1979-80

MASTER COPY

COLLEGE OF LAW, UNIVERSITY OF ILLINOIS

Examination in Property
Professor Humbach

May, 1980
13 pages

YOU WILL HAVE 3 HOURS TO COMPLETE THE ENTIRE EXAMINATION

GENERAL INSTRUCTIONS:

This examination consists of 45 multiple choice questions. The questions are to be answered on the Computer Answer Sheet provided.

On the answer sheet, complete sections for name, student number and course code. Your course code is "11111".

USE ONLY SOFT LEAD PENCIL ON ANSWER SHEET.

Answer each multiple choice question selecting the best answer. Indicate your choice on the answer sheet by blacking out the appropriate letter. 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 black out the one which you consider correct.

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

Unless the context otherwise requires, base your answers on general common law principles as generally applied in American common law jurisdictions. Do not assume the existence of any agreements not indicated by the question.

Property Examination
Professor Humbach

May, 1980

1. Harding bought a lot in a subdivision established by Devco, Inc. Harding's deed contained the following:

> "Grantee covenants that the premises shall be used solely for residential purposes."

Harding's next door neighbor, who bought from Devco six weeks after Harding, wishes to place a gas station on his lot.

A. In order to prevent the gas station, Harding must show that the neighbor's deed had a covenant similar to that in Harding's deed (as quoted above).

B. Even without a restrictive covenant in the neighbor's deed, Harding might be able to prevent the gas station if he can show that there was a common plan or scheme of development, and the neighbor purchased with notice of such plan or scheme.

C. Harding cannot prevent the gas station unless there can be shown privity of estate between himself and his neighbor.

D. The quoted language creates an affirmative easement.

2. If Harding's neighbor did not have a restrictive covenant in his deed, Harding's best theory for preventing the gas station would be:

A. Implied reciprocal equitable servitudes.

B. Third party beneficiary.

C. Implied trust.

D. Privity of estate

3. If you represented Devco and your client wished to assure the residential character of the neighborhood, the most convenient and effective way to proceed would be to:

A. Place a set of restrictions in every deed.

B. Hand a set of restrictions to every purchaser.

C. Record a Declaration of Restrictions and refer to it in every deed.

D. Publish a set of restrictions in a local newspaper for eight consecutive weeks.

4. Suppose all deeds by Devco state that "No building shall be constructed unless the plans are first approved by the Devco Homeowners Association [to which all lot owners in the subdivision automatically belong unless they opt out]." The best argument (assuming that it is factually based) for allowing construction despite a refusal of such Association to give approval would be:

   A. The restriction purports to create an equitable servitude in gross.

   B. The restriction sets no standards limiting the Association's unbridled discretion.

   C. The restriction is too vague to be enforced.

   D. Inclusion of the restriction in deeds does not give actual notice.

5. An equitable servitude in gross:

   A. Cannot exist.

   B. Relates solely to personal property.

   C. Allows a single dissenter to frustrate the desires of the majority.

   D. Has no dominant tenement.

6. Assume that a restriction like the one quoted in question 1 appears in all deeds to lots in the subdivision. Harding still should not be able to enjoin the neighbor's proposed gas station if:

   A. Many nearby properties in the subdivision already are being put to similar commercial uses.

   B. Many nearby properties outside the subdivision already are being put to similar commercial uses.

   C. Both A and B above.

   D. Neither A nor B above.

7. Assume that in question 6 Harding can show facts permitting enforcement of the restriction either as a covenant running with the land or as an equitable servitude.

   A. Either theory would permit Harding the choice of recovery of damages or injunctive relief.

   B. Neither theory would permit recovery of damages.

   C. Harding must make up his mind, since a restriction cannot simultaneously be a real covenant and an equitable servitude.

   D. To get damages, Harding must show facts permitting enforcement of the restriction as a real covenant.

8. Which of the following would not be required to permit enforcement of the restriction as a real covenant?

   A. Privity of estate.

   B. Privity of contract.

   C. Intention that the covenant bind successors in title.

   D. The covenant must touch or concern the land.

9. Suppose Harding's deed stated: "Grantee and his family only shall have the right to free use of the recreation area to be established in the subdivision." Most probably, this would create:

   A. An easement by express reservation.

   B. An appurtenant easement.

   C. A right of use that would run with the land to buyers from Harding.

   D. Both B and C above.

10. If Harding later sold his lot and his deed made no mention of the recreation area:

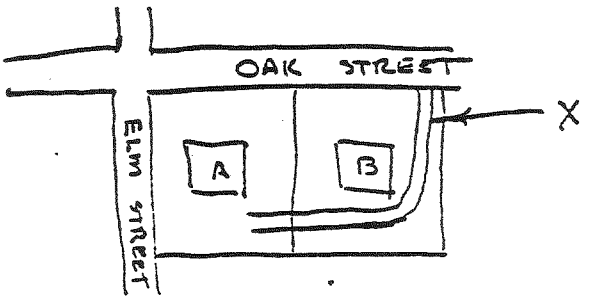
   A. Harding would retain his right to use same.

