

PACE UNIVERSITY SCHOOL OF LAW

PROPERTY
PROFESSOR HUMBACH
FINAL EXAMINATION

May 14, 2010
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 multiple choice questions and true-false questions. Answer the multiple-choice and true-false questions (if applicable) on the answer sheet provided.

- Write your examination number on the “name” line. *Write it NOW.*
- Write "Version A" on the answer sheet. *Write 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 (and, of course, you don’t have to do the true/false questions). **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.

Facts for Edmund questions: Edmund owns an automobile repair shop. One of his workers, Reynard, was repairing a car at the shop when he discovered \$25000 in recently issued currency hidden behind a door panel. Reynard handed the money to a co-worker, Jana, who took it to Edmund. The car belonged to Wilson, who had bought it one week earlier for \$1000 after seeing it in the ads for second-hand cars on the Internet. Wilson did not know that the money existed when he took the car in for repairs.

1. Reynard, Jana and Wilson now all claim the money. Assuming that the court applies the distinction between lost and mislaid property and treats Edmund's shop as the locus in quo, the money would probably (in the absence of its true owner) be awarded to:
 - a. Edmund.
 - b. Wilson.
 - c. Reynard.
 - d. Jana.
2. Assume that Wilson personally drove the car to Edmund's shop. Assume also that the court does *not* apply the distinction between lost and mislaid property. Consistently with the so-called English rule for "finding" cases, the money should be awarded to:
 - a. Edmund.
 - b. Wilson.
 - c. Reynard.
3. Assume again that the court does *not* apply the distinction between lost and mislaid property but, instead, follows the so-called *American* rule for cases of finding. If Wilson personally drove the car to the shop, the money would probably be awarded to:
 - a. Reynard, unless "finding" is deemed by the court to be part of his duties as an employee of Edmunds.
 - b. Edmund, if "finding" is deemed by the court to be part of Reynard's duties as an employee of Edmunds.
 - c. Both of the above.
 - d. Wilson.
 - e. Jana.
4. Harrison left his car at Ace's Valet Parking while he had dinner. When Harrison came back for the car, he spotted a computer thumb drive on the floor of the customer reception area, considered a "semi-public" portion of the premises. Mr. Ace, owner of the parking facility, now demands the thumb drive. The jurisdiction does not make the distinction between lost and mislaid property. The question is who has the better right to the thumb drive?
 - a. Harrison, if the jurisdiction follows the so-called American rule to cases of finding.
 - b. Harrison, if the jurisdiction follows the so-called English rule to cases of finding.

- c. Both of the above.
- d. Mr. Ace.

Facts for “Marjorie’s vase” questions: Marjorie had a porcelain vase that she’d received as a gift from an aunt. Unbeknownst to Marjorie, the vase was an antique, worth several thousand dollars. When her daughter’s second grade class was making a diorama of pioneer life, Marjorie lent the vase to the teacher for use in the display. The teacher, also unaware of the value of the vase, let members of the class play with it. One of the second graders dropped the vase and it shattered

- 5. Marjorie brings an action against the teacher for the loss to the vase.
 - a. The teacher would be liable to Marjorie for damages because she could not return the vase in the same condition in which it was lent to her.
 - b. The teacher would be liable to Marjorie for damages only if she were found to be negligent in dealing with the vase.
 - c. The teacher could be held liable to Marjorie for damages only if her conduct could be considered to be a “conversion” of vase.
 - d. The teacher could not be held liable to Marjorie for damages.
- 6. In Marjorie’s suit against the teacher, the issue arose whether the teacher was negligent in caring for the vase.
 - a. Ordinarily, the teacher would be presumed to have been negligent.
 - b. Ordinarily, it would be up to the teacher to come forward with evidence showing that the loss was *not* due to her negligence
 - c. Both of the above.
 - d. Marjorie, as plaintiff, would ordinarily be required to show a prima facie case for relief to be granted, meaning that the initial burden would be on Marjorie to prove that the teacher was negligent.
- 7. In Marjorie’s suit against the teacher, the issue arose whether the teacher was negligent caring for the vase. In making such a determination, the actual or apparent value of the vase:
 - a. Would usually be irrelevant.
 - b. Would be relevant in assessing whether the teacher had any legal obligation to take care of the vase.
 - c. Would be relevant to the measure of damages only.
 - d. Would be one of the “circumstances” that is to be considered in applying the “reason person” or “ordinarily prudent person” test.
- 8. In Marjorie’s suit against the teacher, the court is trying to formulate the charge to the jury on the question of whether the teacher properly cared for the vase. Which of the following values (if any) would be *most* relevant to this issue?

- a. The actual fair market value of the vase.
 - b. The apparent value of the vase in the eyes of an ordinarily prudent person.
 - c. The value that the teacher actually thought the vase had.
 - d. None of the above. Value would not be relevant on the question of whether the teacher properly cared for the vase.
9. In Marjorie's suit against the teacher, the court is trying to determine what to charge the jury with respect to the proper measure of damages. Assuming that the teacher is found to be liable, which value would be most relevant to the proper measure of damages?
- a. The actual fair market value of the vase.
 - b. The apparent value of the vase in the eyes of an ordinarily prudent person.
 - c. The value that the teacher actually thought the vase had.
 - d. None of the above. Value would not be relevant to the proper measure of damages if the teacher did not know the actual value of the vase.
10. Irene lent a suitcase to her friend Rhonda, who was going on a cruise. When Rhonda returned the suitcase (in good condition) Irene suddenly remembered that she had hidden some jewelry inside it, secreted in a little pouch. When she checked, however, there was no sign of the jewelry. At the time Rhonda took the suitcase, she had no idea it contained jewelry. Under the better reasoned rule:

- a. There would have been no bailment of the jewelry.
- b. Rhonda would be considered to have become a bailee of the jewelry and probably liable for its loss.
- c. Rhonda would be considered to have become a bailee of the jewelry but probably *not* liable for its loss.
- d. There would be a presumption that Rhonda had misdelivered the jewelry.

