

Note: The questions on this exam draw heavily on exams given 1997-2006

PACE UNIVERSITY SCHOOL OF LAW

PROPERTY
PROFESSOR HUMBACH
FINAL EXAMINATION

May 11, 2012
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 60 multiple-choice questions. Answer the questions on the answer sheet provided.

- Write your **examination number** on the “name” line. *Write it NOW.*
- Mark "A" in the “Test Form” box on the right side of the answer sheet. *Mark 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.*

Because you successfully completed the online Estate System Proficiency Test, this copy of the exam does not include the true-false questions covering the estate system. You do not need to write your “word” on your 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.

1. Dustin bought a small warehouse that he wanted to convert to a discount retail store. In order to get a building permit for the alterations, Dustin has to provide fire exits on both sides of the building. However, one side of the building abuts on land owned by Kingston, who uses the area next to Dustin's building as a driveway. For a price, Kingston is willing to let Dustin have an easement for emergency egress from the proposed fire doors. If Kingston grants the easement to Dustin, it would presumptively be (unless otherwise specified):

- a. An appurtenant easement.
- b. An accessory easement.
- c. An easement by necessity.
- d. An easement in gross.

2. Kingston granted Dustin the needed easement discussed in the preceding question. Dustin later conveyed his store to Home Max, a large home-improvement chain. The deed to Home Max did not mention the easement. Kingston now wants to deny Home Max the use of the easement. Under the usual interpretive presumptions:

- a. Home Max would not be entitled to use the easement in connection with the store.
- b. Home Max would have an easement by necessity if the store would otherwise be illegal under the local fire laws.
- c. Home Max would have an easement by implication if the store would otherwise be illegal under the local fire laws.

d. The previously created easement would pass to Home Max as an appurtenance to the dominant tenement conveyed by Dustin.

3. In 2003, the Bradfords bought a lot near the beach. The grant included “an easement for pedestrian use only” on a specified path leading to the ocean. The path lies on land down the road from the Bradford property. The Bradfords never used the easement because they had other ocean access, more convenient, over land owned by the Larkins. Although the location of the easement is now badly overgrown and needs to be cleared, there were never words or conduct inconsistent with possible future use. Last winter, the Larkins sold their property, and the Bradfords want to clear and reopen the path across the easement.

- a. The Bradfords probably have a right to clear the path and make use of the easement.
- b. The easement has probably been extinguished by prescription.
- c. The easement is probably extinguished by abandonment.
- d. The easement is probably extinguished by estoppel.

4. An easement in gross is usually transferable:

- a. In connection with a transfer of the dominant tenement.
- b. If it is a "commercial" easement (as opposed to a “personal” one).
- c. If has been created by implication from prior use.

- d. None of the above. Easements in gross are never transferable.

Facts for Freeman-Weld questions. Freeman bought a house on a large parcel in a semi-rural area. The person who built the house (a previous owner) put an underground septic field on the eastern side of the parcel, the only location with suitable soils. There was, however, no surface indication of the septic field's location, and there still is not. Recently, to raise some needed cash, Freeman conveyed the eastern half of his land, including the area with the septic field, to Weld.

5. Weld discovered the septic field a few months after the conveyance, while doing some test borings. Now Weld wants the septic field removed. The actual location of the septic field came as a genuine surprise to both Freeman and Weld, but Freeman will incur major expense if the septic field cannot stay where it is. Freeman now wishes to claim an easement by implication from prior use to continue having the septic field on Weld's land. Factors that would tend to weigh against this claim include:

- a. The use was not very apparent at the time of the conveyance to Weld.
- b. Freeman is a grantor claiming an easement by implied reservation, not a grantee claiming by implied grant (at least this would matter in some states).
- c. Both of the above.
- d. There was no quasi-easement at the time of the conveyance to Weld.
- e. All of the above.

6. Suppose that when Freeman conveyed the eastern half of his land to Weld he expressly reserved an easement to maintain the underground septic field on the premises. Weld built his home on another part of the premises, some distance from the septic field. Two years later, Weld planted a beautiful and costly ornamental garden over the area occupied by the underground septic field.

- a. In planting the garden, Weld is trespassing on Freeman's rights and Freeman can have the garden dug up any time he wants.
- b. Freeman can have the garden dug up if but only if it is necessary to do so in connection with the operation, maintenance or repair of the septic system.
- c. As owner of the premises acquired from Freeman, Weld clearly has the paramount right to possession, and it would be legally wrong for Freeman to dig up Weld's garden without Weld's consent.
- d. Weld did not violate Freeman's rights by planting a garden on the septic field area, but if he wants to use the area for something else, such as grazing his horse, Freeman would have the final say.