   B. Harding's grantee would acquire the right to use same.

   C. The right to use the recreation area would be extinguished.

   D. Harding would be liable for breach of implied warranty.

11. Assume that Harding bought and took title to two lots (to be used by himself and his father) and built houses and driveways on them as follows:



Later, Harding's father died and Harding sold the lot and house occupied by his father, but retained the other one. The deed from Harding mentioned no easements. Under the majority rule, access to lot A across Lot B would have the best chance of being upheld if:

A. Lot A had been the one which Harding had sold.

B. Lot B had been the one which Harding had sold.

C. It would make no difference which one Harding had sold.

D. None of the above.

12. If, in the preceding question, Harding had sold Lot B first, he would be claiming:

A. An easement by implied grant.

B. An easement by implied reservation.

C. An easement by necessity.

D. An easement in invitim.

13. Which of the following is not usually required for an easement by implication to arise?

A. That there be prior use of the servient tenement for the benefit of the dominant tenement.

B. That such use be visible.

C. That such use be apparent.

D. That such use meet a minimum standard of necessity.

14. Which of the following is not usually required for an easement by necessity to arise?

A. Quasi-easement.

B. Absolute (strict) necessity.

C. A servient tenement.

D. A dominant tenement.

15. Suppose that Harding bought both Lots A and B and, before the driveway was put in, sold Lot A to Alcott. Further suppose that Harding put in the driveway last year and just before doing so he told Alcott "If you help me build it, you can share the use." If Alcott did in fact then share both the cost and the labor of building the driveway, Alcott probably has:

A. A revocable license.

B. An easement by prescription.

C. An easement by estoppel.

D. A negative easement.

16. Assume in the preceding question that Harding later gave Alcott a deed conveying a right to use the driveway for ingress and egress. If Alcott later sold Lot A:

A. To Harding (who still owned Lot B), the easement would be extinguished.

B. To a third person, the easement would presumptively pass with Lot A.

C. To Harding (who still owned Lot B), the easement would become a quasi-easement.

D. All of the above.

17. Suppose in the preceding question that Alcott did not sell Lot A, but kept it; also, Alcott developed the habit of parking just off the driveway at the point marked X. If Harding has never objected to this:

A. Alcott may, after an appropriate period, acquire an easement to park by prescription.

B. Alcott presumptively would acquire only a license.

C. The failure to object in itself might give rise to an easement by estoppel.

D. The failure to object in itself might give rise to an easement in invitim.

18. In the preceding question, if Harding did object:

A. Such objection would tend to defeat the ripening of a prescriptive easement under the "lost-grant fiction" theory.

B. Such objection would tend to reinforce the claim of a prescriptive easement under the "analogy to adverse possession" theory.

C. Both A and B above.

D. Neither A nor B above.

19. In this country it is generally held that a negative easement cannot be acquired by prescription. One reason for this is that:

A. A restrictive covenant is required to create a negative easement.

B. The requirement of continuity (of use) cannot be met.

C. The requirement of "actual" use cannot be met.

D. The use of the servient tenement involved in a negative easement is not in itself an actionable legal wrong.

20. Harding owns a beach house several miles from his lots bought from Devco. The shortest access to the beach is a little path across land belonging to Smith. Harding has no right to use the path, but he, his family and his guests use it regularly during the summer. If this summer use continues for enough years, then by virtue of it:

A. Harding can acquire a right to such use in subsequent summers.

B. Harding can acquire a right to such use year-round.

C. Harding can acquire a right to any reasonable use of the path.

D. All of the above.

21. If Harding acquires a right of use in the preceding question, he may transfer such right to:

A. Anyone whomsoever, with or without a transfer of other interests in land.

B. Any purchaser of his beach house lot.

C. Any purchaser of his property in the Devco subdivision.

D. Any purchaser of either his beach house lot or of his property in the Devco subdivision.

22. If Harding acquires a right of use in question 20,

A. Smith cannot make any conflicting use of the path whatsoever.

B. Smith can still transfer a right to use the path to Barnes.

C. Smith can move the path, provided that this does not cause unreasonable inconvenience to Harding.

D. Smith will be required to maintain the passability of the path.

23. An easement in gross:

A. Cannot exist without at least a quasi-dominant tenement.

B. Can generally not be transferred, whatever its nature and purpose.

C. Is extinguished upon transfer of the servient tenement.

D. For commercial purposes is generally not subject to the usual policy objections to transferability.

24. Assume that Harding acquired his beach-access easement by express grant from Smith. Harding could lose the easement by:

A. Merely not using it for the prescriptive period.

B. A statement of intent not to use the pathway any more, if such statement induces Smith to build an annex to his house on the pathway.

