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PACE UNIVERSITY SCHOOL OF LAW

EXAMINATION IN PROPERTY
PROFESSOR HUMBACHDECEMBER 15, 1977
PAGES TO THIS EXAM: 13

YOU WILL HAVE 3 HOURS TO COMPLETE THE ENTIRE EXAMINATION
UNLESS YOU EXERCISE THE "RE-WRITE" PRIVILEGE DESCRIBED BELOW.

GENERAL INSTRUCTIONS:

This examination consists of 35 multiple choice questions and two essay questions. The multiple choice questions are to be answered on the answer sheet provided. Write your examination number on the answer sheet in the space provided. Write it NOW.

Answer each multiple choice question selecting the best answer. Indicate your choice on the answer sheet by blacking through the appropriate letter with the special pencil provided. Select only one answer per question; if more than one answer is indicated, the question will be marked wrong.

If you want to change an answer, you must fully erase your original answer and blacken through the one which you consider correct.

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

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.

RE-WRITE PRIVILEGE

You will be given the privilege (but you are not under the obligation) to re-write your essay answers to improve the content, composition, handwriting, etc.

Students who exercise this privilege will be given an extra hour to complete this examination. Students not exercising the re-write privilege must turn in all examination materials at 9:00 p.m.

CONDITIONS OF RE-WRITE PRIVILEGE:

A. In order to exercise the re-write privilege, you must notify the proctor of your intention at the time you are ready to begin re-writing (anytime prior to 9:00 p.m.).

B. At this time:

1. Your multiple choice answer sheet must be turned in.
2. Your existing "first-draft" bluebook(s) will be submitted to the proctor so that she may mark the end of each of the four answer subdivisions.
3. You will be given a new re-write bluebook in which your re-write answers shall be placed.

C. You must clearly indicate, for each of the four answer subdivisions, whether the "first-draft" or re-write answer is to be graded (by X-ing out the corresponding answer subdivision in the other book). You are responsible for any ambiguities, and the following priorities will be observed if it is unclear which answer is to be graded:

1. If neither the "first-draft" nor the re-write answer is X-ed out, then the "first-draft" answer will be the only one graded.
2. If any part of a "first-draft" answer subdivision is X-ed out, none of that answer subdivision will be graded; only the re-write of that answer subdivision will be graded. That is, the re-write privilege can only be exercised with respect to entire answer subdivisions.

Abuse of the re-write privilege will be penalized. The absence of a substantial, prose answer (not a mere outline) in the "first-draft" book -- i.e. the use of the fourth hour for writing what is, in effect, a first-draft -- will be considered an abuse of the privilege.

Multiple Choice Questions

1. Henry Hargrave went to Ovillers, a tavern close to his school, in order to wash away some of the day's tensions. He threw his overcoat over a chair at one of the tables and sat down at the bar. While sitting there, Henry spied (i) a silver I.D. bracelet bearing the inscription "BIPPY" on the floor behind the bar and (ii) a quarter on the floor just beneath his feet. Henry picked up the quarter. The proprietor of the bar has said that he "didn't know" who owned either of these items.

As against the bar owner:

1. Henry is entitled to possession of both items.
2. Henry is entitled to possession of the quarter but not the bracelet.
3. Henry is entitled to the bracelet but not the quarter.
4. Henry is entitled to possession of neither item.

2. Assume in the preceding question that Henry had sneakily hopped over the bar, grabbed the I.D. bracelet from the floor and then was confronted by the bar owner. Pick the best answer.

1. Under the so-called American rule, Henry would now be entitled to the bracelet as against the bar owner.
2. Under the so-called English rule, Henry would now be entitled to the bracelet as against the bar owner.
3. Both of the above.
4. Neither A nor B above.

