PACE UNIVERSITY SCHOOL OF LAW

PROPERTY
PROFESSOR HUMBACH August 17, 2016
FINAL EXAMINATION TIME LIMIT: 4 HOURS

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

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

GENERAL INSTRUCTIONS: This examination consists of 62 multiple-choice questions to be answered on a Scantron answer sheet.

- 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. Do it carefully. *This is part of the test.*

Because everyone has successfully completed the online Estate System Proficiency Test, this copy of the exam does not include the true-false questions covering the estate system. Also you do *not* need to write your "word" on your Scantron answer sheet. You will automatically receive full credit (15 points) for the estate-system questions.

Answer each question selecting the *best* answer. Mark your choice on the Scantron 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 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 and answer based on the traditional rule.

Facts for Gluggles-Bert questions. While scuba diving out in the bay, Macon Gluggles found a bunch of lobster boxes (traps) that Bert, a local lobsterman, had set out and left on the bottom. Gluggles grabbed 3 lobsters from the boxes, took them home and made himself a lovely feast. Bert discovered what happened and sued Gluggles.

1. The lobsters, as wild animals, would be considered:

    a. Animus revertendi.

    b. Ferae naturae.

    c. Ratione soli.

    d. Res ipsa loquitur.

2. At the time Gluggles found the lobsters in the lobster boxes:

    a. They would still be considered "fair game," free for the taking by anybody, because they were still at the bottom of the bay and, therefore, in their natural habitat.

    b. Bert would already be considered to have occupancy of the lobsters because they were in his traps.

    c. The lobsters would be considered to have occupancy of the lobster boxes according to the doctrine of occupancy.

    d. Bert would, strictly speaking, already have actual corporeal possession of the lobsters.

3. Suppose Bert's lawyer argues that Bert had a better right to the 3 lobsters because, in order to take possession of them, Gluggles had to physically intrude on and interfere with property belonging to Bert, namely the lobster boxes. Such an argument:

    a. Would make legal sense by *analogy* to the policy underlying the doctrine of ratione soli.

    b. Would make no legal sense and violate the policy underlying the doctrine of ratione soli.

    c. Should be rejected because the argument would, in effect, call for rewarding a trespasser for his own wrong.

    d. Would only apply if the lobster boxes had Bert's name or mark written on them.

4. Suppose Gluggles went out and bought some lobster boxes of his own, which he successfully used to catch many lobsters. As a result, other lobstermen who had already been lobstering in the area suffered a substantially lowered catch and made less money. The other lobstermen should be able to recover damages from Gluggles:

a. Because his actions have reduced their catch and diminished their income.

b. Because they were first in time to engage in lobstering in the bay.

c. Both of the above.

d. None of the above. The loss that Gluggles has caused to the other lobstermen would be damnum absque inuiria (harm that is not legally actionable).

5. Veblen asked Napoli for permission to hunt on Napoli's farm. Napoli agreed but insisted "only small game." Veblen didn't see any small game animals, but he did spot a deer and, seizing the opportunity, took it down. Napoli, who much prized the deer on his land, brought suit against Veblen to recover the value of the deer.

a. Veblen should win because he was hunting with Napoli's permission,

b. Napoli should win because Veblen exceeded the scope of his license.

c. Veblen should win as long as he had a state hunting license.

d. Napoli should win because, under the better rule, the wild animals running around on his land belong to him.

6. Dermott began to paint western side of his house, which is a few inches from the property line. His neighbor, Blech, objected when Dermott set up a ladder because the base of the ladder needed to rest about two feet on Blech's side of the line. Dermott has offered Blech money for permission to make this minor use of Blech's land. However, Blech is adamant, saying Dermott absolutely may not use Blech's land.

a. As long as Dermott is willing to pay a reasonable sum, Blech has no right to prevent Dermott from making this minor use Blech's land.

b. Blech has no right to prevent others from making brief and reasonable use of his land as long as there is no economic damage to Blech.

c. Dermott has a right to make brief and reasonable use of a small amount of Blech's land for this purpose if Dermott has no easy alternative.

d. Blech is within his rights to refuse to let Dermott use Blech's land for this purpose.

7. Gratian discovered that his neighbor, Chiron Corp., has been injecting natural gas purchased from distant wells into a subterranean cavity that extends under both their properties. As a result, gas owned by Chiron has been flowing across the property line and settling in an area a thousand feet beneath Gratian's home. The injected gas is chemically different from the gases that occur naturally in the area.

a. Chiron no longer owns the gas under Gratian's land because property used to commit a trespass is forfeited so that people will be discouraged from trespassing.

b. There is no basis under the capture doctrine for saying that Chiron still owns the injected gas once the gas has, so to speak, regained its natural liberty.

c. Some courts would say that, according to the capture doctrine, Gratian should be allowed to pump out the injected gas and sell it.

d. The chemical differences between the injected gas and naturally-occurring local gas could have no logical bearing on a dispute between Gratian and Chiron over its ownership.

