PACE UNIVERSITY SCHOOL OF LAW

PROPERTY
PROFESSOR HUMBACH May 13, 2016
FINAL EXAMINATION 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 to be answered on a Scantron answer sheet.

- 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. Do it carefully. *This is part of the test.*

Because you have 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 Scantron answer sheet. You will automatically receive full credit (15 points) for the estate-system questions.

Answer each question selecting the *best* answer. Mark your choice on the Scantron 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 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 and answer based on the traditional rule.

1. Borton is a retired biology professor. He owns a farm with several large meadows full of wildflowers that attract butterflies. Borton has been particularly pleased that a certain very rare species of pink butterfly, the so-called "Hot Petunia," has established itself on his land. One day Borton was out on his land and, to his chagrin, he saw a Komodo Dragonfly about ready to prey on one of his precious Hot Petunia's. With a deft sweep of his net, he managed to capture the voracious creature just before it attacked and devoured the butterfly.

a. Borton would be considered to have occupancy of the Komodo Dragonfly and would be considered to own it by original acquisition.

b. Borton would have primary ("first in time") possessory rights to the Komodo Dragonfly but would not be considered its owner.

c. To be considered the owner of the Komodo Dragonfly, Borton must establish *animus revertendi* in it.

d. If it could be proved that the Komodo Dragonfly originally came from land down the road belonging to Elmo Peech, then Peech would be the dragonfly's rightful owner.

2. Later that same day, Borton from the previous question saw his former colleague, Klover, out in one of Borton's meadows with a butterfly net. Borton had told Klover several times he was not allowed on Borton's land. As Borton chased Klover away from his land, he noticed that Klover had one of the prized Hot Petunias in a collection jar. On the lepidoptera market, a specimen of this rare butterfly is worth over $600. Under the usual common law rules:

a. Borton would have no serious claim to recover the Hot Petunia captured by Klover.

b. Borton should be entitled to the Hot Petunia under the principle of *animus revertendi*.

c. Borton should be entitled to the Hot Petunia under the principle of *ratione soli*.

d. Borton should be entitled to the Hot Petunia because he would be legally regarded as the first captor.

3. Having been forbidden to enter Borton's land, Klover purchased a small drone with a camera and flew it a few feet above the ground over Borton's meadows looking for rare butterfly caterpillars that he could later sneak in and take. During these flights, the drone never touched the ground and never did any actual damage. However, when Borton discovered what Klover was doing, he brought suit for trespass.

a. As long as the drone never touched the ground, Klover's actions could not constitute trespass.

b. As long as the drone never did any actual economic damage, Borton would have no right to recover damages in trespass.

c. Both of the above.

d. Just by flying the drone over Borton's land, as described, Klover would be committing a trespass under traditional common law principles.

4. While vacationing in the north woods, Borton decided to do some butterfly hunting on a large tract of open land owned by a timber company. He spotted an Ugglod butterfly (native to the area) and, with a skilled sweep, got it securely in his net. However, he then fumbled and the Ugglod got loose again. As it flittered across a field with Borton watching in helpless resignation, Klover leapt out of the tall weeds and netted the Ugglod because he wanted it for himself. Borton now demands that Klover let him have the Ugglod, insisting he was the "first captor." Under the usual common law rules:

a. Borton should be entitled to the Ugglod because he was the first captor, and Klover has no serious argument to the contrary.

b. Klover would have a strong claim to the Ugglod because he caught it after it had regained its natural liberty.

c. Borton should have a better claim to the butterfly than Klover under the principle of *Keeble v. Hickeringill* (the duck-decoy pond/gun-shooting case).

d. If neither Borton nor Klover had permission from the timber company to go on the timber company's land or capture butterflies there, neither of them would have any rights to the Ugglod as against the other.

5. Lily Trumane discovered that her neighbor, Harold Rostin, arranged with a local industrial concern, InterGas, to store natural gas underground beneath his property. Recently, it occurred to Trumane that the gas being pumped into the ground on Harold's property might be seeping into cavities under her property. She inquires about her rights:

a. Trumane would have no complaint against Harold or InterGas for seepage because a surface owner like Trumane does not own the inaccessible cavities deep beneath her land.

b. In some states, where courts analogize natural gas to *ferae naturae*, the gas pumped into the ground by InterGas would cease to be the property of InterGas.

c. Under the rule followed almost everywhere, Trumane would be guilty of larceny if she "produced" (pumped out) gas injected into the ground by InterGas, knowing that InterGas has bought it and put it there.

d. All of the above.

6. Berwick Corp. has been taking percolating water from its land to use in a cooling device for an office building on the same land. Because of the pumping, the wells go dry on neighboring land belonging to Salter.

a. If the local courts use the so-called American rule, Salter would have no legal remedy against Berwick even if the cooling device made inefficient use of the water and would be considered wasteful.

b. If the local courts use the so-called American rule, the percolating water would be deemed to run in a definite underground stream or channel rather than ooze or seep through the soil.

c. If the local courts use the so-called English rule, Salter would have a legal remedy against Berwick, provided he could show that Berwick's use of the water was not a reasonable use.

d. If the local courts use the so-called English rule, Salter would have no legal complaint since Berwick would be within its rights in taking as much water as it needed for use on its land.

