

Note: The questions on this exam draw heavily on exams given 2004-09

PACE UNIVERSITY SCHOOL OF LAW

PROPERTY
PROFESSOR HUMBACH
FINAL EXAMINATION

August 18, 2010
TIME LIMIT: 4 HOURS

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

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

GENERAL INSTRUCTIONS: This examination consists of 70 multiple choice questions. Answer the multiple-choice questions on the answer sheet provided.

- Write your examination number on the “name” line. *Write it NOW.*
- Mark "A" in the “Test Form” box on the right side of the answer sheet. *Mark it NOW.*
- Also write your examination number in the boxes where it says "I.D. Number" on the right side. Use **only** the first 4 columns and *do not skip columns*. Then carefully mark your exam number in the vertically striped area below. You should mark only one number in each of the first four columns. *This is part of the test.*

Since everyone successfully took the Estate System Proficiency Test, you do not need to write your “word” on the answer sheet.

Answer each question selecting the *best* answer. Mark your choice on the answer sheet with the special pencil provided. *Select only one answer per question.* **If you change an answer, be sure to fully erase your original answer** or the question may be marked *wrong*. You may lose points if you do not mark **darkly** enough or if you write at the top, sides, etc. of the answer sheet.

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

Unlike in some recent previous years, **there is no “re-answer” feature on this test.**

Unless the context otherwise requires (such as where the facts are specifically stated to arise in New York), base your answers on general common law principles as generally applied in American common law jurisdictions. Do not assume the existence of any facts or agreements not set forth in the questions. **Unless otherwise specified, assume that: (1) the period of limitations on ejectment is 10 years; and (2) the signed-writing requirement in the statute of frauds applies to “leases of more than one year.”**

Except as otherwise specified, all conveyances are to be considered as if made, in each case, by a deed having the effect of a bargain and sale, after the Statute of Uses, but ignoring the effects of obsolete doctrines such as the Rule in Shelley's Case, the Doctrine of Worthier Title and the destructibility of contingent remainders. Ignore the possibility of dower and, for perpetuities purposes, ignore the possibility of posthumous children in gestation.

Facts for Archer-Mott questions. While waiting for his rental horse to be saddled at Swayback Stables, Archer noticed something shiny in the grass. It turned out to be a jeweled key ring that somebody had *lost*. Archer reported it to, Mott, the owner of Swayback. Mott was surprised and said he had no idea whose it might be. However, Archer agreed to leave the ring with Mott “in case the person who lost it comes back to get it.” After a month or so, Archer called Mott and asked about the key ring. Mott said nobody had come back for it so last week he just went ahead and pawned it, for \$500, at the Good Time Friday Night pawnshop.

1. When Archer heard how much Mott had gotten from the pawnbroker, he demanded that Mott let him have the \$500 “or at least share it.” Mott refused saying: “Hey, dude, it was on my private property.” If Archer sues Mott for the \$500:

- a. Most courts would probably let Mott keep the whole \$500.
- b. Some courts would decide that Archer has a legal right to the money even though the key ring wasn't his in the first place.
- c. Most courts would probably decide that neither Archer nor Mott was entitled to the money.
- d. Archer may have a replevin action against Mott, but definitely not a trover action.

2. Archer decided he'd rather have the key ring than the \$500. Archer explained the circumstances to Gibbs, the owner of Good Time Friday Night. However, Gibbs refused to give the ring to Archer, claiming that he bought it in good faith and with no reason to believe that Mott was not the rightful owner. The local law of finding generally follows the so-called American rule:

- a. Gibbs would be a converter.
- b. Archer would have an action in replevin against Gibbs.
- c. Gibbs would be absolutely liable to Archer if he redelivered the ring to Mott.
- d. All of the above..

3. After Archer called Mott and threatened a lawsuit, Mott decided he'd better get the ring back out of hock. Mott got possession of the ring again. A little later, Archer sued Mott to recover possession of the ring. Archer pointed out that, although he found the ring in a private area on Mott's property, he was not a trespasser there inasmuch as he was a customer waiting to be served. The court decided that the true owner had *lost* the ring.

- a. In many states, Mott would probably have the better claim to the ring as owner of the locus in quo, even if Archer was not trespassing.
- b. In many states, Archer would probably have the better claim to the ring as long as he was not a trespasser at the time he found it.
- c. Both of the above.
- d. Since neither Archer nor Mott is the owner of the ring, the best thing for the court to do is simply leave it with the person that has it.

4. Again assume that Mott got the key-ring back out of hock. Further assume that the case arises in an “American-rule” state that recognizes the distinction between lost and mislaid property. If the jury concludes that the ring got into the grass by falling out of the owner’s pocket without his knowledge, then:

- a. Mott would probably have a better claim to the ring as the owner of the locus in quo.
- b. Archer would probably have a better claim to the ring as the person who actually found it.
- c. The court would probably order that the ring be sold and the proceeds be split between Archer and Mott.
- d. Archer would have the better claim to the ring because it was “mislaid” rather than “lost.”

5. Suppose that Mott urgently needed some cash and so he re-hocked the key ring at the pawnbroker. The available evidence shows that the key ring was worth as much as \$1,800. As is usually the case, however, Mott got a lot less than that from the pawnbroker. In fact, Mott only got \$500. If Archer were able, on some sort of legal theory, to succeed as finder against Mott for conversion of the ring, the amount of damages he could recover from Mott:

- a. Would probably be nominal because Archer was a mere possessor and not the owner of the ring and, therefore, he hasn’t suffered much actual injury.
- b. Would probably be limited to the \$500 that Mott received for the ring from the pawnbroker.
- c. Should be equal to the full fair value of the ring, as found by the jury—perhaps as much as \$1800.
- d. Would probably be nil unless Archer could prove that Mott pawned the ring with full knowledge that he didn’t have any legal right to it.