7. Suppose again that when Freeman conveyed to Weld he expressly reserved an easement to maintain the underground septic field on the premises conveyed. Freeman then bought another lot, adjacent to his but on the far side from Weld. He built a house on the new lot. When Freeman moved into the new house, the original one was demolished. The septic field now serves the new house just as it used to serve the original one. Now, Freeman and Weld are having a bitter dispute over an unrelated matter and Weld has told Freeman to “cease and desist” his use of the septic field:

- a. Weld has no legal right to make Freeman stop using the septic field.
- b. Weld has a legal right to make Freeman stop using the septic field only if the physical burden resulting from the new house significantly exceeds the burden that resulted from the original.
- c. Freeman's present use of the septic field would be an illegal overuse, but only if the physical burden resulting from the new house significantly exceeds the burden that resulted from the original.
- d. Freeman's use of the septic field to serve the new house would be an illegal overuse even if the physical burden resulting from the new house is no greater than that which resulted from the original.

8. For the last 12 years, Thompson has been walking his dog on an empty lot adjacent to his own backyard. For most of this time the empty lot belonged to Kranz, who paid little attention to these activities. Last year, Kranz sold to Wiggin, who built a house on the lot. The area where Thompson has been walking his dog is now part of Wiggin's backyard, within an area that is subject to a utility easement. About 3 months ago, Wiggin sent the Thompson the first of a series of letters and notes protesting his alleged "trespasses" and the resulting "filth" left behind on Wiggin's property. Now Wiggin is putting up a fence that will effectively keep Thompson out.

- a. Since Thompson had been obviously using the area for a long period of time prior to the purchase by Wiggin, Thompson probably has acquired an easement by implication based on his prior use.

- b. Since the area where Thompson walked his dog was already a utility easement, it would not be possible for Thompson to have an easement of his own on the same area.
- c. On these facts, Thompson seems to have a good case for claiming an easement by prescription.
- d. Since the area where Thompson walked his dog was already a utility easement, Wiggin could not complain since he does not have exclusive rights to the area anyway.

9. In 2001, Rachel conveyed Whiteacre "to Olson and Wilson and their heirs." Under the modern presumptions for interpreting a conveyance such as this:

- a. If Wilson predeceases Olson, then Olson would be the sole owner of the premises.
- b. If Olson predeceases Wilson, then Wilson would be the sole owner of the premises.
- c. Both of the above.
- d. None of the above.

10. Assume that, in the preceding question, both Olson and Wilson are still alive and further that Wilson has had sole possession of the property since the 2001 conveyance:

- a. By virtue of his long period of sole possession, Wilson has probably become the sole owner by adverse possession.
- b. If Wilson ousted Olson (and it happened long enough ago), Wilson might now be the sole owner due to adverse possession.

c. By virtue of his long period of sole possession, Wilson presumptively owes a lot of rent to Olson (majority rule).

d. None of the above. A concurrent tenant cannot lose his or her rights due to adverse possession by another concurrent tenant.

11. Reston conveyed Blueacre “to Jack Barker and Marcia Grimm and their heirs, as joint tenants.” Later, Jack predeceased Marcia

a. In some states the conveyance would have created a tenancy in common because it does not specify rights of survivorship.

b. Assuming the conveyance created a joint tenancy, Marcia became the sole owner of the land at Jack’s death.

c. Assuming the conveyance created a tenancy in common, Jack’s heir or devisee would become Marcia’s new co-tenant at Jack’s death.

d. All of the above.

12. Assume that the conveyance in the preceding question created a joint tenancy.

a. If Jack later mortgaged his interest to Clark, Marcia would not, according to the “four unities” doctrine, become the sole owner at Jack’s death.

b. If Jack later leased his interest to Clark, Marcia would not, according to the “four unities” doctrine, become the sole owner at Jack’s death.

c. Both of the above.

d. According to the “four unities” doctrine Jack could not unilaterally impair Marcia’s survivorship right to become the sole owner at Jack’s death.

13. Ellie, Udall and Eunice owned Brownacre as joint tenants. Ellie conveyed her interest to Wally. As a result:

a. Udall, Eunice and Wally are now joint tenants.

b. Udall and Eunice remain joint tenants as to an undivided 2/3, while Wally owns an undivided 1/3 as tenant in common with Udall and Eunice.

c. Udall, Eunice and Wally are now tenants in common.

d. The answer depends on Ellie’s intention when she conveyed to Wally, *i.e.*, whether she intended to make Wally a joint tenant or a tenant in common.