8. Rainer City passed a "Universal Internet Access Ordinance" for the purpose of assuring broadband access to all of its residents. The ordinance authorizes certified broadband providers to connect new households by running wires via the "shortest route from any utility pole to the home of any subscriber." Sometimes the shortest route runs over private property belonging to neighboring owners. Dave Haskins objects to the installation of wires across a corner of his property in order to provide Internet service to the house next door. Under the Takings Clause:

a. Haskins can probably prevent installation of wires across his property.

b. Haskins cannot prevent the installation of wires across his property, but he would be entitled to receive just compensation.

c. Haskins is probably not entitled to receive compensation as long as the intrusion of the overhead wires does not substantially affect any economically valuable use of his land.

d. Haskins would not be entitled to compensation if the ordinance is declared by a court to serve an important public interest.

9. Lewis Unger bought a piece of undeveloped land. The land was large enough so that, under the local zoning law, it could be divided into 6 building lots, worth about $80,000 each. Before Unger took any steps to develop the land, the local town board adopted a wetlands protection ordinance. Under the ordinance's definition of "wetlands," a significant portion of Unger's lands was prohibited from development. As a result, Unger was able to carve out only four legal building lots, reducing the total value of his land by around 1/3. Under the Takings Clause:

a. Unger can probably have the wetlands ordinance declared unconstitutional in court.

b. Unger can probably have the wetlands ordinance partially overturned in court, at least as applied to his property.

c. Unger cannot have the wetlands ordinance invalidated in court, but he is probably entitled to just compensation for the value he has lost.

d. The ordinance would be valid and Unger would probably not be entitled to compensation.

10. Cherry orchards, which are very important to the economy of Berwick, are threatened by a new plant disease—spread from, among other things, infected rose bushes. The state adopted a law prohibiting anyone from planting or maintaining roses within ½ mile of a cherry orchard. Henrietta Potter has a yard full of beautiful roses that she has cultivated for many years. They add considerably to the value of her property. The state agricultural agent has declared Potter's roses a public nuisance and ordered her to remove them. If she does not, the state will remove them at her expense. Under the Constitution:

a. Potter cannot be required to remove her rose bushes as long as they are on her private property.

b. Potter cannot be required to remove her rose bushes if she can prove that her particular bushes are not infected and, therefore, pose no immediate threat to any cherry orchard.

c. The state can choose which property to prefer in a case like this, and it can therefore protect cherry orchards at the expense of roses.

d. Potter can be required to remove her roses but is entitled to just compensation.

11. In order to attract a large retail store (which would provide jobs, tax revenues and other community benefits), the legislative board of the Village of West Peach has authorized the use of eminent domain to acquire the land of 25 homeowners. Under the plan, their homes would be torn down for the project and the land would be leased long-term to a private developer. Some of the homeowners object vehemently, arguing that the

Constitution does not allow the use of eminent domain to acquire private property for use by another private owner (the retail store developer).

a. The homeowners are right because the literal wording of the Takings Clause expressly prohibits takings that are not for "public use."

b. The homeowners are not correct because, according to the Supreme Court, there are no limits on the governmental use of eminent domain as long as just compensation is paid.

c. The homeowners are right because taking private property in order to lease it to other private interests cannot be considered a taking for a "public purpose."

d. The homeowners are not correct because, according to the Supreme Court, the courts should be highly deferential to legislative determinations as to what actions are and are not needed to serve the public interest.

Note: In questions that follow, assume unless otherwise specified that the jurisdiction does *not* recognize the distinction between lost and mislaid property.

Facts for Bissell questions: Boris Bissell owns an automobile repair shop. His employee, Octavio, was repairing a car at the shop when he discovered $25000 in recently issued currency hidden behind a front door panel. Octavio handed the money to the bookkeeper, Jana, for safekeeping. The car belonged to Wilko, who had purchased it one week earlier for $1000. Wilko did not know that the money existed when he drove the car to Bissell's shop and left it for repairs. The true owner of the money is unknown, and Bissell, Octavio, Jana and Wilko now all claim it. Assume that the court does *not* deem "finding" to be part of Octavio's duties as an employee.

12. Consistently with the so-called American rule for "finding" cases, who of the following would probably have the best claim to the money?

a. Bissell.

b. Octavio.

c. Jana.

d. Wilko.

13. Consistently with the so-called English rule for "finding" cases, who of the following would probably have the best claim to the money?

a. Bissell.

b. Octavio.

c. Jana.

d. Wilko.

14. If the jurisdiction follows the so-called American rule for "finding" cases and *does* recognize the distinction between lost and mislaid property, who of the following would probably have the best claim to the money (based on the case we read in class)?

a. Bissell

b. Octavio.

c. Jana.

d. Wilko.

15. Frederika went into a large chain-store pharmacy and walked up and down the aisles distributing leaflets protesting the sale of products in single-use plastic bags. The store manager told her to leave, revoking her license to be on the premises. She ignored the order and continued passing out her leaflets. As she did, she noticed a purse on the floor, half tucked under one of the counters. She picked it up. Assuming the purse was lost property, who probably has the better right to it under the so-called American rule?

a. The store owner because Frederika was a trespasser.

b. Frederika because she was the finder.

c. The store owner because the money was found in a public or semi-public place.

d. Frederika because she found the money in the locus in quo.