3. Assume in the preceding question that Henry relinquished possession of the I.D. bracelet to the bar owner, but the next day a friend of Henry's showed up and said: "I'm Wallace J. Morrison, III. My friends call me Bippy. I think I lost a silver I.D. bracelet here." If the bar owner turns over possession of the bracelet to Henry's friend, the bar owner should probably be:

1. Absolutely liable for misdelivery if the friend is not the "true owner."
2. Liable for misdelivery only if negligent if the friend is not the "true owner."
3. Under no liability, negligent or not, even if the friend is not the "true owner."
4. Entitled to demand a reward as a condition to returning the bracelet to the "true owner."

4. If the friend in the preceding question gets possession of the bracelet but is not the "true owner," the "true owner" could probably,

1. Have replevin against Henry's friend.
2. Have replevin against Henry.
3. Have replevin against the bar owner.
4. Any one of the above, at the true owner's option.

5. If the friend in the preceding question were not the "true owner," the bar owner could probably (pick the best answer):

1. Have replevin against the friend.
2. Have damages in trover against the friend.
3. Both of the above.
4. Neither of the above.

6. If the bar owner did recover the bracelet or its value from the friend in the preceding question, then, under the strict application of the Winkfield doctrine:

1. The friend's liability to the true owner would be terminated.
2. The friend's liability to the true owner would be unaffected.
3. The bar owner's recovery would be contrary to generally accepted legal principles.
4. None of the above.

7. Assume that the friend were not the true owner, but that he acquired possession of the bracelet as described in question 3. Assume further that, before the bar owner brought his action (in question 5), the friend had transferred the bracelet to Fred Fence.

1. The bar owner could not recover the bracelet from Fence unless Fence had reason to know that the friend was not the "true owner."
2. The bar owner could recover the bracelet from Fence even if Fence were a bona fide donee causa mortis of the bracelet.
3. The bar owner could not recover the bracelet from Fence if Fence were a bona fide inter vivos donee of the bracelet.
4. The bar owner could not recover the bracelet from Fence under any circumstances.

8. Assume that the friend were not the true owner, but that he acquired possession of the bracelet by writing a letter to the bar owner claiming to be Arthur Wealth, a well known rich person, and offering to buy the bracelet with payment to be made by return mail. The bar owner then mailed the bracelet to the friend. Friend neither paid nor even intended to pay. The friend could transfer the bracelet to a bona fide purchaser for value free of the bar owner's rights:

1. Under both the common law and the U.C.C.
2. Under the common law but not the U.C.C.
3. Under the U.C.C. but not the common law.
4. Under neither the common law nor the U.C.C.

9. Assume that when Henry left the bar (that first day) he found a wrist watch which had not belonged to him in the pocket of his overcoat (which had been slung over a chair). The sweep-up person had found the watch on the floor near the coat, believed that the watch had fallen from the coat, and put it in the pocket. Under the circumstances:

1. Henry has no rights in the watch.
2. Henry has what amounts to full ownership rights in the watch subject only to the superior rights of the "true owner."
3. Henry is not a bailee of the watch.
4. Henry is obligated to take all steps necessary to return the watch to the true owner.

10. If Henry lent the watch to his fiancée on the assumption that it was gold plated,

1. The fiancée would be liable as a converter if she discovered the watch was pure gold.
2. The fiancée would be guilty of common law larceny if she discovered that the watch were pure gold and then refused to give it back.
3. The fiancée would be guilty of common law larceny if she refused to return the watch irrespective of her reasons (assuming she was not the true owner or acting on the true owner's behalf).
4. None of the above.

11. Assume that Henry got the watch back, but at a speed of 32 mph. (His fiancée threw it at him in a quarrel). If the watch did not work, and Henry took it to a watch repairman, and if the watch repairman sold the watch to Duff:

1. Duff would acquire Henry's rights in the watch at common law.
2. Duff would acquire Henry's rights in the watch under the U.C.C. irrespective of the circumstances of Duff's purchase.
3. Duff would acquire Henry's rights in the watch under the U.C.C. only if the presence of additional facts made the "entrusting" provisions (§2-403) applicable.
4. Duff would acquire the true owner's rights in the watch if the presence of additional facts made the "entrusting" provisions (§2-403) applicable.