6. Ellen Forbes, a lawyer, left her new BMW at Dentem Parking Garage while attending a deposition for a client. The garage was operated with a valet parking arrangement, which made it a bailee of the car. When Forbes returned after the deposition, the power mirror was missing from the car’s passenger side. She complained. One of the attendants ran upstairs and returned with missing mirror, which he handed to Forbes.

- a. Dentem is strictly liable for the damage to the mirror.
- b. Dentem is liable only if the mirror was broken off due its failure to use ordinary care.
- c. Dentem is liable for “misdelivery” of Forbes’s car.
- d. None of the above. There could be no bailment of the mirror (as distinguished from the car) unless the attendant actually knew that it was on the car when he accepted the bailment.

7. Suppose in the preceding question that Forbes, not wishing to look too ostentatious at the deposition, left her \$75,000 diamond bracelet in the BMW's trunk. She did not mention this to the Dentem attendant when she'd left off her car. When she went to put the broken-off mirror in the trunk, however, she noticed that the bracelet was missing. She told the attendant, who replied: "You gotta be kidding, lady!" Forbes sues for both the broken mirror and the value of the bracelet. As to the bracelet:

- a. Some courts would accept the argument that there was no bailment of the bracelet if nobody at Dentem had knowledge that it was in the trunk.
- b. Even if Dentem had a bailee's duties with respect to the bracelet, the duty of care could be fulfilled by doing essentially nothing special to protect the bracelet since nobody at Dentem even knew it existed.
- c. Both of the above.
- d. Forbes should have no problem in recovering the value of the bracelet since there is a "presumption of negligence" whenever a bailee cannot return the object that was bailed.

8. Two people were fishing from a boat floating down a stream. After they had already caught two fish, the person who owned the land on both sides of the stream (and the streambed) saw them from the shore. He shouted for them to pull over. The landowner demanded that the boaters give him the two fish and get their boat out of there "now."

- a. If the stream was "navigable in fact," then the boaters would not be trespassers for merely navigating on it.
- b. The navigation servitude means that the boaters would not be trespassers *unless* they touched the privately-owned bottom or banks of the stream.
- c. Both of the above.
- d. The boaters would have been trespassing by floating their boat over the landowner's streambed unless the stream was "navigable in law."

9. A group of commercial fishermen found an injured dolphin a few miles off shore. They brought it to Aqualand Gardens. Aqualand nursed the dolphin back to health in a special pen than was next to (but fenced from) the bay. During a storm, the fence was breached and the dolphin escaped to ocean. Later, a dolphin was found by other commercial fisherman who then "sold" it to SeeSea Park, a competitor of Aqualand. Under the rules applicable to *ferae naturae*:

- a. Aqualand probably lost its rights in the dolphin when it regained its natural liberty.
- b. Aqualand would have the better claim to the dolphin if it had *animus revertendi*.
- c. Both of the above.
- d. SeeSea could not have a legal right to the dolphin if it was the same dolphin that escaped from Aqualand.

10. Warbler owned a 3-acre parcel of mountain land abutting a small lake. The lake was the one of the few remaining habitats for Kentucky blind trout, a rare and endangered species. Under the state's Protected Species Act, a special permit is needed to build on any land where the construction might affect the habitat of an endangered species. Warbler has been told he may not erect any structure that might pollute the runoff into the lake, require the creation of a septic system within 500 yards of the lake or involve cutting any trees bigger than 4" in diameter. These restrictions severely limit what Warbler can build on his land. Nearby similar (but fully buildable parcels) are worth over \$50000 per acre. Warbler has a claim under the takings clause if:

- a. His land has been substantially reduced in value.
- b. The restrictions deprive his land of all economically viable use.
- c. Both of the above.
- d. He cannot erect any structure that would be actually habitable.
- e. All of the above.

11. A bag of cement fell off the back a truck belonging to Hardrock Contracting Co. Before Hardrock's driver could circle back to retrieve it, the bag was spotted by a driver for Bass Builders, who picked it up off the street and threw it in his own truck, intending to use it on a job. A short time after that, however, the bag slipped off the Bass truck and was found by Harry Holen, who put it in his car and took it home. The whole series of events was captured by on-street video cameras, and copies of the tapes are in the possession of Hardrock's lawyer:

- a. One bag of cement is pretty much like any other (of the same brand), so even if Hardrock originally owned the cement, Hardrock would have lost title to it once it fell off Hardrock's truck.
- b. Since neither Bass nor Harry ever owned the cement, Bass would have no better right to the cement than Harry.
- c. Both of the above.
- d. None of the above. Hardrock could recover from Bass in trover.

12. Wanda McMuck bought a 10-acre parcel of tidal wetland. She got it at a very favorable price because of the development restrictions imposed under state law. Now Wanda is challenging the development restrictions on the ground that they constitute an unconstitutional taking of private property. Although she's had offers from conservancy groups to buy the land for over \$100,000, she argues that it would be worth over \$1,000,000 if she could use it to build luxury seaside homes. The most difficult counter-argument that she's likely to face is:

- a. She bought the land with the intention of challenging the restrictions.
- b. The land manifestly retains substantial value, as evidenced by the offers to purchase.
- c. The building of more luxury homes is not a particularly socially compelling use.
- d. There can be no compensation for mere regulation without an actual physical taking of land.

13. While attending a baseball game as a spectator, Lenny found himself in the direct path of a foul ball, which he made an effort to catch (using a mitt he'd brought along, just in case). The ball struck the top in his mitt, and flew up in the air, and another fan, Timmy, jumped up in an effort to intercept it. Timmy held the ball momentarily but he then dropped it when he slipped on an errant beer cup. Lenny grabbed the ball as it rolled past his feet:

- a. Since Timmy actually held the ball first, he would have a better claim to it than Lenny.
- b. If Timmy was entitled to the ball, he could bring a replevin action to recover damages from Lenny.
- c. Both of the above.
- d. Since Lenny was first to come into contact with the ball, the court would almost certainly conclude that Lenny has the better legal claim.