14. Ellie, Udall and Eunice owned Brownacre as joint tenants. Ellie conveyed her interest to Eunice. As a result:

a. If Udall then dies, Eunice would own the whole, by herself.

b. If Eunice then dies, Udall would own the whole, by himself.

c. Both of the above.

d. None of the above.

15. The primary effect of a severance of a joint tenancy (by destruction of one or more of the four unities) is to:

- a. Create a tenancy in common that destroys the rights of survivorship either in whole or, at least, in part.
- b. Divide the premises into separate parcels, which are then separately occupied and possessed by the prior joint tenants.
- c. Divide the premises into separate parcels, which are then jointly occupied and possessed by the prior joint tenants.
- d. Make the former joint tenants into tenants in severalty.

16. Borgia's principal asset is his interest in a house that he holds as tenant by the entirety with his wife, Henrietta. Recently, he was involved in a traffic accident in which he was at fault. His liability insurance is inadequate to cover the amount of the tort judgment that may be rendered against him:

- a. Under the majority rule, Borgia's judgment creditor *would not* be able to levy execution on Borgia's interest in the house to enforce the judgment.
- b. Under the minority (and New York) rule, Borgia's judgment creditor *would* be able to levy execution on Borgia's interest in the house to enforce the judgment.
- c. Both of the above.
- d. In nearly all states that recognize the tenancy by the entirety, Borgia's judgment creditor would be able to levy execution on Borgia's interest in the house to enforce the judgment.

17. Gregg and Gloria, husband and wife, live in a community property state. In the last few days, Gloria has received a paycheck from her employer, a gift of \$10,000 of bonds from her father, and a dividend on stock that she purchased with money she earned from

her job after she got married to Gregg. She also owns a car, which she acquired (paid in full) with her own money shortly before the marriage.

- a. Gregg is a 50% owner of all of the above-mentioned items.
- b. Gregg is a 50% owner of everything but the car.
- c. Gregg is a 50% owner of everything but the car and the bonds.
- d. Gregg is a 50% owner only of the dividend.

18. Woodstock, who holds a valid state hunting license, was out hunting on land belonging to Simpson. He saw an animal (*ferae naturae*), shot it and took it home. This was the same animal which, the day before, had been caught in a trap laid by Munson on Munson's own land. However, as Munson was taking the animal out of the trap, it bit him and got away.

- a. If Woodstock did not have a license from Simpson to hunt on Simpson's land, then Simpson would be entitled to possession of the animal as against Woodstock.
- b. Munson would be ordinarily entitled to possession of the animal as the first captor.
- c. Both of the above.
- d. If the animal was on Simpson's land then, under the better (and more sensible) view, Simpson already owned it, essentially in the same way that he owns the bushes, trees and rocks that are there.

19. Assume that Simpson had given Woodstock a license to “go hunting” on Simpson’s land. While hunting there Woodstock discovered that passing trains spilled coal on Simpson’s land where the tracks made a tight turn along the property line. Woodstock managed to remove nearly \$100 worth of coal, which he intended to use to heat his cabin. Simpson has found out about this and wants the value of the coal.

- a. There is no way that Simpson could have a right to get the value of the coal from Woodstock because Simpson didn’t own the coal any more than Woodstock did.
- b. Simpson would have a strong argument that he has a better right to the coal than Woodstock because, despite the license to “go hunting,” Woodstock was committing trespasses in taking the coal.
- c. Simpson would have a strong argument that he has a better right to the coal than Woodstock because, as owner of the land, Simpson would be deemed to own all that lies on it, including the coal.
- d. There is no way that Simpson could get the value of the coal from Woodstock because Woodstock had a license from Simpson and, therefore, could not be considered a trespasser for any purpose.

20. Walter is building a patio in his back yard. The project requires large amounts of concrete. The steepness of the terrain on Walter’s land prevents a concrete delivery truck from getting to Walter’s backyard so the concrete would have to be carried up in buckets—requiring the efforts of 5-8 men for a full day, at great expense. Walter’s neighbor in back, Herbert, has an existing driveway that would be very convenient for the purpose. It would allow access to Walter’s yard with no harm to Herbert. Unfortunately, Herbert has refused permission to let Walter bring the concrete in over his

driveway. If Walter goes ahead and uses Herbert’s driveway anyway:

- a. It would not be a trespass because courts will balance the hardships and refuse to enjoin a harmless use by one person of the other person’s land.
- b. It would not be a trespass because Herbert is being unreasonable, and courts will not assist a person to unreasonably cause expense to another.
- c. It would be a technical trespass but no court is likely to award more than nominal damages unless Herbert can show that he has sustained serious actual harm.
- d. It would be a trespass and a court might even order Walter to pay major punitive damages.

