PACE UNIVERSITY SCHOOL OF LAW

PROPERTY
PROFESSOR HUMBACH August 15, 2018
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 60 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 that material. 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.

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. Maples caught a wild baby rabbit in his backyard. He put it in a cardboard box on his porch, along with some food and water. The rabbit escaped and ran to the neighbor's backyard, where the neighbor caught it. Maples has demanded return of the rabbit.

a. The rabbit belongs to Maples as the first captor.

b. Maple's right to the rabbit ceased when he no longer had possession of it, so the neighbor is entitled to keep it.

c. Maples did not get any special rights to the rabbit merely by catching it and putting it in a box, so the neighbor is entitled to keep it.

d. The rabbit became the neighbor's property the moment it ran into his backyard.

2. Wilshire Industries buys natural gas on the interstate market. It stores the gas by injecting it into an old gas well that was depleted long ago. The well connects to a natural underground cavity that extends under land belonging to Nathan. Much of the injected gas flowed under Nathan's land. In at least some of the states that apply the rule of capture to natural gas (treating it like ferae naturae):

a. Nathan may lawfully pump out and sell natural gas that Wilshire injected into the cavity.

b. Nathan would not have a trespass action against Wilshire because Wilshire ceased to own the gas that flowed under Nathan's' land.

c. Both of the above.

d. None of the above.

3. Lorraine DuPont threw a pot at a cat belonging to Fenwick to shoo it away. The pot caused injuries that resulted in $2,200 of veterinary bills plus much emotional distress to Fenwick. Now Fenwick is suing Lorraine to recover for the veterinary expense along with $30,000 for emotional distress.

a. Fenwick cannot recover on a theory of trespass to chattels because a cat is not an inanimate object.

b. Fenwick should be able to recover in trespass for his economic loss but not for his emotional distress damages.

c. Fenwick should be able to recover in trespass for his economic loss as well as for his emotional distress damages.

d. The proper action for Fenwick to recover from Lorraine is an action in trover.

4. A storm damaged a large tree in Gary's backyard. He needed to have it removed. In order to bring in the necessary equipment, his contractor needed to have access across land belonging to Gary's neighbor, Cossett. Without the equipment, alternative methods of removing the tree would cost 3-4 times more. Cossett refused permission to use his land even after Gary offered a generous payment. The next week, while Cossett was away on a business trip, Gary called the contractor and told him it was "all clear" to use Cossett's land "if you can get it done today," which he did. Cossett now sues Gary.

a. Gary had a right to make reasonable use of Cossett's land for a reasonable fee because the use was necessary.

b. Gary had a right to make reasonable use of Cossett's land at no charge because Cossett had unreasonably refused the offer of payment.

c. Gary had no right to use Cossett's land but he would not be liable to pay damages unless the trespass caused actual economic injury or loss.

d. Cossett may even have a case for recovery of punitive damages.

5. During an extended construction project near her home, Tara Potter was plagued with constant machine noise and vibrations. The dust from the project accumulated on her windowsills and furniture. Under the traditional rules, the appropriate action for Tara to bring would be:

a. Nuisance.

b. Trespass.

c. Either of the above would be appropriate.

d. None of the above.

6. A primary difference between trespass and nuisance actions is that:

a. Nuisance analysis normally involves a balancing of benefits and burdens whereas in trespass actions do not.

b. Reasonableness is not a factor in nuisance analysis whereas it is a factor in trespass cases.

c. Liability in nuisance does not require proof of a substantial harm but liability in trespass does require such proof.

d. None of the above. The two actions are nowadays essentially the same.

7. Gilead Lanscome owns a farm near an open gravel pit. The gravel company has to constantly pump water from the pit in order to mine the gravel. The effect has been to

lower the water table in the area, causing Gilead's wells go dry in the summer. It will cost Gilead $25,000 to drill deeper wells.

a. In a case like this there is a presumption that the underground water is *not* percolating water unless it is proved otherwise.

b. Under the traditional rules for underground water, the gravel company would probably not be liable to Gilead for pumping out the pit in order to mine gravel.

c. Gilead would have a better case for recovering damages from the gravel company in a state that follows the English rule (rather than the American rule).

d. Under the traditional rules for underground water, Gilead probably can get an injunction prohibiting the gravel company from activities that negatively affect Gilead's wells.

