PACE UNIVERSITY SCHOOL OF LAW

PROPERTY
PROFESSOR HUMBACH June 21, 2019
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. Bogart's small dog escaped from his yard and ran into the yard of Egan, his neighbor. Egan didn't much like dogs and disliked this one in particular because it barked a lot when left outside. Egan grabbed a rake and guided the dog roughly toward the edge of his property. When the dog turned and barked, he whacked it with the end of the rake. Bogart incurred $1200 in veterinary bills to treat the resulting injuries to the dog. Bogart sues Egan for the $1200:

    a. Bogart probably could not recover because his dog was trespassing.

    b. The proper action for Bogart to bring is not trespass to chattels but trover, for conversion.

    c. Bogart should recover his out-of-pocket costs and may also recover damages for emotional distress, if proved.

    d. Bogart should recover his out-of-pocket costs but cannot recover damages for emotional distress.

2. Warren Ross was hunting on a friend's farm. He spotted some wild ducks swimming in a pond on neighboring property and went into the neighboring property and took some of the ducks. Ross had no permission to hunt on the neighboring land. The neighboring owner should be able to recover the ducks or their value from Ross:

    a. By reason of ratione soli.

    b. Because Ross should not be allowed to benefit from his own trespass.

    c. Both of the above.

    d. Because it makes sense to say that owners of land own the wild animals that are on it.

    e. All of the above.

3. Conner Cashman was out hiking in a woods that is open to public access. While crossing a narrow stream he noticed a small fur-bearing animal (a muskrat) caught in a trap. Seeing that it was still alive, Cashman released it from the trap and took it home to nurse it back to health. The trapper discovered what had happened and has sued Cashman. As between the trapper and Cashman, who has the better legal right to the animal?

    a. Cashman because he was first to take actual physical possession.

    b. The trapper because he was first to attain occupancy.

    c. Cashman because the animal was still alive when he took it.

d. The trapper because trapping is considered a trade or business, which the law protects from interference.

e. Cashman because of his industry and labor in nursing the animal back to health.

4. Bayswater caught some fish while boating on a stream that feeds into Lake Oilslick. The streambed was privately owned at the location where Bayswater caught the fish. Bayswater had not sought or received permission to fish there, nor had the owner of the streambed done anything to expressly deny permission. However, landowners in the area had customarily allowed people to fish on streams from boats—including at the place where Bayswater was fishing.

a. If Bayswater's presence or conduct at the place where he caught the fish was considered a trespass, the owner of the streambed would have a better right to the fish than Bayswater.

b. Bayswater would have a good argument that his conduct was not a trespass because the landowner's acquiescence in the custom implied a license.

c. Both of the above.

d. Even if Bayswater's presence or conduct at the place where he caught the fish was a trespass, he would still have a better right to the fish because he was the first captor.

5. Suppose in the preceding question that Bayswater was fishing with express permission of the landowner. While transferring a fish he caught to a bucket, it jumped from his hand and back into the stream. A few minutes later, another fisherman (also fishing with express permission) caught what looks to be the same identical fish. Who is entitled to the fish?

a. Bayswater, as the first captor.

b. The other fisherman.

c. The fish should be split between Bayswater and the other fisherman.

d. The landowner.

6. Pantheon Corporation uses natural gas in its business. It buys the gas from interstate pipelines and stores it in an underground cavity that formerly contained naturally occurring gas (long since depleted). The cavity lies under Pantheon's land and also extends under the land of a neighbor, Fenton Filbert. It was recently discovered that Filbert has tapped into the cavity, pumped out some of the gas and sold it. Pantheon is suing Filbert, and Filbert has counterclaimed for trespass.

a. It would be illogical to consider Pantheon a trespasser if the gas pumped back into the ground no longer belongs to Pantheon.

b. Even if Pantheon still owns the gas when it's under Filbert's land, Pantheon would not be considered a trespasser as long as Filbert incurs no economic injury.

c. Filbert would be entitled to take the gas that is under his land because Pantheon forfeits it under the law of trespass.

d. Some courts, applying the doctrine of capture, would say that the gas ceased to be Pantheon's property once it was pumped back into the ground.