14. For many years Dietrich operated a truck depot on a property adjacent to Brown's. The way the two properties were laid out, however, trucks coming into Dietrich's depot usually needed to traverse a portion of Brown's land as they backed into place. Until recently Brown was happy to accommodate Dietrich and repeatedly invited him to continue making the use. However, Brown has now had a change of heart and has forbidden the further use of his land. If Dietrich has no sufficient basis for claiming an easement:

- a. Then he is in the unfortunate position of a person who's had a license and whose license has been revoked—which a licensor may do at any time.
- b. If Dietrich continued to make the now forbidden use, he would be liable—perhaps even for punitive damages—as a trespasser.
- c. Both of the above.
- d. As a neighbor, a person in Dietrich's position would generally have the right to make reasonable use of the next-door property as long as no harm is caused. Courts ignore unreasonable people like Brown.

15. Carrollberg Mfg. Co. pumps large quantities of natural gas into a natural subterranean cavity for storage. It later uses the gas in its operations. It acquires the gas from a long distance pipeline company. Recently, Carrollberg has discovered that one of its neighbors has been pumping out the gas and selling it on the open market. The gas is pumped from a portion of the cavity that extends under the neighbor's land.

- a. By analogy to *ferae naturae*, there's no basis to conclude that Carrollberg's ownership rights in the gas were affected when it flowed away to the neighboring land.
- b. Some courts would hold that doing what Carrollberg does amounts to a "trespass" because it is making unpermitted use of another's land.

c. If Carrolberg has been using the underground cavity for a sufficiently long period of time, it very probably has a ripened title to it by adverse possession (or, at least, an easement by prescription).

d. If Carrolberg were found to be trespassing with the gas, the neighbor should be entitled to the offending gas since forfeiture of the intruder's offending property is a normal remedy for cases of trespass.

16. When the Watermores pumped out percolating water to fill their swimming pool last summer, their neighbor's well went dry. The neighbor, Drye, has sued.

a. The Watermores would more likely be liable if the state applies the so-called English rule rather than the so-called American rule on underground waters

b. Under the so-called American rule, the Watermores would have absolute ownership of the water under their land, and they could pump as much as they wanted.

c. Under the so-called American rule, the Watermores would be liable if their use was not a reasonable use of the underground water, for example if they wasted it or consumed it negligently or maliciously.

d. Under the so-called English rule, Drye had "absolute" ownership of the water under their land and, therefore, the Watermores would almost certainly be liable for causing Drye's water to flow away.

17. Over a period of several years, Sorenson went onto unoccupied land owned by Prescott Timber Co. and harvested more than 300 tons of mushrooms, at a considerable personal profit. Now Prescott would like to bring an action against Sorenson for trespass.

a. As owner of the land, Prescott would be deemed in constructive possession of the land for purposes of suing Sorenson for trespass, provided there was no adverse possession.

b. As owner of the land, Prescott would be deemed in constructive possession of the land purposes of suing Sorenson for trespass, *irrespective* of whether there was an adverse possessor.

c. Sorenson probably could successfully defend by showing that Prescott wasn't making any use of the mushrooms anyway, so it suffered no loss.

d. As owner of the land, Prescott could maintain an action in trespass against Sorenson whether or not it had any sort of possession of the land.

18. Worthington owned a piece of riverfront land. About 25' from shore there was an island of several acres. Although Worthington did not own the island, he had built a makeshift bridge over to it, and the only easy way to reach the island was across Worthington's land. For the past 15 years, Worthington generally has acted as though he owns the island, has chased people off who landed from the river and has presumed to give permission to fisherman and trappers to go there. However, at no time did Worthington ever live on the island or maintain any sort of occupancy there. Under these facts:

- a. It looks like it would be just about impossible for Worthington to have acquired a ripened title by adverse possession because he never actually occupied the island.
- b. Generally, as a matter of common law some sort of structure or permanent cultivation is required to claim a ripened title by adverse possession.
- c. Lacking a fence or other enclosure, it would very difficult for Worthington to show that he had “exclusive” or “continuous” possession of the island.
- d. These facts appear to present at least a jury question whether Worthington has acquired a ripened title to the island.

19. There is evidence that Foxx bought Blueacre from Crowley 7 years ago. However, due to a deed snafu, Crowley did not actually own Blueacre even though he had lived there for 5 years. Suppose that the activities of Foxx during the past 7 years, and those of Crowley during the previous 5 years, have been the sort that could ripen into title by adverse possession.

- a. Foxx could well have a claim to ripened title to the land assuming there was “privity of estate” between Foxx and Crowley.
- b. In order for Foxx to have a ripened title to the land, there’d need to be not only “privity of estate,” but also conduct that touches and concerns the land, and an intention that possession run with the land.
- c. There’s no way Foxx could have a ripened title to the land. The duration of his possession is simply too short.
- d. Privity of estate, or its absence, has nothing to do with whether Foxx would have a ripened title to the land.

Facts for Furman questions. Furman and his family starting camping on a certain area of vacant land over 15 years ago. Even though they have never built a dwelling (using their camping trailer instead), they have made a number of durable improvements to enhance the convenience of their time spent there. There is a cleared area of about 3 acres that they intensively use. They have also made frequent use of the trails in a larger surrounding area (up to 100 acres), picked berries and mushrooms in the larger area and also hunted there. Others also use the larger area, for purposes similar to those of the Furman family.

20. Now Furman wants to claim a ripened title by adverse possession:

- a. It is practically essential to Furman’s claim that he has stated to one or more others that he is owner of the land
- b. It is practically essential to Furman’s claim that he gave actual notice to the true owner that he was claiming by adverse possession.
- c. The hostility requirement could be met by Furman’s acting on the land as though he’s the true owner.

d. Furman could not have a ripened title to this land by adverse possession because he never built a dwelling there.

21. The land (if any) to which Furman may have acquired a ripened title is:

- a. Quite possibly the 3 acres, but probably not the 100 acres.
- b. Quite likely not only the 3 acres but also the 100 acres.
- c. Most likely neither the 3 acres nor the 100 acres.
- d. Whatever he has constructively possessed.

