PACE UNIVERSITY SCHOOL OF LAW

PROPERTY
PROFESSOR HUMBACH August 9, 2024
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.

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 person or AI system.

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 later be changed.

You will receive 2 bonus points for correctly using EXAM4.

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. If you think different states have different rules, use the majority rule unless the question otherwise specifies. 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. Huntsman was chasing a wild woodchuck. Just as he was on the verge of catching it, Walker jumped out of a bush and grabbed it. Huntsman has sued Walker for the value of the woodchuck. There is authority holding that the court should rule in favor of Walker, the first to take possession,

a. For the sake of certainty.

b. In the interest of promoting peace and order.

c. Both of the above.

d. None of the above. Most would agree that the court should rule in favor of Huntsman.

2. Suppose the facts of the preceding question occurred on land belonging to Owner. Neither Huntsman nor Walker had Owner's permission to be on the land.

a. Owner would have a better claim to the woodchuck than Huntsman or Walker because landowners own the wild animals on their land.

b. Huntsman would have the better claim to the woodchuck.

c. Walker would have the better claim to the woodchuck.

d. Under the doctrine of *ratione soli,* Owner would be entitled to the woodchuck.

3. The Wildlife Restoration Project (WRP) sought to capture several small ferae naturae on its own land in order to reintroduce them in an area where their species was extinct. A neighboring farmer claimed several of the animals in question on the ground that they had been occupying a den on the farmer's land. In order to prove ownership by occupancy:

a. WRP *must* show that it had attained actual corporal possession of the animals.

b. It's enough if WRP can show that it had captured the animals in traps, depriving them of their natural liberty.

c. It's enough if WRP can show that it knew the locations of the animals and was almost certain to capture them.

d. None of the above is correct, but the farmer can prove ownership by occupancy by showing that the animals occupied a den on the farmer's land.

4. A hunter mortally wounded a wild animal and remains in hot pursuit. The hunter:

a. Would be deemed to have actual physical possession of the animal by virtue of the mortal wounding and his hot pursuit.

b. Would have a better claim to the animal than a second hunter who intervened and took the animal during the first hunter's hot pursuit.

c. Both of the above.

d. Would have no better claim to the animal than any other random person.

5. Walker wants to obtain a legal right to dominion and control over an unowned object (such as ferae naturae). The fundamental way to do this is to:

a. Purchase the object from the state.

b. Go to the courthouse and register ownership of the object.

c. Formally declare to witnesses that the object is yours.

d. Intentionally exert dominion and control over the object.

6. Owner captured a small turtle in his backyard. He put it in a glass box along with a couple of rocks and food. The next morning, Owner discovered that the turtle had somehow tipped the box and escaped. Later that afternoon, Owner saw some boys walking down the street with a turtle. They said they'd found it in some bushes a few houses away. Owner demanded the turtle, but the boys refused. The turtle is essentially indistinguishable from other turtles that roam wild in the area. Who is entitled to the turtle?

a. The boys.

b. Owner, because the turtle became his when he first caught it.

c. Owner, because he provided food to the turtle.

d. Owner, because he would probably take better care of the turtle than the boys.

e. None of the above. The turtle is a wild animal, and nobody is legally "entitled" to it.

7. Owner runs a business of selling lobsters to people in her community. She has invested a considerable sum to install lobster tanks in her backyard. Last month, about a mile away, a large supermarket set up a competing lobster tank operation and is attracting much of the lobster buying public—so much that Owner may be forced to go out of business. Owner has sued the supermarket to recover damages for the destruction of her business. Owner's lawyer cites *Keeble v. Hickeringill* as authority. Based on that case, should Owner recover damages from the supermarket?

a. No, because the supermarket has as much right as Owner to sell lobsters in the community.

b. Yes, because she was "first in time first in right" and, therefore, had a property right in her business.

c. No, because lobsters are ferae naturae

d. Yes, because she owns the lobsters in her backyard.

8. While out shopping, Owner put a 12 pack of grape soda in her cart. At the check-out aisle she placed the 12 pack on the shelf underneath the cart's main basket. When she got to her car, she forgot about the 12 pack, and left it in the cart. Snapper saw her drive off without the 12 pack and placed it in his own cart. Then, Defendant, quick on his feet, grabbed the 12 pack from Snapper's cart and ran off.

a. Defendant has as good a claim to the 12 pack as Snapper since neither one of them owned it.

b. Snapper has a better claim to the 12 pack than Defendant.

c. Neither Snapper nor Defendant has a legal claim to the 12 pack since neither of them has done anything to acquire rights to it.

d. Both Snapper and Defendant have equal rights to the 12 pack.