7. If the gas in the preceding question is treated like ferae naturae, it would be logically consistent to say:

a. The gas pumped underground by Pantheon is "fair game," legally available for others to capture and sell.

b. The gas pumped underground by Pantheon remains the property of Pantheon.

c. That Pantheon retains title by ratione soli to the gas it pumps underground.

d. All of the above.

8. During an extended construction project near her home, Linda Forbes 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 Linda to bring would be:

a. Trespass.

b. Nuisance.

c. Either an action for trespass or for nuisance would be appropriate.

d. None of the above.

9. 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.

10. Georgie Petroff owns a farm near an open gravel pit. The gravel company constantly pumps water from the pit in order to keep it dry enough extract the gravel. The effect has been to lower the water table in the area, causing Georgie's wells go dry in the summer. It will cost Georgie $25,000 to drill deeper wells.

a. Unless it is proved otherwise, the underground water would be presumed *not* to be percolating water.

b. Georgie 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.

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

d. Under the traditional rules for underground water, the gravel company would probably not be liable to Georgie for the side effects of pumping out the water in order to extract gravel.

11. Clemson's neighbor collects and works on old cars as a hobby. He has now accumulated enough clunkers to fill his front yard. They mostly just sit there rusting away, up on blocks, with pieces missing, paint peeling, etc. It is, all in all, a substantial visual blight on an otherwise well-kept neighborhood of attractively designed houses and manicured lawns. Clemson has become so perturbed about the situation that he has consulted a lawyer.

a. Ordinarily, the courts would recognize that Clemson has a nuisance action against his neighbor for maintaining an eye-sore.

b. Clemson would not have a nuisance action against his neighbor on these facts because the neighbor is not intentionally trying to harm Clemson.

c. Many courts do not allow nuisance actions based on purely aesthetic concerns.

d. Clemson would be better off suing the neighbor in trespass because he then would not have to prove actual damages in order to prevail.

12. Last year the Town's wetlands protection law was tightened up. As result, a local developer, Marvin Esposito, suffered a substantial loss because some of his land became partially unbuildable. Despite the new law, however, the land still has considerable value for various lawful uses. Esposito sued for just compensation and the lower court denied his motion for judgment on the ground that "Government may affect property values by regulation without incurring an obligation to compensate." Esposito has appealed. The appellate court would probably:

a. Reverse, because the quoted statement is contrary to modern U.S. Supreme Court decisions.

b. Affirm. The quoted statement is consistent with modern U.S. Supreme Court decisions.

c. Reverse, a compensable taking occurs only if the government action constitutes a permanent physical invasion or appropriation.

d. Affirm, because environmentally beneficial regulations of land use cannot be considered takings.

13. Bellway owns a home in area of town that contains many single-family homes. A coal company owns the right to mine coal under the area. The mining sometimes causes subsidence and, when it does, it often destroys one or more homes. The state legislature recently passed a law requiring anybody who mines under residential areas to leave enough coal in the ground to prevent subsidence of the surface. In a similar early landmark case before the Supreme Court:

a. The law was upheld as a safety measure.

b. The law was upheld so that property owners like Bellway would not be deprived of economic due process.

c. The law was struck down because it was considered to be an actual physical appropriation of the property rights in privately owned coal.

d. The law was struck down because the public interest in protecting private houses did not justify so great a limitation on mining certain coal.

14. Higgins Pharmaceutical Co. makes a cold medication that contains an ingredient used to "cook" a popular (and illegal) psychoactive drug. The state passed a new law that bans all manufacture or sale of the cold medication. This law has a major negative impact on Higgins' profits. Higgins could probably succeed in challenging the law if:

a. There are many substitutes for the ingredient in question, so the new law probably wouldn't reduce the availability of the illegal drug anyway.

b. The new law has a substantial negative impact on the value of Higgins' plant and other property.

c. Higgins could show that the benefit of the cold medication exceeds the detriment caused by the illegal drug.

d. None of the above.