Facts for Rowan questions: Rowan traps wild ferrets for breeding. He sells their offspring as pets. His traps are intended to prevent the animals from escaping but not to harm them or impair their value for breeding.

11. Last Friday, as Rowan was removing a wild ferret from one of his traps, it managed to squirm away. A few days later, Rowan was visiting Grayson, and right there in one of Grayson's cages was the ferret that had squirmed away. At any rate, Rowan claims to recognize it from the pattern on its fur. Assuming that Rowan had the landowner's permission to set his traps:
- a. The wild ferret would have belonged to Rowan while it was in his trap.
 - b. The wild ferret would have ceased belonging to Rowan after it squirmed away.
 - c. The wild ferret would now belong to Grayson.
 - d. All of the above.

12. Suppose that Rowan caught another wild ferret in a trap on land belonging to Sandburg. Rowan had permission to walk across Sandburg's land but did not have permission to trap there.
- The ferret would probably belong to Sandburg under the doctrine of *ratione soli*.
 - Rowan would probably be a trespasser by engaging in trapping on Sandburg's land.
 - Both of the above.
 - None of the above. As long as Rowan had not been forbidden to trap on Sandburg's land, he would be deemed to have a license to do so.
13. Suppose that some offspring of Rowan's wild-caught ferrets escaped back into their natural habitat and were later captured in traps that had been lawfully placed by Grayson. Rowan should be able to reclaim these escapees from Grayson if:
- They have *animus revertendi*.
 - They are *ferae naturae*.
 - They have *damnum sine injuria*.
 - None of the above. Once the ferrets escape back into their natural habitat they become fair game.
14. Fred Tremont purchased a new metal shed to be placed at the back of his suburban property. Because of the layout and terrain, there was no direct way to move the shed in from the street. The only two possibilities were: (1) to bring the shed in from the back, across the property of his neighbor, Hyatt, or (2) to hire a derrick, costing \$3000, to lift the shed over Tremont's house.
- Hyatt would be legally obligated to let Tremont bring the shed in across Hyatt's land if doing so would cause no actual injury to Hyatt.
 - Tremont would be liable for, at most, for nominal damages if he brought the shed across Hyatt's land without permission.
 - As long as Hyatt never forbids Tremont from crossing his land, Tremont could safely assume that it would not be a trespass to make a one-time use of Hyatt's land to bring in the shed.
 - To avoid liability for trespass, Tremont would need a license to cross Hyatt's land.
15. A natural gas production company paid Martha Redman for permission to drill on her farm and take natural gas that was there. The natural gas reservoir extended underground beneath neighboring land belonging to Ustinov. Now Ustinov complains that some of the gas being taken by the production company actually comes from under Ustinov's land. Using the common-law rule of capture:
- Gas collected by the production company at the surface should belong to it, even if the gas came from under Ustinov's property.
 - The production company would be a trespasser if, without Ustinov's permission, it removed and retained any gas that had come from under Ustinov's property.

- c. Ustinov would have an absolute right to any gas that was beneath his property, and this right would continue even after the gas was collected at the surface of Redman's land by the production company.
 - d. Ustinov would have the sole right to remove and gas that originated under his property.
16. Filburne and Warbler own adjacent parcels of land. Both rely on well water for their household water needs. Beginning next year, Warbler plans to pump out a large quantity of underground water and sell it to a nearby village for its water system.
- a. The underground water would be presumptively considered to be part of an underground stream.
 - b. The underground water would be presumptively considered to be percolating.
 - c. The law would make no presumption as to whether the underground water was in a stream or percolating.
 - d. It makes no legal difference whether underground water is considered to be in a stream or percolating.
17. In the preceding question if the usual presumption is made and Warbler's pumping of water for sale causes Filburne's well to go dry:
- a. Filburne would have to bear the expense of drilling deeper or finding an alternate supply because Warbler would have an absolute right to take the water from his land.
 - b. Filburne should be able to recover damages from Warbler because his use of the water does not appear to be a reasonable one.
 - c. Either of the above might be true, depending on whether the state follows the English rule or the American rule.
 - d. Warbler would run the risk of forfeiting his land due to "overuse."
18. Donnie Peters and Jeannine Grip are traveling down a small stream on a raft. They are at a place where Rhett Onslow owns both banks and the bed of the stream. Under rules commonly applicable in the eastern states (such as in New York):
- a. Peters and Grip would not be trespassers if the stream is navigable in fact.
 - b. If the stream is navigable in fact, Peters and Grip would not be trespassers *provided* they do not touch the banks of the stream.
 - c. If the stream is navigable in fact, Peters and Grip would not be trespassers *provided* they do not touch the banks *or bed* of the stream.
 - d. Unless Peters and Grip have permission from Onslow, they would be trespassers by merely floating down his portion of the stream.
19. Bostwick has large rose bushes all around his home. In the summer, their beautiful blooms greatly enhance the look of his property. Recently, a communicable plant disease called rose rust was found on a small recently planted bush and now the

state Pest Control Agency is demanding that Bostwick cut down all of his rose bushes in order to protect other homeowners in the vicinity. His house will look terrible (and probably have less value) without them. If he is forced to cut down his roses:

- a. Bostwick will be entitled to just compensation for a taking.
- b. Bostwick will be entitled to just compensation for a taking only if he is not permitted to keep the severed rose bushes that he cuts down.
- c. This would not be a taking because the state's action does not take all value.
- d. This would not be a taking because, in fact, nothing is being "taken."