12. Esther was on her deathbed coughing and wheezing from the effects of a life too-well spent. Her nephew Morris was sitting beside her. She said: "Take this safe-deposit key; I want you to have the contents of the box." Morris took the key, and Esther departed to her reward the next day. Shortly thereafter, Morris opened the box and found three diamond bracelets and some cat food. He now possesses these. Select the best answer:

1. Title to the contents of the box probably passed to Morris on delivery of the key.
2. Title to the contents of the box probably passed to Morris on Esther's death.
3. Title to the contents of the box probably passed to Morris when he took possession of them.
4. Title to the contents of the box has probably not passed to Morris.

13. In the preceding question,
1. It would make no difference that the box was not a safe-deposit box, but rather a lockbox in Esther's bedroom.
 2. It would make no difference if Esther had bequeathed the contents of the box to Smithie in a will made a week earlier.
 3. It would make no difference if Esther had retained a duplicate key.
 4. None of the above.
14. In question 12, if the gift were valid:
1. The gift could only have been a gift inter vivos.
 2. The gift could only have been a gift causa mortis.
 3. The gift was presumably a gift inter vivos.
 4. The gift was presumably a gift causa mortis.
15. Presumably, Esther could have gotten title away from Morris (assuming it passed to him) if:
1. She properly executed a will giving the same specific property to Smithie after Morris took the key.
 2. She survived her illness and returned to good health.
 3. Both of the above.
 4. None of the above.
16. Mary and Marty were married in a large formal ceremony that produced a handsome return in terms of presents. They are now having a dispute as to the ownership of the presents. In determining who has the ownership, the court should, in principle:
1. Determine whom the respective donors intended as the donee(s). (If this answer applies, ignore the others).
 2. Hold that "domestic"-type items belong to Mary and the remainder are jointly owned.
 3. Hold that "domestic"-type items belong to Mary and the remainder belong to Marty.
 4. Divide the presents equally between Mary and Marty.
17. Sitting in his apartment in Greenburgh, N.Y., Artie told Jones: "I want you to have the tennis racket that is down in my car. It's yours." As of that moment:
1. Jones has legal title to the tennis racket.
 2. Jones has equitable title to the tennis racket.
 3. Jones has right to title to the tennis racket but still does not have the right of title.
 4. Jones has no rights in the tennis racket.

18. Artie handed his employee, Grump, the certificates for the stock which Artie owned in Artie's, Inc., a corporation of which Artie was the president and sole stockholder. Artie said, "Hold these till I die, then hand them over to my daughter, Jill." Artie voted the stock and took dividends until his death.

1. The gift to Jill was incomplete since Grump was Artie's agent.
2. The gift to Jill was complete to vest her with sole ownership of the stock, since Grump was intended to be Jill's agent.
3. The gift to Jill is incomplete for want of acceptance.
4. The gift to Jill may be upheld as an immediate gift of a future interest.

19. Artie (who is in good health) lent his golf clubs to his brother, and when the latter offered them back, Artie said: "I want my son, James, to have them when I die. But don't let James have them now, because I may decide to take up golf again and want them back."

1. Artie has made a valid gift causa mortis.
2. Artie has made a valid conditional gift.
3. Artie has made no gift.
4. None of the above.

20. Yuckacre is a smelly bog of about 20 acres. In 1965, a neighboring landowner, Dipp, began entering Yuckacre regularly in order to capture frogs which he sold to La Cuisine de la Terre restaurant. Dipp thought erroneously that Yuckacre was included under his deed. Basically, Yuckacre wasn't much good for anything else and, due to its location, could not be fenced in with particular ease. On the other occasions when Dipp found others on Yuckacre, he chased them away shouting "Get off my marsh!" Assume that the local statute of limitations on ejectment is 10 years.

1. Dipp may have acquired title to Yuckacre under the common law rules.
2. Dipp may have acquired title to Yuckacre in New York.
3. Both A and B are true.
4. Neither A nor B is true.