16. Harry Henson left his car at Ace's Valet Parking while he had dinner. When Henson came back for the car, he spotted a computer thumb-drive on the floor of the customer reception area, a "semi-public" portion of the premises. Mr. Ace, owner of the parking facility, now demands the thumb-drive. The question is who has the better right to the thumb-drive?

a. Henson, if the jurisdiction follows the so-called American rule to cases of finding.

b. Henson, if the jurisdiction follows the so-called English rule to cases of finding.

c. Both of the above.

d. Mr. Ace.

Facts for "MaryAnne's vase" questions: MaryAnne had a porcelain vase inherited from an aunt. Unbeknownst to MaryAnne, the vase was an antique worth several thousand dollars. When her daughter's second grade class was making a diorama of pioneer life, MaryAnne lent the vase to the teacher for use in the display. The teacher was also unaware of the value of the vase. She let members of her second-grade class play with it, and one of them dropped it, causing it to shatter

17. MaryAnne brings an action against the teacher. The teacher would be liable to MaryAnne for damages:

a. Because she had an unconditional duty to return the vase in the same condition in which she received it or else pay for any loss.

b. Only if she is found negligent in caring for the vase.

c. Because letting the second-graders play with the vase was "negligence per se."

d. None of the above. The teacher could not be held liable to MaryAnne since the teacher was not the person who damaged the vase.

18. In MaryAnne's action against the teacher for the loss to the vase:

a. The teacher should not be considered a bailee of the vase because she did not know its actual value.

b. The teacher should not be liable for the loss unless she made a contract in which she agreed to such liability.

c. The teacher should not be liable for the loss because MaryAnne did not tell the teacher the actual value of the vase.

d. The teacher would be considered a bailee of the vase.

19. In MaryAnne's action against the teacher for the loss to the vase:

a. Ordinarily, negligence would be presumed.

b. Ordinarily, the burden would be on the teacher to come forward with evidence showing that she used ordinary care.

c. Both of the above.

d. MaryAnne, as plaintiff, would ordinarily have the full burden of proof on the issue of negligence.

20. Assume that, in MaryAnne's action against the teacher, the court is trying to formulate a charge to the jury. On the question of whether the teacher used the required kind and degree of care, which (if any) of the following values would be *most* relevant?

a. The actual fair market value of the vase.

b. The apparent value of the vase in the eyes of an ordinarily prudent (or "reasonable") person.

c. The amount that the teacher actually thought the vase was worth.

d. None of the above. Value would not be relevant on the question of whether the teacher used the required kind and degree of care.

21. Assume that, in MaryAnne's action against the teacher, the court is also trying to determine what to charge the jury with respect to the proper measure of damages. Assuming that the teacher is found to be liable, which of the following values would be most relevant to the proper measure of damages?

a. The actual fair market value of the vase.

b. The apparent value of the vase in the eyes of an ordinarily prudent (or "reasonable") person.

c. The amount that the teacher actually thought the vase was worth.

d. None of the above. Value would not be relevant to the proper measure of damages because the teacher did not know the actual value of the vase.

22. Irene lent a suitcase to her friend Rhonda, who was going on a cruise. When Rhonda returned the suitcase (in good condition), Irene suddenly remembered that she'd hidden some jewelry inside it, in a little pouch. When she looked, however, there was no sign of the pouch or the jewelry. At the time Rhonda borrowed the suitcase she did not know it contained jewelry and, therefore, she had no qualms about checking it as baggage (which is x-rayed) when she flew to the embarkation port for the cruise. Under the better reasoned rule:

a. There was no bailment of the jewelry.

b. Rhonda should be considered to have been bailee of the jewelry and liable for its loss.

c. Rhonda should be considered to have been bailee of the jewelry but *not* liable for failing to use reasonable care.

d. There would be a presumption (rebuttable) that Rhonda had misdelivered the jewelry.

23. When Davis arrived home from work there was a package at his door. The package, mistakenly left by a delivery company, was addressed to Ken Abouti, who lived across town. Davis found Abouti's phone number and gave him a call. At Abouti's request, Davis agreed to hold the package until Abouti could pick it up. Davis put the package on a table where his cat knocked it into a bucket of water, greatly damaging the package's contents.

a. Some courts would say that Davis, as a gratuitous bailee, should not be liable for mere ordinary negligence but only if he was grossly negligent.

b. Some courts would say that Davis, as a gratuitous bailee, could only be liable for conversion.

c. Some courts would say that Davis, as a gratuitous bailee, should be absolutely liable for any loss to the package, whatever the cause.

d. Davis cannot properly be held liable on these facts because he did not cause the loss. His cat did.

