PACE UNIVERSITY SCHOOL OF LAW

PROPERTY
PROFESSOR HUMBACH August 16, 2023
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.

OPEN-BOOK EXAM: You may use any written materials or electronic devices you want, but you are not permitted to communicate in any way with any person or AI system.

GENERAL INSTRUCTIONS:

This examination consists of 60 multiple-choice questions to be answered using EXAM4. Since you have successfully completed the online Estate System Proficiency Test, this copy of the exam does not include the questions covering the estate system and future interests. **You do not need to write your "word."**

By now you should have downloaded EXAM4 (https://law.pace.edu/academics/registrarbursar/exam-information) and taken a Practice Exam on it. Please carefully review and follow the instructions supplied by the Registrar's office for taking the exam on EXAM4. Questions concerning the mechanics of taking the exam should be referred to the Registrar's office.

Answer each question selecting the *best* answer. Indicate your choice by clicking the letter on the Multiple-Choice screen in EXAM4. Confirm your answer and the question number on the left side of the screen. **If you want to delete or change an answer, follow the EXAM4 instructions using the "unlock" button. You should have already practiced deleting or changing answers on the Practice Exam to familiarize yourself with the process.** The answers you submit at the end of this exam cannot later be changed.

It is strongly recommended that you **save** a copy of your exam answers to your USB flash drive *before* you exit from EXAM4. You might be unable to review your individual exam if you do not save a copy. You will receive 2 bonus points for correctly using EXAM4.

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. If you think different states have different rules, use the majority rule unless the question otherwise specifies. Do not assume the existence of any facts or agreements not set forth in the questions. **Unless otherwise specified, assume that: (1) the period of limitations on ejectment is 10 years; and (2) the signed-writing requirement in the statute of frauds applies to "leases of more than one year."**
Except as otherwise specified, all conveyances are to be considered as if made, in each case, by a deed under the usual modern conveyancing rules. Note: "Both of the above" (and similar locutions) mean that *each one* of the above answers is, by itself, a correct statement.

1. Walker was at a friend's house. While Walker and his friend were chatting, it began to rain. Walker 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 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.

2. Owner bought a small antique table for $300 at a used furniture store. He took it to Varnish Inc. to have it refinished. Owner did not inform Varnish Inc. how much the table was worth or how much he'd paid for it. While the table was at Varnish Inc., a fire broke out. It destroyed everything on the premises, including the table. Owner brought an action against Varnish Inc. for $300.

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

b. There is a non-rebuttable presumption that Varnish Inc. was negligent in its care of the table.

c. While there's a presumption that Varnish Inc. was negligent in its care of the table, Varnish Inc. is allowed to try to rebut the presumption and thereby avoid liability.

d. Varnish Inc. cannot be held liable for the loss because Owner did not disclose the table's value or how much he'd paid for it.

3. Suppose in the preceding question that the table 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 Owner against Varnish Inc.:

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

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

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

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

e. None of the above.

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

a. There was no bailment of the scarf because the attendant was not aware it was hidden in the coat.

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

c. The restaurant's duty was to use the care that a reasonable person would use under similar circumstances, and reasonable persons don't expend efforts to care for things they don't know exist.

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

5. Walker caught a foul ball that a batter hit into the stands. The previous owner of the ball (MLB) takes the position that balls hit into the stands during a game are abandoned property. Walker placed the ball on the floor under his seat. He momentarily forgot it when he got up to leave after the game. Just as Walker was turning to go back for the ball, he saw Defendant grab it up. Walker has sued Defendant in replevin.

a. Defendant would have the better claim to the ball because he now has it, and Walker has no basis for claiming a right to it.

b. Defendant would have the better claim to the ball because, after Walker caught it, he voluntarily gave up possession by putting it under his seat.

c. Walker would have the better claim to the ball.

d. MLB still owns the ball.

6. Defendant is a butterfly hobbyist. While trespassing on land belonging to Owner, he spotted a very rare butterfly. He managed to capture it and later sold it to another butterfly enthusiast for $5000. Owner learned about this and now sues Defendant in trover.

a. Defendant should prevail in the trover action because he was the first captor, and it was his industry and labor that brought about the capture of the butterfly.

b. Owner should prevail in the trover action under the principle of ratione soli.

c. Owner should prevail in the trover action because the law should not allow a trespasser to profit from his own trespass.

d. Both b. and c. above.

7. Owner created a meditation grove around a waterfall located on her land. She earns her livelihood by charging members of the public who visit the grove to meditate. Now her neighbor has discovered a large and valuable gravel deposit on its land and has developed it into a gravel quarry. The noise of the trucks and digging equipment have a very negative effect on the tranquility and profitability of the meditation grove. The paying visitors to Owner's grove have dwindled to practically nothing. Owner sues her neighbor for damages.

a. The court would prefer Owner if Owner had bought her land first.

b. The court would prefer Owner because the law does not generally tolerate damnum sine injuria (damage without a right to redress).

c. The neighbor would be liable to Owner because the neighbor's conduct has affected Owner's livelihood.

d. The neighbor would be liable to Owner because people are not allowed to use their land in ways that adversely affect the existing uses of neighboring land.

e. In deciding which land use to prefer, the court would normally engage in a balancing process that considers the relative values, including social values, of the competing uses.