9. Owner plans to harvest and remove mature trees from a wooded tract that he owns in the mountains. The least expensive and most convenient route to take out the logs is to drag them across the rear portion of the neighbor's pasture. Timbering is a valuable industry in the area, providing many jobs and tax revenues. Dragging the logs across the neighbor's pasture would cause minimal damage. Owner is willing to pay compensation for any damage that does occur. Does Owner need the neighbor's permission to drag the logs across the neighbor's land?

a. No, because Owner has a legitimate economic reason to use the neighbor's land and there's a public interest in allowing Owner to do so.

b. Yes, but the neighbor may not withhold permission unreasonably.

c. No, because it wouldn't be considered a trespass if alternative routes would be socially wasteful.

d. No, as long as Owner is willing to pay compensation for any damage that occurs.

e. None of the above.

10. A recreational fisherman wanted to fish in a stream on Owner's farmland. The stream runs through a meadow and at one point comes within about 100' of a public highway. The fisherman parked his car on the highway, walked across Owner's land to the stream and commenced to fish. While on Owner's land, he caught three fish (which you may assume

were ferae naturae). Owner saw the fisherman, went over to him and demanded the fish. Who has the better right to the fish?

a. The fisherman who caught them because he was the first captor.

b. The fisherman who caught them as long as he had a valid state fishing license.

c. Both of the above.

d. Owner, because the fisherman was trespassing at the time he caught the fish.

e. The fisherman because no one owns stream water that is flowing in its natural state.

11. Suppose in the preceding question it was the custom of the country to allow recreational fishermen to fish in ponds and streams located on open farmland. Owner never gave the fisherman express permission to fish on Owner's land. But, then again, Owner never gave any indication that he *didn't* allow others to fish on his land. Who would have the better right to the fish?

a. The fisherman because the custom of the country overrides the law and confers a public right to fish in streams like this one.

b. Probably the fisherman because, based on the custom, he can be interpreted to have a license by implication to fish in the stream.

c. The fisherman because the common law confers a right to go on open farmland, even without express permission, to fish and gather wild berries.

d. Owner because the water flowing in the stream was his property.

12. Owner bought natural gas on the open market and injected it into the ground under his land. Some of the gas seeped under the land of Owner's neighbor. The neighbor hired a driller to pump the gas up from under the neighbor's land and sell it for profit. The gas that the neighbor pumped up and sold was probably the same gas that Owner had bought and injected. Assume the court applies the doctrine of capture to the gas:

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

b. Owner can't logically be considered a trespasser for causing gas to seep and flow underneath the neighbor's land because, under the doctrine of capture, Owner ceased to own the gas that he injected into the ground.

c. Owner can't logically be considered a trespasser for causing gas to go *underneath the surface of* the neighbor's land since the neighbor wasn't using that subsurface area anyway.

d. The neighbor could lawfully pump up and sell the gas he finds underneath his land because Owner would no longer own the gas that Owner injected into the ground.

13. Owner got water for his home from a well. His neighbor began digging commercially for sand. The digging required removal of substantial quantities of underground water. The removal caused Owner's well to go dry. Owner wants to hold the neighbor liable. The underground waters in the area ooze and seep through the soil with no definite channel.

a. According to some American authorities, the neighbor would have absolute ownership of the underground waters beneath his land and could remove them without liability to Owner.

b. Under the so-called American rule, the neighbor could remove underground waters without liability as long as the removal was necessary for some useful or beneficial purpose relating to the neighbor's land.

c. Both of the above.

d. The neighbor would not be liable to owner for causing the well to go dry because the underground waters in question do not appear to be percolating waters.

e. All of the above.

14. In the evolution of modern Takings law, the courts have mentioned a number of rationales to explain how, despite the Takings and Due Process clauses, government regulations can impair or eliminate valuable property rights without creating a duty to compensate. Which of the following is among those rationales?

a. Average reciprocity of advantage.

b. Laws that modify property rights, if they do not go too far, simply adjust the benefits and burdens of economic life.

c. Land-use regulations do not require compensation as long as they are enacted to prevent public harm (as opposed to obtaining public benefit).

d. All of the above are among the rationales mentioned by the courts.

15. Owner purchased a number of ornamental barberry bushes at a nursery, paying $1500 to have them planted around her property. She likes the look of them very much. Now, however, the Town has adopted an "invasive plant ordinance." It declares barberries to be "invasive" and a nuisance, and it requires property owners to remove them.

a. The Town can enforce the ordinance against Owner but only if it pays her just compensation

b. The Town can enforce the ordinance against Owner without paying just compensation, but it has to at least reimburse her for the value of whatever rights that it takes.

c. The Town can enforce the ordinance against Owner only if it reimburses her for the cost of removing the barberries.

d. The Town can enforce the ordinance against Owner without making any payment to her at all.