24. Ed had an extra laptop which he let his sister, Sally, take with her to college. Sally's roommate negligently spilled a hazelnut latte on the laptop keyboard. The liquid caused $750 damage but Sally did not have the laptop repaired. Sally was not negligent in the loss.

a. Sally can recover $750 from her roommate for the harm to the laptop.

b. Even if Sally recovers $750 from her roommate for the harm to the laptop, Ed can still legally require the roommate pay him $750, too—since it was his laptop.

c. Ed, as owner, can recover $750 from Sally even if Sally has received no damages payments from by her roommate.

d. All of the above.

Facts for Russo-Tolland questions. For many years Justin Russo has owned a parcel of land along the Wessex River. However, the riverbank area nearest his house is marshy, and he has always gone upstream about 200' to launch and store his boat from a small spit of land (called "Tollacre"). Recently, Russo received a letter from a lawyer stating that Tollacre is owned by Tolland, who wants to build a small marina there. The marina would greatly annoy Russo. In his view, it would impair the pristine character and isolated "feel" of the area. Russo wants to know if, based on his many years of use and occupancy, he has acquired a ripened title to Tollacre, so he can prevent Tolland's proposed marina

25. In proving he has a ripened title by adverse possession, which of the following would Russo *not* have to show:

a. That he had continuous and exclusive possession for the requisite period.

b. That he notified Tolland that he was using Tolland's land.

c. That he had actual possession of the area he claims.

d. That he had open and notorious possession.

e. Russo would have to show *all* of the above facts.

26. Suppose that, for the past 12 years, Tolland was fully aware that Russo was using Tollacre, but both he and Russo honestly but mistakenly believed Tollacre was part of the property that belonged to Russo.

a. Some courts would hold that no title would have ripened because the element of hostility is missing.

b. Under the usual and predominant understanding of the hostility requirement, Russo could not acquire a ripened title to Tollacre unless he possessed with the honest belief he owned it.

c. Both of the above.

d. If neither Russo nor Tolland knew the actual location of the property line, then Russo's adverse possession of Tollacre could not be considered "open and notorious."

e. All of the above.

27. In order for Russo to establish that he had adverse possession of Tollacre, he would normally have to show that:

a. He had built a fence, house, boathouse, dock or some other significant structure on the land.

b. He did not know the area belonged to Tolland.

c. He acted towards the land more or less like an ordinary owner would.

d. All of the above.

28. Assume that Russo's conduct *does* satisfy the requirements for acquiring a ripened title to Tollacre by adverse possession. Once he has possessed for the period of limitations on ejectment (read these alternatives *carefully*):

a. Ownership of Tollacre would be deemed transferred from Tolland to Russo.

b. Russo would be entitled to get a court order requiring Tolland to transfer ownership of Tollacre to Russo.

c. Russo would have title to Tollacre by original acquisition.

d. Russo could relinquish his title back to Tolland by simply abandoning possession of Tollacre.

29. Suppose that a small portion of Tollacre (which Russo adversely possessed) was actually the property of the state, not Tolland. Under the majority rule:

a. Russo could also acquire title by adverse possession to that small state-owned portion, but from the state instead of Tolland.

b. Russo could also acquire title by adverse possession to that small state-owned portion, but he only if he gave the state proper notice of what he was doing.

c. Russo could also acquire title by adverse possession to that small state-owned portion, but he only if he had paid the property taxes on it.

d. Russo's ripened title would not include the small area owned by the state.

30. In 2005, Nicholas Hitchcock contracted to buy some land from Morton Mullally but he never made a payment or received a deed. Nonetheless, Hitchcock took possession of the land (i.e., *adverse* possession) and built a small house on it. He lived there until his sister, Alice, bought the land and received a deed from him in 2011. Last year Elizabeth inherited the land from Alice. Now Mullally is insolvent and his creditors claim the land, threatening an ejectment action against Elizabeth. In computing whether the statute of limitations has run in her favor, Elizabeth may (if necessary):

a. Tack her possession onto Alice's possession.

b. Tack together the possession of herself, Alice and Hitchcock

c. Both of the above.

d. None of the above. Elizabeth's time on the land is too short for her to assert a valid claim to the land by adverse possession, and tacking wouldn't help her.

31. Johnston took adverse possession of Whiteacre in 2004 and remained for 6 years. In 2010, Korsvold became the adverse possessor of Whiteacre having received a deed of conveyance from Johnston. He has remained ever since.

a. The deed of conveyance was not valid because Johnston did not, in 2010, have any interest in the land that he could convey.

b. Korsvold could have acquired a ripened title as early as 2014.

c. Under these facts Korsvold cannot acquire a ripened title until 2020, at the earliest.

d. The deed from Johnston is defective, but once Korsvold acquires a ripened title he can apply to receive a valid deed from the local recording office.

32. During the time that Korsvold adversely possessed Whiteacre in the preceding question, a trespasser entered and removed some trees. After the title ripened in Korsvold, the trespasser returned and took more trees. If the court applies the *Winkfield* (jus tertii) principle to land:

a. Korsvold should not be able to recover damages for the trespasses.

b. Korsvold should be able to recover damages for the trespasses that occurred after his title ripened but not before.

c. Korsvold should be able to recover damages for the trespasses that occurred both before and after his title ripened.

d. The true owner of Whiteacre should be able to recover damages for the trespass that occurred before Korsvold's title ripened.

