# PACE UNIVERSITY SCHOOL OF LAW

PROPERTY
PROFESSOR HUMBACH August 15, 2022
FINAL EXAMINATION TIME LIMIT: 3½ 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.

**OPEN-BOOK EXAM:** You may use any written materials or electronic devices you want, but you are not permitted to communicate in any way with any other person.

## GENERAL INSTRUCTIONS:

This examination consists of 60 multiple-choice questions to be answered using EXAM4. Since you have successfully completed the online Estate System Proficiency Test, this copy of the exam does not include the questions covering the estate system and future interests. **You do not need to write your "word."**

By now you should have downloaded EXAM4 (https://law.pace.edu/academics/registrarbursar/exam-information) and taken a Practice Exam on it. Please carefully review and follow the instructions supplied by the Registrar's office for taking the exam on EXAM4. Questions concerning the mechanics of taking the exam should be referred to the Registrar's office.

Answer each question selecting the *best* answer. Indicate your choice by clicking the letter on the Multiple-Choice screen in EXAM4. Confirm your answer and the question number on the left side of the screen. **If you want to delete or change an answer, follow the EXAM4 instructions using the "unlock" button. You should have already practiced deleting or changing answers on the Practice Exam to familiarize yourself with the process.** The answers you submit at the end of this exam cannot be later be changed.

It is strongly recommended that you **save** a copy of your exam answers to your USB flash drive *before* exit from EXAM4. You will be unable to review your individual exam if you do not do this.

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 under the usual modern conveyancing rules. Note: "Both of the above" (and similar locutions) mean that *each one* of the above answers is, by itself, a correct statement.

1. Walker was stalking a coyote that had been raiding his chicken coop. He was just about to capture the coyote when Drake, knowing full well what Walker was up to, shot the coyote and took it. The two hunters now dispute the ownership of the coyote. Who has the better claim to it?

a. Walker because the coyote had been raiding his chicken coop.

b. Walker because he was the first to see the coyote and try to take possession of it.

c. Drake because he was the first to take possession and occupancy of the coyote.

d. The ownership would normally be divided between the two hunters because both played a substantial role in capturing it.

2. Suppose in the preceding question that Walker had succeeded in capturing the coyote alive before Drake got to it. However, a few hours later it gnawed its way out of its cage and regained its natural liberty. Then, the next day, Drake captured the same or a similar coyote. Walker sues Drake claiming to be the rightful owner of the coyote captured by Drake. Ordinarily:

a. Walker's claim would be preferred because he was the first captor.

b. Walker would be deemed to have lost any ownership rights he may have had when his coyote regained its natural liberty.

c. Drake is legally entitled to the coyote under the rule of "finders, keepers"

d. The coyote would be treated just like any other lost property that is later found by somebody else.

3. Suppose in the preceding question that Walker had sprayed a small, uniquely shaped red mark on his coyote before it got away. The coyote captured by Drake had the exact same mark. The court is sure that the coyote caught by Drake is the same one that had previously been captured by Walker. But Drake argues that, due to the small size and location of the mark, it would not have been visible to Drake until after he'd already captured the coyote. Based on cases we talked about in class:

a. The "industry and labor" argument weighs in favor of a ruling for Drake rather than Walker.

b. The "certainty" argument weighs in favor of a ruling for Walker rather than Drake.

c. Both of the above.

d. None of the above.

4. Walker was fishing from the bank of a small river. The riverbank belonged to Owner. Walker did not have permission to go on Owner's land or to fish from that location. Assuming Owner didn't own the water in the river or the fish while they had still their natural liberty, who would have the better claim to the fish that Walker caught?

a. Owner.

b. Walker, since was the first captor.

c. Walker, as long as he held a valid state fishing license.

d. Both b. and c. above.

5. While fishing without permission in the preceding question, Walker spotted some valuable logs that had washed up on the opposite riverbank in a storm. Walker took some of the logs home with him. Owner sues Walker for their value, Owner should win the lawsuit because:

a. A landowner is deemed to have ownership of everything that is found lying on his land.

b. Persons should not be allowed to benefit from their own trespasses.

c. Both of the above.

d. None of the above. Under the doctrine of ratione soli, Walker is entitled to the logs as a just reward for his industry and labor in recovering them from the riverbank

6. While strolling through a public park, Walker spotted a diamond at the side of the path. He reached down to pick it up. Before he could get it, however, another person (also reaching for the diamond) knocked Walker off-balance. Both fell to the ground. As Walker and the other person were regaining their composure, a passerby saw what was going on and quickly grabbed the diamond. The diamond's true owner is unknown. Based on the *usual* rules for acquiring rights in unowned objects (not ferae naturae), who would have the better legal right to the diamond?

a. Walker.

b. The passerby who was first to take possession.

c. The person who knocked Walker off-balance.

d. The state, by escheat, since the true owner is not known.