7. Gordon and Flowers were rafting down a navigable-in-fact stretch of the Jasper River that runs through Dick Corwell's farm. Corwell, who owned the bed of the stream as well as the land on both sides, sued the two for trespass:

a. Gordon and Flowers could almost certainly be held liable for trespass.

b. Gordon and Flowers probably could *not* be held liable for trespass because all streams in the U.S. are subject to a public navigation easement.

c. Gordon and Flowers probably could *not* be held liable for trespass because navigable-in-fact streams are normally subject to a public navigation easement.

d. None of the above. The only way Gordon and Flowers would not be guilty of trespass is if Corwell did *not* own either the bed or banks of the stream.

8. Randolph owns a piece of land about the size of our law school's campus and located at the edge of his town. Recently the municipal council took several actions affecting Randolph's land. Which of them would require that "just compensation" be paid?

a. Modified the zoning regulations to forbid the use of the land for commercial purposes, decreasing its overall value by 25%.

b. Widened a road and, in the process, permanently took possession of a strip approximately three feet wide along the entire front of the property, reducing the property's overall value by about 2%.

c. Both of the above.

d. Adopted a wetland regulation that reduced the number of possible building lots that could be obtained from the land, diminishing the property's overall value by 75%.

e. All of the above.

9. Suppose in the previous question that the municipality built a new bridge and causeway over a creek that passed by Randolph's land and the construction caused the water in the creek to back up resulting in permanent flooding of about ¼ of the property. When the municipality refused to compensate Randolph, he sued claiming that a taking had occurred. The municipality responded pointing out that a great public benefit was achieved by building the new bridge and causeway and that, in any event, no taking had occurred because Randolph still had his land—it was just under a few inches of water.

a. Randolph probably could not recover compensation for "taking" because his land has not actually been taken.

b. Because the governmental action effectively destroyed a portion of Randolph's land, he should be entitled to compensation for under the Takings Clause.

c. Because the governmental action affected only a portion of Randolph's land and did not destroy all economically beneficial of the property as a whole, he probably would *not* be entitled to compensation for under the Takings Clause.

d. Because government is generally liable under the Constitution whenever a law substantially reduces property values, Randolph probably would be entitled to compensation under the Takings Clause.

10. Bob Lacey owns an apartment building in the City of Eubank. Believing that access to the Internet is a modern necessity, the city council voted to wire the whole community with the help of a grant from a large corporate donor. Completion of the plan will require stringing cables along the street and on some streets, such as Lacey's, it will require attaching the cables to the facades of the buildings. Lacey objects to having the cables attached to his building. Under the Takings Clause:

a. Lacey may refuse to allow the attachment of the cables to his building.

b. Lacey may refuse to allow the attachment of the cables to his building unless he receives just compensation for the physical intrusion.

c. Lacey may *not* refuse to allow the attachment of the cables to his building or demand money compensation because the cables will be for the benefit of the public.

d. Lacey may *not* refuse to allow the attachment of the cables to his building as long as none of his land is actually taken.

11. One day Jane Brauer went to a dress shop and, while browsing through the merchandise in the public showroom, she found a small purse with money, but no identification, on the floor next to one of the displays. Nobody has any idea who the true owner might be. As between Jane and the owner of the dress shop:

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

b. Jane would have the better claim under the so-called English rule.

c. Both of the above.

d. None of the above. Since Jane found the purse on private property, she would have no right to the purse or the money.

12. In the previous question, suppose the local jurisdiction follows the so-called English rule. It would tend to support the dress shop owner's claim to the purse if:

a. Jane had been the first (and, so far, only) customer to enter the shop that morning, after the shop had been locked up all night.

b. Given the circumstances where the purse was found, it was probably lost rather than mislaid.

c. Both of the above.

d. None of the above. Under the English rule there would be a nearly irrebuttable presumption in favor of letting Jane have the purse.

13. During a party at Gilmore's home, Bearforte spotted an earring next to a phone on a small table while he was peeking around in one of the bedrooms. Gilmore admitted to not being the owner of the earring, and nobody else claimed to own it. Gilmore demanded the earring from Bearforte, who said: "Why should I let you have it? You admit it's not yours." Gilmore would have a better right than Bearforte to the earring if:

a. Bearforte had not been invited to the party and did not have a license to be in Gilmore's home.

b. Bearforte had been invited to the party but had no permission, express or implied, to be peeking around in the bedrooms.

c. The state applies the distinction between lost and mislaid property.

d. All of the above.

e. None of the above.

14. Phillips found a precious looking stone on the street and took it to a jeweler to be appraised. After hearing that Phillips had found the stone, the jeweler refused to return it.

a. Phillips can recover the stone from the jeweler in trover.

b. Phillips can recover the value of the stone from the jeweler in trover.

c. Phillips should not be able to recover either the stone or its value from the jeweler because Phillips is not the owner of it.

d. Phillips should be able to recover either the stone or its value in replevin.