22. If Furman claims a ripened title by adverse possession based on his acts on the property, the factors a court would consider would include:

- a. How long Furman had engaged in such acts
- b. The nature and situation of the property, the kinds of things it was useful for, and the kinds of uses that an ordinary owner might make of land similarly situated.
- c. Both of the above
- d. Mostly, whether Furman placed any sort of permanent dwelling on the land or a fence around it.

23. Osgoode owned and lived on a parcel of land. There was a railroad track behind his house. He didn't own all the way up to the track, however. He was separated from the track by a strip of land owned by Roberts, who owned the parcel that was (mostly) on the other side. For more than 10 years, Osgoode openly occupied right up to the actual rail bed, using the strip of Roberts' land for garden, lawn and other usual domestic purposes that were normal for land in the vicinity. When asked about this situation, Osgoode once said that he didn't think Roberts realized he owned the strip "and I hope he doesn't find out."

- a. Osgoode cannot acquire a ripened title to the strip by adverse possession because his possession is not open and notorious.
- b. In order for Osgoode to acquire a ripened title to the strip by adverse possession, he'd need to notify Roberts that he's in "hostile" possession of Roberts' land.
- c. Both of the above.
- d. Osgoode can acquire a ripened title even if Roberts doesn't actually realize he owns the strip of land in question.

24. In 1980 Eastman put up a boundary fence around his land. He accidentally enclosed about 40 sq. feet of land belonging to his neighbor, Gormley. Neither noticed the discrepancy. Gormley recently had a survey done and, when apprised of the situation, Eastman apologized and immediately removed the fence.

- a. If Eastman had indeed acquired a ripened title to the 40 sq. feet by adverse possession, he could not undo it by merely apologizing and moving the fence.
- b. In some jurisdictions, Eastman's acts of apologizing and moving the fence might be taken as evidence that there never was a hostile claim of right in the first place.
- c. The best way to clear this situation up is probably for Eastman to deliver Gormley a quitclaim deed to the 40 sq. feet.
- d. All of the above.

25. Assume in the preceding question that Gormley was 8 years old when, in 1980, Eastman erected his fence that enclosed the 40 sq. feet. Using the statute of limitations that we studied in connection with disabilities (with a 21 year basic period and a 10 year disability period), and assuming the age of majority is 18 years, the earliest that Eastman could acquire a ripened title would be:

- a. 1998
- b. 2000
- c. 2001
- d. 2011

26. As an investment, Granger bought a house and 25 acres near Compton Lake. A few months later Granger leased this property to Stennis, for a 12-year term. Almost immediately thereafter Fillmore fenced in and planted crops on a portion of the 25 acres, and he continued this use and occupancy for many years. After ten years of thus adversely possessing the land, Fillmore could acquire a ripened title:

- a. But the title thus acquired would only be good against Stennis.
- b. But the title thus acquired would only give Fillmore a right to possession for 2 additional years.
- c. Both of the above.
- d. That would be good against both Granger and Stennis.

27. When the bridge for Tressel's driveway recently washed out, he began getting from his house to the road by making use, without permission, of a bridge on the neighboring property, which was the home of Cliff. However, Cliff is a tenant for years, holding under a 20-year lease from Hendricks. The lease expires in late 2012. For the trespasses to date:

- a. Cliff has a trespass action against Tressel.

- b. Either Cliff or Hendricks has a trespass action against Tressel.
- c. Both of the above.
- d. Hendricks but not Cliff has a trespass action against Tressel

28. Karen's grandmother pointed to some silver candlesticks and said: "These have been in the family since the Revolutionary War. When I die they will be yours."

- a. The grandmother has made a valid testamentary gift.
- b. The grandmother has made a valid inter vivos gift.
- c. The gift cannot yet be complete because Karen has not expressed acceptance.
- d. The gift does not appear to be complete because the donor has not expressed *in praesenti* donative intent.

29. After college, Jeff moved back in with his parents. One day at the dinner table, Jeff said to his high-school age sister: "Sis, since you like my Hed Kandi CD so much, you can have it." The gift would be complete:

- a. Without need of anything further assuming the donor and donee live in the same household.
- b. If the CD were already in the donee's possession, in her room.
- c. Both of the above.
- d. Only if Jeff actually physically handed the CD to his sister,

30. Melk and Yarrow were long time friends. A couple of years before his death, Melk gave Yarrow a deed to his house, but retained a right to possess the house for life. He also told Yarrow: "You can have all the furniture in the house." When Melk died, however, his estate claimed the furniture.

- a. The delivery of the deed to the house cannot, under the law of gifts, logically be treated as a "delivery" of the furniture.
- b. Even if Yarrow took possession of the house immediately upon Melk's death, it would be too late for such possession to be considered a "delivery" of the furniture.
- c. It might be easier for Yarrow to assert that there was a delivery of the furniture if he was living together with Melk in the house, though it would still count against him that he and Melk were not related.
- d. All of the above.

31. Bentley, on his deathbed, took off his ruby ring and handed to Grimm, saying: "Here, I won't be needing this anymore. You take it." Grimm said thank you and left wearing the ring.

- a. The gift would be presumptively revocable.
- b. The gift would be presumptively causa mortis.
- c. Both of the above.
- d. Because Bentley was on his deathbed, the gift could not have been an "inter vivos" gift.
- e. All of the above.

32. About to go into the hospital for a serious and risky operation. Denton handed his war medals to his grandson, Edmark and said: "Eddy, I want you to have these." In light of the purpose of gifts causa mortis, the gift should be considered revoked if:

- a. Denton was in an auto accident while driving to the hospital and was killed instantly.
- b. Denton survived the operation and went home.
- c. Both of the above.
- d. None of the above. The gift would not be revocable once completed.

33. Talbot, believing himself to be on his deathbed, wanted to give \$10,000 cash to his favorite nephew, Billy. The money was not, however, nearby or handily available for making an immediate hand-to-hand delivery.

