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PACE UNIVERSITY SCHOOL OF LAW

PROPERTY
DEAN HUMBACH
FINAL EXAMINATION

MAY 18, 1983
TIME LIMIT: 4 Hours
Version B

IN TAKING THIS EXAMINATION, YOU ARE REQUIRED TO COMPLY WITH THE SCHOOL OF LAW RULES AND PROCEDURES FOR FINAL EXAMINATIONS. YOU ARE REMINDED TO PLACE YOUR EXAMINATION NUMBER ON EACH EXAMINATION BOOK AND SIGN OUT WITH THE PROCTOR SUBMITTING TO HIM OR HER YOUR EXAMINATION BOOK(S) AND THE QUESTIONS AT THE CONCLUSION OF THE EXAMINATION.

DO NOT UNDER ANY CIRCUMSTANCES REVEAL YOUR IDENTITY ON YOUR EXAMINATION PAPERS OTHER THAN BY YOUR EXAMINATION NUMBER. ACTIONS BY A STUDENT TO DEFEAT THE ANONYMITY POLICY IS A MATTER OF ACADEMIC DISHONESTY.

GENERAL INSTRUCTIONS:

This examination consists of 60 multiple choice questions. 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 letter with the special pencil provided. Select only one answer per question; if more than one answer is indicated, the question will be marked wrong.

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

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

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.

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). Assume that the local period of limitations on ejectment is 10 years.

1. Oliver conveyed Blackacre "to Lamont for life, then to Wanda, Lamont's wife, if children are born alive from their marriage." Lamont and Wanda were and are still childless. Pick the best answer:
 - A. Wanda has a contingent remainder.
 - B. Wanda has a remainder in fee simple on condition subsequent.
 - C. Oliver has no retained interest.
 - D. Before the Statute of Uses, Wanda would have had nothing.

2. Douglas conveyed Whiteacre "to Reston for life, remainder to Reston's heirs."
 - A. Reston would have a fee simple absolute under the Rule in Shelley's-Case.
 - B. Reston's heirs would have a contingent remainder if the Rule in Shelley's Case has been abolished by statute.
 - C. A purchaser from Reston would probably be willing to pay more for Whiteacre if the local jurisdiction still follows the Rule in Shelley's Case.
 - D. All of the above.

3. Turpet conveyed Greenacre "to Crystel and his heirs so long as the land is used for agricultural purposes."
 - A. Turpet retains a right of entry.
 - B. Crystel holds subject to a condition subsequent.
 - C. The conveyence results in a possibility of reverter due to the special limitation.
 - D. The conveyance could be effective as written only after the Statute of Uses.

4. After the Statute of Uses, Easton bargains and sells Blackacre "to Stern for life, then to Michaels and his heirs one week after the death of Stern."
 - A. Easton has a reversion.
 - B. Michaels has an executory interest.
 - C. Both A and B above.
 - D. Michaels has a remainder and Easton has a reversion.

5. Among its enduring effects, the Statute of Uses:
 - A. Greatly limited the use restrictions that could validly be imposed on grantees of real estate.
 - B. Made it possible to convey possessory freeholds in land by written instrument and without livery of seisin.
 - C. Made it possible for feoffees to receive springing and shifting legal interests (executory interests) by direct feoffments to them.
 - D. Both B and C above.

Facts for questions 6 to 12

Lester leased Parkacre to Trent pursuant to an oral agreement. Trent entered into possession immediately, on February 1, 1983, paying a month's rent in advance. The agreed term of the lease was until January 31, 1986, although the local Statute of Frauds requires leases of more than one year to be in writing and signed by the party to be charged.

6. If the agreed rent was \$400 per month, and Trent has paid it faithfully on the first of each month so far, then probably the earliest date (from today) as of which:
 - A. Trent can terminate the lease is June 30, 1983.
 - B. Lester can terminate the lease January 31, 1986.
 - C. Trent can terminate the lease May 31, 1983.
 - D. Lester can terminate the lease is June 18, 1983 (i.e. one month from today).