15. The main point for making a distinction between lost and mislaid property is:

a. To provide greater assurance that *mislaid* items will get back into the hands of their true owners.

b. To provide greater assurance that *lost* items will get back into the hands of their true owners.

c. To help assure that the owners of business premises will be able to keep possession of things that are rightfully theirs.

d. To encourage finders to make others aware of their finds.

16. Which of the following is *not* a bailment?

a. You leave your shoes at a shoe repair shop, to be picked it up later.

b. You deposit $300 to your bank account and intending to withdraw it again later.

c. You leave your car with the valet parking attendant at a hotel, to be picked up when you check out.

d. You rent a pair of skis, boots and poles from the ski shop at a mountain resort where you spend your winter vacation.

e. All of the above are bailments.

17. While walking down the street to a restaurant, Ruth Anne became conscious of her diamond bracelet dangling all-too-temptingly from her wrist. She discreetly pulled the bracelet off and stuffed in a coat pocket. A short time later she entered a restaurant where the maitre d' took her coat, adding it to several others he had over his arm, and he left the coats at the checkroom. Nobody working for the restaurant was aware of the bracelet.

After the soup, Ruth Anne suddenly remembered the bracelet, and she went to the checkroom. The coat was there but the bracelet was not. Under the *better* analysis of this situation:

a. The restaurant did not become bailee of the bracelet because it was not aware of its value.

b. The restaurant did not become bailee of the bracelet because it was not aware of its existence.

c. The restaurant did not become bailee of the bracelet because it never agreed to become liable for so great a value.

d. The restaurant became bailee of the bracelet but it should not be held liable for the loss under the "reasonable person" standard of care.

18. Suppose in the preceding question that, when Ruth Anne got to the checkroom, not only was the bracelet missing but also her coat. Ruth Anne would like to recover at least for the coat.

a. The restaurant should not be liable unless Ruth Anne paid a specific charge to check her coat because, without such a charge, the bailment of the coat would have been a gratuitous one.

b. There would be a rebuttable presumption that the restaurant was negligent once Ruth Anne proved there had been a bailment of the coat and the restaurant was unable to return it.

c. It would be conclusively presumed that the restaurant was negligent once Ruth Anne proved there had been a bailment of the coat and the restaurant was unable to return it.

d. Ruth Anne could prevail only if she could affirmatively prove, as part of her prima facie case, that the restaurant was negligent.

19. When Lucky moved into a house he had just bought, there was still some junk in the attic. On investigation, he found an oil painting, all covered with grime. He took it to an art dealer who identified the painting as a rare Matisse, worth several hundred thousand dollars. The dealer agreed to clean the painting and display it for sale. While the painting was at the dealer's shop, however, it was badly damaged in a fire. Lucky sued the dealer and the dealer defends asserting that Lucky never owned the painting and therefore is not entitled to recover damages.

a. The dealer has a good point since, if he pays damages to Lucky, he might end up later being held liable a second time when the painting's true owner shows up.

b. The dealer's defense would be appropriate if Lucky had sued in trover but not if he sued in replevin.

c. Lucky *is* the owner of the painting because the sale of a house normally includes everything in it.

d. Whether or not Lucky is the owner of the painting, the dealer cannot defend by asserting a *jus tertii* under which he does not claim.

20. Goodhart took his car to Crumple Garage to have some engine work done. While the car was at the garage overnight, someone broke and stole it, and it hasn't been recovered.

a. Crumple Garage is absolutely liable to Goodhart for the loss.

b. Crumple Garage is liable to Goodhart for the loss only if it was due to Crumple's negligence, but there is a rebuttable presumption that Crumple was negligent.

c. There is no reason why Crumple Garage should be liable to Goodhart for the loss since it was caused, not by Crumple, but by the criminal act of another.

d. For not taking adequate steps to prevent the theft, Crumple would be liable in trover for conversion of the car.

21. MacEwen owns a tract of country land that he does not occupy or physically possess. He has discovered that Maurice has been entering the land and taking shellfish from the small streams that flow there. For purposes of a trespass action by MacEwen against Maurice:

a. MacEwen would be considered to constructively possess the land, provided it is not possessed by an adverse possessor.

b. MacEwen would be considered to constructively possess the land, whether or not it is possessed by an adverse possessor.

c. As owner of the land, MacEwen has a right to sue and recover for trespass whether or not he could be considered to have possession of it.

d. MacEwen could not recover from Maurice in trespass unless Maurice actually caused damage to the land.

22. Mr. and Mrs. Lorbeer bought a house and moved in several years ago. Last night, a drunk driver negligently lost control, went over the curb and crashed into the house. The Lorbeers have lost the use of a room (a loss valued at about $300 per month) and it would will cost over $10000 to fix the damage. Their lawyer has found that one of the deeds in

their title chain was improperly witnessed. As a result, he cannot prove that the Lorbeers are the actual owners, only that they have undisturbed possession.

a. The Lorbeers would be legally considered to be adverse possessors and, as such, would not be entitled to sue the driver.

b. People who damage property cannot be held liable to plaintiffs (like the Lorbeers) who cannot prove they truly own it.

c. Some courts would let the Lorbeers recover the $10000 repair cost, while others would limit their recovery to the use value they have lost ($300 per month).

d. Courts treat land the same as chattels in cases like these, and people in the position of the Lorbeers are always almost allowed to recover just as fully as chattel owners would be.