16. Owner has a home in a semirural suburban area. Owner's neighbor has decided to raise pigs on his property next door. The pigs make it very annoying to be outside in the yard around Owner's home. Owner contributed $3,000 to the campaign of a local Town board member and, soon thereafter, the Town adopted a law that prohibits raising pigs. As a result, the $25,000 investment made by Owner's neighbor (pig raising equipment, pig shelters, etc.) has been rendered worthless. The neighbor contends that the new ordinance is unconstitutional.

a. To uphold the ordinance as constitutional, the court must find that the needs of the public require it.

b. The court can properly uphold the ordinance only if it finds that the ordinance is reasonably suited to serve its intended purpose.

c. In upholding the ordinance, the court must make provision for compensation to Owner's neighbor for his loss of investment.

d. All of the above

e. None of the above.

17. Owner bought an empty lot intending to build a weekend home near the ocean. Later, based on a vegetation survey, the environmental agency declared most of Owner's lot to be a legally protected wetland. In consequence, Owner has been told he's legally barred from building on his lot.

a. If the government's action deprives Owner of all economically beneficial use of his land, he would be entitled to just compensation.

b. Owner wouldn't be entitled to compensation, even if he was deprived of all economically beneficial use, because the government's action has not actually "taken" any of Owner's land.

c. No just compensation would be due under these circumstances as long as the government's action was deemed reasonably necessary to further a legitimate police-power purpose.

d. The government cannot constitutionally deny Owner the right to build on his land because he bought it as a "building" lot.

18. To improve flood control in Owner's neighborhood, the local government built a small dam at one side of Owner's property. The dam intrudes on Owner's property, occupying an

area of roughly 5x3 feet. Owner now demands just compensation for the part of his property that is occupied by the dam.

a. Owner would not ordinarily be entitled to just compensation if the dam was built for an important government purpose.

b. Owner would not be entitled to just compensation if the need for the dam was the result of climate change, which is outside of the government's control.

c. Owner would be entitled to just compensation because, on these facts, he has been deprived of property without due process of law.

d. This looks like a clear case for just compensation under the Takings cause.

19. Owner purchased a food truck. He parked in a legal parking spot on a downtown street and sold hot sandwiches to passersby. The local village board then passed an ordinance that prohibits sales from food trucks on village streets, even in legal parking spots. The ostensible purpose of the ordinance was to prevent excessive littering and preserve the village's vibrant restaurant scene. Owner decided to re-sell his food truck at a substantial loss. Owner has asked the court to strike the ordinance down under the Due Process clause. Is he likely to succeed?

a. No, because government actions pursuant to the police power are not subject to the Due Process clause.

b. Yes, because the village adopted the ordinance after Owner had already bought the food truck.

c. Yes, if Owner can prove that the village adopted the food truck prohibition partly in order to prevent the loss of brick-and-mortar restaurants.

d. Probably not, because courts generally defer to the legislative judgment on the question of what laws are necessary to serve the public interest.

20. The City Council wants to see the redevelopment of a rundown part of town. The plan would be to demolish existing residential structures and replace them with a modern urban center. The Council has authorized the use of eminent domain to acquire properties in the redevelopment area for resale to a designated private developer. Owner is a long-time resident of the area and objects to the forced sale of his property. He says it is unconstitutional taking for non-public use.

a. Owner will probably be successful in challenging the city's plan to use eminent domain for this purpose.

b. The Supreme Court interprets public use very broadly, and its cases would probably allow the city to utilize eminent domain to acquire Owner's property for redevelopment by a private developer.

c. The city's proposed use of eminent domain will probably be valid, but "just compensation" means Owner must be fully compensated for the economic value of his property as well as for any special value that it may have to Owner.

d. Both b. and c. above.

In the following questions do not assume the court makes a distinction between lost and mislaid property unless the question says so.

21. Walker found a gold watch in a parking lot. It didn't work. He took it to a jeweler to have it fixed. When he mentioned to the jeweler that he'd found the watch, the jeweler said "ah, well," and refused to give it back. If Walker wants to recover the value of the watch from the jeweler, he should bring an action in:

a. Replevin.

b. Trover.

c. Conversion.

d. Trespass to chattels.

22. If Walker brings an action against the jeweler for the value of the watch.

a. Walker should prevail.

b. The jeweler should prevail because Walker is not the owner of the watch.

c. The jeweler should prevail because otherwise, if the true owner comes along later, the jeweler might end up having to pay twice.

d. Both b. and c. above.