15. A housing developer called Morningstar Homes, Inc. bought a 150-acre tract of wooded land. The company's intention was to divide the land into lots and build 300 vacation homes. Before it could do so, however, the local town board amended the zoning to require every building lot to have a minimum of at least 4 acres. This zoning amendment reduced the number of homes that Morningstar could build from 300 to fewer than 40, and the market value of the land was reduced by 75%:

a. Morningstar probably has a claim under the takings clause for the amount by which the value of its land was reduced.

b. Morningstar has a strong substantive due process claim that the new law is invalid because it is "unduly harsh or burdensome."

c. The new law would probably be upheld, and Morningstar's loss would be uncompensated.

d. A law affecting property values can be valid only if it does no more than duplicate the result that could have been achieved in the courts under the law of nuisance or the like.

16. The reason (or, at least, one of the important reasons) for the answer in the preceding question is that:

a. The requirement of "economic due process" forbids laws that are "unduly harsh or burdensome."

b. A compensable "regulatory taking" occurs whenever the government takes one of the valuable "sticks" in the bundle of sticks.

c. A compensable "regulatory taking" occurs whenever the government substantially reduces the value of land.

d. Building homes is a socially valuable activity and was not considered a nuisance at common law.

e. Government could hardly go on if it could not change property rights and affect property values without paying for the change.

17. Forrest City has announced a plan to take a swath of private homes by eminent domain make room for an urban redevelopment program. As homes are acquired by the City, they are sold immediately to a private developer to reimburse the City for the cost of paying compensation to the homeowners. The developer will build luxury apartments and commercial buildings on the land, and these are expected to invigorate the economy and enhance tax base of Forrest City. A homeowner named Studley Kiljoy does not want to sell. Based on modern Supreme Court precedents,

a. The City cannot force Kiljoy to sell if he does not want to because the law protects the right of private owners to choose whether to sell their homes or not

b. The Constitution would prohibit the City from forcing Kiljoy to sell because this cannot be considered a taking for "public use."

c. The court would probably decide that the City's acquisition was for a public purpose and, on that basis, would allow the City to force Kiljoy to sell.

d. Because the City will immediately sell the acquired homes to a private developer, the court cannot properly hold that the acquisitions are for a public purpose.

Facts for Alex-Claudio questions: Alex Mitford owns an automobile repair shop. His employee, Claudio, was repairing a car at the shop when he discovered $25000 in recently issued currency hidden behind a front door panel. Claudio handed the money to the bookkeeper, Jana, for safekeeping. The car belonged to Bender, who had purchased it one week earlier for $1000. The true owner of the money is unknown, and Bender did not know that the money was in the car when he took it to Alex's shop for repairs. Now Alex, Claudio, Jana and Bender all claim the money. Assume the court decides that Claudio's duties as an employee do not include "finding."

18. If the court follows the so-called American rule on "finding" and does *not* recognize the distinction between lost and mislaid property, who would probably have the best claim to the money?

a. Alex.

b. Claudio.

c. Jana.

d. Bender.

19. Consistently with the so-called English rule on "finding," who would probably have the best claim to the money?

a. Alex.

b. Claudio.

c. Jana.

d. Bender.

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

a. Alex

b. Claudio.

c. Jana.

d. Bender.

21. Katerina VanWert went in a large chain-store pharmacy and walked up and down the aisles distributing leaflets to protest animal testing by cosmetics makers. The store manager told her to leave, revoking her license to be on the premises. She ignored the order and continued passing out her leaflets. As she did, she noticed a purse on the floor, half tucked under one of the counters. She picked it up. Assuming the purse was lost property, who probably has the better right to it under the so-called American rule?

a. The store owner because Katarina was a trespasser.

b. Katarina because she was the finder.

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

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

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

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

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

c. Both of the above.

d. Mr. Duke.

Facts for "Lauren's vase" questions: Lauren Gipson had a glass vase that she'd inherited from an aunt. Unbeknownst to Lauren, the vase was an antique worth several thousand dollars. When Lauren's daughter said her second grade class was making a diorama of pioneer life, Lauren lent the vase to the teacher for use in the display. The

teacher was also unaware of the value of the vase. She let members of her second-grade class play with it, and one of them dropped it, causing it to shatter

23. Lauren brings an action against the teacher. The teacher should be liable to Lauren for damages:

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

b. Only if she was negligent in caring for the vase.