23. In 1996 Ambrose died intestate while holding title in fee simple absolute to a wooded hillside. Holden, his sole heir did not take possession. In 1999, Sorrell saw that the land was unoccupied and took possession of it, engaging in the kinds of conduct that would normally ripen into title by adverse possession. In 2007, Sorrell died while still in possession of the land, and the possession was promptly assumed by Cannon, who still holds it today. Holden wants to sue Cannon in ejectment.

a. No matter what the relationship was between Cannon and Sorrell, Holden's ejectment action ought to succeed since Cannon has held possession for only 9 years.

b. Holden's ejectment action probably would not succeed if Cannon was in "privity of estate" with Sorrell.

c. Even if Cannon happened to be Sorrell's sole heir, it wouldn't matter since Sorrell died before he acquired a ripened title by adverse possession.

d. Cannon should prevail since his "prompt" assumption of possession means he can tack his possession onto Sorrell's.

24. In the preceding question, assume that Holden did not know he was the sole heir of Ambrose, and he has only recently found out. Under the better rule (and the one we studied in class):

a. The adverse possession of Sorrell and Cannon cannot be considered "open and notorious" because Holden was not aware that he was the owner of the land.

b. Holden should recover possession in ejectment because it would be wrong to extinguish a person's cause of action before he has a reasonable opportunity to bring suit.

c. The adverse possession of Sorrell and Cannon should not be considered "hostile and under claim of right" because they never did anything to let Holden know they were claiming his land.

d. None of the above.

25. The Erskines' backyard has a fence on both sides and is bordered in the rear by the back wall of their neighbor's garage. Ever since they bought their property, the Erskines have assumed that they own all the way to the wall of the garage. In fact, however, the actual record property line is six inches on their side of the garage wall. In other words, the Erskines have been occupying, mowing and otherwise caring for a six-inch strip of what was, originally at least, their neighbor's property. Now, after 11 years of this, the neighbor has sued the Erskines in ejectment to recover the 6" strip. The neighbor's lawyer got the Erskines to admit in a deposition that they honestly (but mistakenly) believed that the 6" strip was theirs

a. In some states such an admission would tend to show that the Erskines' possession was not hostile and under a claim of right.

b. In some states such an admission should, if anything, help the Erskines' claim to ripened title, by showing they possessed in good faith.

c. In some states such an admission should neither hurt nor help the Erskines' claim to ripened title since it's their objective manifestations that would count.

d. All of the above.

26. Finch tells his lawyer that he has adversely possessed a 3-foot strip of his neighbor's land for the past 11 years. Suppose that Finch has acquired a ripened title to the 3-foot strip but that the period of limitations for trespass actions (including for mesne profits) is 3 years.

a. The neighbor could still recover for mesne profits accruing during the most recent three years.

b. The neighbor could still recover for mesne profits but only for those accruing during the first two of the most recent three years (up until title ripened in Finch).

c. The neighbor no longer could recover mesne profits at all.

d. The neighbor could recover for mesne profits accruing during the entire 11 years because a title by adverse possession "relates back" to the beginning of the possession.

27. Warbler went into adverse possession of Greenacre in 2013. At the time, the land was owned in fee simple by Marbury. In 2015, Marbury delivered a deed purporting to convey a fee simple in Greenacre to Thrush. If Warbler remains in possession:

a. The earliest year in which he could acquire a ripened title against Thrush would be 2023.

b. The earliest year in which he could acquire a ripened title against Thrush would be 2025.

c. The earliest year in which he could acquire a ripened title against Thrush would be 2027.

d. He can eventually acquire a ripened title as against Marbury but not as against Thrush.

28. Now assume that in 2012 Marbury *leased* Greenacre to Thrush for a term of 20 years. In 2014 Warbler bought the land next to Greenacre and installed an electric line across a corner of Greenacre without the knowledge or permission of Marbury or Thrush. Warbler hopes to acquire a prescriptive easement for the electric line. If he were able to acquire such an easement prior to the expiration of the lease, it would be:

a. Good only for the remaining duration of the lease.

b. Good against Marbury but not Thrush.

c. Good against both Marbury and Thrush.

d. None of the above. A prescriptive easement cannot be acquired in land that is held under a lease.

29. Assuming the lease in the preceding question is not terminated early, what is the earliest that Warbler could acquire an easement for the electric line?

a. The earliest for an easement against Thrush would be 2024.

b. The earliest for an easement against Marbury would be 2042.

c. Both of the above

d. None the above. A prescriptive easement cannot be acquired in land that is held under a lease.