21. Assuming Dipp did not acquire title by adverse possession, the possibility still exists that, by the conduct described above,

1. Dipp acquired an easement by estoppel.
2. Dipp acquired an easement by prescription.
3. Dipp acquired an easement by implication.
4. Dipp acquired an easement by acquiescence.

22. Croak, as an April Fool's stunt, placed a chemical in the Yuckacre marsh water which was absorbed into the frogs' bodies and sent anyone who ate the frogs' legs into paroxysms of laughter. La Cuisine quit buying the frogs from Dipp.

1. Croak would be liable to Dipp if Dipp had acquired a ripened title to Yuckacre by adverse possession.
2. Croak would be liable to Dipp even if Dipp had not acquired a ripened title to Yuckacre by adverse possession.
3. Croak would be liable to Dipp even if Dipp had title neither to the frogs nor Yuckacre at the time of Croak's action.
4. All of the above.

23. Assume that Dipp has acquired a ripened title to Yuckacre by adverse possession, and shortly thereafter acquired a deed to the adjoining farm (which included Yuckacre) from Short. Assume also that Short's title was defective (apart from Dipp's rights), and that the right to the said adjoining farm (other than Yuckacre) was in Carryon.

1. If Dipp continues his past activities on Yuckacre, he can thereby acquire a ripened title to the whole farm.
2. If Dipp continues his past activities on Yuckacre, he will not thereby acquire a ripened title to the whole farm.
3. If Dipp cultivates a part of the farm (outside Yuckacre), he may acquire a ripened title, but in no event to more than the part cultivated.
4. None of the above.

24. Assuming that Dipp has acquired a ripened title to Yuckacre by adverse possession,

1. Dipp will lose that title if he engages in no further acts of possession for a continuous period of 10 years.
2. Dipp will be entitled to a deed from the previous owner confirming Dipp's ownership.
3. Dipp will still be liable for trespass and mesne profits from periods to the ripening of title.
4. None of the above.

25. Assume that Dipp has acquired a ripened title to Yuckacre by adverse possession. If Dipp and a neighbor, Prim, exchange promises "as burdens and for the benefit of themselves and their respective successors" to use their respective parcels (Yuckacre and Prim's land) solely for commercial purposes:

1. Such agreement would be void for the lack of consideration.
2. Such agreement would not be enforceable as a real covenant by or against successors to Dipp and Prim under the majority rule with regard to privity of estate.
3. Such agreement would not be enforceable as a real covenant by or against successors to Dipp and Prim under the New York rule with regard to privity of estate.
4. Both 2 and 3 above.

26. In the preceding question:
1. Such agreement could be enforced against successors (with notice) of Dipp by recovery of damages on an equitable servitude theory.
 2. Such agreement could be enforced against successors (with notice) of Dipp by injunction on an equitable servitude theory.
 3. Such agreement is an example of "implied reciprocal equitable servitudes."
 4. None of the above.

FACTS FOR QUESTIONS 27 to 31

Milo and Millie Mitvik, husband and wife, bought a house in upstate New York. The deed simply named the two of them as grantees: "to Milo and Millie Mitvik and their heirs." To avert boredom, Millie bought a citizens-band radio and adopted the "handle" of Hungry Mama. One day Harold Handsome, a truck driver on the local interstate, was talking to Millie on the C.B., and he invited himself over for tea. When the big rig roared off again, Millie was giggling inside next to Big Harold. She has been gone since. Now, about six months later, Carlo Creditori -- a haberdasher in a neighboring town -- wishes to levy execution on the house in satisfaction of a judgment for bills run up by Millie to buy new outfits for Harold. Milo would like to partition the real estate.

27. On these facts:
1. Milo and Millie acquired title as tenants in common.
 2. Milo and Millie acquired title as tenants by the entirety.
 3. Milo and Millie acquired title as tenants by the entirety, but they are now tenants in common.
 4. Milo and Millie acquired title as joint tenants which they remain.
28. On these facts:
1. Creditori may now levy execution on both Milo's and Millie's "share" of the title.
 2. Creditori may now levy execution on Millie's "share" only, and if he does, the tenancy will become an ordinary tenancy in common.
 3. Creditori may now levy execution on Millie's "share" only, but even if he does, Milo's right of survivorship (if any) would be unaffected.
 4. Creditori may not levy execution on the house to satisfy his judgment against Millie.
29. If Milo brings an action for partition, such action
1. could succeed.
 2. could not succeed.
 3. could succeed only if Milo consents to a "sale" partition.
 4. could not succeed because there would be prejudice to Creditori.