20. In the landmark coal company case (*Pennsylvania Coal Co. v. Mahon*), the Supreme Court held:

- a. Laws can impair property values to a certain extent without compensation, but if the loss of value goes too far then it will amount to a taking for which just compensation must be paid.
- b. The coal company would be liable to homeowners for "taking" their property by tunneling under it and causing subsidence.
- c. States have no power to modify or cut down private property rights once the state has created them.
- d. All of the above.

21. The town of Fremont-by-the-Sea has embarked on a program of beach access and facilities with a view to fostering tourism in the town. The town beaches themselves are publicly owned (below the high water mark), but most of the land between the beaches and the public roadways is private—much of it developed with private beach homes. Which of the following newly proposed town laws would probably cause a taking that would require the town to pay just compensation?

- a. A law requiring all beachfront owners to allow electrical and emergency phone lines to be maintained across their properties to serve lifeguard stations along the public portions of the beach (effect on landowner values: less than 1%).
- b. A law requiring all beachfront owners to allow members of the public to walk across undeveloped portions of their properties in order to go to and from the public portions of the beach (effect on landowner values: less than 2%).
- c. Both of the above.
- d. A law requiring all beachfront owners having lots bigger than 100'x100' to leave the seaward 30' of their lots open and without permanent construction (effect on landowner values: up to 50%).
- e. All of the above.

22. Hickham owns a piece of vacant riverfront land on which he plans eventually to build a retirement home. The property has an old but still usable dock on it. After a recent flood washed out his neighbor's dock, the neighbor started making use of Hickham's dock, traversing a short path between the dock and the

neighbor's property line. This use of Hickham's dock and path is without permission.

- a. If the river is navigable in fact, the neighbor would not be considered a trespasser for making this limited use of Hickham's property.
 - b. Hickham would not have a trespass action against the neighbor if Hickham does not have actual possession of his land.
 - c. If Hickham's land is in the possession of an adverse possessor, then the adverse possessor (and not Hickham) would have the action for trespass against the neighbor.
 - d. If Hickham's land is in the possession of an adverse possessor, then nobody would, for the time being, have an action for trespass against the neighbor.
23. Lowell has a 5-year lease to a commercial building owned by Fustian Mgmt Co. Last month the light switch in Lowell's storeroom ceased to function, forcing Lowell to rely on floor lamps for lighting. Despite Lowell's demands, Fustian has so far done nothing to fix this problem. The lease did not say anything about the landlord's obligations in this kind of situation. Under traditional common law principles:
- a. Lowell would be entitled to a discount on his rent.
 - b. Lowell would be entitled to abandon possession and claim a constructive eviction.
 - c. Lowell would have an action for damages against his landlord.
 - d. All of the above.
 - e. None of the above.
24. Suppose in the preceding question that Lowell finally paid an electrician to fix the defective light switch and deducted the cost from his rent check for the following month. Neither the lease nor any statute specified the landlord's remedies for non-payment of rent, so the traditional common law rules applied.
- a. Lowell would be subject to eviction for violation of his obligation to pay rent, since the lease did not say anything about the landlord's obligations in this kind of situation.
 - b. Lowell would be subject to eviction for violation of his obligation to pay rent since covenants in leases are independent.
 - c. Lowell would *not* be subject to eviction for non-payment of rent, but he would be liable for amount he did not pay.
 - d. Lowell would be entitled to terminate the lease under the implied warranty of habitability.
25. Lowell also rents an apartment. It is in a 8-story residential building owned by Corduroy Real Estate Co. Last January the heating unit in Lowell's bedroom ceased to function properly, causing the inside temperature to fall into the 30s every night. Lowell was forced to stay in a hotel. Despite demands, Corduroy has so far done nothing to fix this problem. The lease did not say anything about the landlord's obligations in this kind of situation. Under the more modern approach:

- a. Lowell can probably assert a breach of the implied warranty of habitability even if the lease did not say anything about the landlord's obligations in this kind of situation.
 - b. Lowell probably cannot be evicted for failing to pay the entire reserved rent as long as he pays the reasonable rental value in light of the heating problems.
 - c. Many courts would say that the lease should be treated as a contract rather than as a conveyance and this would provide Lowell with a "rent weapon" with which to secure his rights under the lease.
 - d. All of the above.
26. Irwin conveyed a parcel of undeveloped land "to McKinney, Fredericks and Riff and their heirs." If Fredericks later dies, then under the usual modern interpretive presumption:
- a. McKinney and Riff would own the land as tenants in common.
 - b. McKinney and Riff would own the land as joint tenants.
 - c. McKinney and Riff would own the land as tenants by the entirety.
 - d. None of the above.
27. Assume that McKinney, Fredericks and Riff own the undeveloped land as joint tenants. If McKinney then dies intestate:
- a. Fredericks and Riff would own the land as tenants in common.
 - b. Fredericks and Riff would own the land as joint tenants.
 - c. Fredericks, Riff and McKinney's heirs would own the land as joint tenants.
 - d. Fredericks, Riff and McKinney's heirs would own the land as tenants in common.
28. Wesson and Olanoff own a house as tenants in common. The two of them shared possession until, after a quarrel, Olanoff became an out-of-possession cotenant. Wesson now is in sole possession, but the parties have no agreement about this situation:
- a. Olanoff would be able to recover money from Wesson only if Wesson ousted Olanoff.
 - b. Olanoff had better not wait too long to do something about this because the statute of limitations is running, and Wesson may eventually have sole title by adverse possession.
 - c. Both of the above.
 - d. Olanoff has no action against Wesson because, as a tenant in common, Olanoff is entitled to possess the whole property.
29. Harmon and Kinderman own a downtown building as tenants in common. They have rented the ground floor to a tenant who uses it as a tavern. When Harmon's own house was damaged by fire, he moved into the upstairs apartment of the building. Kinderman did not object. Under the majority rule:

- a. Kinderman would be entitled to recover money from Harmon since Harmon is in sole occupancy of an apartment that both of them own.
 - b. Kinderman would be entitled to get an eviction order against Harmon if Harmon refuses to pay him his portion of the fair rental value of the apartment that both of them own.
 - c. As a matter of property law, Kinderman would be entitled to share possession of the apartment with Harmon.
 - d. Kinderman had better not wait too long to do something about this because the statute of limitations is running, and Harmon will eventually have sole title by adverse possession.
30. Evie conveyed a farm to “Taylor, Jackson and Quinn and their heirs as joint tenants with right of survivorship.” At the time, Quinn had one child, Justin. Taylor and Jackson were childless. As a result of this conveyance:
- a. The farm belongs to Taylor, Jackson, Quinn and Justin, as joint tenants.
 - b. When Quinn dies, his share will go to his son, Justin, provided Justin survives him.
 - c. When Taylor dies, his share of the property will go to his heirs.
 - d. The farm belongs to Taylor, Jackson, and Quinn as joint tenants.
31. Hesper conveyed a house “to Ralph and Rheba Raymond, husband and wife.” Ralph and Rheba were in fact married. Several years later, Ralph negligently ran a red light and crashed into Bopp, who has just received a judgment against Ralph. Under the usual modern interpretative presumption:
- a. In some states Bopp would have recourse against Ralph’s interest in the house to satisfy the judgment.
 - b. In some states Bopp would have *no* recourse against Ralph’s interest in the house to satisfy the judgment.
 - c. Both of the above.
 - d. In some states, Bopp would have a common-law right of recourse against the whole house, not just Ralph’s interest, to satisfy the judgment.
32. Foley, Gibbs and Conner bought an investment property as joint tenants. Conner conveyed his interest to Taggart and, later, Foley died intestate:
- a. Taggart and Gibbs would own the property as tenants in common.
 - b. Taggart and Gibbs would own the property as joint tenants.
 - c. Taggart, Gibbs and Foley’s heirs would own the land as joint tenants.
 - d. Taggart, Gibbs and Foley’s heirs would own the land as tenants in common.
33. Helen and Tony are married. Both work and earn salaries.

- a. If they live in a community property state, Helen's paychecks would belong 50% to Tony.
- b. If they live in a common law property state (such as New York), Helen's paychecks would belong 50% to Tony.
- c. Both of the above.
- d. In most states, Helen's paychecks would belong 100% to Tony or, at least, he would technically have the right to control them.

Facts for Laura Fulbright questions: Laura Fulbright leased an apartment from Arianna Dorne under a 3-year lease. Two years into the lease Laura did not need the apartment anymore.

34. If Laura simply abandons possession and ceases to pay rent, then:
 - a. Dorne would, under the traditional rule, be entitled to let the apartment remain vacant and recover the full rent from Laura as it comes due.
 - b. Applying *ordinary* contract rules, Dorne would not be able to recover anything from Laura for her breach unless Dorne takes reasonable steps to mitigate.
 - c. Both of the above.
 - d. The lease would terminate and Laura's obligations would come to an end if Dorne accepts possession of the keys to the apartment.
35. Laura has found a friend who is willing to take over her apartment for the remaining year of the lease. Under the traditional rules:
 - a. If the lease contains a prohibition against subletting without landlord consent, then Laura needs Dorne's consent to either assign or sublet.
 - b. If the lease contains a prohibition against subletting without landlord consent, then Dorne can refuse to consent for any reason or no reason (just not an illegal reason).
 - c. If Laura signs a document called a "sublease" transferring the possession to her friend for the entire remaining term, that would be considered (in most states) to be a violation of the prohibition on subletting.
 - d. If Dorne says that she will consent to a sublease only if the rent is increased by \$150, it is not likely that any court would consider the demand to be unreasonable.
36. If Laura does sublease the apartment to her friend:
 - a. Laura would become her friend's landlord.
 - b. Laura would still be a tenant under her original lease.
 - c. Laura would have a reversion (or, at very least, a right of re-entry).
 - d. All of the above.
37. Suppose that Laura assigned her apartment lease to Jessica. Three months later Jessica abandoned possession without legal

justification and ceased to pay rent. Dorne would like to hold Laura for the back rent.