30. Donne bought Fairacre in 2009 from the state, which had owned it since acquiring it in a tax foreclosure several years before. At the time of purchase, unbeknownst to both Donne and the state, a neighboring owner, Champlin, had fenced off and taken adverse possession of a corner of Fairacre that happened to be adjacent to Champlin's pasture. Assuming that Champlin commenced his unlawful possession in 2007, the earliest that he could acquire ripened title to the corner would be:

a. Never because his possession was unlawful.

b. Never because title by adverse possession can never be based on an intrusion on lands held by the state.

c. 2017 under the rule applicable to state lands in most states.

d. 2019 under the rule applicable to state lands in most states.

31. Larch had a large lot on which he built a house. The sewer connection between the house and the street ran under the ground through his wide side yard, with one metal access plate clearly visible in the middle of the side yard. Later, Larch sold his side yard as a separate lot. No easement for the underground sewer connection was reserved (either expressly or by implication). More than 40 years have since elapsed. The present owner of the side-yard lot (S) has sued the present owner of Larch's house (D) demanding that the sewer connection be removed:

a. The presence of the visible metal access plate should give D a plausible argument that he has an easement by prescription for the sewer connection.

b. D would have a strong case for an easement by prescription with or without the visible metal access plate.

c. It is highly unlikely that these facts could provide any basis for holding that D has an easement by prescription.

d. D would have trouble proving that he's met the continuity requirement for an easement by prescription.

32. Antonio entered into adverse possession of Blue Acres on March 12, 2002. The owner was insane on that date and died, still insane and intestate, last month leaving H, age 14, as his sole heir. Under a statute of limitations like the one we studied in class (21 years with a 10-year disability period), the earliest year in which Antonio could acquire a ripened title would be:

a. 2023.

b. 2026.

c. 2030.

d. 2037.

33. Tamerlin conveyed Brownacre "to Quentin and Catalina Clippart and their heirs." Quentin and Catalina were brother and sister. Under the modern interpretive presumption, they would have received a:

a. Tenancy in common.

b. Joint tenancy.

c. Tenancy by the entirety.

d. Cannot be determined from the facts given.

34. Tamerlin conveyed Redacre "to Orin and Esther Blomquist and their heirs." In order for the grantees to receive a tenancy by the entirety under the modern interpretive presumption (remember, pick the best answer):

a. The deed would have to specify expressly that the estate conveyed was a joint tenancy.

b. Tamerlin would have had to have a tenancy by the entirety in the first place.

c. The grantees would have to be married.

d. The grantees would have to be married to each other.

35. Suppose in New York, Tamerlin delivered a deed conveying Blackacre "to Tim and Maria Savanna, husband and wife, and their heirs as tenants by the entirety." However, unbeknownst to both himself and Savanna, Tim was still legally married to Jane—due to a defective divorce:

a. The grantees would receive a tenancy by the entirety anyway.

b. The grantees would receive a joint tenancy.

c. The grantees would receive a tenancy in common.

d. The deed would fail because its terms could not be carried into effect; the land would still belong to Tamerlin.

36. Billy Boyd, sole owner of Hilltop, delivered a deed conveying an undivided 1/5 interest in Hilltop "to Carolyn Potter and her heirs."

a. If Billy predeceases Carolyn, she would be the sole owner of Hilltop.

b. If Carolyn predeceases Billy, he would be the sole owner of Hilltop.

c. Both of the above.

d. If Billy dies intestate before Carolyn, she would share possession of Hilltop with Billy's heirs.

37. Suppose that Tamerlin delivered a deed conveying Greenacre "to Ellen and Allen, brother and sister, and their heirs" (along with appropriate language to create the desired concurrent tenancy). Allen then predeceased Ellen:

a. Ellen would be the sole owner if she and Allen had received a joint tenancy.

b. Ellen would be the sole owner if she and Allen had received a tenancy in common.

c. If Ellen and Allen had received a joint tenancy, Ellen would be the sole owner even if Allen had, before his death, conveyed his interest to their mother, Julie.

d. Both a. and c. above.

38. Suppose that Tamerlin delivered a deed conveying a joint tenancy to "Ellen and Allen and their heirs," and that Ellen and Allen were not related. Ellen and Allen then both died intestate—one year apart:

a. If Allen predeceased Ellen, then Ellen would have been obligated to share possession with Allen's heir(s).

b. After the death of both Ellen and Allen, the heirs of both would all be entitled to share possession of the property.

c. After the death of both Ellen and Allen, the heirs of the one who lived longer (Ellen or Allen) would own the property.

d. If Allen conveyed all his interest to Julie before he died, then at his death Ellen (if still alive) would become a joint tenant with Julie.

39. Porter delivered a deed conveying a joint tenancy in Swampbottom to "Ellen, Allen and Otis and their heirs." Otis later delivered a deed conveying his share to Allen. After that, Allen died intestate:

a. Ellen is now the sole owner.

b. Ellen now owns an undivided one-third. Allen's heirs own an undivided two-thirds.

c. Ellen now owns an undivided two-thirds. Allen's heirs own an undivided one-third.

d. Otis still owns his one-third. A part interest in a joint tenancy cannot be conveyed because that would violate one or more of the "four unities."