30. If Millie does not show up for ten years, and Milo remains continuously in possession, alone:

1. Sole title will surely ripen in Milo as a result.
2. Sole title probably cannot ripen in Milo until there is some substantial further period of possession by Milo.
3. Milo would be legally prevented from making any transfers so long as Millie remains away.
4. Milo would be within his rights to shoot Millie when she re-appears.

31. If the deed had read "to Milo and Millie Mitvik and their heirs as joint tenants with right of survivorship,"

1. The answer to question 27 would be the same.
2. The answer to question 28 would be the same.
3. The answer to question 29 would be the same.
4. The answer to question 30 would be the same.

32. Which of the following creates a fee simple determinable?

1. "to A and his heirs for church purposes."
2. "to A and his heirs so long as the premises are used for church purposes."
3. "to A and his heirs, but if the premises are not used for church purposes the grantor may re-enter."
4. All of the above.

33. Prior to the Statute of Uses, O (who is in possession) makes a transfer by feoffment "to A for life and one day after A dies to B and his heirs."

1. O would have a reversion for one day only.
2. O would have a reversion of potentially infinite duration.
3. B would have a contingent remainder.
4. B would have a vested remainder.

34. After the Statute of Uses, O (who is in possession) makes a transfer by bargain and sale "to A for life and then to B and his heirs if B gives a A suitable burial."

1. O would have nothing.
2. O would have at most a one day reversion.
3. B would have a contingent remainder.
4. B would have a (springing) executory interest.

35. O (who is in possession) make a transfer of legal title "to A and his heirs, but if liquor is used on the premises, then to B and his heirs."

1. Such a transfer would have been invalid as to B's interest prior to the Statute of Uses.
2. Such a transfer gives a right of entry to B.
3. Both 1 and 2 above.
4. Such a transfer gives a possibility of reverter to B.

* * * * *

INSTRUCTIONS FOR ESSAY PORTION:

Answer the following questions in your examination booklet stating fully the reasons for your answers. Clearly identify all facts and legal principles which you believe are relevant. You can be graded only on your knowledge and reasoning ability which appears on your paper.

Each question consists of two parts. Number your answers to each part in correspondence to the numbered parts of the question.

Do not forget the re-write privilege.

I.

Fenwick answered an ad offering "an apartment, 2 rooms + bath, at \$270 per month." Upon inspection he said to the landlord, McArthur, "I'll take it." After a handshake (there was no formal lease) Fenwick moved in on the agreed day -- two weeks later on the fifth day of the following month. For the next four months, Fenwick paid his rent in advance on the fifth day of each month (except for the third month when the fifth day fell on a Sunday, so that Fenwick paid the following Monday).

The day he moved in Fenwick noticed a roach scurrying across the floor, but he thought merely "That sure makes me homesick for the good ol' Big Apple" and smiled inwardly. As the weeks went by, however, the roach problem got progressively worse. Despite attempts by Fenwick to squirt them with bugbomb, lay roach traps and do everything else short of trying to reason with them, the roach population steadily grew. A trip to the bathroom to get a glass of water at night made him feel like an invader. The novelty and challenge of getting them with spray quickly grew thin. Fenwick slept in a poison fog of his own making. When he complained to the landlord McArthur about the number of roaches, McArthur replied only: "Don't worry. I won't charge extra for the fauna." Exasperated, Fenwick moved out on the 18th day of the fifth month, leaving the key and a note on the kitchen counter, saying simply: "This lease is over. Get the rent from the roaches. The apartment has been more theirs than mine anyway."