- a. Dorne could probably recover the back rent from Laura.
- b. There would be no way that Dorne could recover the back rent from Laura.
- c. Dorne could probably recover the back rent from Laura but not if Dorne consented to the assignment of the lease.
- d. In most states, Jessica could not be held liable for the back rent.

38. Suppose again that Laura assigned her apartment lease to Jessica. This time suppose also that Jessica assumed the lease. Two months after that, Jessica assigned the lease to Aaron, who did not assume the lease.

- a. Jessica would continue to be liable for rent based on privity of estate.
- b. Jessica would continue to be liable for rent based on privity of contract.
- c. Both of the above.
- d. There would be no way that the landlord could continue to recover rent from Jessica.

39. Last week, George answered an advertisement for an apartment and agreed to lease it for 2 years at a rent of "\$1500 per month." The local Statute of Frauds applies to leases for "exceeding one

year." George has entered into possession. If the lease was made orally:

- a. It would be invalid, and no landlord-tenant relationship would have been created.
- b. George would probably have a term of years for one year.
- c. George would probably have a term of years for two years.
- d. George would probably have a tenancy at will.

40. Suppose in the preceding question that George remains in possession and pays the reserved rent on a monthly basis. Based on this conduct, after a certain amount of time:

- a. George could be evicted as a trespasser unless he signs a valid lease.
- b. George's tenancy would be converted into a tenancy from month to month.
- c. The originally agreed two-year lease would become effective by part performance.
- d. George would be a tenant at will, subject to termination on any reasonable notice, no matter how much time elapsed after the void lease was made.

41. Fillmore leased to Grant "for 1000 years as long as he wants to live there." Grant promptly took possession. As a result of this conveyance:

- a. Grant probably has a term of years.

- b. Grant cannot have a term of years because 100 years is the maximum duration that is allowed for a term of years.
 - c. Grant has received an interest that would be considered “real property” (as opposed to “personal property”).
 - d. There can’t have been a *demise* because Grant is still alive,
42. Mason and his wife lived in a house that they both believed belonged to her. Shortly before her death, Mason’s wife conveyed the house to Mason. In fact, she had only a life estate in the house. The remainder belonged to Lucas. Mason continued to live in the house for another 12 years. During this time, Lucas was completely unaware that he owned any interest in the house, and Mason never told him
- a. Mason has probably acquired a ripened title to the house by adverse possession.
 - b. Mason probably has not acquired a ripened title by adverse possession because, by not informing Lucas of his interest, Mason has not made a claim of right.
 - c. Mason probably has not acquired a ripened title by adverse possession because Lucas was unaware of Mason’s adverse possession and never had a chance to do anything about it.
 - d. Mason probably has not acquired a ripened title by adverse possession because Lucas was a remainderman, and it is not usually possible to acquire title by adverse possession against a remainderman.
43. In 1995 Lucas bought the house where he lives. Unknown to him, his garage in the back encroached 4 feet into property owned by the state. Six years ago, the state sold its property behind Lucas to a private developer. The developer has now demanded that Lucas remove his garage. Under the rule in most states:
- a. Lucas would have probably acquired a ripened title to the encroaching garage area by adverse possession.
 - b. Lucas could tack his possession against the developer onto his possession against the state for purpose of establishing 10 years of continuous adverse possession.
 - c. Both of the above.
 - d. Lucas could not prevent the developer from removing the encroaching portion of his garage.
44. Pasco built a driveway along the side of his house (which, like his neighbor’s house, was located on a 100-foot wide lot). Due to a measuring error, Pasco’s driveway extended several inches over onto his neighbor’s property. However, neither Pasco nor his neighbor was aware of this. The driveway remained for 11 years until Pasco’s neighbor decided to sell his house. In that connection, an accurate survey was done and it revealed the encroachment.
- a. In some states Pasco wouldn’t have acquired a prescriptive easement for the encroachment because his use would not be considered “hostile.”
 - b. In some states Pasco wouldn’t have acquired a prescriptive easement for the encroachment because his use was pursuant to an honest mistake of fact.

- c. Both of the above.
- d. In virtually every state, Pasco would probably have acquired a prescriptive easement for the encroachment under the “lost grant” fiction.
45. Suppose in the preceding question, both Pasco and the neighboring owner, Larson, discovered the encroachment almost immediately, but Larson did nothing about it because his property was leased to a tenant. The tenant had a term of years that, at the time, had 11 years still to run. The tenant also knew about the encroachment but frankly didn’t care. After 10 years (with the lease still having a year to run):
- a. A prescriptive easement for the encroachment would probably have ripened in Pasco, but only against the tenant.
- b. A prescriptive easement for the encroachment would probably have ripened in Pasco, but only against Larson.
- c. A prescriptive easement for the encroachment would probably have ripened in Pasco as against both the tenant and Larson.
- d. It is unlikely that any prescriptive easement for the encroachment would yet have ripened in Pasco.
46. Stafford paid \$500,000 for a parcel of land in 1996. Due to a forged deed in his chain of title, Stafford did not in fact receive a good title to the land. However, Stafford took possession of the land. In 2001 Stafford left possession, which was taken over by Leo, who has been in possession ever since.
- a. Leo would probably now be the owner of the parcel if Stafford had purported to convey it to him by deed in 2001.
- b. Leo would probably now be the owner of the parcel if Stafford had died and left it to him by will in 2001.
- c. Leo would probably now be the owner of the parcel if Stafford had died intestate in 2001 and Leo was his sole heir.
- d. All of the above.
47. Bradley erected a fence behind his welding shop. Later, he extended the fenced area a few feet onto the property behind him, which belonged to the railroad. For over 10 years Bradley has used the fenced-in area, including railroad-owned land, for storage. If Bradley claims a ripened title by adverse possession:
- a. He should bring an ejectment action against the railroad.
- b. Under the better (and probably majority) rule, it should not count against him that he privately knew that he had no right to use the railroad’s property.
- c. Under the better (and probably majority) rule, the railroad would have a good defense if it can prove that Bradley knew all along that he was intruding on railroad property.
- d. Most courts would hold in favor of Bradley only if his adverse possession was in good faith.
48. In general, to be considered “in possession” for purposes of acquiring title by adverse possession, a person *must*:
- a. Live on the land in question.