40. Kaycee and Clyde became tenants by the entirety of Greenacre. Later, in settlement of a debt, Clyde delivered a deed purporting to convey "all my interest in Greenacre" to Marpole.

a. In some states, Marpole would be a co-owner of Greenacre with Kaycee.

b. In some states, an interest in a tenancy by the entirety cannot be conveyed by one of the tenants acting alone.

c. If Clyde predeceased Kaycee, she would be entitled to sole possession of Greenacre.

d. All of the above.

41. Ashley and Arthur inherited Blueacre, a one-family residence, from their aunt. Ashley, who had been living with the aunt at her death, remained in occupancy. After several years, Arthur complained that Ashley was enjoying "his" share of their inheritance and that she should consider paying him a suitable sum each month. She replied: "I refuse to pay you rent, but if you don't want me to have the inheritance all to myself, then move in and share possession with me." Arthur comes to you and inquires as to his rights. As a co-tenant with Ashley in Blueacre:

a. Arthur is entitled under the majority rule to recover reasonable monetary compensation from Ashley for the time she has had sole possession.

b. Arthur is entitled to treat Ashley's refusal to pay him a fair rent as an "ouster."

c. Both of the above.

d. Arthur is entitled to join in possession with Ashley.

e. All of the above

42. Suppose in the preceding question that Ashley has had the sole possession of Blueacre for 12 years. In a state that has no special statute concerning adverse possession by co-tenants (and with a 10-year limitation period on ejectment):

a. Ashley would clearly now be the sole owner of Blueacre.

b. Ashley would be the sole owner of Blueacre if she could show that she had ousted Arthur over 10 years ago and he had done nothing about it since.

c. If Ashley ousted Arthur over 10 years ago, Arthur would be entitled to monetary compensation for Ashley's sole possession during the time since that ouster.

d. None of the above.

Facts for Lathrop-Delray questions. Lathrop leased an apartment to Delray for a term of 4 years. After possessing the demised premises for one year, Delray was transferred to another city by his employer.

43. Assume that Delray simply moves out of the apartment, in breach of the lease. Under the common law rule:

a. Delray would have no further obligation to Lathrop.

b. Lathrop would be required to take reasonable steps to mitigate his damages.

c. Lathrop could allow the apartment to remain vacant and require Delray to pay the full rent as it accrues for the rest of the lease term.

d. Delray would still be liable to Lathrop for rent but he would be able to terminate this liability as of the end of any month by giving Lathrop one month's notice.

44. Assume that Delray finds a co-worker, Jedrick, who is willing to take over the apartment. Delray signs a document called a "sublease" transferring the apartment to Jedrick for the entire remaining term of the lease. Once Jedrick takes possession and moves in:

a. Jedrick would be the *assignee* of Delray and the tenant of Lathrop.

b. Jedrick would be the *subtenant* of Delray.

c. Jedrick would be the *subtenant* of Lathrop.

d. Delray would have no further obligation to Lathrop under the lease.

45. Assume again that Delray found a co-worker, Jedrick, who was willing to take over the apartment. Delray made an assignment of the lease to Jedrick, who "assumed" the lease. Jedrick took possession and moved in. Later, however, he fell in love with a person he met at Starbucks and moved in with her, simply abandoning the apartment, without lawful cause, and ceasing to pay rent.

a. Jedrick would continue to be liable to pay rent.

b. If Jedrick failed to pay rent as it came due, Lathrop would be entitled to recover the unpaid amount from Delray.

c. Both of the above.

d. Lathrop would have no legal recourse against either Jedrick or Delray.

46. Onslow and Westbrook orally agreed that Onslow would lease an apartment to Westbrook, reserving a rent of $400 per month. Westbrook moved in. The agreed term of the lease was 3 years. Under the local Statute of Frauds, a lease for a term in excess of one year must be in writing and signed by the party to be charged.

a. Westbrook is entitled to possession of the apartment for 3 years.

b. Westbrook is entitled to possession of the apartment for 1 year.

c. Westbrook has an estate in land, but it is not a term of years.

d. The oral lease is void, so Westbrook does not have any "estate" at all.

47. Assume that Onslow and Westbrook orally agreed that Onslow would lease the apartment to Westbrook on a month to month basis, for no particular duration, with Onslow reserving a rent of $400 per month. The tenancy started when Westbrook moved in on September 10, paying the first month's rent in advance. He has paid rent regularly ever since. As of today (May 13), the earliest date as of which either party can terminate this lease would be:

a. May 31.

b. June 9.

c. June 30.

d. July 9

Facts for Lonagan-Bingen questions. Lonagan and Bingen were out flyfishing when Bingen's line got tangled up in some brush on the far side of a deep pool. Lonagan said he would try to retrieve the valuable artificial fly at the end of the line. Bingen said: "I think it's impossible. But try if want. It's all yours—my gift to you."

48. A few minutes later, Lonagan succeeded in unsnarling the fly, which he held up for Bingen to see. At that moment:

a. There could not yet be a completed gift of the fly because Bingen still has not actually made a "delivery" of the fly to Lonagan.

b. Lonagan is the owner of the fly.

c. There is probably not a completed gift of the fly because Lonagan has not done anything to indicate acceptance (he was going to try to unsnarl the fly anyway).

d. When Bingen said "It's all yours--my gift to you," Lonagan had a valid future interest in the fly.