7. Some courts have applied the doctrine of capture (from wild animal law) to resolve disputes between claimants of certain other kinds of property, such as:

a. Natural gas.

b. Flowering plants.

c. Wheat and other bulk grains.

d. Volleyballs.

e. More than one of the above.

8. Owner's land lay over a natural underground cavity that formerly contained natural gas deposits. Owner bought a quantity of natural gas on the open market and injected it into the cavity for storage. Some of the gas seeped under the land of Neighbor, who pumped it up from under his own land and sold it. If the court applies the doctrine of capture in this situation:

a. Neighbor would be guilty of larceny for stealing gas that belonged to Owner.

b. There's no logical way to hold that Owner committed trespass on Neighbor's land if Owner ceased to own the gas that seeped under Neighbor's land.

c. Owner's property rights in the gas he pumped into the ground should not be affected by the fact that the gas seeped over to Neighbor's land.

d. A person in Neighbor's position would *not* violate Owner's rights by pumping out the gas because Owner ceased to own the oil that seeped under Neighbor's land.

9. Owner has a driveway that's big enough to hold two cars, though Owner has only one. Neighbor has asked permission to park a rental car in Owner's driveway for one night. The reason for the request is that local regulations prohibit overnight parking on the street, and neighbor has no other convenient place to keep the rental car until the next day. It would cause Owner no economic harm to grant Neighbor's request.

a. Owner may not withhold permission unreasonably.

b. The law expects property owners to show ordinary neighborliness, and Owner can theoretically be held liable for refusing to let Neighbor use his driveway.

c. Owner has a right to withhold permission even if doing so would be unreasonable.

d. Neighbor should just go ahead and use the driveway even without permission because he can't be held liable in the absence of significant economic harm to Owner.

10. Owner bought a vacant piece of land in order to build a public self-storage facility. Before he could begin construction, the Town changed the zoning to prohibit such facilities in the area. As a result, Owner's property suffered a substantial loss of value. The land is still valuable for grazing cattle, but Owner is not interested in being a farmer. Owner sued the Town for just compensation. The lower court held for the Town relying on the principle that "government may affect property values by regulation without incurring an obligation to compensate." The appellate court should:

a. Reverse, because the quoted statement is contrary to US Supreme Court decisions.

b. Affirm. The quoted statement is in *accord* with US Supreme Court decisions.

c. Reverse, because the Town has taken a valuable property right belonging to Owner, namely, the right to build a self-storage facility on his land.

d. Affirm, because the Town cannot be held liable for just compensation unless it does something that constitutes a permanent physical intrusion on private land.

11. Grove City has announced a plan to use eminent domain for an urban redevelopment project. The land it acquires under the plan will be sold immediately to private developers. The developers will tear down the homes that are on the land and build luxury condos in their place. The plan's objective is to enhance the economy and tax base of the city. Owner, whose home is in the path of the project, does not want to sell.

a. Owner cannot be forced to sell if she doesn't want to because private owners always have the choice of whether to sell their property or not.

b. The Constitution would prohibit the city from forcing Owner to sell because, under the plan, her land is not being taken for use by the public.

c. The court would probably decide that the urban redevelopment plan is for a public purpose and, on that basis, would allow the city to force Owner to sell.

d. The court is precluded from holding that the city is acquiring Owner's property "for a public purpose" because the land is to be immediately re-sold to private developers.

12. Last summer, the State Park Service dug a short irrigation canal. The canal cut across Owner's property (due to a surveying error). Nevertheless, the Park Service intends to continue using the canal because "there's no money in the budget to move it." Though the canal is a permanent physical intrusion on Owner's land, the intrusion is relatively small and it's not particularly harmful to Owner's current use of his land. The constitutional protection of property that is most likely to provide Owner with redress is:

a. The Contract Clause.

b. The Due Process Clause (economic due process).

c. The Takings Clause.

d. All of the above.

e. None of the above. Owner would not be entitled to redress on these facts.

13. Owner is a manufacturer and distributor of devices that are used in connection with vaping. The Legislature recently banned the sale of Owner's products based on a study showing that vaping causes health hazards. The Legislature's action has destroyed much of the value of Owner's facilities and equipment. Owner has now found other studies showing that vaping is actually a safer alternative to cigarettes. He believes these studies are proof that the Legislature has made a mistake. Owner has contacted a lawyer concerning his legal rights under the Constitution:

a. Owner cannot expect to obtain relief under the Due Process clause because the currently applicable "rational basis" test means courts will refuse to review or second-guess the Legislature's conclusions concerning health hazards.

b. Owner is not protected by the Due Process clause because, during the 1930s, the Supreme Court abolished "due process" as a basis for protecting property rights.

c. Both of the above.

d. Owner probably has no right to compensation under the Due Process clause but he is very likely entitled to compensation under the Takings clause.

14. The local Town has just completed a project to improve the road in front of Owner's ranchette. The newly widened road encroaches a few inches along the front of Owner's property.