- b. Have a fence around the land in question or have a building on it.
 - c. Act essentially as an ordinary owner would act with respect to similar land.
 - d. Conduct himself so as to avoid detection by the true owner.
 - e. All of the above.
49. In 1990, Anna Josephs entered into adverse possession of land in a state having a statute of limitations identical to the 21-year statute that we studied in class. At the time she entered, the true owner of the land was 16 years old and became an adult in 1992. What is the year in which title ripens in Josephs?
- a. 2000.
 - b. 2002.
 - c. 2011.
 - d. 2021.
50. Fastapp found a snazzy cell phone and immediately realized it was almost certainly a test version of an unreleased model. He figured that it was supposed to be a closely-kept industrial secret. When he turned the phone on, a message popped up saying: "Please return. Reward. Call 505-555-9020." However, Fastapp got in touch with a somewhat edgy tech blog and sold the phone to the bloggers for \$4000. Under the common-law rule:
- a. Fastapp would be probably guilty of larceny.
 - b. As a finder, Fastapp was entitled to the phone and to sell it to the highest bidder.
 - c. As a finder, Fastapp probably should have turned the phone over to the owner of the locus in quo.
 - d. Because the phone was so valuable, it was probably mislaid and not lost.
51. Jenkins conveyed "to Howard for life, remainder to Howard's first child to reach age 25, and his heirs." Under the traditional Rule Against Perpetuities:
- a. The remainder would be void.
 - b. The remainder would have been valid if the conveyance had said 21 years instead of 25 years.
 - c. Both of the above.
 - d. The remainder would have been valid if, at the time of conveyance, Howard had a child over the age of 4.
 - e. All of the above.
52. In 1990, Werber sold his home to Jenkins. As part of the transaction Jenkins granted Werber an option to buy the house back for the same price. The option established a time limit of 50 years, after which it would expire. If Werber dies before exercising the option, the option will belong to his estate.

- a. Under the traditional Rule Against Perpetuities, Jenkins would now (in 2010) have approximately one year left in which to exercise the option.
 - b. In some states, such as New York, the option would have been void from the outset, as a violation of the Rule Against Perpetuities.
 - c. Under the modern approach applied in most states, the option would probably not (yet) be deemed void under the Rule Against Perpetuities.
 - d. All of the above.
53. In 1988, Evan bought the back corner of Maxwell's farm. The area he bought was landlocked. At the time of the purchase, there was no apparent route across Maxwell's retained land to get to the parcel bought by Evans. On these facts, Evans would have a solid basis for claiming:
- a. An easement by necessity.
 - b. An easement by implication from prior use since there must have been at least a quasi-easement.
 - c. Both of the above.
 - d. An easement by implication from subdivision.
 - e. All of the above
54. Calder's neighbor, Fred, has an easement across Calder's land to provide Fred with ingress and egress from the highway.
- a. If Calder needs to, he can probably make reasonable adjustments in the location of the easement without Fred's consent.
 - b. If Fred enlarges his lot by purchasing some adjacent land in the back, there would be no question that he can use the easement for ingress and egress from the highway to his enlarged property.
 - c. Future modifications in the use of the dominant tenement would not ordinarily impair the enforceability of the easement.
 - d. If the land surface at the specific location of the easement falls into disrepair, Fred can require Calder to maintain it.
55. Assume that, in the preceding question, Calder sells his land to Borland:
- a. Borland would ordinarily take subject to the easement if the deed that created it was recorded.
 - b. Borland would ordinarily take subject to the easement if the existence of the easement was evidenced by obvious signs of use on the ground, whether or not the deed that created it was recorded.
 - c. Borland would have the right to use the easement to travel from one part of his land to another.
 - d. All of the above.