21. Jordan has a house in a semi-rural area near a truck depot. Jordan gets his domestic water from a well. Recently the truck depot put in an extensive truck-washing facility that also uses well water. The needs of the truck depot are sufficiently great that it has lowered the water table in the immediate vicinity. As a result, Jordan’s well has gone dry and, to meet his own water needs, Jordan will have to extend the depth of his well considerably—at a cost of several thousand dollars. The truck depot’s use of the water is not considered a “commercial” use.

- a. If the state follows the so-called English rule, the truck depot would not be liable to Jordan.
- b. If the state follows the so-called American rule, the truck depot would not be liable to Jordan
- c. Both of the above.

d. None of the above. In most or all states the truck depot would be liable to Jordan.

22. Neville and Esteban decided to take a small boat down the Burbly River, a narrow but navigable-in-fact stream. They planned to start at a public highway and traverse Greenacre, owned by Mr. Green. As they were putting their boat in the water, Mr. Green appeared and ordered them not to use the stretch of river crossing his land. Neville and Esteban ignored him. A short distance downstream, in the midst of Greenacre, they were photographed as they dragged their boat on the riverbank to get around a rocky obstacle.

a. Neville and Esteban should be liable as trespassers because they had no permission to go down the stream through Greenacre.

b. Neville and Esteban should be liable as trespassers because, although they were entitled to float down the stream, they had no right to go ashore.

c. Neville and Esteban should not be liable as trespassers because the law implies a license for members of the public to use lakes and streams in rural areas.

d. Neville and Esteban should not be liable as trespassers because there is a public navigation easement (including a right to make necessary uses of the shore) over streams that are navigable in fact.

23. Stillwell found a valuable bracelet while walking through a public park on his way to work. He showed it to his boss, who told him he should turn it over to the police. His boss even offered to do it for him. A couple of weeks later, Stillwell saw his boss' wife wearing the bracelet.

a. Stillwell has an action in trover to recover the value of the bracelet from his boss.

b. Stillwell has an action in replevin to recover the value of the bracelet from his boss.

c. Both of the above.

d. Stillwell has no action because he is not the true owner of the bracelet.

24. Suppose in the preceding question that Stillwell had found the bracelet in a supermarket, while selecting a head of lettuce in the produce display. As between Stillwell and the owner of the supermarket:

a. Stillwell would probably have the better claim under the so-called American rule.

b. The supermarket owner would probably have the better claim under the so-called English rule, assuming that the bracelet was found in a place that would be considered public or semi-public.

c. Both of the above.

d. None of the above, but Stillwell would have no lawful claim to the bracelet because he is not its true owner.

25. Suppose again that Stillwell found the bracelet in a supermarket, in among the lettuce heads in the produce display. In a state that makes the distinction between lost and mislaid property:

a. The supermarket's claim to the bracelet would be strengthened if it could establish that it had been lost.

- b. The supermarket's claim to the bracelet would be strengthened if it could establish that it had been mislaid.
- c. In a case like this one, it would make no difference whether the bracelet was mislaid or lost.
- d. The true owner would have a better legal claim to the bracelet if it had been mislaid rather than lost.

26. Emily lent her co-worker Lucy an umbrella and \$20 cash to take a taxi home. As a result there was probably:

- a. A bailment of the umbrella and the cash.
- b. A bailment of the umbrella but not the cash.
- c. A transfer of title to both the umbrella and the cash.
- d. A bailment of the cash and a transfer of title to the umbrella.

27. Peterson lent a rare old violin to Bochum, who later took it to a shop for routine repairs. The shop owner accidentally cracked the neck of the violin and, embarrassed, refused to return it. Bochum sued and the shop owner paid Bochum a jury verdict of \$3000 as full damages for the value of the violin. Now, Peterson claims the violin from the shop owner. The shop owner should be entitled to retain the violin because:

- a. He has already paid full damages to the bailee.
- b. There is no evidence that he was negligent in dealing with it.
- c. Only if he has held the violin for at least the period of the statute of limitations on actions on replevin.

- d. None of the above. The shop owner should *not* be entitled to retain the violin.

28. Hammond Deggs decided to give an engagement ring to his girlfriend, Lucie. For the occasion he took her out to *La Jambe de Grenouille*, a very fancy restaurant. Secretly, Hammond delivered the ring to the waiter with instructions that it be brought to Lucie perched on top of a Floating Island dessert. The real value of the ring greatly exceeded its apparent value. Before the waiter could bring the ring to Lucie, he somehow lost it.

