PACE UNIVERSITY SCHOOL OF LAW

PROPERTY
PROFESSOR HUMBACH August 16, 2017
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 66 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 (including the Rule Against Perpetuities).

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.

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. If you believe today's courts follow more than one rule—a traditional rule and a newer or modernizing rule—**use the traditional rule** unless the question otherwise indicates. Likewise, 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."** 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.

1. Walter Behrens shot and killed a deer while trespassing on land owned by Grant. Now Grant claims the deer (currently in Behrens' freezer):

a. Behrens, as first captor, is entitled to retain the deer.

b. Behrens is entitled to the deer but must pay damages to Grant.

c. Grant is entitled to possession of the deer based on ratione soli.

d. The right to possess the deer will probably be decided based on animus revertendi.

2. Paul Dixon owns a piece of land with a creek running through it. Although the creek bed belongs to Dixon, the creek is legally considered "navigable in fact." Recently, Dixon saw two local fishermen on his property, one walking along the creek bank and the other rowing up from public land downstream. Both caught several trout within Dixon's boundaries. Which of the following is true?

a. It was a trespass for the fisherman in the boat to enter into Dixon's land by rowing upstream over streambed land belonging to Dixon.

b. Dixon should be entitled to any trout caught by the fisherman who entered his land by walking without permission along the creek bank belonging to Dixon.

c. Both of the above.

d. The wild fish living in Dixon's section of the creek are Dixon's property because they are ferae naturae.

e. All of the above.

3. Angela Martin was hunting on Dixon's land. In which of the following cases would Martin be considered a licensee rather than a trespasser?

a. Martin had previously sought and received permission from Dixon to hunt on Dixon's land.

b. Dixon told Martin she was permitted to enter and walk on Dixon's land whenever she wanted.

c. Both of the above.

d. Martin had a valid state hunting license.

e. All of the above.

4. Jillian hunts wild game that she sells to nearby gourmet restaurants. Dixon gave her permission to hunt on his land but he denied permission to Jack. One day, just as Jillian was about to shoot at a wild boar that she spotted on Dixon's land, Jack (who was standing lawfully just outside Dixon's property) discharged two blasts from a shotgun. This caused the boar to bolt away and ruined Jillian's shot.

a. Jillian would have a plausible case for damages against Jack if Jack shot his gun maliciously, for no reason except to prevent Jillian from taking the wild boar.

b. Jillian would probably have *no* action against Jack for damages if Jack discharged his gun solely for the purpose of shooting some wild turkeys that Jack had spotted nearby.

c. Both of the above.

d. Jillian could not have any legal cause for complaint against Jack as long as Jillian did not yet have ownership of the wild boar.

5. Handwell and his neighbor, Tarb, have been on bad terms for several years. Recently, Handwell complained that Tarb's house could use some paint. Tarn responded by painting his house a hideous shade of pink and starting a collection of junk cars in his front lawn. He has no apparent reason other than to annoy Handwell. Although Tarb's acts do not violate zoning or similar laws, they have reduced the appraised value of Handwell's property by about $15,000. Handwell comes to you for advice. You should tell him that:

a. There's not much you can suggest because Tarb has a nearly absolute right to use his property in any way he sees fit.

b. The law consistently refuses to recognize a nuisance where the alleged harm is purely aesthetic.

c. The fact that Tarb's conduct substantially reduces the value of Handwell's property probably makes it a nuisance per se, entitling Handwell to legal relief.

d. Tarb's malicious motivation should be highly relevant in deciding whether his activities constitute an actionable nuisance.

6. Albert Candelaria's next-door neighbor built a backyard swimming pool. Candelaria is bothered by the constant whirring from the filtration equipment. He's also bothered by the pool lights, which cast a glare into his bedroom if he has the windows open for ventilation. He has told his neighbor that the lights interfere with his sleep and asked that they be turned off when the pool is not in use. The neighbor does not like Candelaria, however, and he now leaves the lights on all night. Candelaria has sued in nuisance.

a. If keeping the lights on all night is not necessary to the neighbor's reasonable enjoyment of his own property (including the pool), that fact should count in Candelaria's favor in the case.

b. If the neighbor's conduct negatively affects Candelaria's use and enjoyment of his land, that will probably be enough in itself for a court to declare it a nuisance.

c. The law expects people to try to live together in harmony and courts are quick to find actionable nuisances when people do things that interfere with their neighbors' use and enjoyment of land.

d. It is unlawful to use land in a way that has negative spillover effects on neighboring land.

e. All of the above.

7. Melanie Jerrol sued a nearby rock quarry for trespass and nuisance. Dust, noise and vibrations from the quarry operations were causing her substantial damage, including shattering her windows and contaminating her pond. Assuming that the local courts adhere to the traditional distinctions between trespass and nuisance:

a. Jerrol would have a trespass action for the dust (but not for the noise or vibrations) because the dust particles physically intrude into her property.

b. Jerrol would have a trespass action for both the vibrations and the dust as long as the vibrations and dust cause physical damage to her property.

c. The court would probably dismiss the trespass claim and only allow Jerrol to proceed only based on a nuisance theory.

d. The court would be equally likely to give Jerrol redress based on either trespass or nuisance for the dust, noise and vibration.

8. Arleigh Fillmore was browsing in a bookstore owned by Harriet Bok. He found a small wrapped package behind some books stacked on the floor. Bok was very surprised when Fillmore brought the package to her attention. The owner of the package is unknown. Which of the following (if true) would tend to strengthen Bok's claim to the package?

a. It was lost rather than mislaid property.

b. Bok's bookstore had just opened for the day and Fillmore was the first person (after Bok) to enter the bookstore that morning.

c. The jurisdiction ordinarily follows the so-called "American rule" with respect to lost and found property.

d. The jurisdiction's law of finding does not ordinarily recognize the rights of unconscious possessors.