8. Mitty Petersen borrowed his brother's car and went to a class picnic. On the way home, he was pulled over and found to be driving DWI. Under a local law, the police seized the car. When Mitty's brother went to retrieve it, he was told that the vehicle had been forfeited under the city's new DWI forfeiture law. The law does not provide for compensation.

a. The forfeiture would be unconstitutional under the Takings Clause because the car's owner did not commit the illegal criminal activity.

b. The forfeiture would be constitutional only if Mitty's brother had knowingly authorized Mitty to drive the car while under the influence.

c. The forfeiture could not be constitutional because the law does not provide for just compensation.

d. Mitty's brother probably has no recourse against the city for taking the car.

9. Andrea Talbot owns a house and lot. There is an extra lot attached to the side of her property. The extra lot is worth as least $100,000 as a building site. Andrea has long planned to sell off the extra lot when she needs the money for retirement. The City Council is considering an amendment to the zoning that would require a 15,000 sq.ft. minimum lot size for homes (but allow existing structures to remain). In effect, the amendment would make it impossible for Andrea to sell her extra lot as a building site. If the City Council adopts the proposed amendment:

a. It would constitute a compensable taking of Andrea's extra lot and Andrea would be entitled to compensation.

b. It would constitute a regulatory taking of a valuable development right and Andrea would be entitled to $100,000 compensation.

c. It would *not* constitute a compensable taking because Andrea would still have economically valuable use of her property as a whole.

d. It could *not* constitute a compensable taking since none of Andrea's land would actually be taken.

10. The Town of Corrales widened Rio Bravo Road in an economic revitalization project. It also imposed certain building restrictions in the area. The road widening took about one foot off the frontage of Dale Gantry's 640-acre farm. This resulted in a small negative effect on the farm's value. In addition, the building restrictions reduced the farm's potential development value by 60%, or $2.75 million. Even so, the property has substantial value as a farm. Dale can recover compensation under the Takings Clause for:

a. Both the value of the land taken for the road widening and the value that was lost due to the building restrictions.

b. The value of the land taken for the road widening but not the value that was lost due to the building restrictions.

c. The value that was lost due to the building restrictions but not the value of the land taken for the road widening.

d. Neither the value of the land taken for the road widening nor the value that was lost due to the building restrictions.

11. Arrowwood Investors owns a profitable basketball arena. It has contracted to sell the air rights for $6 million. The buyer plans to build a 30-story office building on top of the arena. The city is considering a new zoning rule that would prohibit anything over 6 stories, which would make the project economically non-viable. If the new rule is passed and the buyer backs out of the contract, Arrowwood would likely be able to recover:

a. $6 million under the Takings Clause.

b. Nothing under the Takings Clause given the facts and circumstances of this case.

c. Nothing under the Takings Clause because air rights are not considered property.

d. Nothing because the Takings Clause does not apply to building height regulations.

12. A coal mining company dug tunnels under private homes in the town of Denton. As a result, some of the homes collapsed into sinkholes. The homes that were destroyed had depended on coal for residential heating in winter.

a. The court would probably consider the hazard of these sinkholes to be part of the burdens and benefits of living in a civilized society and therefore not actionable wrongs.

b. The homeowners would ordinarily be considered to have a common-law right to subjacent support, which the mining company would have violated by undermining their homes.

c. These actions of the mining company would ordinarily be considered to be a compensable taking under the Taking Clause.

d. None of the above.

13. Connie Clarke is the town's lawyer for the Town of Westcott. The Town Board is considering a new local law on public beach access. The law would guarantee the public a right to use ocean beaches seaward of the mean high water line and also the right, if necessary, to cross private property to get to the public beach. No compensation would be provided to private owners affected by the law. The Town Board asks Clarke to give her legal opinion as to the proposed law. Her answer should be:

a. The part of the law that guarantees the public a right to use ocean beaches appears to violate the Takings Clause.

b. The part of the law that guarantees the public a right to cross private land to get access to beaches appears to violate the Takings Clause.

c. Both parts of the law appear to violate the Takings Clause.

d. Neither part of the law appears to violate the Takings Clause.

14. Ambrose operates a trout hatchery in a rapidly urbanizing area west of town. Noises and smells from the hatchery bother some of his recently arrived neighbors. They persuaded the local council to amend the zoning to prohibit Ambrose from using his land as a hatchery. The law has a severe negative impact on the value of Ambrose's land. Ambrose sues for compensation. The effect of the new law would be a compensable taking:

a. If it leaves Ambrose's property with no value and the hatchery is deemed to be a common-law nuisance.

b. If it leaves Ambrose's property with no value and the hatchery is *not* deemed to be a common-law nuisance.

c. Both of the above.

d. As long as the hatchery was there before the neighbors had bought their nearby properties.

e. All of the above.