- a. The waiter could be liable for, at most, the apparent value of the ring.
- b. In an action by Deggs to recover for the loss of the ring, negligence on the part of the waiter would be presumed.
- c. In an action by Deggs to recover for the loss of the ring, there would be an irrebuttable presumption of negligence.
- d. There can be no liability in this case because the bailment was gratuitous.

29. David decided to give a solid gold bracelet to Patricia as a present. He handed her the bracelet and she tried it on, but the clasp was defective and wouldn't stay closed. David said: "Here, let me take it to the jeweler and have it fixed. But this bracelet is yours." Patricia handed the bracelet back to David.

- a. The delivery requirement was not met on these facts since Patricia did not actually end up with possession of the bracelet.
- b. It appears that the donor has become the donee of the bailee.

- c. It appears that the donor has become the bailee of the donee
- d. The law would generally regard this as an effective “gift in suspension” until David redelivers the bracelet to Patricia.

30. Back in 2006, Terrance visited his Aunt Carrie and, while there, made an admiring comment about her album of old family photos sitting on the shelf. Carrie said, “You always did like that album, ever since you were a little boy. I want you to have it after I’m gone. Don’t let anybody else take it. It’s to be for you.” The album remained in Aunt Carrie’s possession for six more years, until she passed away.

- a. Terrance should be entitled to the album based on the described statements, assuming they can be proved.
- b. If a typed note is found in the album stating that Terrance should get the album, then Terrance should be entitled to the album.
- c. There appears to be no effective gift of the album to Terrance due to an absence of *in praesenti* donative intent.
- d. The only way for Aunt Carrie to make an effective inter vivos gift of the album would be to deliver the album itself to Terrance during her lifetime.

31. Suppose that, during Terrance's 2006 visit, Aunt Carrie handed Terrance a note, signed by her, saying: "I hereby give you my album of family photos, but I want to keep possession of it until my death,"

- a. Terrance should be entitled to possess the album after Carrie’s death.

b. There appears to be no possibility of an effective gift to Terrance due to an absence of *in praesenti* donative intent.

c. The only way for Aunt Carrie to make an effective inter vivos gift of the album would be to deliver the album itself to Terrance during her lifetime.

d. Aunt Carrie's attempted gift fails because it was an invalid testamentary gift.

32. Suppose that Terrance later visited Aunt Carrie at a time when she was very ill and believed she was on her deathbed. He picked up an old silver tea tray that was on a table across the room from Aunt Carrie, and she said: “Terrance, I want you to have that tea tray. Take it when you go. It’s yours.” Later, as Aunt Carrie looked on contentedly, Terrance took the tea tray with him when he left. Aunt Carrie regained her full health a few days later.

- a. The attempted gift probably was not complete because there was no delivery.
- b. The attempted gift probably was probably not complete due to lack of donative intent (as opposed to testamentary intent).
- c. Aunt Carrie, now back to her full health, would probably have the right to get the tea tray back.
- d. All of the above.

33. Griffith has a collection of rare coins and he decided to give some to his nieces and nephews. He put coins into several packages and on each package he wrote the name of the intended donee. He handed the packages to his brother and asked him to make sure the packages got to the persons named on them, saying “Now these coins are theirs.”

- a. There cannot yet be a completed gift because the delivery to the brother could not be construed as meeting the delivery requirement.
- b. There cannot yet be a completed gift because the donative intent in this case is apparently not an *in praesenti* donative intent.
- c. It is enough to find a completed gift in this case that the donative intent was clearly expressed.
- d. There would be a completed gift in this case if the brother were deemed to be acting as agent for the donees.

34. Harris Burger was seriously ill and believed he was soon going to pass away. He handed a rare woodcarving to his friend Harney and said: "I've always wanted you to have this after my death. It's yours." Under the usual presumption:

- a. The gift would be revocable if Burger changed his mind.
- b. Most would say the gift would be automatically revoked if Burger did not die of the illness but instead fully recovered from it.
- c. The gift would be a gift causa mortis.
- d. All of the above.

35. Paula lent a DVD to her friend, Angela, so she could take it home and watch it. Later, Paula told Angela over the telephone that she could just keep the DVD.

- a. There has there been a valid gift of the DVD under these facts.

- b. The delivery requirement was met inasmuch as the DVD was already in the donee's possession when Paula decided to make a gift of it.
- c. Both of the above.
- d. None of the above. There is not (yet) a completed gift in this case.

36. The major difference between gifts inter vivos and gifts causa mortis is that:

- a. Gifts causa mortis are in their nature revocable.
- b. Persons on their deathbeds can only make gifts causa mortis, not inter vivos.
- c. Gifts inter vivos are an effective will substitute, allowing persons to make provisional dispositions of their property in anticipation of death.
- d. All of the above.