9. In the preceding question, which of the following (if true) would tend to strengthen Fillmore's claim to the package?

a. The color of the package closely resembled the color of the books near which it was found.

b. The jurisdiction ordinarily requires that lost property be returned to the true owner who lost it, if possible.

c. The jurisdiction ordinarily follows the so-called "American rule" with respect to lost and found property.

d. The package was mislaid property.

10. Lisle and Annette Yarborough rented a beach house for the summer. While digging in the sand just outside the front door, Annette found a 14K gold bracelet that had obviously been there for many years. The landlord of the house, Tony Nesson, admits that he never saw the bracelet before. He contends, however, that he is entitled to it as the owner of the property where it was found. If the jurisdiction follows the "English rule":

a. Nesson should be entitled to the bracelet simply because he owns the ground where it was found.

b. Nesson should be entitled to the bracelet as the earliest known possessor of it even though his possession was unconscious possession.

c. Annette should be entitled to the bracelet since she was in rightful possession of the house and locus in quo at the time the bracelet was found.

d. Annette should be entitled to the bracelet simply because she was the finder.

11. Winston Belmont bought an old tuxedo for $25 at a garage sale. When he got it home, he discovered a hidden pocket in the jacket. On investigation, he found an envelope with the tuxedo seller's name written on it. The envelope contained foreign currency worth over $10,000. The seller just called asking if Belmont noticed anything unusual about the tuxedo.

a. Belmont would probably be considered entitled to the currency since he is the finder.

b. The currency would probably be deemed included in the sale.

c. If Belmont just decides the keep the currency, he would definitely be within his rights in doing so.

d. If Belmont just decides the keep the currency, he would probably be guilty of larceny.

Facts for "Portia" questions. Portia bought an old chest of drawers, which she decided to have refinished. She left it at a furniture repair shop for an estimate. While the chest was in the shop awaiting the estimate, there was a fire and the chest was burned to a crisp.

12. As a result of the legal relationship established between Portia and the shop owner under these facts:

a. The shop owner should be liable to Portia for the loss if it resulted from the shop owner's failure to use ordinary care to protect the chest from fire.

b. The shop owner would *not* be liable to Portia unless he could be considered a "converter" of the chest.

c. The shop owner would *not* be liable to Portia unless he actually started the fire.

d. The shop owner would *not* be liable to Portia unless he was guilty of gross negligence or worse.

13. In an action by Portia against the shop owner:

a. The shop owner should be deemed a gratuitous bailee.

b. There would normally be a non-rebuttable presumption that the shop owner was negligent.

c. The shop owner would be presumed negligent in causing the loss but would be allowed to present evidence rebutting the presumption.

d. Portia would normally not be entitled to any particular presumptions in her favor.

14. Before taking the chest in for an estimate, Portia had it appraised at a passing "antique road show." She learned that the chest was once in the family of President Polk and, therefore, worth at least $5000. However, to all appearances it looked like an ordinary used chest, worth only $20-$100 at most. Portia purposely did not tell the shop owner the true value of the chest when she dropped it off to get the estimate. The shop owner should be liable to Portia for:

a. The $5000 value if he failed to use the ordinary care suitable for a $5000 piece of furniture (even if he used the care suitable for a $20-$100 piece of furniture).

b. The $5000 value if he did not use the ordinary care suitable for a $20-$100 piece of furniture.

c. Nothing since Portia, by her silence, misled the shop owner as to the true value of the chest.

d. No more than the apparent value of the chest ($20-$100).

15. When Portia left the chest at the repair shop for the estimate, she accidentally forgot to remove some gold coins that she had placed in the chest's hidden compartment. Under the better analysis, the shop owner should not be considered as bailee of the coins because:

a. He had no knowledge of them.

b. He did not possess them.

c. He accepted the chest only for purposes of making an estimate and not (yet) for the purpose of refinishing it.

d. None of the above. By possessing the chest, the shop owner had unconscious possession of the coins and, so, he *should* be considered as bailee of the coins (though not necessarily liable if the coins disappeared).

Facts for Easton questions. David Easton owns a small farm along the Paskagoocha River in Griggs County. Arthur Dee, a close friend of certain county officials, wants land to set up profitable brazing factory. Because brazing requires lots of water, he needs streamside land. The county legislature has declared that Easton's farm would be much better used (and pay higher taxes) in the hands of Dee. It has further declared it to be in the public interest to take the farm by eminent domain in order to turn it over to Dee. Easton wants to keep his farm, which has been in his family for 4 generations.

16. Easton should have no concerns because:

a. Eminent domain cannot be used to take private property to turn it over to another private person.

b. The Constitution does not allow eminent domain to be used to promote private economic development.

c. He is constitutionally guaranteed a payment of compensation sufficient to leave him fully satisfied in the end.

d. None of the above. Easton *should* be concerned because courts are deferential to legislative determinations that takings by eminent domain will further a public interest.

17. If Easton has any right at all to prevent his farm from being taken, it is most likely (pick the best answer):

a. Under the Due Process Clause on the ground that the taking is not for a public purpose.

b. Under the literal wording of the Takings Clause, which says that takings can only be "for public use."

c. Under the Diminution of Value Clause on the ground that his farm has special value to him.

d. None of the above; the Constitution contains nothing that limits the governmental power to take property as long as the owner receives just compensation.