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

d. None of the above. The teacher could not be held liable to Lauren since the teacher was not the person who dropped it.

24. In Lauren's action against the teacher for the loss to the vase:

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

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

c. Both of the above.

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

25. In Lauren's action against the teacher for the loss to the vase:

a. Ordinarily, negligence would be presumed.

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

c. Both of the above.

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

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

a. The actual fair market value of the vase.

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

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

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

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

a. The actual fair market value of the vase.

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

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

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

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

a. There was no bailment of the jewelry.

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

c. Kalinda should be considered to have been bailee of the jewelry but *not* liable for its loss.

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

29. When Davis arrived home from work there was a package at his door, mistakenly left by a delivery company. The package was addressed to Mark Chessi, who lived across town. Davis found Chessi's phone number and gave him a call. At Chessi's request, Davis agreed to hold the package until Chessi could pick it up. Davis put the package on

a table where his cat knocked it into a bucket of water, greatly damaging the package's contents.

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

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

c. Some courts would say that Davis, as a gratuitous bailee, should be liable for any loss to the package, no matter what the cause.

d. Davis cannot properly be held liable on these facts because he cannot be considered the cause of the loss. His cat was.

30. Derek had an extra laptop which he lent to his sister, Carla, so she could take with her to college. Carla's roommate negligently spilled a hazelnut latte on the laptop keyboard, causing $750 damage. However, Carla did not have the laptop repaired. Carla was not negligent in the loss. Carla has sued her roommate for the damage:

a. Carla can recover $750 for the harm to the laptop.

b. Carla cannot recover damages because she did not pay to have it repaired.

c. Carla cannot recover damages because it was not her laptop.

d. Both b. and c. above.

31. In 2005, Elsa Fenster built a backyard garden shed that substantially encroached on the neighboring property. At the time, the neighboring property was held by Conrad Limon under a lease that ran to April 30, 2016. Timothy Plover was Limon's landlord and held the fee simple.

a. Full title in fee simple to the area under the encroaching shed could not ripen in Fenster until at least 2026.

b. Full title to the area under the encroaching shed could have ripened in Fenster in 2015, in effect cutting off Plover's remainder.

c. Plover had an ejectment action against Fenster to get rid of the encroaching shed from the day it was built, but the cause of action expired 10 years after it accrued.

d. Fenster could acquire a full ripened title to the area under the encroaching shed only if she notified both Limon and Plover that she was making a claim hostile to their interests.

32. Twenty years ago, Kerry Moffatt purchased a lot in a developing residential project. A few months after he received the deed from the developer, Moffatt built a house within the boundaries shown by the surveyor's stakes on the ground. Unfortunately, somebody working for the developer had pointed out the wrong lot to Moffatt as the one he was buying. Twenty years ago, in other words, Moffatt built his house on the wrong lot. Moffatt could successfully show a ripened title by adverse possession to the lot where he built the house:

a. Only if he built the house under an honest mistake of fact.

b. Only if he has paid the property taxes.

c. If he has proof that has occupied the house and lot as an ordinary resident owner since he built it.

d. None of the above. A person who gets a deed to particular lot cannot use the doctrine of adverse possession to transfer the ownership to a different lot.

33. For several years, Ken Sagstrom often camped on a small piece of land that juts into a lake located on a large wooded tract. The tract is owned by a forest products company. One day in 2007 Sagstrom got some lumber and built a small cabin on the spot. He also built a picnic table and benches. Ever since he built the cabin he has stayed in it on most weekends from April to November and for several weeks each summer. He gets to the cabin using an old logging road that belongs to the company.

a. Sagstrom has probably acquired a ripened title to the cabin site and a prescriptive easement to use the road for access.

b. Sagstrom has probably acquired a ripened title to the entire tract, not just his cabin site.

c. Sagstrom may have difficulty claiming a ripened title to the cabin site because his use has not been continuous.

d. The company could defend against Sagstrom’s claim of title by presenting evidence that Sagstrom, despite his actions, knew he’d never paid for the cabin site and had no legal right to use it.