15. Liz Endicott inherited a house from her mother. It is located across the street from a municipal beach on Craig Lake. Endicott loves the view. In order to create a new "tourism" area and attract people to spend money in town, the council has adopted a plan to acquire all of the properties on Endicott's side of the street, tear down the houses, and sell the land to a private recreational development corporation. The corporation's investment will greatly benefit the local economy, increase tax revenues and provide jobs. Endicott does not want to sell.

a. Endicott cannot be constitutionally forced to sell in eminent domain because the city is acquiring the land for economic development purposes rather than for public municipal purposes.

b. Endicott cannot be constitutionally forced to sell in eminent domain because the city is acquiring the land in order to turn it over to a private owner.

c. Both of the above.

d. Endicott *can* be constitutionally forced to sell in eminent domain but the amount she will receive as "just compensation" is sure to compensate her fully for the value she places on her home.

e. None of the above.

16. Ordinarily, a municipality or state can use eminent domain to acquire homes from unwilling sellers:

a. Only if the land is being acquired for direct use by the public.

b. Only if the land is being acquired for a public purpose.

c. No matter what the land is being acquired for, as long as duly elected officials have authorized it.

d. Only if there is a public emergency that would justify forcing people to sell their homes to government.

17. Hinton found a gold watch on the ground in an open public ball field. He took it to a jeweler to have it checked out. When Hinton returned the next day he was told that the jeweler's assistant had misdelivered the watch to a person whose identity is unknown. If Hinton sues the jeweler for damages, the proper type of action for this situation would be:

a. Replevin.

b. Trover.

c. Trespass to chattels.

d. Restitution.

e. None of the above.

18. In the previous question, if Hinton sues the jeweler for damages:

a. The jeweler should win because Hinton cannot show proof that he owns the watch.

b. The fact that Hinton possessed the watch would create a rebuttable presumption of ownership but the jeweler should win if he can rebut the presumption.

c. The judgment should be for Hinton for the value of the watch.

d. The judgment should be for Hinton but only for nominal damages because he paid nothing for the watch.

19. Kerner bought a house and hired an electrician to put up a ceiling fan in the family room. The electrician found $8000 hidden in the ceiling. The previous owner who lived in the house heard about the find—although he admits he has no idea how the money got there. The electrician, Kerner, and the previous owner are all claiming the money in court. Following the logic of the so-called English rule of finding, the money should belong to:

a. Kerner.

b. The previous owner of the house.

c. The electrician who found it.

d. A charity selected by the court.

20. In a jurisdiction that follows the so-called American rule, the money in the previous question should belong to:

a. Kerner.

b. The previous owner of the house.

c. The electrician who found it.

d. A charity selected by the court.

21. After dining at a restaurant. J.B. headed back to his car, which was parked in a bank parking lot nearby. He found a bracelet on the ground in the parking lot. Now J.B. and the bank, as owner of the locus in quo, are in a lawsuit over who is entitled to the bracelet. Because of the bracelet's high value, the court does not consider it "abandoned property." Under the American rule:

a. The bank should win if J.B. was trespassing at the time of the find.

b. The bank should win because the American rule generally prefers the owner of the locus in quo.

c. Technically, neither J.B. nor the bank would have any right to the bracelet and the court would hold it for the true owner.

d. The court should split the value of the bracelet between J.B. and the bank.

22. Ken Mosson lives in a house that he rents in Willowdale. One day he was out in the yard with his new metal detector and he discovered an antique waffle iron buried in the ground. From all the evidence, the iron had been there since the late 1800s. A lawsuit resulted between Ken and his landlord, each claiming the iron. In a state that follows the English rule, the person entitled to the waffle iron would be:

a. Ken, as finder.

b. The landlord, as earliest known possessor.

c. Ken, if the court determines that the iron was mislaid.

d. Ken and his landlord jointly.

23. Popper walked over to a friend's house, about a 1/2 hour away. While Popper and his friend were chatting, it began to rain. Popper had no umbrella and no money for a taxi. His friend said: "Here, I'll lend you this umbrella and I'll also lend you $20 for a taxi." Assuming that the friend did not intend to make a gift, the most reasonable interpretation is that:

a. There was a bailment of the umbrella but not of the $20.

b. There was a bailment of the $20 but not of the umbrella.

c. There was a bailment of both the umbrella and the $20.

d. There was a bailment of neither the umbrella nor the $20.

Facts for Tolly-Urban questions. Tolly bought a table for $300 at a used furniture store. He took it to Urban Varnish Inc. to have it refinished. While Tolly's table was at Urban, a fire broke out, destroying everything on the premises, including the table.