18. If the county does take Easton's farm by eminent domain, Easton will be entitled to "just compensation," meaning:

a. A sufficient amount of money to put him in as good a position as he would have been in had the taking not occurred.

b. The fair market value of the land based on what a willing buyer would pay and a willing seller would accept for the property.

c. Fair market value plus additional compensation for any special sentimental value that Easton can prove that the property has for him.

d. The value that the property will have to Dee, for whom it is being taken.

19. According to the Supreme Court, which of the following could *not* be deemed a public use or public purpose suitable to support a valid exercise of eminent domain?

a. An airport that will be owned by a municipality and primarily serve private corporate jets.

b. A highway off-ramp to provide access to a privately owned multiplex cinema.

c. A corporate-owned shopping mall that will house private retail businesses.

d. All of the above could be deemed suitable public uses or public purposes.

e. None of the above could be deemed a suitable public use or public purpose.

20. In 2009, Max Ulrich bought 263 acres of farmland near the edge of town. He intended to develop it into a residential subdivision. Now he's ready to start the development. Recently, however, the Town passed an agriculture preservation law that prohibits converting farmland to other uses unless a "certificate of public need" is obtained. The Town denied Ulrich's application for the certificate. He can still use the land for farming (a valuable use), but he has been deprived of a $6 million development profit. In considering whether the Town's new use regulation constitutes a compensable taking, which of the following factors has the Supreme Court said ought to be considered:

a. The effect of the regulation on distinct investment-backed expectations.

b. The economic impact of the regulation.

c. Whether the Town has shown persuasively that the regulation is necessary to meet a demonstrated public need.

d. More than one of the above.

21. Ernie Princeton is an investor in a tract of land along Mossy Creek. The land is low-lying and marshy. During heavy rains it holds back water, protecting downstream homeowners. The county denied Princeton's application for a building permit because, it said, any construction on the tract would cause serious public harm, specifically, flooding of downstream homeowners and new burdens on emergency services. Princeton alleges that his tract has no use or value to him if he cannot build on it. He has sued the county claiming that the permit denial is a taking that requires compensation. As the county's lawyer:

a. Your best argument is there could not have been a "taking" because nothing was taken: Princeton still has his land and the county has merely restricted its use.

b. You should move to start settlement negotiations since there is no apparent way the county can avoid paying hefty compensation in a case like this.

c. You should make an effort to show that Princeton's land *does* have residual value and use, even if he cannot build on it.

d. You need not be concerned because the county's public purpose to prevent serious public harm means that compensation is not constitutionally required.

22. Suppose in the preceding question that the county ultimately lets Princeton build on most of his tract but denies building permits for a corner of the property where 3 houses were planned. As a result, Princeton sustains a 15% diminution of value of the tract as a

whole and a 100% diminution of the non-buildable corner area. Princeton would be constitutionally entitled to compensation equal to:

a. 15% of the value of the tract.

b. 100% of the value of the corner area.

c. Nothing.

d. The amount he paid for the corner area on which he is not allowed to build.

23. Last month Princeton noticed some kayakers paddling down Mossy Creek along the edge of his property. His lawyer told him that he owns to the middle of creek. He now has sued the kayakers for trespass. The kayakers' lawyer argues that her clients were not trespassers pointing out that the creek is navigable in fact. If the court rules that the public right of navigation applies to Mossy Creek, the ruling:

a. Would be a taking of Princeton's property entitling him to just compensation.

b. Would be a taking of Princeton's property but not the kind that would entitle him to compensation.

c. Could *not* be a taking of Princeton's property because the court would merely be modifying his right to exclude.

d. Would *not* be a compensable taking because a right to exclude the public from boating on navigable-in-fact waters was never a part of Princeton's property rights in the first place.

24. Suppose in the preceding question that the county passes a new law allowing people to cross private lands in order get access to fishable waters (including Mossy Creek). Since then, members of the public have worn a path across Princeton's land and he objects. He has asked his lawyer to challenge the new law:

a. The new law results in a compensable taking by curtailing Princeton's right to exclude others.

b. The new law results in a compensable taking only if it deprives Princeton of all use or value of his land.

c. The new law does *not* result in a compensable taking because the county has not actually taken the land but merely authorized members of the public to use it.

d. The new law does *not* result in a compensable taking because it is customary for members of the public to have the right to fish in fishable waters.

25. Aston Morris lent his car to his brother, Mickey. While driving around in the car, Mickey puffed on a joint, an illegal act. He was stopped for a routine traffic violation and the police sniffed the illicit aroma. They arrested Mickey. Aston's car was impounded and declared forfeit under a statute that authorizes civil forfeiture of any property used as an "instrumentality of a drug crime." Aston seeks return of his car. Under the Constitution:

a. Aston is entitled to return of his car as long as he was in no way involved in the commission of any drug crime.

b. Aston is not entitled to return of his car but he is entitled to just compensation as long as he was in no way involved in Mickey's crime.

c. Aston is not entitled to return of the car or to just compensation, whether or not he was involved in Mickey's crime.

d. Aston has, on these facts, been deprived of both procedural and substantive due process.

26. In a landmark case on regulatory takings, homeowners sued to enjoin a coal company from mining coal under their homes in such a way as to cause subsidence and destruction of the surface. The Supreme Court held in favor of:

a. The homeowners, because private home ownership is an important American value resulting in a strong public interest to protect private homes.

b. The coal company, because a law making it commercially impracticable to mine certain coal has very nearly the same effect as appropriating or destroying it.

c. The homeowners, because the coal company was carrying on a profitable business at the homeowners' expense.

d. The coal company, because the legislature had expressly authorized the company to mine coal under people's homes.