33. In 1985, while O was the owner of Blackacre, an adverse possessor, A, entered into possession. A has remained ever since. Assume the local statute of limitations tolling provisions are like the ones we studied in class (with a basic 21-year period and a 10-year disability period). A would have acquired a ripened title in:

a. 2006 if O was under no disability in 1985, died in 1986, and left H, age 5 years, as his heir.

b. 2008 if O was insane in 1985 and died in 1998 while still insane.

c. Both of the above.

d. 2006 if O was under no disability in 1985, became insane in 1988, and died in 2004 while still insane, leaving H, an adult, as his heir.

e. All of the above.

34. Mellor owns and lives on land next to an electric company transformer facility. The electric company leases the parcel under a long-term lease. In 2004 (twelve years ago), without permission or knowledge of the electric company, Mellor built a hidden underground drainage pipe across a back corner of the transformer parcel. Once the pipe was installed, its existence was not at all apparent. At that time (2004), the electric company's lease had 22 years to run, and it now has about 10 years left. The electric company recently discovered the drainage pipe and wants it removed.

a. Mellor has probably acquired an easement by adverse possession to continue using the drainage pipe.

b. Mellor has probably acquired an easement by prescription to continue using the drainage pipe.

c. Despite his adverse use, Mellor may well have no rights to continue using the drainage pipe because his adverse use likely would not qualify as open and notorious.

d. Mellor's wrongful use of the electric company land appears to be too insubstantial to ripen into any kind of legal right to use.

35. Suppose in the preceding question that Mellor did acquire rights to use the drainage pipe by virtue of his prolonged wrongful use. In view of the fact that the electric company's lease has only about 10 years to run, it looks like:

a. Mellor's rights to use the drainage pipe will probably come to an end in about 10 years.

b. Mellor's rights to use the drainage pipe would be binding on the both the electric company and its landlord.

c. Mellor's rights to use the drainage pipe would mainly be binding on the electric company's landlord.

d. Mellor's rights to use the drainage pipe will probably have an indefinite duration.

36. Marlene was standing in her living room and, in the presence of several witnesses, said to her daughter: "This clock used to belong to your great grandmother. When you get married and have a home of your own, I'm giving it to you." The daughter took the clock from her mother's hands and admired it for a few moments and then replaced it on the fireplace mantel, where it remained until her mother's death several years later.

a. Marlene's daughter should have no problem asserting that there was a valid gift of the clock since the delivery requirement was met when she held the clock and admired it.

b. Based on these facts, in particular the manifest lack of *in praesenti* donative intent, there has been no valid gift of the clock to Marlene's daughter.

c. Delivery or no delivery, Marlene's daughter has a right to the clock once she gets married and has a house of her own, since Marlene's intent was clearly expressed

d. Since Marlene is now deceased, her daughter should be able to successfully claim the clock as a gift cause mortis.

37. For her birthday, Carolyn's husband gave her a large and heavy 70" 4K TV. The new TV was already installed in the couple's living room when Carolyn arrived home from work that day. All her best friends were there, too. Her husband announced to all present that the TV was hers and repeatedly said the same thing on later occasions as well. When he died the next year, his estate claimed the TV.

a. There probably was no valid gift of the TV since there is no evidence of facts that could satisfy the "delivery" requirement.

b. There probably was no valid gift of the TV since there is no evidence of facts showing "*in praesenti*" donative intent.

c. It would probably be held that there was a completed gift causa mortis of the TV to Carolyn.

d. It would probably be held that there was a completed inter vivos gift of the TV to Carolyn.

38. Believing himself to be on his deathbed, Raphael said to his niece: "Your great-great grandfather carried this watch during the Civil War. I want you to have it." He then handed it to her. She said "thanks," and she took it with her when she left. Several weeks later Raphael made an unexpected full recovery.

a. The gift was presumptively a gift causa mortis.

b. The gift could only be a gift causa mortis.

c. Because Raphael made a full recovery (and did not die as he'd expected), the gift became a gift inter vivos.

d. Once the niece went home with the watch, the gift became irrevocable.

39. On his deathbed, Felspar said to his longtime close friend: "Here is the key to my safe deposit box. In it are 100 shares of Facebook stock that I want you to have." The friend took the key (which was the only existing key to the box).

a. The gift could be effective as a completed gift even if the friend did not go to the box and retrieve the stock before Felspar's death.

b. Presumptively, Felspar could revoke the gift at any time prior to his death.

c. The delivery requirement could be considered met by delivery of the key.

d. All of the above.

40. Omar wanted to make a gift of money to Carla so he wrote her a check for $20000. Carla accepted the check from him but before she got around to cashing it at the bank, Omar died tragically in a freak gardening accident. In most states:

a. The gift would be considered complete upon the delivery of the check, which would be treated as an effective actual delivery.

b. Delivery of the check would be treated as an effective constructive delivery of the funds in Omar's account.

c. The attempted gift would have failed because the donor died before the check was cashed.

d. A gift of money cannot be made by the donor's own check.