56. Glover and Parkman are neighbors. They went together to build a driveway along the boundary line between them, and they shared the cost equally. Once the driveway was finished, Glover built a garage that was accessible by car only by way of the new driveway. After a falling out with Glover, Parkman decided to dig up the portion of the driveway on his side of the line and plant roses, an action that would render Glover's new garage practically useless. If the parties signed no papers to establish their respective legal interests in the driveway:
- They probably both have mutual easements anyway because, manifestly, that was their intention, and nothing stands in the way of a court's respecting their intention.
 - Glover has a good chance of asserting a right to use the whole driveway as a so-called "executed parol license."
 - It is unlikely that either party could ever claim an easement by prescription to use the whole driveway because their respective uses clearly are mutually permissive.
 - All of the above.
57. Carroll has an easement by necessity over land belonging to Ernestine. The easement will be extinguished if:
- Carroll does not pay Ernestine the fair value of easement within a reasonable time.
 - There ceases to be unity of ownership.
 - There is no privity of estate.
 - The absolute necessity ceases to exist.
58. Alex acquired an easement for ingress and egress as well as for underground utilities. The deed creating the easement was not, however, recorded. Nonetheless, Alex built a paved driveway over the designated location of the easement. Later the servient tenant conveyed the servient tenement to Morris, who saw the new driveway and could see that Alex was using it for ingress and egress. Now Alex wants to bury an underground fiber optic cable beneath the driveway. Morris objects.
- Alex probably has an easement for ingress and egress, but there may be difficulty asserting an easement for the cable.
 - Alex has a strong a case that the easement can be used for the cable as well as for ingress and egress.
 - Alex would have trouble asserting an easement for the cable against Morris unless Alex could show that such an easement was reasonably necessary.
 - The unrecorded deed was totally ineffective to convey or create any easement or other interest in land.
59. Eric Salander was on his deathbed with an extremely serious illness. He handed his gold retirement watch to Denny saying, "I won't be needing this anymore. It's yours." About a half hour later, Salander said he wanted to take "one last look at the watch." Once he got it in his hand, however, he wouldn't let Denny have it back. A short time later, Salander "gave" the watch to Sally. Under the usual presumption:
- Once Denny had possession of the watch, the gift was complete, and Salander couldn't lawfully take back ownership unless Denny agreed.

- b. Once Denny had possession of the watch, the gift was complete, but Salander could lawfully take back ownership by revoking the gift.
- c. Once Denny had possession of the watch, the gift was complete, and the only way Salander could undo the gift would be to survive his illness.
- d. The gift to Denny (or Sally, whichever it was) would be revoked if Salander died a short time later from a cause totally unrelated to his serious illness.
60. Suppose that Arvin, moved by Salander's generosity, said to Denny, "I'm giving you the bonds that are in my safe deposit box down at the bank. Here's the key. Go and get them."
- a. If Arvin retained another key to the box, the gift would probably fail if Denny did not go to the box and retrieve the bonds before Arvin died.
- b. If Arvin did *not* retain another key to the box, the gift would probably be deemed complete, based on constructive delivery, when he handed Denny the key.
- c. Both of the above.
- d. None of the above. Whether Arvin had another key or not, Denny would not be considered the owner of the bonds until he took actual possession of them.
61. Remoladis wrote a letter to his stepson, Barry, saying: "Your mother and I want you to have my speedboat docked down at the river. I want to use it while I'm still here, but it's yours to take at my death. Enjoy it in good health." When Remoladis died unexpectedly a couple of years after Barry received the letter, his biological son, Purk, claimed that the boat was part of the estate.
- a. What Remoladis did, in effect, was give Barry a remainder or executory interest in the boat by means of a deed of gift.
- b. The attempt by Remoladis to give the boat to Barry was an invalid testamentary gift that failed to comply with the Statute of Wills.
- c. The attempt by Remoladis to give the boat to Barry was an invalid gift causa mortis that failed because Remoladis did not make the gift in apprehension of death.
- d. The gift would be presumptively revoked if Barry got sick and therefore ceased to be "in good health."
62. Carrie and Florence were two elderly sisters who lived together in the house they inherited from their mother. On the wall in the living room was a huge painting of their grandfather in his Civil War uniform. The painting had been given to Carrie, as the eldest of the surviving siblings, some years before. At Carrie's 95th birthday party, she announced that she was giving the painting to Florence. "It's now yours," she said to Florence in front of all present. However, the painting (which weighed over 125 lbs.) stayed right where it was, hanging on the wall. At Carrie's death, several years later:
- a. The painting would be part of Carrie's estate because there was no delivery.
- b. A court might well be inclined to hold that there was a "delivery" under these facts, though it would be a relatively close case.

- c. The court could easily hold that there was a delivery because courts freely dispense with the requirement of actual delivery wherever actual delivery is inconvenient or problematic.
 - d. This gift would probably fail in any event unless Florence clearly expressed her acceptance of the gift.
63. Arnold wanted to give a birthday bracelet to his fiancée, Marianne, who was attending college several hundred miles away. Alexandra was driving up to the college anyway, in an unrelated connection, and Arnold asked her to take the bracelet to Marianne. While Alexandra was en route to the college with the bracelet, Arnold received a text message from Marianne stating that she had just met the captain of the college soccer team. He turned out to be the love of her life. The engagement, she said, was off. Arnold has changed his mind about the gift.
- a. If Alexandra is deemed the agent of Arnold, he can call off the gift at any time up until she actually turns the bracelet over to Marianne.
 - b. If Alexandra is deemed the agent of Marianne, Arnold can call off the gift at any time up until she actually turns the bracelet over to Marianne.
 - c. No matter whose agent Alexandra is deemed to be, Arnold can call off the gift. A gift can't be complete until the donee gets actual possession of it.
 - d. The law of agency has nothing to do with this question. A donor is always free to revoke his or her donative intent and call off a gift.