34. Twelve years ago, Parker Weskit hired a contractor to erect a fence between his residential lot and that of his neighbor, Dummett. Parker assumed at the time, in full good faith, that the fence was exactly on the property line. Recently, however, a survey was done in connection with a utility project and it turns out that the fence is in the wrong place. Parker had been occupying a 2-foot wide strip of Dummett's land since the day tthe fence was built. Learning this news, Parker expressed regret and promptly moved the fence 2 feet to the original boundary line.

a. In some states, Parker would not have acquired a ripened title to the strip by adverse possession because his honestly mistaken possession would not be considered "hostile and under claim of right."

b. In some states, Parker would have acquired a ripened title to the strip by adverse possession even though he honestly thought the fence was in the right place

c. Both of the above.

d. Even if Parker had acquired a ripened title to the strip by adverse possession, the title would have gone back to Dummett when Parker expressed regret and moved the fence to the original boundary line.

e. All of the above.

35. In 2008, James Harbin entered into actual possession of a 7-acre corner of Redlands (a 50-acre tract) believing himself to be the owner of the whole tract. In fact, however, Redlands belonged to Jonas. In 2018 Harbin could have acquired a ripened title:

a. To the entirety of Redlands if he held actual possession of the 7 acres under a deed that purported to convey the whole 50 acres to Harbin.

b. To at least the 7-acre corner (if not more) even if Jonas died in 2016, leaving his property to his heirs.

c. To at least some of Redlands even though he did not take actual possession of the whole 50 acres.

d. All of the above.

36. Assume now that, in 2012, Harbin entered into actual possession of *all* of Redlands believing himself to be the owner, but Redlands belonged to Jonas. Harbin's possession has been such that it could ripen into title. A trespasser named Trever has just cut $3000 of trees from an area of Redlands that was (and still is) in the actual possession of Harbin. In a state that applies the *Winkfield* rule to land, who has the immediate right to recover damages from Trever?

a. Jonas.

b. Harbin.

c. Either one has an immediate right to recover.

d. Neither could recover because the adverse possession puts trespass actions in suspension.

37. Earlier this year, Peterson acquired a ripened title to a tract of land called Fairview by adverse possession. Jonas, the record owner of Fairview, realizes he's lost his title but wants to know if he can recover at least *something* from Peterson. The period of limitations on trespass actions is 3 years,

a. If he acts fast, Jonas should be able to recover for nearly 3 years' worth of mesne profits from Harbin based on the last 3 years of wrongful possession before Peterson's title ripened.

b. Jonas would have a trespass action against Peterson for injuries Peterson caused to the land as long as the injuries occurred within period of limitations on trespass.

c. Both of the above.

d. Jonas appears to be out of luck because Peterson's title "relates back."

38. George Fleming wrote the names of several persons on packages of rare coins from his collection. He then handed the packages to his nephew saying they should be delivered to the persons named on them. A short time later, George died in a freak gardening accident. His nephew carried out George's instructions right after George's death:

a. The gift could succeed if the court regards the nephew as agent for the donor.

b. The gift could succeed if the court regards the nephew as agent for the donees.

c. Both of the above.

d. The gift would probably be upheld as a valid will.

39. When Burt Fortunato turned 60, his wife, Mona, bought him a large luxury-class riding mower, something Burt had always wanted. The mower was delivered to the garage at the couple's home during the day, and Burt was taken out to be "surprised" during a small family gathering that same evening. Burt sat on the mower, held the controls and backed it up a couple of feet. Everyone clapped enthusiastically. Then they all went back in the house and had cake. After Mona's death, the tax authorities claimed Mona still owned the mower at her death (so its value would be taxable as part of her estate). Assume the tax authorities follow ordinary state property law on questions of the validity of gifts:

a. There does not appear to be any plausible factual basis for saying that Mona did *not* still own the mower at her death.

b. Courts sometimes waive and dispense with the delivery requirement when it's hard to meet because the donor and donee live in the same household.

c. Burt's sitting on the mower and backing it up a couple of feet might well be considered enough to satisfy the delivery requirement, especially in a common-household case like this.

d. More than one of the above is true.