Now, three months later, Fenwick has been found across town in a duplex owned by a man in the exterminator business. The old apartment

remains unrented though McArthur keeps it locked. Now McArthur comes to you and asks concerning the chances of collecting some money from Fenwick.

Assume that you are in a jurisdiction which is more or less in the "mainstream" of American landlord-tenant law, but that you do not know of any of the specific statutory or recent common law developments. You decide that your research should be along two lines:

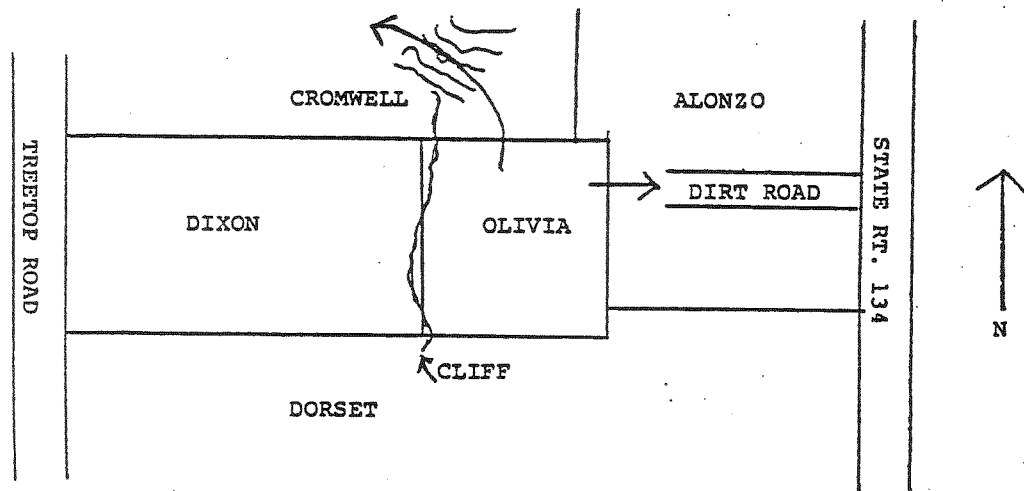
A. What would be Fenwick's liability assuming that there were no problems concerning the premises' condition?

B. What effect would the roach situation possibly have on Fenwick's liability as determined in A, above?

Write a memorandum on each of these questions discussing fully all pertinent facts and applicable rules and identifying any likely recent statutory or case-law developments which you will want to look into.

II.

Olivia Strumpf purchased a piece of land in a forested mountain area of upstate New York. She named it after her husband -- Bellyacre. There was however an unusual problem of access to the land. Olivia's land is the eastern half of a larger parcel. The western border of this larger parcel was Treetop Road, along which road the boundary runs for a length of 300 yds. The larger parcel ran back from Treetop Road for a distance of 600 yds. and Olivia now owns the eastern 175 yds. of this, as follows:



As can be seen, the bulk of Olivia's land is cut off from access to Treetop Road by a cliff. This cliff has a sheer drop of between 50' and 200' where it passes along Olivia's west border, though it mellows to a barely passable (but still steep and wooded) hill on the north-side property of Cromwell.

Access to Olivia's land was infrequent prior to Olivia's purchase of her lot. The real estate agent who showed her the land brought her

in via the dirt road running across Alonzo's property, but that mode of access had never been used for such purpose before. All of the lands shown were once in the ownership of one Marcus, but Alonzo's land was severed from the rest before the dirt road was constructed. Access to the portion of the lands now owned by Olivia was by the hill route through what is now Cromwell's property.

Olivia's deed contained no mention of any easements. However, in the deed from Marcus to Cromwell there was the following provision:

"Grantee hereby agrees to allow the grantor to pass upon the premises conveyed as may be necessary or convenient in connection with the use of [the lands retained by Marcus, i.e. the lots now owned by Dixon and Olivia]."

1) Discuss Olivia's right of access based upon a theory of easement, ignoring the language quoted above.

2) Discuss Olivia's right of access based upon a theory other than easement relying on the language quoted above.