27. Gail Gleason received a deed purporting to convey a 4-acre wooded suburban lot. She hired a developer to clear about one acre and build a house there. For the past 12 years, she has used the house and surrounding cleared yard just as every other ordinary homeowner in her area. Now she learns that her grantor was a fraudster who never owned the lot in the first place. It was an empty foreclosed lot belonging to Carrion Bank, and the bank is asserting a claim to her property.

a. Under the claim of right rule, she can probably successfully claim a ripened title to the entire 4-acre lot.

b. Under the color of title rule, she can probably successfully claim a ripened title to the entire 4-acre lot.

c. She can probably successfully claim a ripened title only to the one-acre portion of the lot that she actually possessed as an adverse possessor.

d. She probably cannot successfully claim a ripened title to any part of the 4-acre lot because she did not have actual possession of the whole lot.

Facts for Mary-Rebo questions: Osgoode Ellis died owning Blueacre, a 199-acre tract of land containing a nice lake. His niece, Mary Thorpe, believed herself to be his sole heir and took possession of the land. In fact, unbeknownst to Mary, Uncle Osgoode had a daughter, Laura Loupe, who was his true heir. After 9 years of possession, Mary discovered that Ray Rebo had entered the land without permission and cut down valuable timber. Mary has sued Rebo in trespass for damages.

28. Rebo's lawyer discovered Laura's heirship rights, but Laura cannot be found:

a. Rebo should be able to get the case dismissed because Mary is not the true owner of the land.

b. Mary is not entitled to any recovery because she did not have lawful possession of the land.

c. Rebo should prevail because Laura (not Mary) had constructive possession of the land.

d. Rebo should be liable to Mary for damages.

29. Suppose Rebo asserts as his defense that he is entitled to judgment simply because Laura is the true owner (not Mary):

a. It would be an example of a valid jus tertii defense.

b. The court should reject the defense under the jus tertii rule.

c. The court should dismiss Mary's claim because Mary lost nothing due to Rebo's actions.

d. The case would be put into abeyance until we see whether Mary will acquire a ripened title by adverse possession.

30. Suppose Rebo's lawyer finally finds Laura but she says she's "too busy" with her career in Hollywood to be bothered. Two days later, Laura tells Mary and her lawyer over the phone that she gives Mary all her rights in the land.

a. Though Mary had no case against Rebo before, now she would have one because she has become the true owner of the land.

b. Mary would still have no case against Rebo because, at the time of the trespass, Laura was still the owner, not Mary.

c. Laura would still, on these facts, be the true owner of the land.

d. Laura would still, on these facts, be immediately able to recover from Rebo in trespass even if Mary still has possession.

31. Ordinarily, today's private property rights to land in the United States originated in (and are traceable back to):

a. Conveyances from sovereign owners such as the U.S. government or the state in which the land is located.

b. Conveyances from the Native Americans who owned the land before the European colonists arrived.

c. Conveyances made by the "discovers" such as John Cabot, Henry Hudson and Hernando deSoto.

d. Conveyances from the Pilgrims.

32. The generally accepted rationales for permitting the acquisition of title by adverse possession include:

a. To provide an affordable alternative for those who are financially unable to buy property using conventional mortgage financing.

b. To protect property owners from losses and inconveniences that can result when stale claims are asserted based on alleged facts that supposedly occurred long ago.

c. To promote land-use transparency by punishing those who do not make open and notorious use of their land.

d. All of the above.

e. None of the above.

33. In the early '90s an island formed in a river running through a forest tract owned by Constellation Timber Co. In 2006, Larry Dwyer took possession of the island and built a substantial structure there. For the past 10-plus years he has lived on the island and done everything he could to control who came on it. Now, Constellation has sued Larry in ejectment. It argues that, in several blog entries, Larry has denounced private ownership and said that everyone has a natural right to use any open land that isn't already being actively used by another. According to Constellation, the blog entries show that Larry's alleged acts of possession were not under a claim of right.

a. It does not actually matter to Larry's defense whether his acts were under claim of right or not.

b. Under the majority rule, Larry's statements in the blog should be controlling.

c. Constellation has a point because, under the majority rule, title does not ripen unless the possessor's subjective state of mind was to make a claim of right.

d. Under the majority rule, the "claim of right" element is objectively determined from the possessor's conduct, and Larry's actual state of mind would be irrelevant.

34. Lancaster owns an apartment building. Four months ago, he made an oral lease of an apartment to Torrey. The lease was for an agreed term of *9 months*, reserving a rent of $1200 per month. Torrey has moved in and has been duly paying the rent each month:

a. Torrey has a term of years.

b. Torrey probably has a tenancy from month to month.

c. Torrey probably is a tenant at will.

d. Torrey is a licensee.

35. Suppose that Lancaster orally leased to Torrey creating a month-to-month tenancy that commenced April 28, 2017. Lancaster wants to terminate the tenancy as soon as possible. Suppose that today (August 16, 2017) Lancaster hand-delivers a notice to Torrey stating that the tenancy will terminate August 27, 2017.

a. The notice should be effective according to its terms, and Torrey would be unlawfully holding over if he were still in occupancy after August 28.

b. The notice would *not* be effective according to its terms, but Torrey would nonetheless be unlawfully holding over if he were still in occupancy after August 28.

c. The notice would *not* be effective to end the lease in August, but Torrey would nonetheless be unlawfully holding over if he were still in occupancy on September 28.

d. The notice would not be effective to terminate Torrey's tenancy.

