-year period. In 1977, A entered into adverse possession against O, who then held a fee simple absolute. Later, in 1987, O died devising the land "to L to life, remainder to R and his heirs." L died intestate in 1995, with R as the sole remainderman. Through it all, A has remained in undisturbed possession. The earliest that A can get a ripened title good against R is:

- a. In 2005.
- b. In 2008.
- c. In 2016.
- d. None of the above. A's title ripened against R in 1998.

32. Reanswer the previous question.

Facts for Cornella-Ace questions:

Cornella left a valuable furpiece with the Ace Storage Co. for safekeeping during the summer. She received a numbered claim ticket of the kind that Ace provided to each of its storage customers.

33. Later the same year, Prufrock presented a claim ticket bearing a number very similar to the one on Cornella's ticket. Ace mistakenly gave Cornella's furpiece to Prufrock. In an action by Cornella to recover the value of the furpiece from Ace:

- a. Cornella ought to recover even if it were proved that Ace was not negligent in delivering the furpiece to Prufrock.
- b. Cornella will probably want to rely on the rebuttable presumption of negligence, which forces to Ace to prove that it was not negligent in delivering the furpiece to Prufrock.

c. Cornella will have to include Prufrock as a defendant so that there will be no risk that Ace will be held liable twice for the value of the furpiece.

d. None of the above.

34. Reanswer the previous question.

35. Assume that Ace had a window cleaner come in to clean the windows in its facility during the time that the furpiece was in storage. Due to a negligent mishap, the window cleaner damaged the furpiece:

a. Ace may recover for the damage to the furpiece in an action against the cleaner, but only if it first receives express authority from Cornella.

b. Only Cornella may recover for the damage to the furpiece in an action against the cleaner.

c. Either Cornella or Ace (but not both) may recover for the damage to the furpiece in an action against the cleaner.

d. Both Cornella and Ace may recover for the damage to the furpiece in actions against the cleaner.

36. Reanswer the previous question.

37. Assume again that Ace had a cleaner come in to clean the windows in its facility during the time that the furpiece was in storage and that, due to a negligent mishap, the window cleaner damaged the furpiece. If Ace alone brings an action against the cleaner to recover for the damage to the furpiece:

a. The cleaner would not be permitted to defend by asserting a *jus tertii* under which he does not claim.

b. Ace would be permitted to recover full damages just as though it was the true owner of the furpiece.

c. Both of the above.

d. None of the above. Ace's action should be dismissed.

38. Reanswer the previous question.

39. Assume again that Ace had a cleaner come in to clean the windows in its facility during the time that the furpiece was in storage and that, due to a negligent mishap, the window cleaner

damaged the furpiece. Assume also that the trial court allows Ace to recover from the cleaner for the damage to the furpiece:

a. Ace would be required to account to Cornella for whatever it recovers from the cleaner for damage to the furpiece.

b. Ace can retain whatever it recovers from the cleaner for damage to the furpiece.

c. The cleaner should win on appeal.

d. There is a real chance that the cleaner can end up being held liable twice for the damage to the furpiece, first to Ace and then a second time to Cornella.

40. Reanswer the previous question.

In answering the following TRUE/FALSE questions, assume (unless otherwise specified) that each conveyance is made by O, an owner in fee simple absolute, and that every named party is alive and unmarried at the time of the conveyance. Remember that the conveyances are to be interpreted as set forth in the last two paragraphs on the instruction page. Assume that all life estates end at the death of the named life tenant.

41. O conveyed "to A and his heirs." A's heirs do not receive any interest in the land under this conveyance.

42. O conveyed "to A for life, then to B and his heirs." B does not receive any estate under this conveyance until after the death of A.

43. O conveyed "to A for life, then to B and his heirs." O has a reversion.

44. O conveyed "to A for life, then one day after A dies to B and his heirs." O has a reversion.

45. O conveyed "to A for life, then one day after A dies to B and his heirs." B has a remainder.

46. O conveyed "to A for life, then one day after A dies to B and his heirs." B has a springing interest.

47. O conveyed "to A for life, then one day after A dies to B and his heirs." B has a shifting interest.

48. O conveyed "to A for life, then one day after A dies to B and his heirs." B has an executory interest.

49. O conveyed "to A for life, remainder to my heirs." O's heirs would have a contingent remainder under the Doctrine of Worthier Title.