23. Walker was at a party in a private apartment. He found a valuable earring on the floor in a shadow beside the couch. He picked it up and handed it to the host who then asked loudly if anybody was missing an earring. Nobody spoke up. Walker asked to have the earring back, and the host refused. The local courts follow the so-called English rule with respect finding.

a. The host would have the better claim of entitlement to the earring.

b. Walker would have the better claim of entitlement to the earring.

c. The earring would probably be considered treasure trove because it is valuable.

d. Both b. and c. above.

24. Suppose the facts of the preceding question occurred in a jurisdiction that follows the so-called American rule and recognizes the distinction between lost and mislaid property.

a. If the court considered the earring to be mislaid, then Walker would have the better claim to possess it.

b. If the court considered the earring to be lost, then the host would have the better claim to possess it.

c. If the court considered the earring to be mislaid, then the host would have the better claim to possess it.

d. In deciding who has the better claim to the earring, it would make no difference, in these circumstances, whether it's considered lost or mislaid.

25. Suppose again that the facts of the earring question occurred in a jurisdiction that recognizes the distinction between lost and mislaid property. Suppose also that the factfinder concludes that, based where the earring was found, it fell off at some point during the party without its owner noticing it. The conclusion would follow that:

a. The earring should be treated as mislaid rather than lost.

b. The earring should be treated as lost and not mislaid.

c. The true owner no longer had rights to the earring due to her negligence.

d. None of the above.

26. Owner lent her car to her sister while Owner went to Europe to spend her junior year abroad. A couple of months later, her sister was involved in an accident which was entirely due to the negligence of the other driver, with no fault on the part of the sister. After the accident, the sister hired a lawyer and sued the other driver for damages to recover the cost of repairing the car.

a. The sister should be able to recover full damages from the other driver even without a specific authorization from Owner.

b. The sister is automatically authorized to sue the other driver for full damages because, otherwise, she'd have to compensate Owner for the damage out of her own pocket.

c. If the sister recovers full damages from the other driver, she may keep the amount recovered for herself because it was her effort that made the recovery possible.

d. Only Owner has legal authority to sue the other driver for damages to Owner's car.

27. An old friend of Owner's walked over to Owner's home (a half hour's walk) for a pleasant afternoon of chatting and Chardonnay. A storm blew up as the friend was about to leave, and Owner said: "Here, I will *lend* you an umbrella and *lend* $20 to pay the taxi," which they then called. What legal transaction was most likely intended with respect to the "loans" of the umbrella and the $20?

a. A bailment of both the money and the umbrella.

b. A transfer of title to the money and a bailment of the umbrella.

c. A transfer of title to the umbrella and a bailment of the money.

d. A transfer of title to both the money and the umbrella.

28. While shopping in a department store, Owner handed her coat to a store clerk as Owner went into a fitting room to try on a garment. When Owner came back out again, the store clerk was gone and so was her coat. The clerk had been momentarily called away and, in another part of the store, she absent-mindedly left the coat on a table. It was stolen by persons unknown. Owner sues the department store for the value of the coat. Is there is any basis for holding the store liable here?

a. No, because this was obviously a gratuitous bailment.

b. No, because a bailment requires a contract, with offer, acceptance, consideration, etc.

c. Yes, if the store clerk failed to use ordinary care to prevent the theft of the coat in her possession.

d. Yes, because department stores are generally liable to their customers for thefts that occur on their premises.

29. Owner left his car at Bailee's repair shop to get some routine maintenance. While the car was in the shop overnight, a poorly maintained water pipe broke open. The car sustained substantial damage in the flooding that ensued. Owner sues Bailee for the damage to his car.

a. There's no reason to presume that Bailee was negligent and, accordingly, the burden is on Owner to prove that the damage to his car resulted from Bailee's failure to use ordinary care.

b. There's a presumption that the loss was caused by Bailee's negligence but, under the usual rule, Bailee can rebut the presumption by proving that the loss was caused by water flooding from a broken pipe.

c. There's a presumption that the loss was caused by Bailee's negligence but, under the usual rule, Bailee can rebut this presumption by proving that it used ordinary care.

d. There's an non-rebuttable presumption that the loss to the car in its possession and care was caused by Bailee's negligence.

e. As bailee of the car, the repair shop it's liable for damage occurring while the car is in its possession, irrespective of negligence.

30. When Owner got home from work last night, she found a package from Amazon sitting on her front steps. She had not ordered anything from Amazon, and she quickly noticed that the package was addressed to the next-door neighbor.

a. Owner would be considered to be bailee of the package, with all the attendant legal responsibilities, because it was located on her property, within the bounds of her possession.

b. Owner would be considered bailee of the package, with all the attendant legal responsibilities, if she were to pick up the package and take it inside her home.

c. Both of the above.

d. If Owner decides to keep the package and make personal use of its contents (because, as she says, "it was delivered to my house"), she would be guilty of larceny.

e. Both b. and d. above.