36. Six months ago, Sam Fenwick *orally* leased his house to Kathy Van Ness for an agreed term of two years, reserving a rent of $3000 per month. Van Ness moved in and continues to occupy the house, duly paying the rent each month.

a. Van Ness has a term of years.

b. Van Ness probably has a tenancy from month to month.

c. Van Ness probably has a tenancy from year to year.

d. There is no legal basis for assuming that Van Ness has anything but a tenancy at will.

37. Sharon Tumulty occupies an apartment under a 3-year lease. Shortly after she moved in, the landlord leased the apartment directly overhead to a group of college students. They are very noisy. Loud sounds from above invade Sharon's apartment at all hours of the day and night (except in the morning before 11:00 a.m. or so). Sharon wants to move out before the end of her lease despite the landlord's objection. She wants to know if she would continue to be liable for rent.

a. Sharon should not continue to be liable because tenants who move out early are not legally responsible for rent as long as they let the landlord know a reasonable time in advance.

b. Sharon should not continue to be liable because tenants who move out early are not legally responsible for rent as long as they let the landlord keep the security deposit.

c. In order to assert constructive eviction ending her liability for rent, Sharon would have to show (among other things) that her apartment was untenantable.

d. Even if the court decides Sharon's apartment is not untenantable, she would still be able to assert constructive eviction as long as she actually moves out.

38. Dissatisfied with some of the traditional rules, many courts have adopted the implied warranty of habitability and said they would treat leases as contracts. The effect of these changes in the law is to:

a. Extend the doctrine of "independence of covenants" so that it applies to leases.

b. Give tenants a more-or-less effective "rent weapon" to motivate landlords to perform their obligations under leases.

c. Require landlords to expressly spell out in the lease the services to which tenants are entitled, and to deny tenants any right to services that are not clearly spelled out.

d. Require tenants to show that the premises are untenantable in order to assert a constructive eviction.

39. Vincent conveyed a house "to Kevin and Kendra Kasperov and their heirs" in a state that recognizes all three of the common law concurrent estates. At the time of the

conveyance, the Kasperovs were married to each other. The Kasperovs would have presumptively received:

a. A tenancy in common.

b. A joint tenancy.

c. A joint tenancy with right of survivorship.

d. A tenancy by the entirety.

40. Suppose Kevin and Kendra Kasperov acquired their house as tenants in common. Later, they had a break-up and Kendra moved out, leaving Kevin living in the house alone. Under the majority rule:

a. Kendra would normally be entitled to recover rent from Kevin for the time that he was in sole occupancy.

b. Kevin would normally be able to acquire sole ownership by adverse possession simply by holding sole occupancy for the next ten years after Kendra moved out.

c. Kevin cannot, as cotenant, prevent Kendra from selling her one-half interest to another person who then would have an equal right with Kevin to possession.

d. If Kevin does not pay rent to Kendra for his sole occupancy, she can sell his interest to recover what is owed her.

41. Suppose Kevin and Kendra Kasperov acquired their house as joint tenants. Later, Kevin died with a will leaving all his property to his son, Matt, from a previous marriage. The house would now belong to:

a. Kendra and Matt as joint tenants.

b. Kendra and Matt as tenants in common.

c. Kendra alone.

d. Matt alone.

42. Will, Phil and Jill acquired a vacation cottage as joint tenants. Phil then died intestate. The property would be owned by:

a. Will and Jill as joint tenants.

b. Will and Jill as tenants in common.

c. Will, Jill and Phil's heir as joint tenants.

d. Will, Jill and Phil's heir as tenants in common.

43. Suppose again that Will, Phil and Jill acquired a vacation cottage as joint tenants. Phil then conveyed his one-third interest to McGill. If McGill then died intestate before Phil, the property would belong to:

a. Will and Jill as joint tenants.

b. Will, Jill and McGill's heir as tenants in common.

c. Will, Jill and McGill's heir as joint tenants.

d. Will and Jill as joint tenants as to an undivided 2/3, and McGill's heir would own the other 1/3 as tenant in common with them.

44. .Arvin and Alice acquired Brownacre as joint tenants. Later, Alice borrowed $35,000 from Security Bank. She signed and delivered a mortgage on Brownacre to secure repayment of the loan. (Arvin was not a party to the mortgage.) Alice now has died and the bank has begun proceedings to foreclose the mortgage. Arvin has hired a lawyer to resist the foreclosure. Brownacre is worth about $700,000:

a. In a state that follows the title theory of mortgages, the bank could foreclose on the one-half interest that Alice would have had as tenant in common at her death.

b. In a state that follows the lien theory of mortgages, the joint tenancy would have been severed when Alice signed and delivered the mortgage.

c. In a state that follows the title theory of mortgages, the joint tenancy would have been severed at Alice's death.

d. No matter which theory of mortgages the state follows (title or lien), the bank would be permitted to foreclose against Alice's one-half interest in Brownacre.

45. Coppel decided to give a copy of the book "Digital Dairy Farming" to his nephew, Linton, as a present on Linton's birthday. He bought a copy of the book and wrote on the inside cover: "For Linton, on your birthday, 8/15/17." Coppel passed away unexpectedly two days before the birthday, still having possession of the book. A court could properly conclude:

a. The gift planned by Coppel never became complete due to a lack of *in praesenti* donative intent.

b. The gift planned by Coppel never became complete due to a lack of "delivery."

c. Both of the above.

d. The gift planned by Coppel became effective as a gift causa mortis.