- a. Assume the money was in a safe deposit box. If Talbot delivered the sole key to the box to Billy, then Billy (as opposed to Talbot's estate) should be entitled to the money even if Billy doesn't retrieve the money till after Talbot's death.
- b. Assume the money was concealed in a secret place out in the woods. If Talbot told Billy where to find it, this information should logically be treated as equivalent to the "sole key" to a safe deposit box so the money should be Billy's (as opposed to the estate's) even if Billy doesn't go retrieve the money till after Talbot's death..
- c. Both of the above.
- d. None of the above.

34. While over at Laurine's house, Jesse picked up a book from the end table and opened it. Laurine said "If you want it you can have it." Jesse replied, "Oh thank you. That's very nice of you." Laurine said, "I just have a few more pages to read." Handing the book to Laurine, Jesse said: "Fine, I'll pick it up next week."

- a. It looks like the donor became the bailee of the donee.

- b. There could be no completed gift under these facts.
- c. There is nothing in these facts that could constitute a delivery.
- d. By holding possession of the book overnight, the donor would have “undone” any gift that might have occurred based on the parties’ actions and words.

35. Grandma was on her deathbed when said to Maura: “I want you to have the 1000 shares of Microsoft stock that I’ve been keeping for a rainy day. Here’s the key to the locked box where the stock certificates are located. Go get the stock as soon as you can. I don’t want it to go in my estate.” Shortly afterwards Grandma passed away;

- a. Grandma’s estate would probably be held entitled to the stock if the “locked box” was in the same room as Grandma and Maura, and Maura did not retrieve the stock before Grandma’s death.
- b. Maura would probably be held entitled to the stock if the “locked box” was a distant safe deposit box at a bank, even if Maura did not go retrieve the stock before Grandma’s death.
- c. Both of the above.
- d. Maura would have an equally strong case for the stock irrespective of where the “locked box” was located or whether Maura went to retrieve the stock before Grandma’s death.

36. O conveyed “to A for life and, six months after A’s death to B and her heirs if B has then reached age 17.” Both A and B were alive at the time of conveyance. Under the traditional rule against perpetuities:

- a. B’s future interest is void.
- b. B’s future interest is valid only if B reaches age 17 *before* A’s death.
- c. B’s future interest is valid and A can serve as the measuring life.
- d. B’s future interest is *void* since B must serve as the measuring life.

37. O conveyed “to A for life, remainder to A’s first child to reach age (see below) and her heirs.” A is alive but childless at the time of conveyance. Under the traditional rule against perpetuities, the future interest:

- a. Is valid if the stipulated age is 18.
- b. Is valid if the stipulated age is 25.
- c. Both of the above.
- d. None of the above. The future interest is void.

38. Modern courts have endeavored to avoid the “remorseless” application of the rule against perpetuities in several ways. Which of the following is *not* among them:

- a. The “done and finished” rule.
- b. The “wait and see” rule.
- c. Savings clauses.
- d. Abolition of the “all or nothing” rule for class gifts.

39. Wellstone Petroleum Corp. was induced to set up a factory in Mortonville by an offer of free land under a complex arrangement. The city leased part of the needed land to the company. It also retained part of the land but allowed Wellstone to use it. Also, Wellstone had an option agreement allowing it to buy all of the land on any of several dates during a 24-year period. One of Wellstone’s competitors recently made an enticing offer to the city, which now wants to terminate Wellstone’s lease and somehow get rid of the option. The rule against perpetuities:

- a. Could not supply a basis for the city to get rid of the option because courts do not apply the rule to commercial transactions.
- b. Might, at least in some states, allow the city to get the option declared void.
- c. Would not likely have an adverse effect on the option because the option’s maximum duration is only 24 years.
- d. Would not likely have an adverse effect on the option because courts do not allow the rule against perpetuities to be used as a backdoor way to confiscate private property.

Facts for Powell-Wilma questions: On February 1 2008, Powell leased Larkacre to Wilma. The agreed term was 5 years. The lease created the usual dual relationship of landlord and tenant.

40. Wilma entered into possession on February 1, 2008 even though neither she nor Powell had signed the written lease that Powell had prepared. The local Statute of Frauds applies to leases “for more than one year.” On February 2, 2008:

- a. Wilma would have a right to possess until February 1 2013.
- b. Wilma would have a right to possess until February 1 2009.
- c. Wilma would have a tenancy at will.
- d. The invalid lease would be considered a periodic tenancy from year to year.

41. Suppose in the preceding question that a few months later, on May 5, 2008, Powell got a better offer for Larkacre. Even though Wilma had been paying the rent on time, Powell wanted her out. If the court

determines that Wilma had a periodic tenancy from month to month, then the earliest date (after May 5) as of which Powell could terminate her tenancy would be:

- a. June 30, 2008.
- b. May 31, 2008.
- c. June 5, 2008.
- d. July 5, 2008.

42. Now assume that Powell and Wilma both signed a written 5-year lease for Larkacre. A tree limb struck the house on the property causing some minor (non-structural) damage to the roof:

- a. Under the traditional common-law rule, Powell, as the holder of the future interest, could ordinarily hold Wilma liable for failure to fix the damage (unless the lease provided otherwise).
- b. Under the modern rule, Wilma could probably hold Powell liable for failure to fix the damage, under the implied warranty of habitability.
- c. Even if the lease contained a contractual provision requiring Powell to repair this sort of damage, that would not, under the traditional common law rule, automatically give Wilma a right to withhold rent if Powell breached by failing to repair.
- d. All of the above.

43. Now assume again that Powell and Wilma both signed a written 5-year lease for Larkacre and that a tree limb struck the house on the property causing some minor (non-structural) damage to the roof. Although the lease contained a contractual provision requiring Powell to keep the house “in good repair,” Powell is slow about fixing the damage and still hasn’t done so. Under the traditional rule:

- a. Wilma would always have the option of moving out, in which case her obligation to pay rent would be extinguished.
- b. Wilma may have the option of moving out and having her rent obligation extinguished, but only if the damage from the falling tree limb rendered the premises untenable.
- c. Wilma would have the option of moving out, but under no circumstances would doing so extinguish her obligation to pay further rent.
- d. Even if Wilma retains full possession of the premises, she could still claim that Powell’s failure constituted a constructive eviction.