31. Owner has a country home, which he holds in fee simple. The back of the property has direct highway access, but Owner preferred to take a shortcut across the neighbor's land. The neighbor said nothing at first but finally became irritated and told Owner to stop it. That was in 2013. Nonetheless, Owner brazenly kept up the trespasses and the neighbor erected a fence a few weeks ago. Now Owner has consulted a lawyer asking if there's anything he can do about the fence. The lawyer should advise Owner that:

a. He probably has an appurtenant easement by prescription to use the shortcut.

b. He probably has an easement in gross by prescription to use the shortcut.

c. He probably has piled up a big trespass liability to the neighbor and should try to settle before the liability becomes even worse.

d. Based on his use of the shortcut, he probably has a ripened title by adverse possession to at least some of the neighbor's property.

32. Owner inherited a house from a distant relative. Because he was hiking in the Himalayas, Owner did not get word of his good fortune. A fraudster saw the house was empty and listed it for sale with a broker. He then impersonated Owner to deliver a forged deed to the buyers. This was all 11 years ago. The buyers have lived in the house as their primary home ever since. Neither Owner nor the buyers had any idea that Owner actually

had title to the house. Last month, Owner found out the truth. He now has sued the buyers in ejectment. The buyers assert the statute of limitations as a defense.

a. The buyers' possession during the 11 years should not be considered "open and notorious" since it did not inform Owner that someone was living in a house that belonged to him.

b. The buyers' possession during the 11 years would generally not be considered hostile and under a claim of right because they honestly believed they were the true owners all along.

c. Both of the above.

d. The buyers may well have acquired a ripened title by adverse possession even though Owner did not know that he owned the property and, therefore, did not know that he had a right to sue in ejectment.

33. During the pandemic Owner bought a vacation cabin sight unseen. When he later went to take possession of the cabin, he mistakenly confused it with another property that was not his. He moved his furnishings into the "wrong" property and commenced using it (and acting as the owner of it) every other weekend during the summer months. Suppose that, after 12 years of this, a person claiming to be the true owner of the "wrong" property shows up and sues Owner in ejectment. Owner would prefer to retain the "wrong" property. Would the law let him do so?

a. Owner would probably not have a valid claim to the "wrong" property because his possession there has not been sufficiently continuous.

b. Many cases support the conclusion that Owner's possession of the "wrong" property could be considered sufficiently continuous for a ripened title if his acts of possession comport with the nature and character of the property.

c. Under the majority (and better reasoned) rule, Owner would not have a basis for claiming ripened title to the "wrong" property because his actions were due to an honest mistake of fact and, therefore, were not hostile.

d. Owner would have a good case for requiring the person who claimed to be true owner of the "wrong" property to trade with Owner since Owner's actions were due to an honest mistake of fact.

34. Owner bought a piece of vacant land in a distant county, but he seldom went there. When Owner discovered that someone had been living in a small metal shed at the back of the property, he went to a lawyer to discuss his rights. Based on what the lawyer is able to determine, the person in the shed has been in adverse possession of a substantial part of Owner's land for more than 10 years. The period of limitations on trespass is three years.

a. Owner would not prevail in an ejectment action against the person in the shed, but Owner should be legally able to recover damages for trespass.

b. Owner would not prevail in an ejectment action against the person in the shed, but Owner should be legally able to recover mesne profits for the three years immediately prior to the commencement of the action.

c. Owner should be legally able to recover possession in an ejectment action as well as trespass damages for injuries to the land within the period of limitations for trespass.

d. It does not appear that Owner now has any action whatsoever against the person living in the shed.

35. Suppose in the preceding question the person in the shed had been there for fewer than 10 years, and the court finds that Owner is permitted to recover mesne profits from him. The measure of the recovery would roughly correspond to:

a. The fair rental value of the property adversely possessed for the period during which the defendant was in adverse possession (within the period of limitations for trespass).

b. The sale value of the property between a willing buyer and a willing seller.

c. The amount of profit that a reasonably diligent owner would be able to derive from the "mesne" of the property during the adverse possession.

d. Whichever of the above would provide the greater monetary recovery for Owner.