Also, a new sewer drain installation encroaches about 3 sq. feet on Owner's land. The result is a very small (but significant) diminution in the value of Owner's property.

a. The Town's actions constitute a compensable taking and Owner is entitled to just compensation.

b. Due to the holding in *Pennsylvania Coal v. Mahon*, the Town's actions would constitute a compensable regulatory taking.

c. The Town's actions would constitute a regulatory taking but Owner is *not* entitled to just compensation.

d. The Town's actions physically intrude on Owner's property but, being clearly in the public interest, they are not compensable.

15. Owner's ranchette is larger than he needs. He has thought he would sell off the east part of the property to help pay his daughter's college tuition. Under local zoning, the ranchette could be divided into two buildable lots, one with Owner's existing home (which he would keep), and the other consisting of the still-undeveloped eastern part, which he would sell. Recently, however, the Town adopted a new wetland regulation and ruled that the eastern part of the ranchette consists almost entirely of a legally protected wetlands. That means the eastern part (which could have previously sold for $100,000) can no longer be built on or sold as a separate buildable lot. The use of Owner's home and the land immediately around it is not affected.

a. A regulatory taking appears to have occurred and Owner is entitled to $100,000 as just compensation.

b. Owner is not entitled to just compensation.

c. Owner would be entitled to just compensation unless the court finds, in its own independent judgment, that the wetland regulation prevents a public harm,

d. Owner is entitled to compensation for the diminution of the value of his property, but he is not necessarily entitled to $100,000.

16. Suppose in the preceding question that Owner had sold the eastern part of his property to O2 long *before* there was any reason to think the Town might adopt a wetland regulation affecting the parcel. If O2 paid $100,000 and now has a piece of property on which he is unable to build a home.

a. O2 would probably be entitled to just compensation if Town's wetland regulation reduced the value of his property by 50% or more.

b. O2 would probably be entitled to compensation for the diminution of the value of his property, no matter how small that diminution might be.

c. O2 would be entitled to compensation in the amount of $100,000 if his purpose in purchasing the land was entirely frustrated by the Town's wetland regulation, even if the land had other valuable uses.

d. O2 would probably be entitled to just compensation if Town's wetland regulation deprived O2 of all economically beneficial use of the land.

e. More than one of the above is true.

17. Walker owns and lives on a five-acre lot in a rural district. Until now, the area has not had zoning. Recently, however, the Town board adopted a zoning ordinance that limits the uses of Walker's property to residential purposes only. Prior to the zoning, Walker's property was worth over $1,000,000 as a potential industrial site. Now it's worth at most $300,000. On the other hand, Walker's 5 acres are more valuable as a residential property because they are protected from the possibility of nearby commercial uses that would detract from their value as a residence. Among the reasons a court might give for holding that Walker has no Takings clause claim for compensation is that:

a. The zoning ordinance provides average reciprocity of benefits to Walker and his neighbors.

b. Walker's 5 acres still have substantial value.

c. Both of the above.

d. None of the above. Walker probably does have a Takings clause claim for the loss of value that the zoning ordinance has caused.

18. The theory behind the so-called rational basis test used in "economic due process" cases is that:

a. An elected legislature almost always makes rational decisions and, therefore, courts should not second guess whether legislative decisions are rational or not.

b. An elected legislature is in a better position than the courts to decide what policies and measures are required to meet the needs of the public and, therefore, courts should defer to legislative judgments on these matters.

c. Property rights should usually be upheld and protected from legislative encroachment because it is generally rational to do so.

d. Laws should be struck down whenever courts are unable to find a rational basis for them.

19. Finder was out hiking. He took a shortcut across land belonging to Owner. While on Owner's land, Finder spotted a small crystal ball the ground. He picked it up and, later, tried to sell it to Drake, an acquaintance. Drake examined the ball and then refused to return it to Finder saying: "Why should I give it back to you? It's just as much mine as it is yours. After all, I have it, and you don't." Owner admits he has "no idea" where the ball came from and he has disclaimed any interest in it. If Finder sues Drake:

a. Finder is legally entitled to recover possession of the ball but he cannot require Drake to pay him the ball's value since Finder does not actually own it.

b. Finder is legally entitled to recover either the ball or its value, whichever Finder chooses.

c. Drake would be given a choice of either returning the ball to Finder or paying its value to him.

d. The court would probably dismiss the case because neither party is true owner of the ball.

20. Suppose in the preceding question that Owner decides the ball might be valuable and wants to claim it even though he has no idea where it came from. Which of the following additional facts would (if proved) tend to support Owner's claim to the ball in at least some American jurisdictions?

a. The ball had long been buried on Owner's land and it emerged to the surface due to natural processes shortly before it was found.

b. Finder was trespassing at the time he found the ball.

c. Both of the above.

d. None of the above. Finder, as the first to discover and take possession of the ball, would always have a better claim than Owner despite either of the above additional facts.