44. Again assume that Powell and Wilma both signed a written 5-year lease for Larkacre and that, after possessing the premises for nearly 2 years, Wilma received a promotion at work requiring her to move to a distant city. One of her co-workers, Leonora, is willing to take over the premises. Wilma and Leonora signed a document called a “sublease” under which Wilma “hereby sublets my apartment to Leonora for

the rest of my 5-year term.” Wilma moved out and Leonora moved in. As a result (under the traditional rules):

- a. A new landlord-tenant relation arose between Wilma and Leonora, as subtenant.
- b. Leonora took Wilma’s place in the original landlord-tenant relationship.
- c. Wilma and Leonora are now both tenants of Powell, one as prime tenant and the other as subtenant.
- d. Wilma is still in both privity of estate and privity of contract with Powell.

45. In preceding question, if Wilma wanted to sublease the premises to Leonora, she could have (pick the approach that would work in all or virtually all states):

- a. Reserved a reversion of at least one day.
- b. Provided for a right of entry in case of a breach by Leonora.
- c. Both of the above.
- d. Simply done exactly what she did, *viz.* sign a “sublease” under which she “hereby sublets my apartment to Leonora for the rest of my 5-year term.”

46. Assume again that Powell and Wilma signed a written 5-year lease for Larkacre. A year or so later, Wilma assigned the lease to Leonora. After Leonora occupied the premises for a while, paying the rent to Powell, she simply abandoned possession without justification and stopped paying rent. This occurred nearly two years before the agreed lease term was to end.

- a. Leonora would remain liable to Powell for rent if she assumed the lease.
- b. Wilma would remain liable for rent to Powell irrespective of whether Leonora assumed the lease.
- c. Under the usual rule Powell would have two people to whom he could look for the payment of rent, though he could have only one recovery.
- d. All of the above.

47. Assume again that Powell and Wilma signed a written 5-year lease for Larkacre. The lease created the usual dual relationship of landlord and tenant. A year or so into the lease, Wilma assigned the lease to Leonora. After Leonora occupied the premises for a while, she stopped paying rent (though she remained in possession). If Powell obtained a judgment for rent from Wilma:

- a. Wilma should be able to have the judgment reversed on appeal.
- b. Wilma should be able to recover from Leonora, in subrogation, the amount of rent that Wilma was required to pay to Powell.

- c. Wilma would be able to recover reimbursement of rent from Leonora only if Leonora assumed the lease.
- d. Wilma would legally be the one who is ultimately responsible for the rent.

48. In the middle of her 5-year written lease, Wilma found a better place to live and moved out of the old one. She has not paid any rent since then. Powell, her landlord, wants to know his options. Which of the following is *not* true under the traditional common-law rules?

- a. Powell can let the premises lie vacant without making any effort to find a new tenant and still hold Wilma for the full rent as it accrues.
- b. Powell can relet the premises for Wilma's account and still hold her liable to the extent that the rent received from the new tenant is less than the agreed rent under the lease signed by Wilma.
- c. Powell would have a duty to mitigate by making reasonable efforts to find a substitute tenant.
- d. Wilma could terminate her obligation to pay further rent by getting Powell to accept her proffered surrender.

49. Suppose that, instead of just moving out in the middle of her 5-year written lease, Wilma assigned the lease to a co-worker without Powell's consent. Under the traditional common law rules:

- a. This action by Wilma would be a violation of her lease if the lease contained a prohibition on subletting without the landlord's consent.
- b. If the lease prohibited the tenant from "subletting or assigning" without the landlord's consent, Powell could withhold consent, but only if he has reasonable grounds for doing so.
- c. Wilma would, in effect, become her co-worker's landlord.
- d. None of the above.

50. Suppose again that, instead of just moving out in the middle of her 5-year written lease, Wilma assigned the lease to a co-worker.

- a. Wilma would cease to be liable for the reserved rent, but she would continue to be liable for rent based on her promise to pay (privity of contract).
- b. Wilma would cease to be liable for rent based on privity of contract but she would continue to be liable for rent based on privity of estate.
- c. Wilma's co-worker would be liable for rent to the landlord only if the co-worker assumed the lease.
- d. Wilma's co-worker would continue to be liable for reserved rent even after she re-assigned the lease to Cranmar, a person she found on Craig's List, so the landlord would have three people to whom he could look to collect the rent.

51. Lambert conveyed Blackacre “to Finney, Bruce and Kogan and their heirs.” Under the usual modern presumption:

- a. Finney, Bruce and Kogan and their respective heirs would be tenants in common.
- b. Finney, Bruce and Kogan would be tenants in common.
- c. Finney, Bruce and Kogan would be joint tenants.
- d. Finney, Bruce and Kogan would be considered to hold jointly.

52. Lambert conveyed Blackacre to Finney, Bruce and Kogan. Assume that the three grantees were considered to be joint tenants. If Bruce died intestate:

- a. Finney and Kogan would each have an undivided 50% as tenants in common.
- b. Finney and Kogan would each have an undivided 50% as joint tenants.
- c. Finney, Kogan and Bruce’s heirs would each have an undivided 1/3 as tenants in common.
- d. Finney, Kogan and Bruce’s heirs would each have an undivided 1/3 as joint tenants.

53. Lambert conveyed Blackacre to Finney, Bruce and Kogan. Assume that the three grantees were considered to be joint tenants. If Bruce conveyed his interest to Finney:

- a. Finney and Kogan would each have an undivided 50% as tenants in common.
- b. Finney would have an undivided 2/3 and Kogan would have an undivided 1/3 as joint tenants.
- c. Finney would have an undivided 2/3 and Kogan would have an undivided 1/3 as tenants in common.
- d. Finney would have an undivided 1/3 as joint tenant with Kogan, who would also have an undivided 1/3; Finney would have another undivided 1/3 as tenant in common with himself and Kogan.