37. Worthington leased an apartment from Biltmore "for 3 years reserving an annual rent of \$12,000 payable at a rate of \$1,000 per month." Worthington has taken possession and paid rent monthly for several months, but the parties never signed a lease. The Statute of Frauds applies to leases for more than one year. What type of tenancy does Worthington now probably have?

- a. A periodic tenancy from month to month
- b. A periodic tenancy from year to year
- c. A tenancy at will.
- d. An estate for years for one year.

38. Elmer Sufflot has a month-to-month tenancy running from the 4th to the 3rd day of each month. From today (May 11), what is the earliest date as of which the tenancy can be terminated?

- a. May 31.
- b. June 3.
- c. June 11.
- d. July 3

39. Marcus made a written lease of Cornacre to Tostrup for three years at a rent of \$500 per month. It contained the usual promises and reservation with respect to rent. Tostrup later assigned his interest in Cornacre to Chester, who wrongfully abandoned the property with about a year left on the lease. If Chester had assumed the lease:

- a. Marcus can recover rent from Tostrup
- b. Marcus can recover rent from Chester.
- c. Both of the above.
- d. None of the above

40. Suppose in the preceding question Chester did not abandon possession but, instead, reassigned to Durst with about one year left on the lease. Later, before the lease expired, Durst wrongfully abandoned possession and quit paying rent.

- a. Marcus can recover rent from Chester if he assumed the lease.

- b. Marcus can recover rent from Chester even if he did not assume the lease.
- c. If Chester assumed the lease then Tostrup would thereby be relieved of his obligation to pay rent.
- d. All of the above.

41. Frederika leased Alice's villa for two years under a written lease containing the usual promises and reservation with respect to rent. Frederika then assigned her interest to Manfred, who assumed the lease: Which the following is *wrong*?

- a. Manfred is in privity of contract with Alice.
- b. Manfred is in privity of estate with Alice.
- c. Frederika is in privity of contract with Alice.
- d. Frederika is in privity of estate with Alice.
- e. None of the above is wrong (*i.e.*, all are true).

Facts for Mitchell-Clyde questions. Mitchell leased Homeacre from Clyde for three years. The written lease contained a clause stating: "This lease may not be assigned without consent of the lessor." It says nothing about sublets.

42. Suppose that, immediately after taking possession of Homeacre under the original lease, Mitchell transferred the possession to Keith for all but one day of the remaining portion of the three-year term. Clyde then sued claiming that Mitchell violated the terms of the assignment clause in the lease. Mitchell says he did not. Who wins?

- a. Clyde wins because Mitchell has relinquished control over the premises

- b. Mitchell wins because he retains a reversion.
- c. Clyde wins because the lease requires that Mitchell get permission to transfer the premises to somebody else
- d. Mitchell wins because he remains in privity of contract with Clyde.

43. Twining Corp. leased office space from Landmark Holdings, Inc. Right next door, Landmark owns an open lot. After Twining moved in, Landmark leased this lot to an excavating contractor, which uses the space to store equipment and materials. Due to this use, constant noise and dust emanates from the lot, making it extremely difficult to use Twining's space for office purposes. After numerous complaints, Twining wants to know if it has to continue paying rent for space that it essentially cannot use.

- a. Twining would be justified in abandoning and ceasing to pay rent if (but only if) Landmark was somehow responsible for or able to control and prevent the noise and dust coming from the lot.
- b. If Twining wants to be relieved of its rent obligation based on constructive eviction, it must actually vacate its premises, at least partially.
- c. Both of the above.
- d. None of the above. Because of the doctrine of "independence of covenants," Twining must pay the rent that it has agreed to pay.

44. Bob Downing leased a house to Karen Gaines. For Gaines, a major reason for entering the lease was that the house would provide basic protection from the elements. What is more, the lease

contained an express provision that Downing would maintain the premises. During the first big rain, Gaines discovered that the roof was full of leaks. Downing ignored her pleas for assistance and repairs. Under the traditional doctrine of "independence of covenants":

- a. Gaines would be relieved of her rent obligations even if she retains possession.
- b. Gaines would not be relieved of her rent obligations based on the mere fact that the landlord has committed a substantial breach of the lease.
- c. Downing can evict Gaines for nonpayment if Gaines unjustifiably withholds rent even if the lease does not so provide.
- d. All of the above.

45. Same facts as previous question except the lease did not contain an express provision that Downing would maintain the premises. Under modern legal reforms applicable to residential tenancies:

- a. Gaines is entitled to have Downing get the roof repaired despite the absence of the express provision calling for such repairs.
- b. Because of the leaks, Gaines would probably be able to retain possession without paying the full amount of the rent.
- c. Both of the above.
- d. These facts would constitute a constructive eviction of Gaines.
- e. All of the above.