C. Both A and B above.

D. Neither A nor B above.

25. The loss of an easement by abandonment:

A. Is a somewhat controversial mode of extinction among commentators since real property normally cannot be abandoned.

B. Applies only to easements by prescription.

C. Applies only to easements not created expressly by deed.

D. Applies only to negative easements (e.g. of view).

26. Astor and Esther own adjoining buildings. A tenant who leased the top floor of both buildings broke through the common wall and then sealed off the entrance to his premises in Astor's building. At this time, Esther gave Astor a deed conveying "a right of ingress and egress to and from the top floor of Astor's building through the common passageways and third floor of Esther's building." This deed:

A. Would not prevent Esther from voluntarily tearing down her building under the majority view.

B. Creates a servitude not only with respect to Esther's building but also on the land itself.

C. Creates an easement which would be extinguished if Astor tore down his building.

D. Would prevent Astor from voluntarily tearing down his building under the majority view.

27. An ordinary license:

A. Is the least estate that a person can own in land.

B. Is more of an immunity or privilege than a right.

C. Is revocable unless contractually binding.

D. Is enforceable by specific performance even if not binding at law.

28. Assume that, in question 20, Smith told Harding the first year that Harding could use the pathway as long as he wanted, provided that Harding construct a small bridge across a low area where the pathway crossed a marshy drainage ditch. If Harding constructs the bridge as requested, then depending on the jurisdiction:

A. He may properly claim an easement by estoppel.

B. He may properly claim entitlement to an ordinary easement despite the statute of frauds because there has been a contract for an easement and part performance.

C. He may properly claim an executed parol license, which would be irrevocable so long as the intended use continues.

D. All of the above.

29. Which of the following covenants in a deed would probably not be held to "touch or concern" the land as to burden?

A. Restriction to residential use.

B. Set-back restrictions (minimum distance between buildings and lot perimeters).

C. Covenant to not smoke after the date of the deed.

D. Covenant to not use alcoholic beverages on the premises.

30. Williston wishes to sell his house for $70,000 cash and asks Corbin, a local real estate broker, to help him find a buyer. Corbin takes down the appropriate information, but no written listing agreement is prepared or signed. A short time later Corbin convinces Martin Bye to agree to pay $70,000 cash for the house and to otherwise accept Williston's terms. On these facts, Corbin would be entitled to a commission:

A. Only if no other broker were instrumental in bringing Williston's property to Bye's attention.

B. If he is the procuring broker even if the sale does not go through, provided Bye was accepted by Williston as ready, willing and able to purchase.

C. Only if Bye actually completes the purchase because, if he does not, he could not be deemed "ready, willing and able."

D. Only if Williston makes a subsequent express promise to pay a commission.

31. If Williston actually makes a contract of sale with Bye, but Bye subsequently finds that Williston's property is subject to an easement not referred to in the contract:

A. Bye would nevertheless be obligated to accept such title as Williston has.

B. Bye must accept Williston's title, but would be entitled to a proportionate abatement of the purchase price.

C. Bye may reject Williston's title unless Williston offers a warranty deed.

D. Bye may elect to accept Williston's title, but if he accepts a quitclaim deed he will be foreclosed from complaining at law about the easement.

32. In the preceding question, Williston can produce evidence that he and his predecessors in title have openly and continuously blocked use of the easement, without objection, for the prescriptive period, and he contends therefore that the easement was extinguished by prescription:

A. Williston would probably be awarded specific performance based upon such evidence.

B. Such evidence would be irrelevant to marketability of title.

C. Such evidence alone would not remove the cloud from the title in a suit by Williston for specific performance.

D. Such evidence would serve in lieu of warranties in the deed.

33. If the contract between Williston and Bye requires Williston to tender "a title which Safeland Title Co. will insure," and if Safeland is willing to insure the title in Bye subject only to an exception for the easement which was not referred to in the contract:

A. Bye must accept the title.

B. Bye must reject the title.

C. Bye may accept the title.

D. Bye has an action for indemnity against Safeland.

34. The description of the land in the contract (and in the deed by which Williston got title) describes the easterly boundary of his land as running along a hedge. However, the metes and bounds description in the contract (and Williston's deed) places the line three feet beyond the hedge into the eastern neighbor's yard. Unless the metes and bounds description is correct, the former owner of both Williston's and his neighbor's property still owns a 3-foot wide strip between the two properties:

A. The metes and bounds description would generally be preferred as controlling.

B. The description by reference to the hedge would generally be preferred as controlling.

C. Under these facts, there is good reason to resolve the conflict in favor of the metes and bounds description as a matter of interpretation.