21. Lonny Lightfingers took a lawnmower belonging to his neighbor and he refused to give it back. The proper action for the neighbor to recover possession of the lawnmower would be:

a. Trover.

b. Replevin.

c. Conversion.

d. A writ of theft.

e. More than one above is correct.

22. Walker had a job on the maintenance staff at a golf course. His boss instructed him to clean out the muck at the bottom of the goldfish ponds on the property. As Walker was completing this task, he found a silver medallion embedded in the muck. Now Walker and his employer are in a dispute as to who is entitled to the medallion. In a jurisdiction that follows the so-called English rule on finding, Walker's employer is probably entitled to the medallion because:

a. It was found embedded in the employer's property.

b. The bottoms of the goldfish ponds were not public or semi-public places because access to them was not open to the public.

c. Walker was acting as an employee at the time he found the medallion and finding was a part of his job description.

d. All of the above.

e. None of the above. Walker would be entitled to the medallion because he was not trespassing at the time that he found it.

23. While shopping at a supermarket, Walker found a small amber earring while selecting oranges from a self-service display. Walker and the supermarket owner now dispute who is entitled to earring. If the earring is deemed to be lost (not mislaid) and the local jurisdiction follows the so-called American rule with respect to finding:

a. Walker should have the better entitlement to the earring as long as he was not trespassing at the time he found it

b. The supermarket owner should have the better entitlement to the earring because it was found on premises belonging to the supermarket owner.

c. Walker has no plausible claim to the earring because it was found on private property belonging to another.

d. Because neither Walker nor the supermarket owner is the true owner of the earring, neither one is entitled to it, so the court should take it for safekeeping.

24. Suppose in the preceding question that the local jurisdiction makes the distinction between lost and mislaid property. In this case, the legal significance of deeming the earring to be mislaid (as opposed to lost) would be:

a. To support Walker's claim of entitlement to possess the earring (over that of the supermarket owner).

b. To support the supermarket owner's claim of entitlement to possess the earring (over that of Walker).

c. To support Walker's claim of entitlement to possess the earring as long as he actually bought some of the oranges.

d. None of the above. The fact that the earring was mislaid as opposed to lost would have no particular legal significance.

25. Walker left his car at a parking garage while he attended a meeting in the city. When he returned to pick up the car, the right front fender was smashed. The parking garage owner would be considered to be bailee of the car (and potentially liable as such):

a. As long as the car was damaged while parked somewhere on premises belonging to the parking garage owner.

b. If the parking garage owner or its employees actually took possession of the car, for example, in a valet parking situation.

c. As long as Walker paid a fee to the parking garage owner in order to park his car there.

d. Both b. and c. above.

e. Only if there was a contract (with consideration) between Walker and the parking garage owner.

26. Assume in the preceding question that the arrangement between Walker and the garage owner was a bailment. The garage owner would be liable for:

a. Any damage to the car that occurred while it was parked on his premises.

b. Only damage to the car that was due to the garage owner's negligence or other wrongdoing (including negligence in caring for the car).

c. Only such damage to the car that the garage owner had contractually agreed to be liable for.

d. None of the above. There is no legal basis for holding the parking garage owner liable for the damage to the car.

27. Walker left his overcoat at the coat-check room in the concert hall where he was attending a concert. The coat pocket contained his passport, but he did not notify the checkroom attendant that it was there. When he returned later to pick up his coat, the passport was gone. Walker wants to hold the checkroom liable as a bailee for the loss of the passport. Under the better approach,

a. The checkroom would not be considered a bailee of the passport if the checkroom attendant was unaware of its existence when he accepted delivery of the coat.

b. The checkroom *would* be considered bailee of the passport even if checkroom attendant didn't know it existed, but the checkroom wouldn't have a legal duty to take steps to prevent the loss of an item that it had reason to think existed.

c. The checkroom would be strictly liable for the loss of the passport since the checkroom had lawful possession of the coat that contained it.

d. The checkroom would only be liable for those damages that they expressly agreed to be liable for.

28. Last weekend Walker borrowed Henry's boat. While Walker had the boat out for an excursion on the river. another boater negligently rammed it. The total damage to the boat is around $2000.

a. If Walker sues the negligent boater for the $2000 damage to Henry's boat, the negligent boater can defend by proving that Walker is not the owner of the boat.

b. Walker would have legal standing to maintain an action against the negligent boater to recover the full amount of the damage to the Henry's boat.

c. Henry would have legal standing to maintain an action against the negligent boater to recover for the damage to his boat.

d. Both b. and c. above (but there can be only one recovery).