40. Peggy ran into her neighbor, Jimmy, at a garden supply store. She told him she had just bought a new weed whacker and she wanted to give him her old one, which was in her garden shed. She added that she kept the shed unlocked and suggested that Jimmy should just come over and pick it up "anytime." Jimmy would be the owner of the old weed whacker:

a. As soon as Peggy said these things to Jimmy.

b. Only if Peggy and Jimmy later staged a delivery in which she actually handed the old weed whacker to Jimmy.

c. As soon as Jimmy picked up the old weed whacker, whether or not Peggy was still living at that time.

d. As soon as Jimmy picked up the old weed whacker, but only if Peggy was still living at that time.

41. Suppose in the preceding question that, the next day, Jimmy went to Peggy's garden shed to pick up the weed whacker and, liking the looks of the new one better, took it instead. When Peggy saw Jimmy using the new one on his own property she became furious.

a. Jimmy would be the owner of the new weed whacker.

b. Peggy could revoke the gift of the old weed whacker because that gift is not yet complete and, as a result, Jimmy would end up owning neither of them.

c. Although it's too late for Peggy to revoke the gift of the old weed whacker, she could retrieve the new one from Jimmy.

d. None of the above.

42. Ronard Feldspar, who is quite elderly, told his granddaughter, Tammy, that he wanted her to have a certain rare porcelain soup tureen, worth $10,000, after his death. He signed and handed her a letter that said: "I give you hereby my porcelain soup tureen, to possess from and after my death, but I retain the right to possess it until I'm gone."

a. The letter serves essentially the same purpose as a will and, for all intents and purposes, would be treated as a will.

b. If the letter is treated as a will, then legal rights to the soup tureen pass immediately to Tammy subject, however, to revocation at any time prior to the testator's death.

c. Both of the above.

d. Delivery of the letter can serve to meet the delivery requirement and provide Tammy with an irrevocable future interest in the soup tureen.

43. Later, on his deathbed, Ronard wrote a check in the amount of $10,000 and handed it to Tammy. There was plenty of money in his account to cover the check. Tammy would be entitled to the $10,000:

a. Only if she cashes the check before Ronard's death under the rule that applies in many states.

b. Whether or not she cashes the check before or after Ronard's death under the general rule, which says that that checks are assignments of the funds in the account.

c. Under no circumstances since a check is not a valid means for making gifts of money.

d. Only if the check could be interpreted as a de facto will.

Facts for Mason-Sanibel questions. Robert Mason leased a downtown storefront to Oliver Sanibel under a 10-year written lease at a rental of $5,000 per month. The lease said nothing about assignment or subletting. Sanibel entered into possession and opened a flower shop.

44. Suppose that, after three years, Sanibel found the flower business boring and he decided to close the shop. Under the traditional rules, if Sanibel abandoned the leasehold without cause:

a. Sanibel would still be liable for the full rent for the remaining 7 years of the term even if Mason quickly relets the premises to somebody else.

b. Mason would have a right to the full rent as it accrues for the remaining 7 years of the term if he chooses to leave the premises empty.

c. Many modern courts would apply the modern ordinary contract rule, which is that Mason has a "*duty*" to mitigate.

d. Sanibel would have no further duty to pay rent once he leaves the premises.

45. Suppose again that, after three years, Sanibel found the flower business boring. If Sanibel sells the business to Antonia:

a. Sanibel can assign the lease to Antonia, but under the common law rules, the assignment could be lawful only if Mason consents to it.

b. Sanibel can sublet to Antonia, but under the common law rules the sublease could be lawful only if Mason consents to it.

c. Both of the above.

d. None of the above. Under this lease, Sanibel can either assign the lease or sublet without Mason's consent.

46. Assume in the preceding question that Sanibel validly assigned the lease to Antonia. After paying two months' rent, Antonia abandoned possession because she wanted a bigger store. Five more months have gone by, and Mason has already missed receiving $25,000 of rent.

a. Sanibel is liable to Mason for the $25,000 under these circumstances.

b. If Mason succeeds in collecting the $25,000 from Sanibel, Antonia is totally off the hook.

c. Both of the above.

d. None of the above. Sanibel cannot be held liable to Mason for the $25,000 under these circumstances.