46. Assume again that Coppel decided to give a copy of "Digital Dairy Farming" to his nephew, Linton, but now assume that Coppel (alive and well) delivered the book to Linton at his birthday party, Linton said thanks and asked: "Have you read it?" Coppel said no and Linton immediately handed the book back to him saying: "I want you to have a chance to read it first. I know how much this subject has always intrigued you." Coppel took back possession of the book in order to read it:

a. The gift would probably not yet be complete because there was no final delivery.

b. The gift would probably not yet be complete to due a lack of *in praesenti* donative intent.

c. Both of the above.

d. The donor became the bailee of the donee.

47. Suppose Coppel was on his deathbed and wanted to give some bonds to his nephew, Linton. He handed Linton a key to a safe-deposit box and said: "Go to this box at the Shakey Bank and Trust Co. and take out all of the bonds that are there. They are yours."

a. Assuming Coppel did not retain a duplicate key, these events would probably qualify as constructive delivery of the bonds.

b. Whether or not Coppel retained a duplicate key, these events would probably qualify as constructive delivery of the bonds.

c. Even if these events qualify as constructive delivery, Linton would not own the bonds unless he got them out of the safe-deposit box and into his own actual possession before Coppel's death.

d. Even if these events did *not* qualify as constructive delivery, the gift should be valid as a testamentary gift.

48. Gregory Wharton was an invalid but *not* in any particular apprehension of death. He wanted to give some bonds to his grandsons, Oliver and Andrew. As it happened, Oliver was already holding possession of the bonds in safekeeping as a personal favor to Wharton. In an attempt to make the desired gift, Wharton told Oliver: "I've decided to give those bonds you're holding to you and Andrew, half for you and half for Andrew." Oliver said nothing. Wharton added: "Make sure Andrew gets his share." Oliver said okay.

a. The gift of half the bonds to Oliver is complete, but the gift of the other half to Andrew could not be complete (under these facts) until Oliver personally transfers physical possession of them to Andrew.

b. The gift of half the bonds to Oliver is complete, and the gift of the other half to Andrew would also be complete (under these facts) assuming that the court deems Oliver to be acting as "agent" for Andrew for purposes of this gift.

c. The gift of half the bonds to Oliver is not yet complete because, under these facts, Wharton never made a delivery to him with an *in praesenti* intention of making a gift.

d. The gift of half the bonds to Andrew could yet not be complete because, under these facts, there is no evidence that Andrew ever clearly signified "acceptance."

49. Suppose Wharton, an invalid but *not* in any particular apprehension of death, wanted Andrew to have his antique clock after his death. Suppose also, however, that Wharton wanted to retain the clock, with its restful "tick, tick, tick," for the rest of his lifetime. Wharton is trying to decide how to accomplish his intentions.

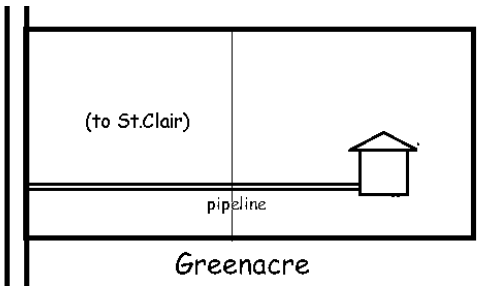
a. If he amends his will to bequeath the clock to Andrew, Wharton can still change his mind later and make an outright sale of the clock (full title) to somebody else.

b. If Wharton retains a life estate in the clock and gives a future interest (such as a "remainder") to Andrew, he can still change his mind later and make an outright sale of the clock (full title) to somebody else.

c. Both of the above.

d. Either way Wharton makes the gift, whether by future interest or by will, Andrew would not get any property rights in the clock until after Wharton's death.

Facts for Ortiz-Greenacre questions. Frederic Ortiz acquired a fee simple in Greenacre in 1965. Soon after he built his home on the easterly side of the property, away from the road. The home was connected to the city water supply by an underground a pipeline that Ortiz constructed across Greenacre to the street. In 1995, Ortiz conveyed the western portion of Greenacre to St.Clair, as shown below:



50. Suppose that, in the 1995 deed to St.Clair, Ortiz expressly reserved an easement for the underground pipeline:

a. After the conveyance, Ortiz presumptively had an appurtenant easement for the pipeline crossing the lot owned by St.Clair.

b. After the conveyance, Ortiz presumptively had an easement for the pipeline that would probably pass automatically to later owners who might acquire Ortiz's retained lot in the future.

c. Both of the above.

d. All of the above *and*, moreover, before Ortiz conveyed the western part of Greenacre, he had an affirmative easement by implication for the pipeline crossing the western part of the property.

51. Suppose that the 1995 deed from Ortiz to St.Clair mentioned no easements. Suppose also that St.Clair was totally unaware of the underground pipeline at the time he purchased. The only surface evidence of the pipe is a small but prominent plate covering a shutoff valve located on St.Clair's lot. In order to establish an easement by implication (implied in his 1995 conveyance), Ortiz would have to make a persuasive case that:

a. The surface plate made it "apparent" there was a underground pipeline across the lot sold to St.Clair.

b. Having use of the pipeline is was at least reasonably necessary (and, in some states, strictly necessary).

c. Both of the above.

d. None of the above. A grantor is not allowed to claim an "implied" easement over land conveyed by a deed that mentions no encumbrances.