24. Tolly brought an action against Urban for $300.

a. Urban would be liable for the loss because, as bailee of the table, Urban was legally responsible if anything happened to it.

b. It would be irrebuttably presumed that Urban was negligent in the loss.

c. There would be a rebuttable presumption that Urban was negligent in the loss.

d. Urban cannot be held liable for the loss if Tolly did not disclose the table's value or how much he'd paid for it.

25. Suppose Tolly did not tell Urban how much he paid for the table but it had an apparent value of about $300. It turns out, however, that, because the table was made by a famous 19th-century craftsman, its actual value was over $10,000. In an action by Tolly against Urban:

a. The *apparent* value should be used in determining whether Urban met its duty of care but the *actual* value should be used in calculating the damages that Tolly can recover.

b. The *actual* value should be used in determining whether Urban met its duty of care but the *apparent* value should be used in calculating the damages that Tolly can recover.

c. The *apparent* value should be used in determining both whether Urban met its duty of care and also in calculating the damages that Tolly can recover.

d. The *actual* value should be used in determining both whether Urban met its duty of care and also in calculating the damages that Tolly can recover.

e. None of the above.

26. Maddie Margrave placed a valuable cashmere scarf in the sleeve of her coat and checked it with a coat-check attendant at a restaurant. She didn't mention the scarf to the attendant (who did not know it was there). When Maddie came back to pick up his coat, the scarf was missing. The *best* reason for holding that the restaurant isn't liable for the loss of the scarf is that:

a. There was no bailment of the scarf because the attendant did not know it was there.

b. The restaurant did not agree to be liable for the loss of the scarf and bailees are not liable for risks they have not agreed to.

c. Reasonable persons do not expend efforts to care for things they don't believe exist, so the restaurant had no obligation to do anything at all to protect the scarf (as opposed to the coat).

d. None of the above. The restaurant would be liable for the loss of the scarf.

27. Wilson inherited Blueacre from his uncle in 2006. At the time, he was on an archeological expedition in a remote Himalayan valley. He was not notified of the inheritance and he never took occupancy. In 2007, a neighbor took possession of Blueacre and has actively farmed it ever since, though he never paid property taxes. Last week the neighbor wrote a letter to Wilson claiming Blueacre by adverse possession. This is the first Wilson has heard about the inheritance or the neighbor's adverse possession:

a. The neighbor could not have acquired ripened title to Blueacre because Wilson did not even know that he owned it, much less that somebody was in "adverse" possession.

b. The adverse possession would not be considered open and notorious because the neighbor did not notify Wilson that he was in adverse possession.

c. The neighbor's adverse possession could not be considered hostile or under claim of right since he did not pay property taxes.

d. The better result (to carry forth the purposes of adverse possession law) would be to hold that title has ripened in Wilson's neighbor.

28. In 2007, Anita Fairburne took possession of Greenacre, a single-family house, believing she had inherited it from her late husband, Dave. In fact, Dave's title was flawed and the house actually belonged to Dobbs. Nonetheless, Fairburne has lived in the house continuously since 2007 except for a period of 3 years (2008-11) when she leased it out to tenants who occupied it under written leases.

a. Fairburne would not yet have title by adverse possession because she has not had 10 continuous years of adverse possession.

b. It looks like Fairburne has probably acquired a ripened title by adverse possession.

c. Fairburne may be able to acquire a ripened title by adverse possession in 2021, but not before.

d. The so-called leases would have been legally void because Fairburne could not lease land that she did not own.

29. In 2002, needing a place to keep her gardening tools, Cynthia Adams had a shed built at the back of her property. Due to a misunderstanding, the contractor built the shed on the neighbor's side of the property line. All the same, the shed remained in place until 2014 when the neighbor had a survey done. When Cynthia learned what the survey revealed, she apologized profusely and promptly had the shed moved to her side of the line. Now she wants to move the shed back to its original location.

a. Even if Cynthia acquired a ripened title by adverse possession, she relinquished it back to the neighbor by removing the shed and apologizing.

b. Once Cynthia acquired a portion of her neighbor's land by adverse possession, merely moving the shed would not change that.

c. In a state that follows the "honest mistaker" rule, Cynthia's apology after the error was revealed and her prompt removal of the shed could be treated as proof that her possession was never hostile.

d. Both b. and c, above.

e. All of the above.