50. O conveyed "to A for life, then to B and her heirs if B marries C." B has a contingent remainder.
51. If O conveys "to A for life, then one day after A dies to B and her heirs if B marries C," B would have a contingent remainder.
52. O conveyed "to A for life, then one day after A dies to B and her heirs if B marries C." B's interest would be destroyed if B were still unmarried at the time of A's death.
53. O conveyed "to A for life, then to B and her heirs if B marries C." B's interest would be destroyed if B was still unmarried at the time of A's death.
54. O conveyed "to A for 5 years, then to B and her heirs." A would be considered to have the seisin during the 5 years.
55. O conveyed "to A for 5 years, then to B and her heirs." B would be construed to be the landlord of A during the 5 years in order to make B's interest valid (prior to the Statute of Uses).
56. O conveyed "to A for life, remainder to A's heirs." Under the rule in Shelley's case, A would have a fee simple absolute.
57. O conveyed "to A for life, then to B and her heirs if B survives A by more than six months." B would have a contingent remainder.
58. O conveyed "to A for life, then to B and her heirs." If B dies before A, the possession goes back to O.
59. If O conveys "to A for life, then to B and her heirs if B marries C before or after the death of A," B would have a contingent remainder and an executory interest, in the alternative.
60. If O conveys "to A and his heirs beginning from and after my death," A would have a springing interest.
61. O conveyed "to A for two years, then to B and her heirs if B marries C." B would have a executory interest.
62. If O conveys "to A and his heirs so long as the land is used for educational purposes," O would probably have a reversion.
63. Overton conveyed Greenacre "to Narwell for life, remainder to Narwell's first child to reach age 21, and his heirs." Later, a trespasser named Gibbons intruded into Greenacre and removed a considerable quantity of valuable timber. Narwell was childless at the time of the conveyance and is still childless.

a. Applying the *Winkfield* principle, Narwell should be able to recover the full value of the timber from Gibbons.

b. If Narwell were to recover the entire value of the timber from Gibbons, that would mean that there would be no way, applying the *Winkfield* principle, to protect the remainderman's interest in the unlawfully taken timber.

c. The remainderman's interest in the timber should probably be limited to the value of reasonable estovers.

d. Applying the *Winkfield* principle, Narwell should be able to recover from Gibbons only the amount that is commensurate with his own interest in the timber.

64. Reanswer the previous question.

65. Fiddlet owned Whiteacre in fee simple absolute. About 8 years ago, Tango entered into adverse possession of Whiteacre and has been occupying it ever since. Recently, Pawlie, who owns the land next to Whiteacre, trespassed into Whiteacre and removed a considerable quantity of valuable timber. At the time of the removal, Tango was still in adverse possession of Whiteacre, where he remains to this day.

a. Under some of the cases, Tango would be able to recover the full value of the timber from Pawlie.

b. Under some of the cases, Tango would not be able to recover the full value of the timber from Pawlie, but only damages for injury to his possession.

c. Both of the above.

d. Fiddlet should be able to recover trespass damages from Pawlie, even while Tango remains in adverse possession.

e. All of the above.

66. Reanswer the previous question.

67. Davis wanted to give a rowboat to his son, a college student. Davis's son lived in the same house as Davis. The house was located on a small lake, which was bordered by several neighboring owners and a public road. Pointing to the boat, Davis said to his son: "I want to you have this boat." The boat was, at the time, sitting on Davis's land at the edge of the lake. The delivery requirement for this gift:

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

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

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

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

68. Reanswer the previous question.

69. In apprehension of death, Fosdick gave a watch to Peters. Immediately afterwards, Fosdick went into the hospital to have a dangerous operation, which there was a good chance he would not survive:

a. The gift should be treated as presumptively irrevocable.

b. The gift should be treated as presumptively revocable.

c. The gift should be treated as presumptively subject to a condition precedent.

d. None of the above.