52. Suppose that the 1995 deed to St.Clair did not expressly or otherwise provide Ortiz with an easement for the pipeline. Are there other possibilities? Suppose that, in 1996, St.Clair found out about the pipeline by observing the shutoff valve at the surface and he objected vociferously but that, despite St.Clair's objection, Ortiz has continued using the pipeline ever since.

a. In most jurisdictions, Ortiz would probably have a strong basis for asserting that he has acquired a prescriptive easement to maintain the pipeline over St.Clair's land.

b. Ortiz probably could not successfully assert a prescriptive easement for the pipeline because St.Clair has objected to it.

c. These facts suggest no basis for claiming an easement by prescription since the use was obviously not hostile.

d. These facts suggest no basis for claiming an easement by prescription since the use was not open and notorious.

53. Suppose that, based on longstanding use and other pertinent facts, Ortiz has acquired an easement by prescription for the pipeline across St.Clair's lot. St.Clair now, in 2017, wishes to place a garage on his lot at a location traversed by the pipeline (so the pipeline would be under his new garage):

a. The existence of the easement would per se prevent construction of a garage on the easement location without Ortiz's consent.

b. Following the rules applicable to easements of way, St.Clair would be allowed to unilaterally move the pipeline easement (at his own expense) provided only that Ortiz does not experience any unreasonable interruption of water flow.

c. An easement owner is not allowed to use an easement in a way that substantially interferes with the use of the servient land and, therefore, Ortiz must allow St.Clair to relocate the pipeline as he sees fit.

d. St.Clair should be allowed to build his proposed garage on the easement location as long as he can do so without unreasonably interfering with the easement owner's uses that are in the scope of the easement.

54. Suppose that when, in 1995, Ortiz conveyed the western portion of Greenacre to St.Clair, he expressly reserved an easement "for a water supply pipe from the water main in the street to present or future structure(s) built on the grantor's retained premises." Ortiz is now thinking about subdividing his retained parcel into four smaller lots, each with a house on it. To do this, he needs to replace the existing water pipe with a larger diameter pipe at the same location. St.Clair strongly objects to the subdivision plan and wants to stop it. Which of the following is his best legal argument?

a. The larger size of the new pipe would significantly increase the physical burden on the servient land.

b. The larger size of the new pipe would unlawfully increase the use of the dominant tenement.

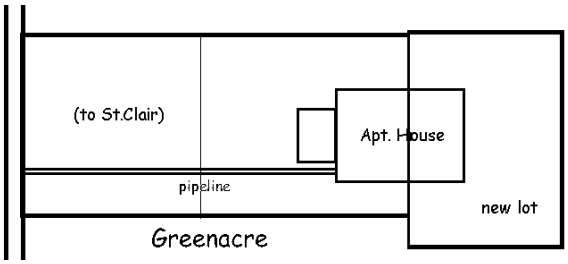
c. The plan would require St.Clair's lot to be dug up to install the larger pipe.

d. All of the above are strong legal arguments for stopping Ortiz's plan

e. None of the above. There appears to be no legal reason why Ortiz cannot use the original easement for a new and larger pipe to supply water to the proposed four-lot subdivision.

55. Suppose again that when, in 1995, Ortiz conveyed the western portion of Greenacre to St.Clair, he expressly reserved an easement—worded as set out in the preceding question.

Ortiz decided against the four-lot subdivision and instead bought the lot to his east. He proposes to place an apartment house on the combined parcels, straddling the boundary (see below).



To do this, Ortiz needs to replace the existing pipe with a larger diameter pipe at the same location. St.Clair strongly objects to the plan and wants to stop it. Which of the following is his best legal argument?

a. The larger size of the new pipe would significantly increase the physical burden on the servient land.

b. The plan would unlawfully add onto the dominant tenement that the easement serves.

c. The plan would require St.Clair's lot to be dug up to install the larger pipe.

d. All of the above are strong legal arguments for stopping Ortiz's plan

e. None of the above. There appears to be no legal reason why Ortiz cannot use the original easement for a new pipe to supply water to the proposed apartment house.

56. Suppose that Ortiz went ahead with his plan for the apartment house, as described in the preceding question. For a water supply, however, he built a new pipeline, entirely on his own land, connecting with a water main that was located to his south of his new lot. The old water pipe crossing St.Clair's land is, as a result, lying idle; it is both unneeded and totally unsuited for any future use in connection with Ortiz' land. Would Ortiz's easement for the pipe across St.Clair's land be extinguished?

a. Probably yes, based purely on the fact that Ortiz quit using the old pipe.

b. Probably yes, because Ortiz not only quit using the old pipe but, also, he made permanent changes in the dominant tenement that are inconsistent with future use.

c. Probably no, because property rights in land cannot be simply abandoned.

d. Definitely no unless the pipes have been dug up and removed.

57. Cory Tissone is buying a lot on which he wants to build a 2-family house for his own family and his mother-in-law. His lawyer did a search of the seller's chain of title. He

found a 1935 deed from the original subdivider that contained a covenant prohibiting houses for more than one family. All of the deeds to the original lot owners in the tract have the same covenant, and it has not been violated to date. A neighboring owner, who holds title under one of the other deeds from the subdivider, is raising objection. If Tissone takes title from the seller:

a. Tissone would probably not be bound to the covenant because he did not personally make it.

b. Tissone would probably not be bound to the covenant because he would not be in privity of contract with anybody who might try to enforce it.

c. Tissone would probably not be bound to the covenant because this is not the kind of covenant that touches and concerns the land.

d. Tissone probably *could* be bound to the covenant because, among other things, there appears to be the needed privity of estate.

58. Jordan made a contract to pay $500,000 for a piece of developable land. On August 10, the seller, Eli Simpson, drafted and signed a deed in preparation for the closing, which was to be held the next day. On August 11, Simpson delivered the deed to Jordan in exchange for a $500,000 cashier's check. Jordan promptly recorded the deed. When did Jordan became the owner of the land?

a. When Simpson signed the deed.

b. Upon the delivery of the deed by Simpson to Jordan.

c. At the time the deed was recorded.

d. Only after the $500,000 check had cleared.