46. Lambert leased an apartment to Grant, who later wanted to transfer the apartment to Collins. The lease provided that Grant may not “sublet” without Lambert’s consent but it said nothing about “assignment.” Under the traditional rules:

- a. Lambert would be permitted to withhold consent to a sublease only with reasonable grounds.
- b. Grant may assign without even seeking Lambert’s consent.
- c. Grant may assign or sublet without seeking Lambert’s consent as long as the new tenant “assumes” the lease.
- d. All of the above.

47. Lambert leased an apartment to Grant and Grant later transferred the apartment to Collins:

- a. If the transfer was a sublease, Grant remains in a landlord-tenant relationship with Lambert.
- b. If the transfer was an assignment, then Grant is in a landlord-tenant relationship with Collins.
- c. Both of the above.
- d. If the transfer was a sublease, Lambert is entitled to recover rent directly from Collins.
- e. All of the above.

48. When a leasehold tenant makes a transfer of possession, the best way to tell whether the transfer is an assignment or a sublease is to:

- a. Look at what it says at the top of the document (“Assignment” or “Sublease”).
- b. See whether the transferor retained a reversion (or, in some states, a right of entry). If he did, then the transfer is an assignment.
- c. See whether the transferor retained a reversion (or, in some states, a right of entry). If he did, then the transfer is a sublease.
- d. See whether the transferee assumed the lease. If he did, then the transfer is a sublease.

49. Dr. Bonner rents space for a dental office in a building owned by Norris. During the summer, Norris decided to remodel the building’s hallways, and the job created mountains of dust in the air. Inevitably some of this dust seeped into Bonner’s treatment room and prevented him from safely working on patients. Bonner was forced to move out 2 years prior to the end of the lease. Assuming the dust could legally be considered a nuisance, would Bonner have a good argument for avoiding liability for rent following his abandonment?

- a. Yes.
- b. No, because landlords are not liable to their own tenants for nuisance, trespass or the like.
- c. No, because Norris did not literally remove Bonner, and his own choice to leave would not be considered an eviction.
- d. No, due to the doctrine of “independence of covenants.”

Facts for Newton-Larvik questions. Newton conveyed a large parcel of wooded riverside land to Larvik Electric Co., which

intended eventually to set up a hydropower generating station there. In the deed (promptly recorded), Newton reserved for himself “his heirs, successors and assigns” an “exclusive perpetual right to hunt and fish on the premises conveyed hereby.” In connection with these rights, Newton insisted that Larvik also covenant that the premises “shall never be developed for any purpose other than hydroelectric generation.” At the time of the deed to Larvik, Newton owned an adjacent parcel of land on which he had a hunting cabin.

50. Newton later conveyed his parcel with the hunting cabin to Forman, and Larvik Electric Co. conveyed its parcel to H & R Vacation Homes, Inc.

- a. Forman probably has a right to use the H & R parcel for hunting and fishing.
- b. Newton probably has a right to use the H & R parcel for hunting and fishing.
- c. Both of the above.
- d. The hunting and fishing easement was presumptively extinguished when Newton ceased to have any use for it.

51. Suppose now that Newton still owns the parcel with the hunting lodge, but Larvik Electric Co. has conveyed its parcel to H & R Vacation Homes, Inc.:

- a. Newton can probably enforce the covenant against H & R—in part because the covenant touches and concerns the land.
- b. Newton can probably enforce the covenant against H & R—in part because there is privity of estate.
- c. Both of the above.

d. None of the above. Newton probably cannot enforce the covenant against H & R.

52. If Newton still owns the parcel with the hunting cabin, but Larvik Electric Co. has conveyed its parcel to H & R Vacation Homes, Inc., Newton can probably enforce the covenant against H & R as an *equitable servitude*:

- a. Whether or not H & R bought with actual notice of the covenant, as long as Newton's deed to Larvik was properly recorded before H & R bought.
- b. Even if H & R had no notice whatsoever of the covenant when it purchased the land.
- c. Both of the above.
- d. None of the above. A so-called real covenant cannot be enforced as an equitable servitude.

53. Suppose that Larvik Electric Co. still owns the parcel that it bought from Newton, but that Larvik's upstream riparian neighbor, a municipal water works, used eminent domain to take the hydropower generation rights in the river.

- a. A court must refuse to enforce the covenant against Larvik because its obvious purpose can no longer be served.
- b. There is authority holding that, under circumstances similar to these, the covenant should be declared extinguished because otherwise Larvik would now have no valuable use of its property at all.
- c. Both of the above.

d. While the covenant might be enforceable against Larvik, it could not be enforced against a purchaser from Larvik under the rule against horizontal privity.