41. Hibbing wrote a letter to his son saying: "I want you to have my sailboat after I'm gone so I'm giving it to you now. By sending you this letter, I intend to make it yours, subject only to a right of possession that I'm retaining for as long as I'm alive." Hibbing signed the letter but did not have it witnessed. His son received the letter and did not respond. The boat remained where it was, moored at the same local marina, until Hibbing's death.

a. Hibbing appears to have made an effective gift to his son of a future interest in the boat.

b. Hibbing's retained an ownership interest under the terms of his letter, but his ownership interest was worth substantially less due to the legal effect of the letter.

c. Both of the above.

d. None of the above. Hibbing has tried to make a testamentary gift, but it failed because he did not comply with the statute of wills.

Facts for Torrens-Lecault questions. Last April, Torrens answered an ad for an apartment in a building owned by Lescault in fee simple. Lescault said to Torrens: "I'll lease you the apartment for a term of three years, beginning May 1, reserving a rent of $2300 per month." Torrens said: "I'll take it." On May 1, Torrens took possession of the apartment, paying the first month's rent in advance.

42. Since taking possession, Torrens has paid the rent on June 1, July 1 and August 1. Assume that a formal written lease was prepared but never signed.

a. The oral lease to Torrens would be invalid as to duration.

b. There has been a demise of possession from Lescault to Torrens.

c. Both of the above.

d. The attempt to lease to Torrens is void due to the Statute of Frauds and Torrens has no estate whatsoever.

43. In the preceding question:

a. Immediately after Torrens entered possession in May, he probably had a tenancy at will.

b. By now (after more than 3 months of possession and regular rent payment), Torrens probably has a tenancy from month to month.

c. At this date (August 17), the earliest date as of which Lescault can lawfully terminate Torrens's tenancy by notice is probably September 30.

d. All of the above.

44. Assume now that, before Torrens entered into possession, he and Lescault put their understanding into a written lease that both of them signed. The written lease includes a promise by Lescault to keep the apartment in reasonable repair. Due to massive water leaks from the apartment above, Torrens's apartment has become nearly uninhabitable, though Torrens remains in possession. Lescault has delayed, without justification, in fixing the situation.

a. If the lease were truly treated as an ordinary contract, Torrens should be legally entitled to withhold all or at least a substantial part of the rent.

b. Under the traditional rule for landlord-tenant cases, Torrens would not have a legal right to withhold rent just because Lescault has defaulted on his promise to repair.

c. Both of the above.

d. Unless the local jurisdiction recognizes the implied warranty of habitability, Lescault's promise to repair would not be legally enforceable.

45. In the preceding question, assume that the lease contained a condition or conditional limitation triggered by a failure to pay rent (as most leases do). If Torrens *unlawfully* failed to pay all or part of the rent on time:

a. His tenancy would (or could) come to a premature end before the agreed three-year term had passed.

b. Under the traditional rules concerning forfeiture, a court should try to preserve Torrens's right to possession, provided that Torrens is willing and able to pay all amounts lawfully due to Lescault.

c. Both of the above.

d. The lease provision (that is, the condition or conditional limitation) would simply duplicate the rights that Lescault has anyway since the common law rules authorize eviction for non-payment of rent

e. All of the above.

46. Under the traditional common law rules, if Lescault had made *no* promise to keep the premises in good repair:

a. It would be generally up to Torrens, as tenant, to maintain the premises and keep them useful for residential purposes.

b. An implied warranty of habitability would probably be implied into the lease

c. The tenant's liability for rent would normally be reduced if the fair rental value was reduced due to violations by Lescault of the local housing codes.

d. The lease would be void as an illusory contract.

47. Suppose that, at a time when Torrens has 30 months remaining under his lease, his job requires him to move to another state. As a result, he has no further use for the premises. Suppose he simply moves out, without advance notice to Lescault. Under the traditional common law rules:

a. Lescault would have a duty to mitigate damages as a pre-condition to holding Torrens liable for rent after he moves out.

b. Lescault could accept the proffered surrender, which would terminate Torrens' obligation to pay rent.

c. Both of the above.

d. Torrens would have a right to terminate his obligation to pay future rent by telling Lescault to keep the security deposit.

48. Suppose again that Torrens has 30 months remaining as tenant under his lease, but his job requires him to move to another state. Suppose now that a friend, Mary, is willing to take over the apartment. If Torrens signs a "Sublease" to Mary for the entire remaining 30 months under his lease,

a. The result would appear to be an assignment of the lease, inasmuch as Torrens has retained no reversion.

b. The attempt to confer an estate on Mary would be void under the common law rules unless Lescault gave prior consent.

c. Torrens would be relieved of any further obligation to pay rent if Lescault consented to let Mary move into the apartment.

d. All of the above.