70. Reanswer the previous question.

71. Fosdick made a gift causa mortis of a ring to Peters just before Fosdick went into the hospital for a dangerous operation. A few days after the operation, while still recovering, Fosdick died of a sudden stroke, without having expressly revoked the gift. In light of the purposes of the gift causa mortis doctrine, the gift should be considered as now revoked:

a. By virtue of the mere fact that Fosdick survived the actual operation itself.

b. If the stroke was not medically caused by the operation.

c. Irrespective of whether or not the stroke was medically caused by the operation.

d. None of the above. The gift should not be considered as revoked on these facts.

72. Reanswer the previous question.

73. Fosdick, on his deathbed, wanted to give some bonds to Ella. The bonds were locked in Fosdick's safe deposit box at a local bank. Fosdick said to Ella: "Go to my house and get the key to my safe deposit box. It's in the top drawer of the desk. The bonds in the safe deposit box are yours; I'm giving them to you now. Take the key and get them."

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

b. The delivery of the bonds was accomplished by Fosdick's telling Ella where she could find them.

c. This gift should fail even if Ella gets physical possession of the bonds before Fosdick's death.

d. There is no way that this gift can succeed unless a method is devised by which Fosdick can actually hand the bonds to Ella before his death.

74. Reanswer the previous question.

75. Same facts as the previous question. A court would normally be willing to hold that Fosdick made a gift to Ella of equitable title to the bonds:

a. If his attempt to make a legal gift failed but the court was nevertheless convinced that Fosdick really intended to give her the bonds.

b. If Fosdick declared himself to be trustee of the bonds for the benefit of Ella.

c. Only if Fosdick expressed the gift in the formal language of trusts, using particular words such as "trustee" or "equitable title."

d. None of the above. A gift of equitable title can only be made by transferring legal title to a third party who agrees to act as trustee.

76. Reanswer the previous question.

77. The key operative difference between a fee simple determinable and a fee simple on condition subsequent is:

a. The fee simple on condition subsequent ends automatically when the stipulated event occurs; the fee simple determinable requires an election.

b. The termination of a fee simple determinable can be readily waived after the stipulated event occurs; the termination of a fee simple on condition subsequent cannot be readily waived.

c. The fee simple determinable ends automatically when the stipulated event occurs; the fee simple on condition subsequent requires an election.

d. None of the above. There really is no significant operative difference between a fee simple determinable and a fee simple on condition subsequent.

78. Reanswer the previous question.

79. Orwell granted Blackacre "to Belwatt and his heirs so long as the land is used for residential purposes." The future interest that is retained by Orwell is called:

- a. a possibility of reverter.
- b. a remainder.
- c. a reversion.
- d. a right of entry.

80. Reanswer the previous question.

81. Darrell has a vested "remainder in fee simple absolute" in Blackacre. Thomas has a life estate in the same land. Which of the following is false?

- a. Darrell has a future interest.
- b. Darrell does not yet have an estate in Blackacre and he will not acquire one until some future time (if ever).
- c. Thomas, who currently has the right to possession, has a "particular estate" in Blackacre.
- d. Darrell's remainder will be destroyed if Darrell dies before Thomas.

82. Reanswer the previous question.

83. Radford granted Whiteacre "to Ellen for life, remainder to Ellen's first child to reach age 18, and her heirs." Ellen has one child, age 15. Which of the following is *false*?

- a. The remainder is a contingent remainder.
- b. The remainder is a freehold interest.
- c. The remainder is a fee simple interest.
- d. The remainder is vested subject to divestment.

84. Reanswer the previous question.

ESSAY

In 1987, Barker put in a hedge along the property line between his property and that of his next door neighbor, Franklin. Due to a measuring error, however, the hedge was an average of 2 feet over on the neighbor's side of the line, giving Barker de facto control of a 2' strip of his neighbor's property. Neither party realized this fact, and the hedge has remained for more than 12 years. During this time, moreover, Franklin sold his property (in 1995) to a buyer named Wyman. Barker has gardened and mowed the 2' strip during the entire period, basically using it as he has used any other part of his yard--like an ordinary suburban yard.

Now Wyman wants to bring an ejectment action to require Barker to remove the hedge or, at least, to pay damages for mesne profits. Assuming that the period of limitations on ejectment is 10 years, what are Wyman's chances of winning such an action?

<End of examination.>