59. Assume in the preceding question that the deed received by Jordan contained a courses and distances description which, due to a typographical error, did not close. This typo created an ambiguity that could not be cured by interpretation or extrinsic evidence.

a. The typo does not matter because descriptions in deeds are mostly just a formalistic matter and courts generally are not concerned if they are somewhat inaccurate.

b. Jordan can easily fix the mistake by inking over the erroneous typo with the correct information.

c. Once the deed is recorded, the mistake would be considered cured.

d. The deed is void for vagueness and ineffective to convey title.

60. Howard McKay decided to sell his home and asked a broker named Tucker to try and find a buyer. Tucker advertised and showed the property, and soon he found someone who was ready, willing and able to purchase on the essential terms set by McKay. The prospective buyer and McKay entered into an unconditional contract of purchase and sale, but the deal fell through when the buyer unexpectedly lost his job. Tucker now demands that McKay pay a commission equal to 6% of the contract purchase price (which would be a reasonable and customary amount for brokers in the community). Under the traditional rule:

a. McKay is not obligated to pay because he never signed a listing agreement.

b. McKay is not obligated to pay because the sale was never consummated.

c. Both of the above.

d. None of the above. It appears that Tucker has earned his commission and McKay is obligated to pay it.

61. Later on, McKay entered into a contract to sell his house to Norton. At the contract signing, Norton provided a 10% down payment that is now held in escrow by McKay's lawyer. The contract provides that the buyer's obligation is conditional on the buyer's obtaining a building permit from the Town to construct a garage on the property. The time for closing specified in the contract has come and gone and Norton still does not have the permit. In fact, inexplicably, he has not yet even applied for one. Now Norton is demanding that McKay return the down payment.

a. Norton is entitled to return of the down payment because his obligation to buy was expressly conditional and the condition has not occurred.

b. Norton is *not* entitled to return of the down payment because down payments are not refundable.

c. Norton is *not* entitled to return of the down payment because he did not even apply for a building permit.

d. Norton *is* entitled to return of the down payment because the closing date has passed and no closing has occurred.

62. Monty Monroe entered into a contract to buy a house from Jason and Wendy Wineth. The contract did not specify the quality of the title that the buyer was to receive. A title search revealed that the deed under which the Wineths received title omitted a substantial portion of their backyard. They assured Monroe that they had lived in the house and continuously possessed the whole backyard for well over 10 years and, accordingly, they had title by adverse possession. Monroe refuses to go through with the deal.

a. Monroe has no right to reject the Wineths' title because the contract did not specify the quality of the title that the buyer was to receive.

b. Monroe has a perfect right to reject the Wineths' title because he is entitled to a marketable title and the Wineths' title (being partially based on adverse possession) cannot be considered marketable.

c. Monroe might be obligated to go through with the deal because, although he has a right to demand a marketable title, the Wineths' title is not necessarily unmarketable.

d. Even if a court decides the Wineths' title is unmarketable, Monroe can be required to accept it as long as a reputable title insurance company insures that his possession will not be disturbed.

63. In the preceding question, if Monroe wanted to avoid the possibility of being forced to accept a title based on adverse possession, he should have made sure that the contract expressly required the seller to provide a title that is:

a. Marketable.

b. Insurable.

c. Both marketable and insurable.

d. Marketable of record.

64. Suppose again that Monty Monroe entered into a contract to buy a house from Jason and Wendy Wineth. Soon after the contract was signed, a pipe broke in the house, causing water damage to the dining room. It was determined on investigation that the plumbing in the house had been done with defective materials and needed extensive remediation. The Wineths had been unaware of the problem and made no representations about the plumbing in the contract. Under the traditional doctrine of equitable conversion:

a. Monroe became the equitable owner of the house at the time of contracting and, as such, bore the risk of losses occurring between the contract and closing.

b. Equity courts would allow Monroe to convert the contract into an option to purchase if an unexpected event, such as this one, occurred.

c. Sellers are deemed by equity courts to warrant that the condition of the property will not deteriorate significantly between the time of the contract and the closing.

d. The Wineths would be responsible for fixing any major defects that they failed to disclose to Monroe.

65. Michael Enquist borrowed $300,000 from Nathan Divitt. He signed a promissory note agreeing to repay the loan and gave Divitt a mortgage on his house. Enquist then

sold the house to Robinette, who found out about the note and mortgage prior to taking title. After selling to Robinette, Enquist made no further payments. Divitt foreclosed. If the proceeds from the foreclosure sale covered only part of the amount due on the loan, Robinette could be held personally liable to pay the deficiency if:

a. He took subject to the mortgage.

b. He assumed the mortgage.

c. Either of the above.

d. None of the above.

66. Neville Krauss entered into a contract to sell a vacant lot to Robinette. The contract did not mention any easements, nor did it specify the quality of the title that Krauss was required to provide. When Robinette found out before the closing that there was a recorded easement on the property, he wanted out of the deal.

a. Robinette would have no right to get out of the deal and he must accept Krauss's title, such as it is, since the contract did not mention quality of title.

b. Robinette cannot be required to honor the easement because it was not mentioned in the contract of sale.

c. Robinette would be entitled to reject Krauss's title.

d. Robinette can go ahead and accept Krauss's title and then, after the closing, recover damages from Krauss for breach of the implied warranty of marketability.

<End of examination>