49. Suppose in the preceding question that Torrens assigned the lease to Mary, with Lescault's consent. Later, Mary assigned the lease to Josh, again with Lescault's consent. If Josh then abandoned possession a month later and paid no further rent.

a. Lescault could probably recover the past due rent from Torrens whether or not Mary assumed the lease.

b. Lescault could probably recover the past due rent from Mary if she assumed the lease.

c. Both of the above.

d. Lescault could probably recover the past due rent from Mary whether or not she assumed the lease.

e. All of the above.

50. O conveyed a parcel of land "to A and B and their heirs." At the time, A and B were not related by blood or marriage. Under the usual modern presumption:

a. A and B would be joint tenants.

b. A and B would be tenants in common.

c. A and B would be tenants by the entirety.

d. A and B and the respective heirs of A and B would all share ownership of the land.

51. O conveyed a parcel of land "to A and B and their heirs as joint tenants." At the time, A and B were not related by blood or marriage. Assuming that a joint tenancy was created:

a. If A dies, B would be the sole owner of the land.

b. If A dies, B and A's heir would be joint tenants.

c. If A dies, B and A's heir would be tenants in common.

d. If A dies and then B dies, the land would revert to O.

52. O conveyed a parcel of land "to A and B and their heirs as joint tenants." At the time, A and B were not related by blood or marriage. Assume that a joint tenancy was created and that, afterwards, A conveyed his interest in the land to C:

a. B's right of survivorship would not be affected by the conveyance.

b. If B dies intestate, C would be the sole owner of the land.

c. If C dies intestate, B would be the sole owner of the land.

d. If C dies intestate, B and C's heir would be share ownership of the land as tenants in common.

53. O died leaving her house to her two children, A and B, as tenants in common. At the time of O's death, A lived in the house and was taking care of O. Initially, B let A continue living in the house, alone, but now after several years B would like to receive some "rent" from A. Under the majority rule:

a. A can be legally compelled to pay B a reasonable rent for the period that A was in sole occupancy, even if there was no ouster or agreement to pay rent.

b. The only way an out-of-possession co-tenant can require the in-possession tenant to pay money for sole occupancy is if there was an agreement to do so.

c. A can be legally compelled to pay B money for periods that A was in sole occupancy if A made an agreement to do so or if A ousted B.

d. Because A has a right as co-tenant to occupy the whole premises, A can under no circumstances be legally compelled to pay B money for periods that A was in sole occupancy.

54. Suppose in the preceding question that B tried to move in with A but A refused to allow it saying that B had no rights to the house because he "didn't lift a finger to take care of Mom."

a. Based on these facts, A now can be legally compelled to pay B money for A's sole occupancy.

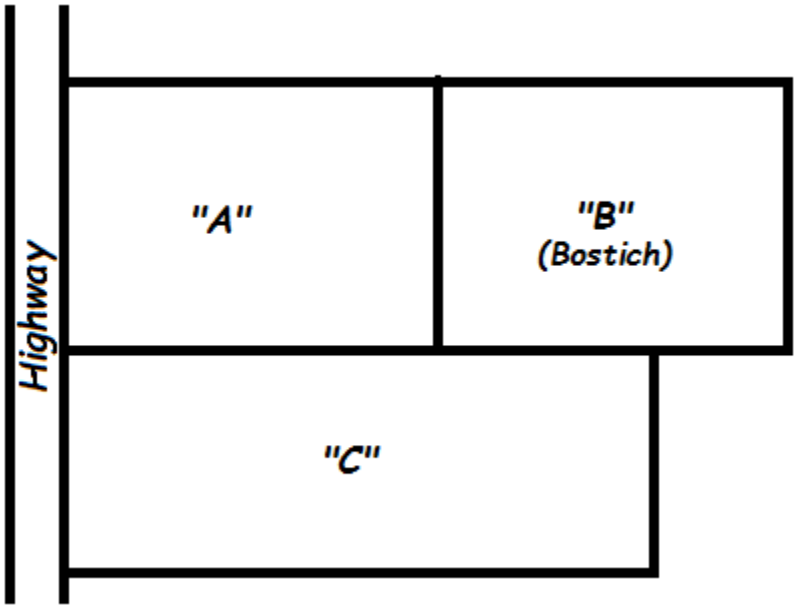
b. If B lets things slide and allows this situation to persist, A will probably end up with sole ownership of the property in about 10 years' time.

c. Both of the above.

d. B would have an ejectment action against A.

e. All of the above.

Facts for David Bostich questions. After 40 years of active law practice, David Bostich wanted to get away from it all. He bought a 60-acre parcel from Ray McAuliffe in a quiet rural area. The parcel he bought is shown as parcel "B" on the map below.



Immediately prior to Bostich's purchase, McAuliffe owned both parcels "A" and "B", and Parcel "C" was owned by Crandon. McAuliffe still retains Parcel "A".

55. Assume that the deed from McAuliffe to Bostich stated: "This conveyance includes an easement of way running across the northern 25' of Grantor's retained land between the highway and premises conveyed."

a. The easement would presumptively be an appurtenant easement.

b. If Bostich later acquired parcel "C," he would presumptively be entitled to use the easement as a means to access the rear portion of parcel "C".

c. If Bostich later conveyed parcel "B" to Abalone by delivering a deed that did not mention any easements, Abalone would probably have no right to cross parcel "A" in order to get access to parcel "B".

d. All of the above.