47. Assume again that, after three years, Sanibel sold the flower shop business to Antonia. As part of the deal, he made a written agreement to transfer possession of the demised premises to Antonia.

a. If Sanibel transfers possession by sublease, Antonia will become Mason's tenant in the place of Sanibel.

b. If Sanibel transfers possession by sublease, Sanibel will still owe Mason the full rent for each month in the remaining seven years of the lease.

c. If Sanibel wants to transfer possession by sublease, then he must transfer to Antonia the right to possession for the entire remaining duration of the lease.

d. If Sanibel wants to assign the lease to Antonia, he must retain a reversion—even if only for a day.

Facts for Torrey's apartment questions: Torrey leases a one-room "efficiency" apartment in a large building. For the past several weeks a leak from the upstairs

neighbor's bathroom has dripped from Torrey's ceiling. Several complaints to the landlord have produced no results. Meanwhile, the drip-drip-dripping all night long keeps Torrey from sleeping. He's gotten so bleary-eyed at work that his boss has threatened to fire him.

48. Assume that Torrey moves out because he cannot sleep in the apartment (*i.e.,* that the apartment is untenantable):

a. If the landlord was legally responsible for stopping the drip, Torrey should not have any further liability for rent under the doctrine of constructive eviction.

b. Even if the dripping is the sole fault of the upstairs tenant and the landlord has no ability or duty to stop it, Torrey still should not have any further liability for rent under the doctrine of constructive eviction.

c. Both of the above.

d. None of the above. Unless the landlord actually intended to evict Torrey, the case would not be one of constructive eviction.

49. Assume that Torrey cannot sleep in the apartment but he does not move out. If the implied warranty of habitability applies to his drippy "efficiency" apartment:

a. He could logically claim a constructive eviction without actually moving out.

b. Torrey should be able to hold the landlord responsible for fixing the drip even without moving out of the apartment.

c. Both of the above.

d. Torrey would be considered responsible for keeping the apartment habitable.

50. Assume that Torrey remained in possession of the apartment but withheld part of his rent, paying the landlord only what Torrey felt to be the "fair" amount due.

a. Under the traditional common law rule, the landlord could evict Torrey for non-payment whether the lease provided for such eviction or not.

b. According to many modern cases, Torrey's rent liability should be held to be reduced or abated because the landlord breached the implied warranty of habitability.

c. Courts that hold as in b. above are, in fact, applying *ordinary* contract law to leases in allowing Torrey to retain possession at a reduced rent.

d. Both b. and c. above.

51. Kathy and Kenny inherited Blackacre from their mother. Ever since, Kathy has been in sole occupancy. Kenny wants to know his rights.

a. Under the majority rule, Kenny would be permitted to recover rent from Kathy purely by virtue of her being in sole occupancy.

b. If Kathy refuses to let Kenny share occupancy with her, he could bring an ejectment action and have her removed from the premises.

c. If Kathy refuses to permit Kenny to share occupancy with her, his only remedy would be to sue for partition.

d. If Kathy refuses to let Kenny share occupancy with her, she would be liable to him for damages corresponding his share of the fair rental value of the premises.

52. Bea and See were co-tenants in Redacre.

a. If they were tenants in common and Bea died, then See would be the sole owner.

b. If they were joint tenants and Bea died, then See would be the sole owner.

c. If they were joint tenants and Bea conveyed her interest to Jake, then See and Jake would be joint tenants.

d. Both b. and c. above.

53. Suppose that Bea, See and Dee were joint tenants.

a. If Bea dies, then See and Dee would be co-owners as joint tenants.

b. If Bea conveys her interest to Fred, See and Dee would be joint tenants as to an undivided 2/3, and Fred would have an undivided one-third as tenant in common with the two of them.

c. If Bea conveys her interest to See, then See and Dee would be joint tenants as to an undivided 2/3, and See would have an undivided one-third as tenant in common with herself and Dee.

d. All of the above.

54. Walter and Winnie are tenants by the entirety in Blueacre. Walter's *individual* creditors would have recourse against Walter's interest in Blueacre to satisfy judgments they hold against him:

a. In all of the states that recognize tenancies by the entirety.

b. In some (but not all) of the states that recognize tenancies by the entirety.

c. In none of the states that recognize tenancies by the entirety.

d. None of the above.