29. Suppose in the preceding question that Walker brought a lawsuit against the negligent boater for the full amount of the damage to Henry's boat. Which of the following principles would apply?

a. As against a wrongdoer, possession is title.

b. Walker and Henry are friends, and friends are authorized to sue on behalf of one another.

c. As a bailee, Walker had more first-hand knowledge about the accident, and is therefore in a better position to seek legal redress against the negligent boater.

d. None of the above. Walker would *not* have legal standing to maintain a legal action against the negligent boater to recover for the full damage to the Henry's boat.

30. Neighbor has long coveted a small patch of wooded stream-side land belonging to Owner. He often goes there without Owner's permission. In order for Neighbor to be considered in adverse possession for purposes of acquiring title to the patch of land:

a. It should be sufficient if Neighbor can prove that he frequently sneaked onto the land.

b. Neighbor would have to prove (among other things) that he engaged in conduct that the court deems to be an ouster of Owner from possession.

c. Neighbor would have to prove (among other things) that he had a deed or other color of title to the land and was not a mere interloper

d. Neighbor would have to notify Owner that he was claiming adverse possession of the land.

31. Assume again that Neighbor has long coveted a small patch of wooded stream-side land belonging to Owner. The court finds that, over a period of many years, Neighbor built and utilized temporary camps on the land, that he often fished and hunted there, that he occasionally chased off intruders and that he gathered firewood there. Owner claims that these activities only amount to "mere trespasses." The key factor that distinguishes mere trespasses from conduct constituting an ouster is:

a. The intention with which the actions are done.

b. The name is listed as owner on the tax records.

c. Whether or not the true owner has objected to the intrusions.

d. The presumption of adverse possession.

32. A land developer delivered a deed conveying an empty lot to Buyer for a price of $120,000. Because Buyer was busy with other projects, he did nothing with the lot and just let it lie fallow. A trespasser intruded on the lot and damaged it while it was lying unattended. Under the modern American rules, would Buyer have standing to bring a trespass action against the intruder?

a. No, because Buyer did not have possession of the land at the time the intrusion occurred.

b. Yes, because courts have long ago abolished the old rule that says a person has to have possession in order to sue for trespass.

c. Yes, because Buyer would be deemed to have constructive possession of the land as long as there was no adverse possessor.

d. No, because by letting his land lie fallow, Buyer was giving an open invitation (license) to others who might wish to intrude.

33. Suppose again that a land developer delivered a deed conveying an empty lot to Buyer for $120,000, and Buyer just let the lot lie fallow. Two years after selling to Buyer, the developer mistakenly delivered a deed to the very same lot to Occupant, who paid $145,000. Occupant had no knowledge or reason to know of the previous deed to Buyer. He immediately entered possession of the land and built a house there, where he now lives. A few months after the house was finished, Buyer realized that somebody had built a house on his land, and he is suing Occupant in ejectment. (Ignore the possible effects of the recording acts.)

a. Buyer would have a better title to the land than Occupant because Buyer received his deed first.

b. Occupant would have a better title to the land than Buyer because Occupant paid more for the land.

c. Occupant would have a better title to the land than Buyer because Occupant has the more recent deed to the property, which supersedes the deed previously delivered to Buyer.

d. Occupant has a better title to the land than Buyer because Occupant has built a house there.

34. Suppose in the preceding question that the recording acts apply but Buyer never bothered to record the deed that he received from the developer.

a. Buyer would have a better title to the land than Occupant because Buyer received his deed first.

b. Occupant would have a better title to the land than Buyer because Occupant paid more for the land.

c. Occupant would have a better title to the land than Buyer because an unrecorded deed is not effective against a later good faith purchaser who buys the land without notice of it.

d. Occupant has a better title to the land than Buyer because Occupant has built a house there.

35. In 2009, Owner received title to a certain plot of land by inheritance from her rich uncle. For some reason, Owner was never notified of the inheritance. Grifter, seeing the land unoccupied and unused, entered into possession of it and blatantly operated a gaudy amusement center there. After 12 years, a local lawyer notified Owner for the first time that she'd received to the land by

inheritance 12 years before. Now Owner has brought an ejectment action against Grifter. Owner should probably win the ejectment action because:

a. Grifter never notified Owner that Grifter was in adverse possession of Owner's land.

b. Owner didn't know she was the owner of the land during Grifter's adverse possession.

c. Owner never had a fair chance to sue Grifter in ejectment before the 10-year statute of limitations ran out.

d. All of the above.

e. None of the above. Owner will probably not prevail in the ejectment action against Grifter.

36. Buyer entered into a transaction to buy a 10-acre parcel of land and received the deed to the 10 acres in 2010. She promptly entered into possession of approximately two acres of the parcel, consisting of a house, garage, and yard area immediately around them. She rarely went into any other part of the 10-acre parcel. It now turns out that the person who purported to sell to Buyer did not have a good title, so Buyer has been an adverse possession all along. Her lawyer says her conduct over 10 years has been sufficient support a finding that she had a ripened title by adverse possession. Under the so-called color of title rule, Buyer appears to have a ripened title to:

a. The entire 10-acre parcel described her deed.

b. Only the two-acre area around her house and garage that she actually possessed.

c. Only the two-acre area around her house and garage plus any additional land that she might reasonably need.

d. Only the two-acre area around her house and garage unless the description of the land in her deed was printed in color, preferably red.