36. Owner bought a house on a residential lot. On the east side of the property there was a fence. The previous owner of the house had mistakenly built the fence three feet over the boundary line, on the neighbor's property. In other words, a three-foot strip of the neighbor's land was on Owner's side of the fence. The fence was erected in 2017, and the previous owner occupied the boundary strip as his own from 2017 until the sale to Owner in 2023. Owner has occupied the strip as his own ever since. The earliest that Owner could acquire a ripened title to the boundary strip is:

a. 2024.

b. 2027.

c. 2033.

d. 2037.

37. Suppose in the previous question that (with whatever additional facts may be necessary) Owner acquired a ripened title to the boundary strip by adverse possession. When the neighbor discovered this, he threatened to sue if Owner didn't move the fence back to the boundary line described in Owner's record title. Owner complied with the neighbor's

demand and, in 2023, moved the fence back to the boundary's record location. Since then the neighbor has occupied the boundary strip as though it were his own. As a result:

a. The neighbor is once again the true owner of the boundary strip.

b. The neighbor now appears to have adverse possession of the boundary strip.

c. Owner would be deemed to have legally abandoned his property rights to the boundary strip.

d. Both a. and c. above.

38. In 2015, an adverse possessor (AP) took possession of a piece of land that Owner had previously leased to a tenant for a term of 20 years. The lease is set to expire in 2030. If the AP remains in possession until 2025, and his possession is of a kind and character that can ripen into title, then AP will get a ripened title that is:

a. Good against both the tenant and Owner.

b. Good against the tenant but not against Owner, meaning that AP will acquire a right to possess the property that lasts only until the lease expires.

c. Good against Owner but not against the tenant since the tenant would not have an ejectment action to stop AP from getting a ripened of title.

d. None of the above. AP could not acquire a ripened title in these circumstances since the tenant has a protected legal right to possession under the lease.

39. Owner handed a valuable ring to her daughter and said: "I want you to have this ring as a graduation present." The daughter took the ring in her hand and replied: "Thanks, Mom, but I want you to wear it to my graduation next week. Here, you hold on to it until then." Owner took back the ring and said: "Okay, but the ring is yours." Later, before the graduation, Owner and her daughter had a massive argument, and Owner said: "I've changed my mind. I want to keep the ring until I think you're ready for it." At that point:

a. The ring still belongs to the daughter.

b. The ring belongs to Owner because there was never a proper delivery to the daughter.

c. The gift of the ring to the daughter was revoked when Owner objectively manifested that she had changed her mind.

d. The gift of the ring to the daughter was never effectuated because there was not a proper manifestation of acceptance.

40. On his deathbed, Owner handed a packet of letters to his nephew saying: "Here are some letters that your great grandfather wrote from France during the World War I. You've

been interested in family history, so I want you to have them. The nephew took the letters and said thank you. Later, Owner's sister asked about the letters, and Owner decided he'd rather give them to her. The gift to the nephew is:

a. Presumptively revocable because Owner was on his deathbed when the exchange with the nephew occurred.

b. Presumptively *irrevocable* because Owner was on his deathbed when the exchange with the nephew occurred.

c. Presumptively revocable because no gift is final while the donor is still alive.

d. Presumptively enforceable by the nephew as a testamentary gift

41. Owner had a large, heavy cabinet that stood in her family's dining room. Owner said to her daughter, who lived in the same house, "I know you like the cabinet in the dining room, and I've decided it will be my wedding present to you." The daughter, who had no immediate plans to get married, said thank you. The cabinet remained where it was and continued to be used as it always had been.

a. Based on the foregoing events, the daughter is now the owner of the cabinet.

b. Based on the foregoing events, the daughter will automatically become the owner of the cabinet when she gets married unless Owner revokes the gift in the meantime.

c. This gift fails because these facts show nothing that can be construed to meet the delivery requirement and, given the size of the cabinet, the only way to accomplish a legally effective delivery would be by deed of gift.

d. Owner's words are a gratuitous promise which is unenforceable for lack of consideration.

42. Owner wrote a check for $5000 and handed it to his 20-something son saying, "Here's some money. Use it to have a good time." The son took the check but for many months did not cash it. Owner became annoyed by this and told the son that he changed his mind and wanted to check back. The son refused.

a. Under the majority rule, delivering the check to the son would have consummated the gift of the funds in the account, and Owner could not legally revoke the gift.

b. Some say that delivering a check is effective to consummate a gift of the funds in the account.

c. A gift of money can be made by writing and delivering a check, but most courts say the gift is not complete until the check is deposited or cashed.

d. Both b. and c. above.