7. The reason for the answer in the preceding question is:
- A. The lease is a tenancy at will.
 - B. The lease was a tenancy at will which became a periodic tenancy as a result of the regular payment and acceptance of rent.
 - C. The lease was a void arrangement which became a term of years, as agreed, once the parties acted pursuant to their agreement.
 - D. The law generally provides a one month notice period for the termination of leases for indefinite terms.
8. In the preceding two questions,
- A. Trent as possessor would also have the seisin.
 - B. Trent as tenant could be held liable for rent only if he actually remained in possession.
 - C. Trent as possessor could generally maintain successful actions against Lester for trespass and nuisance, the same as though Lester were a stranger to title.
 - D. Trent is really a sort of licensee with a contractual right to a continuing license of occupancy.
9. Suppose that the lease, described earlier, was in writing and signed by both Lester and Trent.
- A. Trent could transfer his possessory rights to Fred only with Lester's consent, unless the lease provided to the contrary.
 - B. A transfer today by Trent to Fred "for a period consisting of the next year" would be considered a sublease.
 - C. A transfer today by Trent to Fred "until January 31, 1986" would be considered an assignment.
 - D. Both B and C above.

10. If, in the preceding question, Trent assigned the lease to Fred:
- A. Fred would be liable for the rent so long as he remained in possession, even if he never agreed to pay it.
 - B. Trent would cease to be liable for the rent if Fred "assumed" the lease and Lester accepted the assumption by Fred.
 - C. Both A and B above.
 - D. Fred's primary rental obligation would be to Trent and Trent, in turn, would be liable over to Lester.
11. Suppose the lease described earlier was in writing (and signed), and Trent did not sublet or assign the premises:
- A. Trent would generally, under the common law rules, remain liable for the whole rent for the whole term even if forced to move out earlier due to a transfer by his employer.
 - B. Lester could extinguish Trent's liability for the rent, or at least for the full rent, by reletting to a new tenant in the event that Trent prematurely "abandons" possession.
 - C. Lester could, if Trent abandoned, accept the proffered surrender and still hold Trent liable for damages in many states, especially if the lease contained a survival clause.
 - D. All of the above.
12. Suppose in the preceding question that Parkacre were a residential apartment leased by Trent as his home.
- A. In most states, it has long been the rule that Trent would be relieved of liability for rent, or at least for the full rent, if Lester allowed the premises to become uninhabitable.
 - B. Trent could be relieved of his rent obligation on the theory of constructive eviction, but only if the state recognizes the implied warranty of habitability.
 - C. Under the traditional common law Trent could be held liable for certain types of deterioration of the premises on a theory of permissive waste.
 - D. None of the above.

13. Allister and Bixler were wading in the shallows near the shore. Allister found and picked up a clam. He opened it finding a cut diamond, obviously lost by its owner. Bixler took the diamond "to look at it" and then kept the diamond (leaving the clam to Allister). Allister would have a good chance of recovering the diamond:
- A. Only if the state followed the so-called English rule.
 - B. If the state followed the so-called American rule.
 - C. Neither of the above. The law does not issue orders requiring ownerless items to be delivered from one person to another.
 - D. None of the above answers could be selected as correct on the facts given.
14. Suppose that the area where the clam had been found was owned at the time by Bixler, under local law, as the owner of the adjacent upland. If Allister was trespassing at the time that he found the clam:
- A. Bixler would have a better claim to the diamond than Allister under the so-called American rule.
 - B. Allister would have a better claim to the diamond than Bixler under the so-called American rule.
 - C. The fact of Allister's trespass should be generally irrelevant since, in most states, neither Allister nor Bixler would be entitled to the diamond because it was not "mislaid".
 - D. None of the above.
15. Suppose in the preceding question the local court would hold that, as between Bixler and Allister, Bixler would be entitled to the diamond. Suppose further that Bixler later allowed Allister to take the diamond to a jeweler to have it appraised, and that Allister left the stone with the jeweler. If the jeweler refused to return the diamond:
- A. Allister, but not Bixler, could recover possession of the stone in a replevin action against the jeweler.
 - B. Bixler, but not Allister, could recover possession of the stone in a replevin action against the jeweler.
 - C. Either Allister or Bixler could successfully maintain an action in trover against the jeweler.
 - D. Either Allister or Bixler could recover the stone in replevin against the jeweler, but only Bixler could recover in trover.