49. Suppose that right after Lonagan succeeded in recovering the fly, he handed it over to Bingen, who held it and said to Lonagan: "You've got yourself a real nice fly here." At that moment in time:

a. The donor would be the bailee of the donee.

b. The delivery would have been undone and the fly would again belong to Bingen.

c. Both of the above.

d. There would technically be no valid gift of the fly to Lonagan since there was nobody else present to witness any of the actions that transpired.

50. Suppose that, some months later, Bingen took up a new hobby and wrote an informal note saying: "Because I won't be fishing anymore, I hereby give my trout fly collection to my dear friend, Lonagan. Signed, Bingen." He handed the note to Lonagan saying: "You can pick it all up from my garage whenever you want. This note will keep you from getting into trouble." Before Lonagan got around to picking up the collection, however, Bingen tragically died in an agricultural accident.

a. The informal note could probably operate as a valid will, giving the trout flies to Lonagan.

b. The informal note could probably operate as a valid deed of gift, giving the trout flies to Lonagan.

c. Both of the above.

d. The informal note would probably not have any binding legal effect whatsoever.

51. Suppose that Bingen, about to undergo a dangerous operation, actually handed over his fly collection, in a small shoebox, to Lonagan, saying: "It looks like I may not be needing this anymore, but I want to be sure it will be in good hands. If I die from this operation, I want you to have it." Lonagan said: "Thank you." Under the usual presumption for "deathbed" gifts:

a. If Bingen survives the operation and gets well again, Lonagan would have a legal obligation to return the fly collection to Bingen.

b. If Bingen survives the operation and gets well again, the gift to Lonagan would be revocable only if Bingen actually expressed an intention to make a revocable gift.

c. If Bingen passed away unexpectedly *before* the operation due unrelated causes (choked on a fish bone), the more sensible rule would require Lonagan to return the fly collection to Bingen's estate.

d. None of the above. There was a completed gift to Lonagan, and completed gifts are final.

52. Suppose that Bingen, while in good health, handed Lonagan a key saying, "This is the key to a safe deposit box in which there are 3000 shares of Colgate stock. I want you to see that your granddaughter, Tessie, gets that stock. It's hers now." Lonagan said: "You can rely on me to do it." Later, Bingen died. (Assume that Lonagan would be deemed to be "acting for" Tessie).

a. The gift to Tessie would be complete if Lonagan retrieved the Colgate stock from the box before Bingen's death.

b. The gift to Tessie should be considered complete even if Lonagan retrieved the Colgate stock from the box after Bingen's death.

c. Both of the above.

d. There no reason not to consider the gift to Tessie to be complete even if Bingen retained a second key to the box.

e. All of the above.

53. Farmer Phillips paid his neighbor, Beck, $2000 for an easement from the back of his farm to the highway, over a corner of Beck's land. Beck delivered a deed creating the easement. The easement would presumptively be:

a. Appurtenant.

b. Apportionate

c. Attendant

d. In gross.

e. Cannot be determined from the facts given.

54. After the easement was created in the preceding question, Dan Developer bought the Phillips farm and divided it into 27 building lots, which he prepared for residential construction. Dan wants each of the eventual buyers of the 27 lots to have a right to use

the easement that Phillips received from Beck. However, Beck objects, contending that allowing use by 27 separate owners would be a gross overuse of the easement. Under the usual presumption:

a. There would be no way that Dan could provide a right to use the easement to the buyers of all 27 lots.

b. The buyers of all 27 lots in Dan's new development would each be entitled to use the easement.

c. Dan may designate one of the 27 buyers to receive the easement but not all 27 of them.

d. The easement would have been extinguished when Phillips sold the farm to Dan Developer.

55. Dan Developer also divided 72 acres along an undeveloped lakefront into 7 lots that he sold as sites for deluxe summer homes. He retained the beach area and each of the deeds to the 7 lots contained a provision: "The grantee(s) hereunder and their families shall enjoy free use of the beach for swimming, sunbathing and walking."