43. Owner placed five diamonds in each of three boxes, sealed the boxes and wrote the name of an intended donee on each box. Owner then handed the boxes to a trusted friend with instructions to see that they got to the persons whose names were on them. Before the friend could complete the task, however, Owner died unexpectedly in an accidental fall down a flight of stairs.

a. It is clear on these facts that the gifts are complete, and the named donees are entitled to the contents of the boxes.

b. The gifts could be considered complete only if the friend was acting as the agent of the donor.

c. The gifts could be considered complete if the friend was acting as agent of the donees.

d. Even if the gifts could be considered complete, they would have been revoked by the death of the donor so shortly after they were made.

44. Owner lent Walker a mountain bike to use on an outing with a local outdoors club. Owner had another, better mountain bike, and he called Walker the next day and told him just to keep the one he'd borrowed. "It's yours," Owner said.

a. Despite Owner's words, the gift would not be complete until Walker returns the bike to Owner so that Owner can make a proper delivery to Walker.

b. To complete the gift, Owner must provide Walker with a signed writing confirming that the gift has occurred.

c. It looks like the delivery requirement has been met on these facts, and the gift is complete.

d. There still needs to be a delivery in order to complete the gift because a bailment cannot be converted into a donative transaction by mere words.

45. Owner and Tenant agreed to the terms of aa written lease. The lease was never signed by either party, but Tenant nonetheless went into possession with Owner's permission. Already in the first month, Owner and Tenant are having a dispute. Owner wants Tenant out as soon as possible. The legally enforceable duration of the lease is:

a. Eight months if the unsigned lease provided for a duration of eight months.

b. One year if the unsigned lease provided for a duration of one year.

c. Two years if the unsigned lease provided for a duration of two years.

d. One year if the unsigned lease provided for a duration of two years.

e. Both a. & b. above.

46. Suppose in the preceding question that Owner and Tenant signed the written lease, and it specifically provided that the term of the lease was to be "indefinite."

a. Tenant would have a right to remain in possession indefinitely.

b. The enforceable duration of Tenant's right to possession would be one year.

c. Initially, upon entering into possession, Tenant would have a tenancy at will.

d. Initially, upon entering into possession, Tenant would be considered a tenant at sufferance with no legally cognizable leasehold interest in the land at all.

47. Suppose that Owner and Tenant negotiated a written lease but, again, neither party signed it. The unsigned written lease provided for a duration of 10 years "reserving a rent of $24,000 per year payable in 12 monthly installments of $2000." If Tenant entered into possession and paid rent monthly for a number of months, Tenant would probably be held to have:

a. No legally enforceable leasehold interest at all because the lease was never signed by either party.

b. A tenancy at will.

c. A tenancy from month to month requiring one month's notice to terminate.

d. A tenancy from year to year requiring 6 months' notice to terminate.

e. A tenancy from year to year requiring one year's notice to terminate.

48. Suppose a tenant entered into possession on March 6 under an oral agreement for a month-to-month tenancy. The earliest date from today's date (August 9) that the landlord could terminate the lease and evict the tenant would be:

a. September 5.

b. September 8.

c. September 30

d. October 5.

e. October 8.

49. Owner leased an apartment to Tenant for a term of three years. Tenant took possession. Ten months into the lease, Tenant's employer assigned him to another city for one year. Tenant found a friend who was willing to take over the apartment for the year. Tenant and the friend signed a document in which Tenant purported to "assign" his apartment to the friend for one year, with the right to resume possession when he returned. Under the majority interpretation of such an arrangement:

a. A new landlord-tenant relationship, with a new privity of estate, was created between Tenant and the friend.

b. The friend took Tenant's place in the original landlord-tenant relationship with Owner during the year that the friend had the apartment.

c. Owner would be in privity of contract with the friend.

d. Owner would be in privity of estate with the friend.

e. Both c. and d. above.

50. The tenant under a lease of an apartment assigned the lease to T2. After a month, T2 defaulted on the rent. If T2 did not assume the lease but remains in possession, the landlord can recover the rent in arrears from:

a. The original tenant.

b. T2.

c. Both of the above (though the landlord cannot, of course, have a double recovery).

d. None of the above, since the original tenant no longer has possession and T2 did not assume the lease.

51. Suppose again that the tenant under an apartment lease assigned the lease to T2. After a few months, T2 reassigned the lease to T3. Soon after that, T3 defaulted on the rent. If T3 remains in possession, the landlord can recover the rent in arrears from:

a. T3 only.

b. The original tenant, T3 or T2 (if T2 assumed the lease).

c. The original tenant, T3 or T2 (whether or not T2 assumed the lease).

d. The original tenant only.