30. Ellen Hawkins owns a house at 42 Borgergate Rd., but she lives elsewhere. The house is unoccupied. One night a carload of joyriding teens took a shortcut across her lawn and sideswiped the unoccupied house, doing $1400 damage. Hawkins has sued the teens in trespass. Their lawyer argues that Hawkins does not have standing to sue because she was not in possession of the property at the time of the alleged trespass.

a. The lawyer's argument is misguided because the common law has never required a landowner to have possession in order to sue in trespass.

b. Under the usual American rule, Hawkins would not need to have possession of the damaged property in order to sue in trespass.

c. Under the usual American rule, Hawkins should be permitted to sue in trespass based on her constructive possession of the property.

d. Under the usual American rule, Hawkins would have standing to sue in trespass only if she has actual possession of the land.

31. Angela has lived at 4092 Rose Avenue for 7 years. Due to negligence, a painting contractor working next door allowed a scaffold to collapse on her house. The damage reduced the value by $12,000. When she sued the painting contractor, the evidence showed there may be a flaw in her title. Suppose Angela is technically only a possessor of the house, not the owner:

a. The cases are mixed on whether Angela would be able to recover the full $12,000.

b. If the court applies the *Winkfield* principle in deciding the case, Angela should recover the full $12,000 permanent depreciation and not just damages to use and enjoyment.

c. Both of the above.

d. There is little legal question but that the *Winkfield* principle would apply in this kind of case and Angela can recover the full $12,000.

e. Angela would not be able to recover anything if she cannot prove she owns the house.

32. Suppose the court requires Angela to prove her ownership of the house by showing her chain of title in court. Which of the following deeds are admissible into evidence to prove the chain of conveyances leading to her?

a. All deeds that are appear to be in her chain of title as long as they are signed by the named grantor(s).

b. All *duly executed* deeds that appear to be in her chain of title.

c. All *recorded* deeds that appear to be in her chain of title.

d. All *duly recorded* deeds that appear to be in her chain of title.

33. George Docks was on his deathbed with a dozen family members present. George took off his gold watch and said: "I want Jimmy to have this. It belongs to him now. I hope he gets back from college before I'm gone so that I can hand it to him personally." George put the watch back on his wrist. All present (none of whom are lawyers) are willing to testify that "George gave Jimmy the watch." At this point:

a. There is no completed gift of the watch.

b. There is a gift causa mortis of the watch, but the gift is revocable.

c. Jimmy would be entitled to the watch even if George dies before Jimmy gets back from college.

d. George has made a valid gift of a remainder interest to Jimmy.

34. George Docks was lying on his deathbed in the presence of a dozen family members. He took out the only key to his safe deposit box at the bank downtown and said: "I want Sally to have the 100 shares of Amazon stock that's in my safe deposit box. It belongs to her now. Here's the key so she can get the stock." George handed the key to Sally. At this point:

a. There is presumptively a completed, irrevocable inter vivos gift of the Amazon stock.

b. There is presumptively a completed gift causa mortis of the Amazon stock.

c. There is presumptively a completed inter vivos gift of the Amazon stock, but the gift is revocable until Sally actually takes possession.

d. There is no completed gift of the stock because there has been no effective delivery.

35. George Docks was lying on his deathbed in the presence of a dozen family members. He took off his class ring (class of '53) and said: "I want George Jr. to have this ring since I won't be needing it any more." George handed the ring to George, Jr. A week later, George died in an accidental fall without having recovered from the illness that prompted him to give away the ring. Under the usual presumption:

a. George could have revoked the gift at any time before his death.

b. The gift should be considered revoked because George died of a cause other than the illness that prompted the gift.

c. Both of the above.

d. None of the above.

36. Arthur Tembler typed and signed a letter to his daughter, Rena, stating: "I want you to have the ruby brooch that belonged to your mother. It has great sentimental value so it is better not to send it through the mail, but by this letter I am giving it you now." Tembler died unexpectedly shortly after Rena received the letter. The brooch was found among his possessions.

a. The gift of the brooch should take effect as a gift causa mortis.

b. The delivery requirement was met by putting Rena into possession of the letter.

c. The gift probably fails because Tembler still had possession of the brooch when he died.

d. The letter should be treated as a will, entitling Rena to the brooch at Tembler's death.

37. Suppose in the preceding question that Tembler had written instead: "After I'm gone, I want you to have the ruby brooch that belonged to your mother. It has great sentimental value to me so I want to keep it for a while, but the brooch is now yours to have after my

death." Shortly after Rena received the letter, Tembler died in an accident. The brooch was found among his possessions.

a. The gift of the brooch should take effect as a gift inter vivos.

b. The delivery requirement was met by putting Rena into possession of the letter.

c. Tembler gave Rena a future interest.

d. All of the above.