37. In 2015, AP entered into adverse possession of a certain parcel of land. Then in 2018, Defendant became the sole adverse possessor of the parcel. Defendant can acquire a ripened title in 2025:

a. If AP delivered a deed to Defendant in 2018 conveying AP's interest to Defendant.

b. If AP died intestate in 2018 with Defendant as his sole heir.

c. If either of the above facts occurred.

d. If AP voluntarily moved away from the land in 2018 and, a short time later, Defendant entered into adverse possession of it.

e. If any of the above facts (and a., b. and d.) occurred.

38. In 2007, 15 years ago, AP entered into adverse possession of Owner's land. Owner had a disability when AP entered. The disability was removed in 2021.The local Statute of Limitations

is just like the one we studied in class with a basic 21-year period to recover possession and a 10-year "disability" period. The earliest that AP could acquire a ripened title would be:

a. 2028.

b. 2029.

c. 2031.

d. 2039.

39. When Owner moved into his house in 2011, he had a fence built around the backyard. The fence company installed the fence incorrectly so it also enclosed a chunk of Neighbor's property. However, neither Owner nor Neighbor was aware of the error (or the encroachment) even though it was plain to see that the Owner possessed the entire area within the fence. Neighbor recently had a survey done and now demands that Owner move the fence. In response, Owner says that any encroachment was an honest mistake and therefore, he says, he now has a ripened title to the disputed area by adverse possession. Under the *better* rule:

a. Owner's possession would not be considered hostile and under a claim of right if Owner was making an honest mistake in possessing the disputed area that belonged to Neighbor.

b. Owner would have acquired a ripened title to the disputed area in 2021.

c. Owner needed to notify Neighbor that he was adversely possessing the disputed area in order to acquire a ripened title to it.

d. Owner could not acquire ripened title to any of Neighbor's land that Owner adversely possessed in bad faith (knowing that his possession was unlawful).

40. Walker got high-speed Internet 12 years ago. The lineman from the Internet provider ran the cable from the street pole to Walker's house in such a way that it crossed a corner of Neighbor's property for a distance of about 20 feet. At the time, and still today, Neighbor's property was held by a tenant under a 15-year lease. The lease is scheduled to expire next year. Neighbor has told the tenant to get rid of the trespassing cable before possession of the land reverts to Neighbor at the end of the lease. Walker claims he has an easement by prescription to keep the cable where it is.

a. On these facts it appears likely that Walker has an easement by prescription against both the tenant and Neighbor.

b. The tenant probably is not legally entitled to have the cable removed before the end of the lease, but Neighbor would be entitled have it removed once he takes back possession at the end of the lease.

c. The tenant probably *is* legally entitled to have the cable removed before the end of the lease and Neighbor would be entitled have it removed once he takes back possession of the land.

d. These facts do not appear to support Walker's contention that he has an easement by prescription against either the tenant or Neighbor.

41. Angela was visiting a friend in a distant city. Because the weather was chilly, Angela's friend offered to let her use a sweater when they went out. While wearing the sweater, Angela said she really liked it, and her friend said: "Well, if you like it so much, it's yours." When Angela was ready to go home, there wasn't room for the sweater in her suitcase. Her friend promised to mail it to her the following week. Angela went home without the sweater. Now her friend has changed her mind and wants to keep the sweater.

a. The friend appears to have made a completed gift at the sweater, and Angela is the owner of it.

b. There has not been a completed gift of the sweater because the donor has possession of it, so there has been no delivery.

c. Even if there was a completed gift of the sweater, the friend would be permitted to revoke the gift if she does not wait too long to notify Angela.

d. There would not be a completed gift of the sweater on these facts because there never was a delivery.

42. Angela's aunt said to Angela, "I want you to have this silver teapot when I'm gone. I'm putting it right here in this cabinet and when I'm gone, you tell them that I gave it to you."

a. The gift would be presumptively revocable if Angela's aunt were on her deathbed when she said these things.

b. The gift would be presumptively revocable since it was obviously motivated by death whether or not Angela's aunt was on her deathbed when she expressed donative intent.

c. The gift could be upheld as a testamentary gift since the aunt expressed an intention to transfer title at her death.

d. Despite the absence of any sort of delivery, the words spoken by Angela's aunt could have the effect of conferring Angela with a future interest in the silver teapot.