54. Which of the following conveyances would be *invalid*, in whole or part, under the traditional rule against perpetuities? (At the time of the conveyance, L is a living person who has one child, age 2.)

- a. To L for life and then one day after L's death to R and his heirs.
- b. To L for life, then to L's first grandchild and his heirs.
- c. To L for life, then to L's first child to reach age 18, and his heirs.
- d. All of the above would be invalid in whole or in part.
- e. None of the above would be invalid in whole or in part.

Facts for Robbins-Patman questions. Robbins has owned a parcel of land along the Gowen River for many years. Although Robbins owns to the river's edge, the riverbank area nearest his house is marshy, and Robbins has always gone upstream about 200' to reach the edge of the water, land his boat, etc. Recently, Robbins received a letter from a lawyer stating that the area he's been using to access the river is owned by Patman, who wants to build a small marina there. The marina would greatly annoy Robbins by impairing the now rather pristine nature and isolated "feel" of the area. Robbins wants to know if, due to his many years of use, he has acquired a ripened title to the area where Patman wants to build the marina

55. In general, in order for Robbins to prove that he has a ripened title by adverse possession, he would *not* have to show:

- a. Continuous and exclusive possession for the requisite period.
- b. That he gave Patman reasonable notice that he was using Patman's land.
- c. Actual physical possession of the area he claims.
- d. Open and notorious possession.
- e. Actually, Robbins would have to show *all* of the above facts.

56. Suppose that Patman was fully aware of the riverbank uses being made by Robbins, but that both he and Robbins mistakenly thought the property line was about 50' further upstream. In other words, for all these years both he and Robbins had been assuming erroneously that Robbins was using only his own land.

- a. If Robbins was wrongfully possessing Patman's land due to an honest mistake of fact, some courts would hold that no title ripened because the element of hostility is missing.
- b. Under the usual understanding of the hostility requirement, Robbins could acquire ripened title only if he can prove that he honestly believed that he was the true owner of the land he is claiming.
- c. Both of the above.
- d. If neither Robbins nor Patman knew the actual location of the property line, then the adverse possession by Robbins of the Patman land could not have been "open and notorious."

- e. All of the above.

57. In order for Robbins to establish that he had adverse possession of the area that he now claims, he would have to show that:

- a. He had built a fence, a house, a dock or, at least, some significant permanent structure on the area.
- b. He did not actually know the area belonged to Patman.
- c. He acted towards the area more or less like a true owner would.
- d. All of the above.

58. Last year Elizabeth inherited some rural property from her grandmother, Alice, who'd bought the land from Hickman 4 years earlier (in 2007). Five years before that (2002), Hickman had contracted to buy the land from a subdivider named Malley, but he never made payment or received a deed. Nonetheless, Hickman took possession of the land, built a small house on it and lived there until Alice bought it. Malley is now insolvent and his creditors claim the land. They are threatening an ejectment action against Elizabeth. In computing whether the statute of limitations has run in her favor, Elizabeth may (if necessary):

- a. Tack her possession onto that of Alice.
- b. Tack together the possession of herself, Alice and Hickman.
- c. Both of the above.
- d. None of the above. Elizabeth's time on the land is too short for her to assert a valid claim to the land by adverse possession, and tacking wouldn't help her..

59. Suppose in the preceding question, Malley did not have a good title either, and the true owner was Banks. Suppose also that it's the creditors of *Banks* who are threatening Elizabeth with ejectment.

- a. Elizabeth may tack her possession only onto that of Alice.
- b. Elizabeth may tack together the possession of herself, Alice and Hickman.
- c. Both of the above.
- d. Alice may tack together the possession of herself, Alice, Hickman and Malley.
- e. All of the above.

60. In 1985 while O was the owner of Blackacre, an adverse possessor, A, entered into possession. A has remained ever since. Assuming that the local statute of limitations is like the one we studied in class (with a basic 21-year period and a 10-year disability period), A would have acquired a ripened title in:

- a. 2006 if O was under no disability in 1985, died in 1986, and left H, age 5 years, as his heir.
- b. 2008 if O was insane in 1985 and died in 1998 while still insane.
- c. Both of the above.
- d. 2006 if O was under no disability in 1985, became insane in 1986, and died in 2004 while still insane, leaving H, an adult, as his heir.

- e. All of the above.

<End of examination.>

Note: Because you successfully completed the online Estate System Proficiency Test, this copy of the exam does not include the true-false questions covering the exempted readings on the syllabus.