54. Several years ago Lambert conveyed Blackacre to Finney, Bruce and Kogan. If Bruce has been in sole possession of the premises for the past several years, and Finney and Kogan have basically just allowed him to do so:

- a. Under the majority rule Bruce would be liable to Finney and Kogan for rent.
- b. Finney and Kogan could bring an ejectment action and remove Bruce from possession of all but 1/3 of Blackacre.

- c. Bruce would normally be considered to be in adverse possession of the premises from the day that he first started holding sole occupancy of them.
- d. If, someday in the future, Bruce refuses to allow Finney and Kogan to join him in possession, title by adverse possession could ripen in Bruce 10 years thereafter (if not earlier).

55. Lambert conveyed Greenacre to Martin and Melinda, who were husband and wife. In a state that recognizes the tenancy by the entirety:

- a. Martin and Melinda would presumptively be tenants by the entirety.
- b. Martin and Melinda could be tenants by the entirety, but only if the deed so specified.
- c. On Melinda's death, Martin would be 50% owner as tenant in common with Melinda's heirs.
- d. On Melinda's death, Martin would 50% owner as tenant by the entirety with Melinda's heirs.

56. In the preceding question, assume that some sole creditors of Martin obtained a judgment against him for \$145,000. In order to satisfy this judgment

- a. The creditors could levy execution on Greenacre as an "entirety" in almost all of the states that recognize the tenancy by the entirety.
- b. The creditors could levy execution on Martin's interest Greenacre in almost all of the states that recognize the tenancy by the entirety.
- c. The creditors could levy execution on Martin's interest in Greenacre in some but not all of the states that recognize the tenancy by the entirety.
- d. The creditors could not levy execution on Martin's interest in Greenacre in any of the states that recognize the tenancy by the entirety.

57. Now assume that Lambert conveyed Greenacre to Martin in a community property state. Although Lambert did not know it, Martin was married to Melinda at the time of the conveyance.

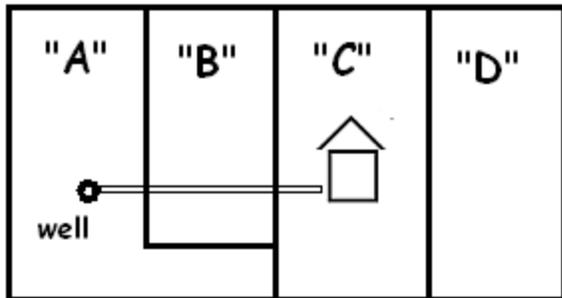
- a. Greenacre would be owned 50-50 by Martin and Melinda as tenants by the entirety.
- b. Greenacre would be owned 50-50 by Martin and Melinda if Martin bought the property solely with money that he had earned working at a downtown department store.
- c. Greenacre would be owned solely by Martin if Martin bought the property solely with money that he had earned working at a department store in the Mall.
- d. None of the above.

58. The Tragers own a piece of property with a railroad line running along the back. Recently they have learned that the railroad company plans to abandon this particular stretch of track. The railroad holds

under a deed that grants it the “right” to use the strip of land “for railroad purposes” but does not expressly specify whether the interest conveyed is a fee or an easement.

- a. If the interest is an easement, and the railroad takes actions such that it can no longer make use of the easement, then the easement will be extinguished.
- b. In many states, the preferred construction of grants describing very long thin strips of land is that the grants create easements rather than fee interests.
- c. Both of the above.
- d. Whether the interest held by the railroad is a fee interest or an easement, the railroad should still be presumptively entitled to it in perpetuity, whether it needs it for railroad purposes or not.

Facts for Norman-Lovett questions. Norman owned a piece of rural land, which he later divided into lots A, B, C and D. He had a small cabin on what is now lot C. In 1992 he dug a well on what is now lot A, and ran an underground pipe to the cabin:



Later, in 2002, he sold and conveyed lot B to Lovett. The conveyed lot contained a segment of the underground pipe. It would be possible to re-route the pipe, to put it entirely on Norman’s land, but that would cost several hundred dollars.

59. If Norman’s deed to Lovett stated that the grant was “subject to an easement along the route of an existing pipe from the well and across Lot B,” an easement created by such language would:

- a. Probably last only as long as Norman remained the owner of the land he retained.
- b. Be an easement by reservation rather than by grant.
- c. Be presumptively revocable.
- d. Be presumptively in gross.

60. If Norman’s deed to Lovett did not mention any easements:

- a. There would be no plausible way for Norman to claim an easement for the existing pipe.

- b. Norman might be able to make a plausible claim for an easement by implication from prior use, and the fact that the easement was by reservation rather than grant would lead most courts look on the claim more favorably.
- c. Norman might be able to make a plausible claim for an easement by implication from prior use, but the fact that the use was not visible would mean he'd have to show that it was otherwise apparent to the Lovett.
- d. Norman might be able to make a plausible claim for an easement by prescription since he has been using the pipe for over 10 years

61. Assume again that Norman's deed to Lovett did not mention any easements:

- a. Norman would probably have a pretty good case for asserting an easement by necessity allowing him to continue using the pipe.
- b. If Norman succeeded in claiming an easement by necessity for the segment of pipe on Lovett's land, the easement would probably continue to exist even if alternative supplies of water became available.
- c. If Norman succeeded in claiming an easement by implication from prior use for the segment of pipe on Lovett's land, the easement would probably continue to exist even if alternative supplies of water became available.
- d. None of the above. If the deed mentioned no easements, then Norman could not have any plausible basis for claiming one except an executed parol license.

62. Assume that Norman has obtained from Lovett a grant of an easement "for a water conduit at the location of the existing pipe from the existing well on Lot A [more fully described]."