43. Walker was living at home with his dad and mom. His dad wanted to give him a new table saw for his birthday. The large heavy tool was delivered to the house and installed in the basement workshop. Walker's dad then pointed to the saw and said (in the presence of several people), "Happy birthday. It's yours." The saw remained where it had been installed until the father's death. There is no question of the father's donative intent.

a. Even if the father's donative intent was plain, the gift would almost surely be held to fail for lack of a delivery.

b. Courts are likely to relax the strict application of the delivery requirement in order to uphold the gift in a case such as this.

c. The court could dispense with the delivery requirement by treating this as a gift causa mortis since the donor has passed away and cannot reconfirm the gift.

d. Most courts are now willing to simply disregard the delivery requirement because it no longer serves any modern purpose.

44. Walker owned an antique Roman statuette worth $500,000. He wanted the local museum to have it after his death, but he wanted to keep it during his lifetime. He signed a letter to the museum stating that he was giving the statuette to the museum "from and after" his death. He delivered the letter to the museum in person. Assume the letter could not be treated as a valid will because it did not meet the formal requirements of the statute of wills. After delivering the letter to the museum,

a. Walker should still be legally able to revoke the gift because he has not yet turned over possession of the statuette to the museum.

b. The museum would own the statuette as a gift causa mortis.

c. Walker would still have a legal ownership interest in the statuette, and that interest would be worth $500,000.

d. Walker would still have a valuable legal ownership interest in the statuette, but that interest would be worth substantially less than $500,000.

45. Landlord leased a storefront to Tenant for ten years. Tenant sold the store business during the lease term and, in that connection, Tenant assigned the lease to an assignee. The assignee never made any promise to pay the rent due under the lease. The assignee continues in possession of the premises under the lease.

a. The assignee is not legally liable to pay rent under the lease.

b. The assignee is liable to pay rent under the lease based on privity of contract.

c. The assignee is liable to pay rent under the lease based on privity of estate.

d. Both b. and c. above.

46. Suppose again that Landlord leased a storefront to Tenant and, in connection with the sale of the store business, Tenant assigned the lease to an assignee. The assignee expressly assumed the lease. The assignee later re-sold the store business and assigned the lease to A-2, but A-2 made no promise to pay rent. Now A-2 has assigned the lease to A-3, who has possession but refuses to pay further rent. Landlord has a right to rent from (select the most complete answer):

a. Tenant.

b. Tenant and the original assignee.

c. Tenant, the original assignee and A-2.

d. Tenant, the original assignee and A-3.

47. Landlord leased a storefront to Walker and then Walker sold the store business to a new investor. In connection with the sale, Walker's lawyer prepared a document entitled "Sublease" that stated: "I hereby sublease to [the new investor] my entire interest in the store premises for the entire remaining duration of my lease." Most courts would conclude that:

a. The new investor has become a subtenant of Walker.

b. The new investor has become a subtenant of Landlord.

c. Both of the above.

d. The new investor has become Landlord's new tenant taking the place of Walker in the landlord-tenant relationship.

e. None of the above.

48. Landlord leased a second-floor apartment to Tenant for a term of three years. Tenant has taken possession of the premises.

a. Landlord has conveyed an estate in land to Tenant.

b. Landlord and Tenant have a contractual relationship, but no conveyance has occurred.

c. Tenant's interest in the premises would be considered real property and not personal property because Tenant would have the seisin in the premises.

d. Under the usual common law rule (and apart from any provision in the lease), Landlord would be legally entitled to terminate the lease and evict Tenant if the rent isn't paid on time.

49. Suppose Landlord made an *oral* lease to Tenant for three years reserving a rent of $2600 per month. Tenant entered into possession and paid the rent as it came due. After several months, Landlord received an attractive offer to buy the building "vacant." He ordered Tenant to vacate the premises as soon as possible. The oral lease, he says, is void under the Statute of Frauds.

a. Tenant does not have to vacate until the three-year lease is over because, once a tenant enters into possession and starts paying rent, the Statute of Frauds no longer applies.

b. Tenant probably does not have to vacate, at least not right away, because Tenant probably now has a tenancy from month to month and is, therefore, entitled to at least one month's notice of termination.

c. Tenant probably does not have to vacate, at least not right away, because Tenant probably now has a tenancy from *year to year* and is, therefore, entitled to at least six months' notice of termination.

d. Tenant has little choice but to vacate the premises right away because, due to the Statute of Frauds, Tenant has only a tenancy at will.

50. Suppose that Landlord had orally leased to Tenant from month to month beginning from the date Tenant took possession on March 1, 2022. The earliest date from today (August 15) as of which Landlord could terminate the lease is:

a. August 31.

b. September 15.

c. September 30.

d. October 31

51. Last year, Owner decided to build a retaining wall to stop erosion at the edge of his property. Because of the terrain, a portion of the wall had to be located on Neighbor's property. Owner explained the situation to Neighbor who nodded, but no document was ever exchanged between them. Neighbor stood by silently as the wall was built. After Owner spent several thousand dollars and much effort building the wall, Neighbor says it's unsightly and wants it removed. Owner's best chance of getting legal protection for the portion of the wall on Neighbor's property is by claiming:

a. An easement by implication.

b. An easement by estoppel

c. An easement by prescription.

d. An easement in invitum.