56. Assume that the deed from McAuliffe to Bostich did not mention any easements but that, prior to the conveyance, McAuliffe had used a visible lane running across the southern 25' of parcel "A" in order to gain access to the land that is now parcel "B":

a. If McAuliffe had used the lane for a long enough period, an easement by prescription may have arisen for the benefit of parcel "B," and Bostich (as owner of parcel "B") would now be entitled to use this easement.

b. These facts appear to support recognition of an easement by implied grant to Bostich.

c. Both of the above.

d. These facts appear to support recognition of an easement by implied reservation over the lands of the grantor, McAuliffe.

e. These facts provide no basis for recognizing an easement for the benefit of parcel "B".

57. Assume again that the deed from McAuliffe to Bostich did not mention any easements. Suppose also that, prior to conveying to Bostich, McAuliffe never used any particular part of parcel "A" in order to gain access to the land that is now parcel "B".

a. Bostich could probably succeed in asserting a quasi-easement across parcel "A", but nothing more.

b. These facts appear to support recognition of an easement by prescription to cross parcel “A”.

c. There is no likely way that Bostich could assert any kind of legal right to cross parcel “A”.

d. Bostich should have a strong case for asserting an easement by necessity across parcel "A".

58. Assume that Bostich acquired an easement by necessity across parcel "A" when he bought parcel “B”. A month later, Bostich bought parcel “C”:

a. The easement by necessity would continue as long as Bostich wanted it for use with parcel "B".

b. The easement by necessity would continue as long as it is reasonably necessary for the use of parcel "B".

c. The easement by necessity would probably be extinguished.

d. The easement by necessity would probably be suspended, but it would be revived if Bostich later ceased to own parcel "C".

59. Suppose that, Bostich has an easement of access across parcel "A", but he finds it more convenient—especially in winter—to get to the highway by trespassing over parcel

"C". The reason is that Crandon (the owner of "C") plows a driveway from the highway to a point near his boundary with "B". Bostich likes to avoid the expense of plowing his own easement. For over 8 years now, Bostich has made regular trespassory use of parcel "C" in the winter months, though he never does so during the other three seasons.

a. Crandon has no reason to worry that Bostich's winter-time use of parcel "C" might ripen into an easement by prescription because the continuity is interrupted for 8-9 months every year.

b. Crandon has no reason to worry that Bostich's winter-time use of parcel "C" might ripen into an easement by prescription because Bostich is trespassing, and trespass is a legal wrong.

c. Both of the above.

d. After a couple of more years of this trespassory use, Bostich will probably have a good case for asserting an easement by prescription over parcel "C" unless Crandon takes steps to the stop the ripening of the easement.

60. Assume that Crandon, by express grant, gave Bostich an easement "to travel by snowmobile" on a certain winter trail crossing parcel "C" in order to reach a public trail located along the south side off parcel "C". Under this easement:

a. Bostich would almost certainly also be entitled to drive his all-terrain vehicle (ATV) over the easement during the spring and fall months when there is not enough snow for his snowmobile.

b. Bostich would almost certainly also be entitled to run a cable TV wire along the easement so he can get television service to his house.

c. Both of the above.

d. Bostich would almost certainly also be entitled to cut away encroaching brush and remove fallen logs that impede snowmobile travel along the easement.

e. All of the above.

61. Suppose now that McAuliffe's deed conveying parcel "B" to Bostich included an express grant of an easement of way over parcel "A" for "pedestrians, automobiles, and other vehicles." Bostich later subdivided parcel "B" into three new lots, selling two of them to third parties and retaining one for himself. Neither of the deeds conveying the two lots to third parties mentioned any easements. Under the usual presumptions for such situations:

a. Bostich and his two buyers would have to decide among themselves which one gets to use the easement that McAuliffe conveyed to Bostich.

b. Only Bostich would be permitted to use the easement that McAuliffe conveyed to Bostich.

c. The easement would probably be deemed appurtenant to all three of the new lots.

d. None of the above.

62. When McAuliffe conveyed to Bostich, neither parcel "A" nor parcel "B" had electric service. Bostich wanted to run an electric line from the highway to his house over a portion of parcel "A" where Bostich had no easement. He and McAuliffe orally agreed that McAuliffe would allow the line to cross his land and Bostich would let McAuliffe tap in (with a meter, of course). This saved McAuliffe $1000 of installation expense to electrify his property. Bostich paid to have the line put in, including the tap to McAuliffe's house, but McAuliffe now threatens to cut the segment of the line that goes to parcel "B".

a. Bostich has a good basis for claiming an executed parol license for the electric line to his property running across parcel "A".

b. Bostich has a good basis for claiming an easement by estoppel for the electric line to his property running across parcel "A".

c. Both of the above.

d. Bostich has a valid oral contract for an easement and there's no reason he can't simply have specific performance of the contract.

e. All of the above.

<End of examination.>