- a. Under the majority rule, Lovett would probably not be permitted to unilaterally relocate the route of the pipe, even if he did so at his own expense.
- b. Under the majority rule, Norman would probably be permitted to unilaterally relocate the route of the pipe on Lot B, provided that he did so at his own expense and with full compensation to Lovett for any harm caused.
- c. Under the majority rule, Lovett would not be permitted to make any use of the portion of his property along the route of the pipe (for example, to plant flower beds) without the consent of Norman.
- d. All of the above.

63. In the preceding question

- a. The easement would be presumptively in gross.
- b. If Norman sold another portion of his land, Lot D, he probably could *not* provide the buyer of Lot D with the right to use the pipe to supply water to the buyer's parcel.

- c. If Norman bought another, additional bit of land from Johns, his neighbor just to the south of lot C, he could not (under the traditional rule) use the pipe across Lovett's land to supply water to that newly acquired parcel.
- d. All of the above.

64. Otterman and Puccini were neighboring landowners. They orally agreed to build and share the use of a 14' wide driveway between their homes. The driveway was constructed to run right up the property line between them, about 7' on each side of the line. Both made use of the driveway until they sold their respective parcels, in 1992 and 1993, respectively, to plaintiff and defendant, who have shared the use of it ever since. No deed makes mention of any easement for the driveway. Defendant now wants to block off his side of the driveway and plaintiff sues for a declaration of his rights:

- a. There should be no obstacle to defendant's blocking off his side of the driveway since plaintiff does not appear to have any basis for asserting a legal interest in it.
- b. Though Otterman and Puccini had an agreement for what were, in effect, mutual easements, the statute of frauds makes it impossible that mutual easements were ever created
- c. There is no way to conclude that the plaintiff has acquired an easement by prescription because plaintiff's use of the driveway over the years has clearly been "permissive."
- d. In many states plaintiff's open use of the whole driveway over the years would be regarded as evincing a sufficient "claim of right" to support the creation of an easement based on adverse use.

Facts for Devlin-Eileen questions. In the 1950s, Devlin acquired a tract of land, which he divided into lots. As he sold the lots, he placed in each deed a covenant restricting the use to one- and two-family homes, creating a "restricted zone." The purpose and effect of the covenants was to protect the value of the lots conveyed as well as the value of the portion of the tract retained by Devlin. Devlin has since died and his retained portion of the tract is held by his daughter, Eileen. A developer has recently bought 6 of the lots, all in a row, and has proposed to tear down the existing houses and put up 10-attached unit garden apartments.

65. Eileen wants to prevent the development of the garden apartments.

- a. There is no way that Eileen could enforce the restrictive covenants against the developer since neither she nor the developer is a party to the covenants.
- b. If the developer traces his title to the lots back to the original buyers from Devlin, then there would be "horizontal privity," which is necessary for Eileen to be able to enforce the covenants at law against the developer.
- c. In the majority of states, there would be no need for horizontal privity in order for Eileen to be able to enforce the covenants at law against the developer; it would be enough if there were "vertical privity."
- d. There is no way these particular covenants would run with the land because there is no basis for saying that they touch or concern the land.

66. Suppose that, after the covenants were made, a number of multi-unit garden apartment complexes were built in the vicinity of Eileen's land. Under the majority rule:

- a. That fact would count more heavily against enforcement of the covenants if the complexes were built inside rather than outside the restricted zone.
- b. That fact would count more heavily against enforcement of the covenants if the complexes were built outside rather than inside the restricted zone.
- c. It would not matter whether the complexes were built outside or inside the restricted zone since the construction of the complexes would be essentially irrelevant to the question of the enforceability of the covenants.
- d. That fact could have no legal effect on Eileen's ability to enforce the covenant against the developer.

67. In order for Eileen to be able to enforce the restrictive covenants as equitable servitudes, she would have to show:

- a. That the developer took title with notice of the covenants.
- b. Privity of estate.
- c. That the covenants were actually easements.
- d. That the original deeds from Devlin intended to create equitable servitudes rather than real covenants.

68. To say that a deed covenant "touches and concerns" the land means that:

- a. The parties intend it to be binding upon and inure to the benefit of themselves, their heirs, successors and assigns.
- b. It is personal rather than real.
- c. It affects the parties to the covenant as landowners by, for example, having some economic impact on the parties' ownership rights in the benefited or burdened land.
- d. Has the characteristic of "vertical privity."

Two more questions...

69. Dave was out on horseback looking for wild horses (which you may assume to be “ferae naturae”). He spotted large stallion, and he commenced pursuit. When he was just about to get a rope on the stallion, Corliss appeared out of nowhere and intercepted it, eventually roping the stallion. Despite Dave’s protests, Corliss took it. Dave has brought an action against Corliss

- a. Dave would be entitled to the stallion as against Corliss if Dave had a reasonable prospect of capturing it.
- b. Dave would be entitled to the stallion as against Corliss if these events had occurred on Dave’s land, and Corliss was trespassing.
- c. Both of the above.
- d. None of the above. Dave would not be entitled to the stallion unless Dave had actually achieved first occupancy.

70. Jasper told his friend, Obert, that he could hunt and fish on Jasper’s land any time he wanted to. Recently, however, Jasper learned that Obert has discovered an outwash on Jasper’s land where there are many ancient arrowheads, relatively easy to dig out. Obert has been digging out the arrowheads and selling them to collectors. Assume that the arrowheads are not considered a part of the soil or “mislaid” property:

- a. Jasper can have no claim to the arrowheads unless he can show either that he already knew they were there or that he had put them there.
- b. Jasper can have no claim to the arrowheads since Obert was on the land with permission at the time he found them.
- c. If the court were to conclude that the scope of Obert’s license from Jasper were limited to hunting only, that conclusion would strengthen Jasper’s claim to the arrowheads.
- d. Obert would be entitled to the arrowheads as the finder even if his activity in digging them up constituted a technical trespass.

<End of examination>

**Omitted: Questions re Estate System and Future Interests.
See “Estate System-Review Questions” at humbach.net.**