55. Wharton sold some of his land to Rhodes. Due to frontage requirements, they had to draw the boundary so Rhodes got a part of Wharton's driveway. Wharton wanted to put off the expense of a new driveway as long as possible—ideally till it came time to sell his retained land. The deed to Rhodes stated that Wharton was "reserving to the grantor personally a right of way over the existing driveway for as long as he continues to own" the retained land. Under the interpretation that would probably best carry out the Wharton's intent, this language would create:

a. An easement appurtenant

b. An easement in gross.

c. A license.

d. A fee simple determinable in the strip covered by the driveway.

56. Nichols wanted to build an irrigation canal that would pass partly across Gelfand's land. Nichols offered to let Gelfand use the water from the canal in exchange for letting Nichols build the canal. Relying on Gelfand's expression of assent, Nichols built the canal at his own considerable expense. Later, Gelfand changed his mind and started to fill in the portion of the canal on his land. Nichols objects. Based on these facts, there appears to be a good chance that a court would recognize that Nichols has:

a. An executed parol license.

b. An easement by estoppel.

c. What some refer to as an "irrevocable license."

d. All of the above.

57. Many years ago Winslow installed an underground sewer pipe from his house to the sewer main in the street. The pipe ran nearly the entire length of Winslow's very long lot. Later Winslow sold a part of the lot, containing a portion of the underground sewer pipe, to Borden. No mention was made of the sewer pipe.

a. One problem with finding an easement by implication in this case is that there was no quasi-easement.

b. One problem with finding an easement by implication in this case is that the underground pipe was not apparent.

c. One problem with finding an easement by implication in this case is that most courts recognize such easements only for easements of way.

d. All of the above.

58. Suppose that, after negotiations, Borden agreed to deliver a deed back to Winslow granting an easement "for the existing underground pipe." The deed described the easement as encompassing a certain 5-foot wide strip and the underground pipe was within that strip.

a. Borden may make any use of the 5-foot strip that does not unreasonably interfere with Winslow's use of the easement.

b. Winslow may make any use of the 5-foot strip (including cable TV wires) that does not unreasonably interfere with Borden's use of his land as a whole.

c. Both of the above.

d. Either Borden or Winslow can unilaterally relocate 5-strip to any convenient location across Borden's property whenever either wants to do so.

e. All of the above.

Facts for Rohrman-Kipper questions. Rohrman and his neighbor, Kipper, went together and shared the cost of digging a well to be used by the two of them. The well is on Kipper's lot, but Kipper granted Rohrman "a permanent easement to use water from the well and maintain connecting pipes to carry the water across the property line for use on Rohrman's lot."

59. Recently Rohrman received an offer to buy his lot, which he is seriously considering. One thing the prospective buyer wants to be sure about, however, is that there is a water supply for the lot. Rohrman told him about the easement, but the buyer's lawyer is still concerned.

a. This easement granted to Rohrman is presumptively in gross.

b. This easement granted to Rohrman will presumptively terminate when Rohrman sells his lot.

c. The easement to Rohrman will presumptively become the property of whoever buys Rohrman's lot.

d. If he wants to, Rohrman can transfer the easement to somebody else separately from his lot.

60. Assume Rohrman didn't sell his lot. Now Rohrman's brother has purchased the lot on the other side of Rohrman's (so Rohrman's lot is now sandwiched between his brother's property and Kipper's). Rohrman proposes to extend the pipe to his brother's property so his brother can also use water from the well. Kipper objects:

a. It would be an unlawful overuse of the easement for Rohrman to extend the pipe to his brother's property so his brother can also use water from the well.

b. Rohrman would be presumptively entitled to transfer an undivided shared interest in his right to the well water to whomever he pleases.

c. Rohrman can keep his lot and transfer his rights to water under the easement, but if he does he would no longer be allowed to use the water himself.

d. If Rohrman's brother sells his lot to Rohrman, it would be lawful for Rohrman to use the well water on both of his lots.

<End of examination.>