D. Both B and C above.

35. If in the preceding question the metes and bounds description were the only one in the contract (and the deed to Williston), and the hedge (which divides the two yards and occupancies) was planted two years ago (after Williston had taken title):

A. Bye would probably be able to reject Williston's title.

B. Bye would be entitled to an accurate survey, but not to reject the title.

C. Bye would own only to the hedge (if he accepts the title) since he is not a bona fide purchaser without notice.

D. Both B and C above.

36. Suppose that Bye notifies Williston at the closing and not before that he (Bye) refuses to accept title because of the above-referenced easement not referred to in the contract, and Williston manages to remove the easement and tender a marketable title the next day. If Bye rejects the title again:

A. Williston could get specific performance or damages, as he chooses.

B. Williston could get specific performance, but his right to damages based on a tender after the "law day" is more doubtful.

C. Williston can get damages only; he has forfeited his right to a specific performance.

D. Williston can probably get neither damages nor specific performance.

37. If Williston's title is good and Bye has the money, but the house burns down while in Williston's possession between the contract date and the closing date:

A. Bye can get his down payment back under the minority rule.

B. Williston can still enforce the contract under the majority rule.

C. Bye may refuse to accept the title in Illinois.

D. All of the above.

38. If Williston had died between the contract date and the closing date:

A. The contract would have become unenforceable.

B. The legatees or distributees of his personal property would get the proceeds paid at the closing.

C. The devisees or heirs of his real property would get the proceeds paid at the closing.

D. Bye could enforce the contract for damages, but not for specific performance.

39. At the closing, Bye arrives with a certified check which is $50 too little, due to a computational error. Bye forgot his checkbook. Williston said, "Don't worry about it; in case something happens to me, here is the deed now on the condition that you send me the $50 tomorrow." Bye took the deed and never paid the $50.

A. Title remains in Williston; the delivery is not complete.

B. The delivery is complete, but is defeasible at Williston's election.

C. The delivery was complete, but has been automatically defeased.

D. The delivery is complete and irrevocable title is in Bye.

40. Suppose that in May, 1980 the deed was delivered to Bye without condition and that it was a warranty deed. If two months later Bye is notified by the neighbor to the south (Klame) that Klame had previously acquired the back 10 feet of the property by adverse possession and if Klame's contention is correct:

A. No title covenants or warranties have been breached.

B. The covenants of seisin and power to convey have been breached.

C. The covenants of warranty and quiet enjoyment have been breached.

D. Both B and C above.

41. Under the facts of the preceding question, suppose that the period of limitation on deed covenants in six years, and that Klame (by resort to legal process) evicts Bye from the back 10 feet in May, 1988. Bye would have an action against Williston for substantial damages:

A. From 1980 to 1986.

B. From 1980 to 1994.

C. From 1980 to 1986 and from 1988 to 1994.

D. From 1988 to 1994.

42. Suppose in the preceding question that Bye sold to Purchatue in 1985, and it was Purchatue who was evicted in 1988. Under the majority rule, Purchatue would have an action against Williston:

A. Never.

B. 1985 to 1986 and 1988 to 1994.

C. 1985 to 1994.

D. 1988 to 1994.

43. Suppose that in May, 1980 the deed was delivered to Bye without condition and that Bye received good title, but that Bye did not record the deed until July, 1980. If Williston delivered a second deed to the same property to a good faith purchaser for value named Sharpe, in June, 1980 and Sharpe recorded in August, 1980:

A. Sharpe would prevail over Bye in a notice jurisdiction.

B. Sharpe would prevail over Bye in a race-notice jurisdiction.

C. Both A and B above.

D. Neither Sharpe nor Bye would have a deed valid against Williston until he recorded.

44. Suppose in the preceding question that Williston dropped dead immediately after the closing with Bye, and that it was Williston's sole heir, Porleigh, who delivered the second deed (in June, 1980) to Sharpe. If the court holds for Sharpe on the grounds that Bye had not recorded before Sharpe took title:

A. The best explanation would be that the unrecorded deed passed no title to Bye so that Porleigh inherited it at Williston's death.

B. The best explanation would be that Porleigh inherited a power to convey which Williston still had at his death as a consequence of Bye's failure to record.

C. The best explanation would be that the case is anamolous.

D. The result would be unexplainable and an undesirable deviation from the policy of the recording acts.

45. Chopper runs a water powered sawmill making use of a stream that runs through his property. Sprouts, his upstream neighbor has begun to take water from the stream for irrigation and, although much of the water taken makes its way back to the stream, a substantial quantity is lost. This loss significantly reduces the flow which powers Chopper's mill. Chopper's best chance for redress against Sprouts would be:

A. By alleging that the waters are "surface waters."

B. If his state applies the traditional English rule.

C. If his state applies the "reasonable-user" rule.

D. If his state applies the "navigable stream" rule.