64. Paula handed a ring to her daughter, Maureen, saying "I want you to have this ring. Here it's yours." Maureen tried it on and it was too loose so Paula said, "Here let me take it to a jeweler and have it resized." Somehow, Paula never got around to returning the ring to Maureen. Recently, Maureen saw the ring being worn by her hated half-sister, Renata. Maureen wants it.
- a. It looks like Paula has revoked the gift, and the ring no longer belongs to Maureen (if it ever did).
 - b. It looks like the donor became the bailee of the donee.
 - c. There is really no basis (on these facts) for saying that the gift to Maureen was ever complete.
 - d. There is really no basis (on these facts) for saying that Paula ever actually made a delivery to Maureen.

If you have a "word" for successful completion of the Estate System Proficiency Test, you are done. Congratulations, and have a good summer. Do this section *ONLY* if you don't have a "word":

In answering the following TRUE/FALSE questions, assume (unless otherwise specified) that, at the times of conveyance, O is an owner in fee simple absolute, and that every named party is alive and unmarried. 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. When you see words appropriate for a defeasible fee simple, assume that the words of conveyance also include whatever additional words (such as words of reverter or re-entry) that may be required by law in order to create the defeasible estate.

65. O conveyed "to A for life, then to B and her heirs." B has a remainder.

66.O conveyed “to A for life, then to B and her heirs.” B’s heirs have an executory interest.

67.O conveyed “to A for life, then to A’s heirs.” A’s heirs have a contingent remainder.

68.O conveyed “to A for life, then to B and her heirs if B becomes a ballerina.” O has a reversion.

69.O conveyed “to A for life and then, one month after A’s death, to B and her heirs.” B has a remainder.

70.O conveyed “to A and her heirs so long as the land is used as a farm, then to B and her heirs.” B has a possibility of reverter.

71.O conveyed “to A and his heirs.” The heirs of A receive a contingent remainder under this conveyance.

72.O conveyed “to A and his heirs.” The heirs of A receive nothing under this conveyance.

73.O conveyed “to A for life, then to B and her heirs if B attends A’s funeral.” B has a contingent remainder.

74.O conveyed “to A for life, then to B and her heirs.” O has nothing.

75.O conveyed “to A for two years, then to B and her heirs.” B may be properly said to have a vested remainder.

76.O conveyed “to A for two years, then to B and her heirs if B becomes a ballerina.” B may be properly said to have a contingent remainder.

77.O conveyed “to A for life, then to B and her heirs if B becomes a ballerina after the death of A.” B may be properly said to have an executory interest.

78.O conveyed “to A for two years, then to B and her heirs if B becomes a ballerina before the end of the two-year term.” B may be properly said to have a contingent remainder.

79.O conveyed “to A for life.” O is much older than A. The conveyance results in a possibility of reverter.

80.O conveyed “to A for life, then to B and her heirs, but if C survives A, then to C and her heirs.” B has a future interest that is vested subject to divestment.

81.O conveyed “to A for life, then to B and her heirs if B marries C.” B has a contingent remainder (at least).

82.O conveyed “to A and his heirs beginning after the time of my death.” The conveyance creates an executory interest.

83.O conveyed “to A for life, then to B for life, and then six days after B’s death, to C and her heirs.” B has a remainder.

84.O conveyed “to A and his heirs as long as Yellowstone remains a national park.” O has a possibility of reverter.

85.O conveyed “to A for life, then to B and her heirs if B survives A by at least one year.” B has an executory interest.

86.O conveyed “to A for life, then to B and her heirs if B does *not* survive A.” B has a contingent remainder.

87.O conveyed “to A for life, then to B and her heirs if B marries C.” O has a reversion.

88.O conveyed “to A for life, then to B and her heirs if B marries C.” B has (at least) an executory interest.

89.O conveyed “to A and his heirs until Yellowstone ceases to be a national park.” O has a right of re-entry.

90.O conveyed “to A and the heirs of his body.” In states that still recognize the fee tail, this estate would *not* be inherited if, at A’s death, his sole heirs were one brother and one cousin.

91.O conveyed “to A and his heirs as long as the house be kept painted white with green shutters.” A has a fee simple determinable.

92.O conveyed “to A and his heirs on the condition that the premises be kept as a nature preserve and open to the public.” O has a right of re-entry.

93.O conveyed “to A for life, then to B and her heirs if B survives A by at least one year.” O has a reversion.

94.O conveyed “to A for life, then to B and her heirs, but if C survives A by at least one year, then to C and her heirs.” C has a future interest that is vested subject to divestment.

95.O conveyed “to A for life, then to B and her heirs if B marries C after the death of A.” B has an executory interest.

96.O conveyed “to A for life, and then to the heirs of B.” B is living but childless. This conveyance creates a contingent remainder.

97.O conveyed “to A for life, and then to the heirs of B” (a person recently deceased). This conveyance creates a vested remainder.

98.O conveyed “to A for life, and then one day after A’s death to the children of B.” B is living but childless. This conveyance creates a contingent remainder.

99.O conveyed “to A for 5 years, then to the heirs of B” (a living person). This conveyance creates a remainder.

100.O conveyed “to A for 5 years, then to the heirs of B” (a living person). This conveyance creates an executory interest.

101.O conveyed “to A for life, then to B and her heirs, but if C survives A by at least one year, then to C and her heirs.” B has a future interest that is vested subject to divestment.

102.O conveyed “to A as long as he desires to remain living on the land.” The more modern tendency is to interpret this conveyance as creating tenancy at will, rather than a determinable life estate.

<end of examination>