38. While sitting in class, Larry Lexington borrowed a pencil from Bobby Barnes. Later, when Larry tried to return the pencil, Barnes said: "Keep it."

a. There was probably a completed gift when Barnes handed Larry the pencil in the first place.

b. There was probably a completed gift when Barnes said: "Keep it."

c. Before there could be a completed gift under these facts, there still must be some additional action to meet the delivery requirement.

d. There cannot be a completed gift of the pencil under these facts because there was no unambiguous expression of acceptance.

Facts for Tenidor-Lambone questions. Brett Tenidor rented an apartment from Lottie Lambone under a three-year written lease. After seven months, Tenidor got engaged and decided to move in with his fiancée to cut down on expenses. He gave Lambone a month's notice that he was leaving and Lambone replied: "Okay, but I'm holding you to the lease."

39. Ordinarily, under the traditional common law rule, Tenidor could be held liable for:

a. Any unpaid rent for his time in possession plus he would forfeit the security deposit, but that's all.

b. The full rent, as it comes due, for the entire remaining term of the lease, just as though he had remained in possession.

c. The difference between the agreed rent under the lease and the fair rental value that Lambone could have gotten by making reasonable efforts to relet.

d. Only the rent for the months that he was actually in possession.

40. Which of the following would have reduced or eliminated Tenidor's obligations to Lambone under the lease?

a. Lambone advertised the apartment for rent and promptly leased it to Kasey for roughly the same rental as Tenidor was paying.

b. Lambone responded to Tenidor's departure by making sure the windows and doors were locked and the premises were secured from intruders.

c. Lambone accepted the keys from Tenidor.

d. All of the above.

41. Westerly leased a small apartment from Bingham "for 3 years reserving an annual rent of $12,000 payable in monthly installments of $1,000." The parties never signed the lease but Westerly took possession and has paid rent monthly for several months. The Statute of Frauds applies to leases for more than one year. What type of tenancy does Westerly now probably have?

a. A tenancy at will.

b. A periodic tenancy from month to month

c. A periodic tenancy from year to year

d. A term of years for one year.

42. Arnault Sufflot has a month-to-month tenancy running from the 4th to the 3rd day of each month. From today (August 15), what is the earliest date as of which the tenancy can be terminated?

a. August 31.

b. September 3.

c. September 15.

d. October 3

43. Mel Mitchie made a written three-year lease of Greenacre to Torrence Graybell reserving a rent of $2500 per month. It contained the usual promises with respect to rent. Torrence later assigned his interest in Greenacre to Chester, who assumed the lease. Chester then wrongfully abandoned the premises with about a year still to go on the lease. Mitchie wants to recover rent accruing after the abandonment:

a. Mitchie can recover the rent only from Chester.

b. Mitchie can recover the rent only from Torrence.

c. Mitchie can recover the rent from either Torrence or Chester.

d. The duty to pay rent was extinguished by the abandonment.

44. Suppose in the preceding question that, instead of abandoning, Chester reassigned the lease to Proctor at a time when there was about one year still to go on the lease. Proctor assumed the lease and Mitchie consented to the assignment. Later, before the lease expired, Proctor allowed the rent to fall in arrears. Mitchie has a right to recover the rent arrearages from:

a. Chester because Chester assumed the lease.

b. Torrence, based on privity of contract.

c. Torrence, Chester or Proctor.

d. Each of the above is true.

45. Fredericka Forsythe leased Alicia's villa for two years under a written lease containing the usual promises and reservation with respect to rent. Fredericka then assigned the lease to Manfredo Rossi, who assumed the lease and took possession. Which the following is *wrong*?

a. Manfredo is in privity of contract with Alicia.

b. Manfredo is in privity of estate with Alicia.

c. Fredericka is in privity of contract with Alicia.

d. Frederika is in privity of estate with Alicia.

e. None of the above is wrong (*i.e.*, all are true).

46. Kleber leased Cliffside to MacMaster under a three-year written lease, which stated: "This lease may not be assigned without lessor's consent." It said nothing about subletting. MacMaster executed a document transferring possession to Keith "for a term of 780 days" at a time when MacMaster's three-year lease still had 782 days to run. Kleber now claims that MacMaster violated the lease because he assigned without the required consent. MacMaster denies that he violated the lease. Who's right?

a. Kleber is right because MacMaster did not get consent.

b. MacMaster is right because he retained a reversion.

c. Kleber is right because there is no right of re-entry.

d. MacMaster is right because he is still in privity of contract with Kleber.