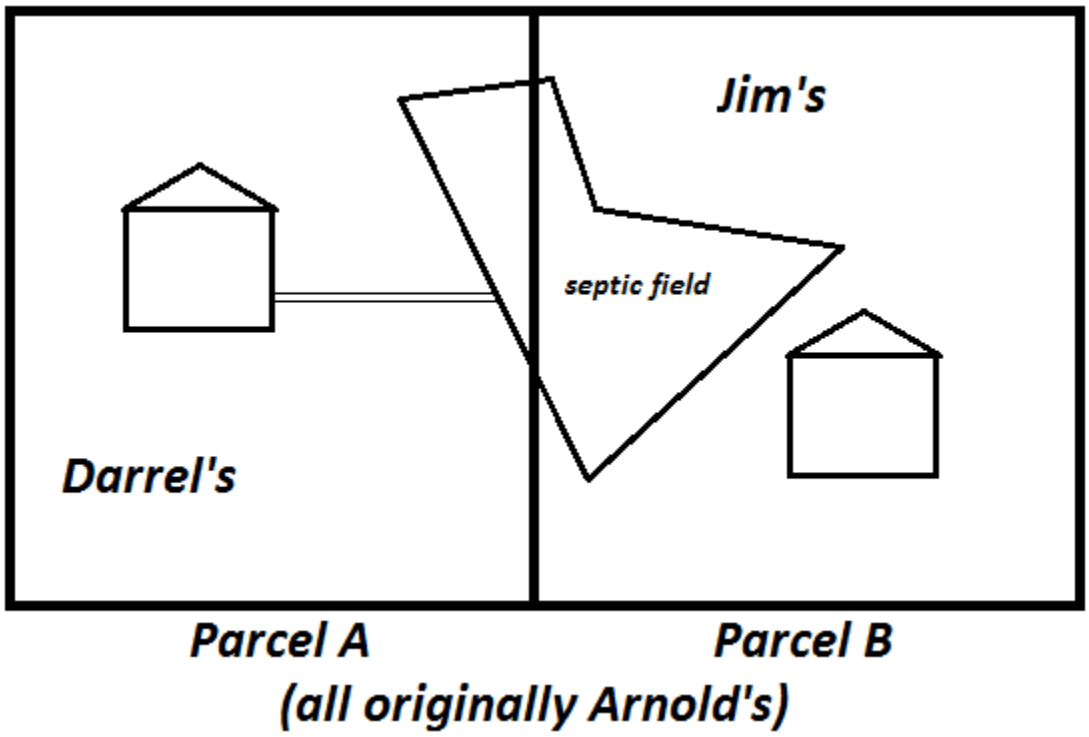
a. The quoted language probably created easements that would allow the original buyers to enjoy the beach even after they sold their lots to others.

b. The quoted language would probably be interpreted to create affirmative easements in gross.

c. The quoted language probably created such an inconsistency among the deeds to the 7 lots that the deeds should be declared void for uncertainty.

d. The quoted language would probably be interpreted to create appurtenant, affirmative easements.

Facts for Darrel-Jim questions. Darrel and Jim own adjacent lots that were once part of a larger tract owned by Arnold. The household wastewater from Darrel's house is handled by an underground septic field that was constructed by Arnold 9 years ago when Arnold still owned the whole tract (and lived in the house on Parcel A). Because the septic facilities are all hidden underground, however, the boundary line was inadvertently placed so it put a large portion of the septic field on the land that became Parcel B. When Jim bought Parcel B, he was totally unaware of the septic field. The septic field is now seeping onto the surface of Jim's land, and Jim wants its use discontinued. The use of Jim's land as a septic field location is reasonably necessary for the use of Darrel's land.



56. Assume that Arnold sold Parcel B to Jim and then, later, sold Parcel A to Darrel. In many states, as a matter of easement law:

a. Darrel probably now has an easement by prescription to use the septic field on Jim's land.

b. Darrel probably has an easement by estoppel to use the septic field on Jim's land.

c. Darrel probably has an easement by implication from prior use to use the septic field on Jim's land.

d. None of the above.

57. Assume again that Arnold sold Parcel B to Jim and then, later, sold Parcel A to Darrel. If Darrel tries to claim an easement by implication from prior use so he can continue using the septic field on Jim's land, which of the requirements for such an easement would probably pose the greatest obstacle to success of the claim in court?

a. Quasi-easement.

b. Apparent.

c. Necessity.

d. Unity and subsequent separation of title..

58. If Darrel had been using the septic field on Jim's land for more than 10 years and wanted to claim an easement by prescription, his biggest problem would probably be the requirement that the adverse use be:

a. Open and notorious.

b. Hostile and under a claim of right.

c. Continuous.

d. Exclusive.

e. None of the above. Darrel should have no problem claiming an easement by prescription on these facts.

59. Assume that Darrel and Jim negotiate a deal in which Jim gives Darrel a deed conveying to Darrel an easement to maintain his septic field at its existing location on Jim's land. Jim now:

a. Has no further right to use the surface of his land above the septic field for any purpose, any such use being a violation of the rights of Darrel.

b. Is free to change the portion of his land used for Darrel's septic field so long as the change is for a reasonable cause and the relocation is entirely at Jim's expense (majority rule).

c. Will be responsible for maintaining the septic field in good working condition.

d. Is allowed to use the surface of his land above the septic field for any purpose whatsoever so long as the use does not unreasonably interfere with the rightful use by Darrel.

60. Which of the following conveyances (if any) creates a future interest that is void under the traditional Rule Against Perpetuities? (Assume that B is alive at the time of conveyance and has one child, Sarah, age 2)

a. "to A for life, then to B's first child to reach age 21, and her heirs.

b. "to A for life, then to B's first child to reach age 25, and her heirs.

c. "to A for life, then to B's first child now alive to reach age 25, and her heirs.

d. More than one of the above creates a future interest that is void under the traditional Rule Against Perpetuities.

e. None of the above creates a future interest that is void under the traditional Rule Against Perpetuities

<End of examination>