16. Suppose in the preceding question that the jeweler did not refuse to return the diamond, but simply could not because the stone was in the possession of Stelt, who obtained the stone by unlawful means. If Bixler sued the jeweler, the jeweler would be liable to Bixler.
- A. If Stelt broke in at night and stole the stone despite the more-than-reasonable precautions against burglary taken by the jeweler.
 - B. If Stelt criminally appropriated the stone, totally illegally, while it was on the counter where the jeweler left it while in the back room.
 - C. Only if Allison had communicated the value of the stone to the jeweler.
 - D. None of the above. The jeweler could not be liable to Bixler.
17. Suppose that the jeweler's assistant mistakenly sold the diamond to Carter. If the laws of agency make the jeweler responsible for the assistant's acts:
- A. The jeweler could be held liable to Bixler for the fair market value of the stone, irrespective of the amount received for it.
 - B. The jeweler could be held liable to Carter for breach of an implied warranty of title, if a court allowed Bixler to replevy the stone from Carter.
 - C. Both A and B above.
 - D. None of the above. As a "merchant" who deals in goods of the same kind, the jeweler had apparent authority at common law, by a kind of estoppel, to sell the stone.
18. Suppose that, before Carter bought the stone, Bixler and Allister had sold "any interest they may have" in the stone to the jeweler. If Carter acquired the stone by fraud:
- A. Carter would have a void title.
 - B. A bona fide purchaser for value from Carter would have a good title, subject only to the jeweler's paramount rights.
 - C. A bona fide purchaser for value from Carter would have a voidable title, just as Carter received.
 - D. A gift of the diamond by Carter to his girlfriend would not affect the jeweler's rights to the stone, even if she were an entirely unsuspecting donee.

19. A thief who steals paint and applies it to his automobile:
- A. Becomes the owner of the paint.
 - B. Loses title to the painted car by wrongfully making his own property inseparable from that of another.
 - C. Is liable for the value of the painted car because the car is not changed in kind.
 - D. All of the above.
20. Gundry captured a previously never-captured partridge on land belonging to Percival. Although Percival had been the first to see the partridge and begin chasing it, Gundry's superior skill with his net prevailed. In an action by Percival against Gundry to recover the partridge, which of the following facts, if proved, would likely affect the outcome (taking each of the following facts by itself):
- A. Gundry captured the bird while on Percival's land without permission, express or implied.
 - B. The partridge was not of a type commonly found wild locally.
 - C. Gundry was in the trade or business of catching and selling partridges.
 - D. Each one of the above taken alone, would likely affect the outcome.
21. Suppose in the preceding question that the partridge later escaped from the cage in which Gundry kept it and that it was afterwards captured by Percival on Percival's own land. Assuming that partridges of the same type are commonly found locally, which of the following facts would, if proved, be most helpful to Percival in defending a trover action by Gundry?
- A. The partridge had developed animus revertendi while possessed by Gundry.
 - B. Percival captured the partridge on his own land.
 - C. Gundry had been negligent in allowing the partridge to escape.
 - D. None of the above facts would be particularly helpful to Percival's defense (which, incidentally, would be a pretty strong defense even without additional facts).

22. Which of the following would have the legal effects of an original acquisition?
- A. Gundry's first capturing of the partridge.
 - B. Gundry's finding and taking possession of a broken cage on a street near his home.
 - C. Gundry's acquiring title by adverse possession to a border area of Percival's land.
 - D. All of the above.
23. Assume that, after first capturing the partridge, Gundry decided that he wanted Sue to have it, as part of an elaborate Christmas present. Several weeks prior to Christmas, at Gundry's house, Gundry showed the bird to Sue and said: "That's yours for Christmas and you'll be amazed to see what comes with it." Sue looked at the bird and said: "I can hardly wait!" On these facts, the legal title to the partridge probably did not pass to Sue because:
- A. A lack of donative intent.
 - B. A lack of proper delivery.
 - C. Both A and B above.
 - D. None of the above. Title did not pass to Sue because of lack of title in Gundry in the first place.
24. Suppose Gundry made an effective gift to Sue of the partridge, along with a pear tree and eleven other sets of items, but cautioned: "I'm only doing this because we're going to be married in June." If, in June, Gundry marries May, whom he met in April (while out on march), then:
- A. He could probably not get the partridge, etc. back in any jurisdiction following the common law on this issue.
 - B. He could probably get the partridge, etc. back in New York, even if he were at "fault" in the breakup.
 - C. Sue could probably keep the partridge, etc. under the condition subsequent which is implicit in gifts in contemplation of marriage.
 - D. None of the above. Gundry had no title to the partridge in the first place.