47. Twinbrook Consulting Co. leased office space from Limerick Holdings, Inc. Limerick owns an open lot next door and, after Twinbrook moved in, Limerick leased the lot to an excavating contractor. The excavating contractor uses the lot to store equipment and materials. Loud noises and dust emanate constantly from the lot making it extremely difficult for Twinbrook to use its office space for the intended purpose. After numerous complaints to no avail, Twinbrook wants to know if it has to continue paying rent for space that it essentially cannot use.

a. Twinbrook would be justified in abandoning and ceasing to pay rent if Limerick had a right to control and prevent the noise and dust under the terms of its lease with the excavating contractor.

b. If Twinbrook wants to be relieved of its rent obligation based on constructive eviction, it must actually abandon possession.

c. Both of the above.

d. None of the above. Because of the doctrine of "independence of covenants," Twinbrook must pay the rent that it has agreed to pay.

Facts for Earlmar-Wickham questions. Earlmar conveyed about half of his large parcel of wooded riverside land to Wickham Electric Co. Wickham intended to set up a hydropower generating station on the land. In the deed (promptly recorded), Earlmar reserved for himself "his heirs, successors and assigns" an "exclusive perpetual *easement* to hunt and fish on the premises conveyed hereby." (Earlmar has a hunting cabin on the land he retained.) Also, Wickham *covenanted* in the deed of conveyance that the premises "shall never be developed for any purpose other than hydroelectric generation."

48. Suppose Earlmar later conveyed his parcel with the hunting cabin to Barnett, and Wickham Electric Co. conveyed its parcel to H & R Vacation Homes, Inc. Neither deed mentioned any easements.

a. Barnett is probably entitled to use the H & R parcel for hunting and fishing under the "easement to hunt and fish".

b. The "easement to hunt and fish" became unenforceable when Wickham conveyed the servient land to a new owner, H & R, which never agreed to the easement.

c. The "easement to hunt and fish" would be presumptively still owned by Earlmar.

d. Both b. and c. above.

49. Suppose that Earlmar still owns the parcel with the hunting cabin but Wickham Electric Co. has conveyed its parcel to H & R Vacation Homes, Inc.

a. Earlmar can probably enforce the covenant against H & R—in part because the covenant touches and concerns the land.

b. Earlmar can probably enforce the covenant against H & R—in part because there is privity of estate.

c. Both of the above.

d. None of the above. Earlmar probably cannot enforce the covenant against H & R.

50. Suppose again that Earlmar still owns the parcel with the hunting cabin, but Wickham Electric Co. has conveyed its parcel to H & R Vacation Homes, Inc. Earlmar can probably enforce the covenant against H & R as an *equitable servitude*:

a. Only if H & R actually knew about the covenant before it purchased its land.

b. Whether or not H & R had actual notice of the covenant when it bought as long as the deed containing the covenant was properly recorded before the purchase by H & R.

c. Both of the above.

d. None of the above. A covenant cannot be enforced as an equitable servitude.

51. Which of the following conveyances would be *invalid*, in whole or part, under the traditional rule against perpetuities? (Assume that, at the time of each conveyance, L is a living person who has one child, age 2.)

a. To L for life and then one day after L's death to R and his heirs.

b. To L for life, then to L's first grandchild and his heirs.

c. To L for life, then to L's first child to reach age 18, and his heirs.

d. All of the above would be invalid in whole or in part.

e. None of the above would be invalid in whole or in part.

Facts for Dan-Owen Questions. Longview is a sizable piece of rural land held by Owen Ostend in fee simple absolute. Owen's home is located several hundred feet from the public highway, which he reaches by means of a long gravel driveway. Last month Owen conveyed a 100 ft. wide strip of land, constituting his entire highway frontage, to Dan Dervischer. Owen's driveway crosses the land conveyed to Dan.

52. The deed from Owen to Dan expressly reserved an easement of way for the gravel driveway. Which of the following is true?

a. Owen would have an easement appurtenant over the land conveyed to Dan.

b. A later conveyance by Owen of his remaining land would presumptively include the driveway easement even if the deed did not say so.

c. If Owen subdivides his remaining land into 50 lots and conveys them to 50 buyers, each buyer would presumptively be entitled to use the driveway easement even if the buyer's deed did not say so.

d. All of the above.

53. Suppose now that the deed from Owen to Dan said nothing about reserving an easement of way for the gravel driveway. However, continued use of the driveway is strictly necessary for beneficial use of Owen's remaining land:

a. Owen would probably have an easement appurtenant over the land conveyed to Dan, at the location of the driveway.

b. Owen's best choice would be to claim an easement by necessity under these facts.

c. The Statute of Frauds would prevent Owen from claiming an easement over the land conveyed to Dan because such an easement would be in derogation of his grant.

d. Owen would probably have only a license to continue using the driveway.