52. Owner built an underground storm drain across part of her property. Some years later, she sold that part of her property to Buyer. When Buyer discovered the drain across his land, he demanded that it be removed. Owner consulted a lawyer who thinks the best chance to maintain the storm drain is to claim an easement by implied reservation:

a. A potential difficulty in establishing such an easement is that the facts don't show there was ever a quasi-easement.

b. The kind of easement that Owner would be claiming would require an apparent use of the servient land prior to the transfer to Buyer, and "apparent" means visible.

c. The kind of easement that Owner would be claiming would require an apparent use of the servient land prior to the transfer to Buyer, but "apparent" may be proved by showing that Buyer knew facts that would put a reasonable person on inquiry.

d. Buyer cannot be held burdened by the easement because there's no indication that Buyer ever expressly agreed to the storm drain.

53. Drake sold Owner a piece of land that has no road access. To get in and out, Owner simply crossed (without asking) other adjacent land belonging to Drake. Fearing that Drake might sell in the future, and having no other means of access, Owner wants to get a court to declare that he has an easement by necessity across Drake's land for ingress and egress to his own land.

a. Owner's chances of claiming an easement by necessity look pretty good because the use of Drake's land for ingress and egress was strictly necessary at the time he bought.

b. Most courts would probably agree that the easement by necessity should also include a right to install wires, pipes and other conduits across Drake's property.

c. One advantage of an easement by necessity is that, once created, it will continue even after the necessity no longer exists.

d. All of the above.

54. In order to get a building permit for desired alterations, Owner has to provide fire exits on both sides of his building. However, one side of the building abuts on land owned by Neighbor, who uses the area next to Owner's building as a driveway. If Neighbor sells Owner an easement for emergency egress, 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.

55. Suppose that Neighbor granted Owner the needed easement in the preceding question. Later Owner conveyed his building to Home Max, a large home-improvement chain. The deed to Home Max did not mention the easement. Neighbor now wants to get paid again for the easement, this time by Home Max. Under the usual interpretive presumptions:

a. Home Max would not be entitled to use the easement in connection with the building unless it pays Neighbor for the right.

b. Home Max would be entitled to use the easement as an easement by necessity if the use of the building would otherwise be illegal under the local fire laws.

c. Home Max would be entitled to use the easement as an easement by implication if use of the building would otherwise be illegal under the local fire laws.

d. The easement granted to Owner would now belong to Home Max as an appurtenance to the dominant tenement that Owner conveyed to Home Max.

56. In 2009, Owner 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 Owner's property and Owner's family never used it because they had other ocean access that was more convenient. The location of the easement is now badly overgrown and impassable, and it needs to be cleared. However, Owner never said or did anything that was inconsistent with possible future use of the easement.

a. Owner probably has a right to clear the path and make use of the easement.

b. The easement probably has been extinguished by abandonment.

c. The easement probably has been extinguished by non-use.

d. Both b. and c. above.

57. Which of the following is true?

a. An easement in gross is usually transferable in connection with a transfer of the dominant tenement.

b. An easement owner would be considered a trespasser if he strays outside the scope of the easement.

c. An easement ordinarily does not prevent the servient owner from using the servient land as he pleases as long as those uses do not unreasonably interfere with the easement.

d. Both b. and c. above.

58. Owner conveyed "to A and B and their heirs." A and B are unrelated to each other.

a. A and B are presumptively joint tenants.

b. A and B are presumptively tenants in common.

c. A and B presumptively have rights of survivorship.

d. A, B and their respective heirs are all tenants in common together.

59. Owner conveyed "to A, B and C and their heirs as joint tenants." A, B and C are unrelated to each other. C later conveyed her share to X. Who now owns the land?

a. A, B and X are joint tenants.

b. A, B and X each hold an undivided 1/3 as tenants in common with one another.

c. A and B are joint tenants as to an undivided 2/3 while X holds an undivided 1/3 as tenant in common with them.

d. A, B and X each have undivided thirds and, if X dies, A and B will be joint tenants with undivided half-interests.

60. A and B are tenants in common in a house that they inherited from their mother. For the past several years the house has been occupied solely by A. Meanwhile, B lives with her family elsewhere and is not interested in living in the house. Lately, however, she's wondered if she might be entitled to receive rents from A.

a. In general, as an out-of-possession cotenant, B would be entitled to receive reasonable rents from A because A enjoys the sole possession.

b. Absent an ouster by A or an agreement by A to pay rents, B is probably out of luck as far as being entitled to rent is concerned—at least under the majority rule.

c. Most courts would probably hold that A's sole occupancy of the premises should be interpreted as an implied promise by A to pay a reasonable rent to B.

d. Under these facts, A is essentially nothing more than an adverse possessor, and adverse possessors do not generally have to pay rent.

End of examination.