52. A tenant and landlord signed a lease that said: “This lease may not be assigned without the landlord's consent.” The lease said nothing about subleasing. Under the traditional rule of interpretation:

a. The tenant could not lawfully assign or sublet without the landlord’s consent.

b. The tenant could not lawfully assign without the landlord’s consent, and she could not lawfully sublet the premises at all.

c. The tenant could not lawfully assign without the landlord's consent, but the consent could not be unreasonably withheld.

d. The tenant could not lawfully assign without the landlord's consent, but she could lawfully sublet without the landlord consent.

53. Owner conveyed a piece of land to A and B as concurrent owners. B then predeceased A. Upon Bs death, the land would be owned by:

a. A alone if A and B held as tenants in common.

b. A alone if A and B had received a joint tenancy.

c. A alone if the deed were “to A and B and their heirs” and the usual modern interpretational preference applied.

d. All of the above.

54. Owner conveyed a piece of land to A and B as tenants in common. B entered into sole possession of the premises. A did not object. Later, however, A needed some cash, and he went to hit up B for the money. Under the majority rule,

a. B would owe a reasonable rental to A for the time that B enjoyed sole possession.

b. B could be required to pay rent to A only if they had an agreement that obligated B to do so.

c. B’s sole possession would start ripening into title against A from the day that B first took sole possession.

d. An ouster of A by B would affect whether B owes money to A for the time that B had sole possession.

55. Owner conveyed a piece of land to A and B as tenants in common. B promptly entered into sole possession and has remained there for 18 years. If the state has a statute like the one we studied in class (and no ouster occurs):

a. B could acquire a ripened title as sole owner of the property in as little as two years from now.

b. B would probably already have a ripened title as sole owner of the property.

c. Neither of the above because B would need to oust A in order to get adverse possession started against A.

d. B could not become sole owner of the property by adverse possession because tenants in common cannot adversely possess against each other.

56. Owner has a joint tenancy with his cousin, Emek. On his deathbed, Owner decides he does not want Emek to end up with the whole thing at Owner's death. Owner can prevent Emek from becoming the sole owner by:

a. Making a lease that demises Owner's share of the property to a third party.

b. Mortgaging his share of the property to a lender (in a lien theory state).

c. Making a will in which he devises his share of the property to his daughter.

d. None of the above could prevent Emek from getting the whole thing at Owner's death.

57. Owner granted E an appurtenant easement to cross over a defined strip of Owner's land "for travel between grantee's land and the public highway." As a result, E has:

a. A right to possess the strip of Owner's land for the limited purpose of ingress and egress.

b. A right of way that would ordinarily pass automatically to a buyer of E's land if E later decides to sell it.

c. An interest that is essentially the same as a license.

d. All of the above.

58. Owner bought a home that shares a common driveway with the property next door. Roughly 7 feet of the driveway is on Owner's side of the line, with 7 feet on the neighbor's side. Unfortunately, none of the deeds to the properties mention the common driveway or the existence of any easements. However, the physical layout was agreed to by the original owners of the two properties, and the owners on both sides have been using the driveway without objection for over 12 years. Owner would like to assert an easement by prescription to use the portion of the driveway on the neighbor's side of the line.

a. It would be hard for Owner to establish an easement by prescription because the past use of the driveway appears to have been permissive all along, and not hostile.

b. If the owners on both sides have been using the driveway as though they had a right to do so for the 10-year prescriptive period, that fact provides a basis for a court to find that the use on both sides was hostile and under claim of right.

c. Owner could likely prevail only if she could show facts that support the existence of an easement by estoppel.

d. Courts will generally not legalize common driveway situations by invoking "prescription" as a pretext for taking rights away from one person and giving them to another.

59. For a number of years, E rented a different summer home each year near the shore of Lake Skylark. In order to secure reliable access to the lake, E negotiated a right to access to the lake across a certain piece of land on the shorefront. The court has concluded that the right acquired by E is an easement in gross. That means she has a right to access to the lake that is:

a. Revocable at any time by the servient owner.

b. Revocable after a reasonable time.

c. Personal to E and not appurtenant to any land.

d. Little different from a license except that it gives E a right to possess the servient land.

60. Last year, E bought the eastern portion of property belonging to O. At the time of purchase, E's property was served by power lines that already ran across the land retained by O. The deed that O delivered to E did not mention any easements, O now demands that E reroute the power lines so they do not cross O's land. Rerouting would be expensive, however, and E wonders if he's legally required to do it. E consults a lawyer. The lawyer should tell E:

a. E's best bet is probably to claim an easement by necessity to keep the power lines where they are.

b. An easement for the power lines already existed before the conveyance to E and as a result, O holds the western portion of the land subject to that easement.

c. These facts appear to provide E with a solid basis for claiming an easement by implication based on prior use.

d. There does not appear to be any plausible basis for E to claim an easement for the power lines since the deed to E did not mention easements.

< End of examination>