54. Ariel purchased Lockacre, a landlocked parcel of land. She also acquired an easement for ingress and egress to the highway over the adjacent land that her seller retained. Later Ariel purchased Backacre, which abutted Lockacre in the back. It has direct highway access and gives her another means of ingress and egress to Lockacre. She now wants to use both accessways. In such a situation, Ariel's easement over her seller's land would probably be extinguished if:

a. She acquired it by express grant.

b. She acquired it by implication based on prior use.

c. She acquired it as an easement by necessity.

d. All of the above.

e. None of the above. Easements can only be extinguished with the owner's express consent.

55. Dixon's septic system failed. He hired a contractor who told him that he did not have enough land with suitable soil to remedy the problem. The contractor suggested using a small portion of the neighbor's property. Dixon asked his neighbor, Nickles, for permission. Nickles readily agreed but nothing was ever put in writing. Dixon spent a substantial sum to have the new system put in and now, after it's done, Nickles is demanding that Dixon stop using Nickles' land. On these facts:

a. Dixon has a good case for claiming an easement by estoppel.

b. Dixon has a good case for claiming an executed parol license.

c. Both of the above (they amount to the same thing).

d. Dixon loses because the oral permission gave him a license, at most, and licenses are revocable.

56. Wiggins entered a contract to buy a house from Hester. The contract stated that the obligation to purchase was subject to the condition that Wiggins obtain a 30-year mortgage for $575,000 at 4.5% or less, and that he could cancel if no such financing was offered to him within 60 days. Wiggins has now found a house he likes better and he no longer wants Hester's house. He also wants his 10% down payment back.

a. The best option for Wiggins is simply to not apply for a mortgage and, after 60 days, he can cancel the contract according to its terms.

b. The best option for Wiggins is to apply for a mortgage and refuse to provide proof of employment, income, assets, etc. so the application is denied and then he can cancel the contract.

c. Wiggins would be obligated to buy Hester's house if the mortgage is denied because the bank deems Wiggins to be too big a credit risk based on his employment, income, assets, etc.

d. Wiggins cannot use the failure of the mortgage condition to get out of the contract if he deliberately causes the condition to fail by not applying for a mortgage.

57. Merrimack owned a parcel of land worth $500,000. He borrowed $400,000 from Conduit Bank, and mortgaged the land to the bank as security. Merrimack then purported to sell the land to Keene. He delivered a deed to Keene in exchange for $100,000. The

deed did not mention the mortgage and Keene never agreed to pay any of the amount owed to the bank.

a. Keene is not personally liable to pay the debt to the bank.

b. Keene's lawyer should advise him not to pay the debt to the bank because he will incur no undesirable consequences if he doesn't.

c. Both of the above.

d. None of the above. It was unlawful to sell land that is subject to a mortgage without paying it off first.

58. Renwick wanted to sell his house and move to a smaller place. He saw a broker friend in a supermarket and said: "If you hear of anybody who might want to buy my house, let me know." The broker found a prospect who liked the house and made an offer. Renwick negotiated the price with the prospect over a period of several days and, although the prospect really wanted the house and the two orally agreed on a price, Renwick changed his mind and decided not to sell. Under the traditional rule:

a. Renwick could not be held to owe a commission to the broker because there was no listing agreement.

b. Renwick could not be held to owe a commission to the broker because he and the buyer never reached the point of signing a contract to buy and sell.

c. Renwick could not be held to owe a commission because he and the broker never agreed to what the amount of commission would be.

d. It is very likely on these facts that Renwick would owe the broker a commission.

59. Months later, Littleton contracted to buy the house from Renwick. Littleton's lawyer spent almost no time reviewing the draft contract of sale and did not demand that the contract specify the quality of the title to be conveyed. It turns out there is an easement across the back of the property for a horse trail and Littleton is allergic to horses. Renwick says he is unable to get the easement removed.

a. Littleton must accept whatever title the seller can provide since the contract of sale did not specify a higher or different standard.

b. Littleton can reject the title but would *not* be entitled to get his 10% down payment back.

c. Littleton can reject the title as unmarketable and Renwick must return the down payment.

d. Littleton cannot lawfully reject the title but he is entitled to an abatement of the purchase price.

60. O conveyed Swampacre to A, who did not record the deed. O then conveyed Swampacre to B, a good faith purchaser without notice and for value. B also did not record. Then A recorded his deed. A would be the owner of Swampacre in a state that has a:

a. Notice statute.

b. Race-notice statute.

c. Both of the above.

d. None of the above.

<End of examination>