8. A hunter was chasing a wild animal across open farmland. He was very close to capturing the animal when a second hunter intervened and caught it. The two hunters are now in a lawsuit over ownership of the animal. The owner of the farmland is not asserting a claim. Which of the two hunters would the court probably prefer?

a. The first hunter, in order to protect the industry and labor which made it possible for the second hunter to capture the animal.

b. The hunter who first achieved actual possession and occupancy of the animal, for the sake of certainty.

c. The court would hold that both hunters should share ownership of the animal 50-50.

d. The court would award the animal to the state because the states own all the wild animals within their boundaries.

9. Owner has a large vacation property with a trout stream running through it. Walker, an avid fisherman, went on the property and caught several fish while wading in the stream. Owner sues. Walker would be entitled to the fish (pick best answer)

a. As long as Walker's presence on Owner's land was pursuant to a license from Owner.

b. As long as Walker had a valid fishing license issued by the state.

c. If Walker had a license from Owner to be on Owner's land and fishing was within the scope of this license.

d. None of the above. The fish would belong to Owner because they were caught on Owner's land.

10. Suppose in the preceding question Walker had entered the property without Owner's permission by floating down the stream in a small boat. Owner sues Walker in trespass for boating down the stream through Owner's property without Owner's permission.

a. Even if the stream isn't legally navigable, Walker could not be considered a trespasser as long as he touched only the water (and not the bottom or banks of the stream).

b. If the stream *is* legally navigable, Walker could lawfully touch the bottom or banks of the stream in connection with navigation without being considered a trespasser.

c. Both of the above.

d. None of the above. Trespass refers only to physical intrusions on *land*, not intrusions on water.

11. Owner is installing an outdoor living space behind her home, including a large outdoor couch. The only practical way to get the couch to the backyard is by going through the narrow side yard. The route requires a brief intrusion several feet onto Neighbor's property. When the truck arrived with the couch, Neighbor came out and expressly forbid any intrusions on her land. But the furniture movers just scoffed and proceeded to carry the couch to the back, trespassing on Neighbor's land as needed to get the job done. Fortunately, there was no economic harm to Neighbor's land.

a. Even though no economic harm occurred, Neighbor may be entitled to substantial punitive damages.

b. Because no economic harm occurred, Neighbor would only be entitled to nominal damages.

c. There's no actionable trespass because the intrusion was unavoidable.

d. There's no actionable trespass because the neighbor was being unreasonable.

e. There's no actionable trespass because ordinary neighborliness requires people to allow minor harmless intrusions on their land by their neighbors.

12. Owner's rural neighbor charges admission to view a cave that can be entered only on the neighbor's land. It is a very profitable business. A recent land survey reveals, however, that most of the cave lies under Owner's farm, even though there's no direct access to it from Owner's surface. Owner is irked that the neighbor has been making a profit off of portions of the cave under Owner's farm. Does Owner have a right of action for trespass against the neighbor?

a. No, because there is no access to the cave from Owner's surface.

b. No, as long as the neighbor was not aware he was using portions of the cave belonging to another.

c. No, if Owner was in no way harmed economically by the neighbor's use of portions of the cave under Owner's farm.

d. Yes.

13. Suppose in the preceding question that the neighbor also mined considerable quantities of naturally occurring semi-precious gems from the walls of the cave. Would Owner be entitled to recover for gems that the neighbor took from under Owner's farm?

a. No, because the gems would be considered the property of no one until the neighbor severed them from the substance of the soil, at which point they belong to the neighbor as first "captor."

b. Yes, because the owner of land generally owns everything that's a part of the soil.

c. No, because without considerable expense Owner could not get access to the gems anyway except by trespassing on the neighbor's property.

d. Yes, because Owner did not even know the gems existed until the neighbor removed them from the cave.

14. Owner has an industrial neighbor that operates a small powerplant in connection with its operations. The powerplant unavoidably requires the pumping and disposal of considerable amounts of percolating groundwater. The power it produces is socially valuable, but the pumping has caused the water table to drop. Owner's well no longer works during low-rainfall months.

a. Under the so-called English or "absolute ownership" rule, Owner would not have an action against his neighbor for removal of the groundwater

b. Under the so-called American or "reasonable use" rule, Owner would probably have no action against his neighbor for removal of the groundwater

c. Both of the above.

d. Owner would have an action against the neighbor in most states because the neighbor's intentional conduct has deprived Owner of value.

15. Seller sold a tract of land to Buyer. In the duly recorded deed, Seller reserved the right (a profit à prendre) to extract oil and natural gas from the under land. Buyer then sold the land to Buyer2 who's now suing to enjoin Seller from pumping oil from the land. Buyer2 says the pumping disturbs his use of the land as a horse farm. Seller argues that Buyer2 is bound by the terms of the deed to Buyer. Is he?

a. No, not unless Buyer2 actually agreed to those terms.

b. Yes, because Buyer could not transfer a greater interest than Buyer had (i.e., title subject to the reservation of oil and gas rights).

c. No, because Buyer2 was not a party to the deed from Seller to Buyer.

d. No, because the oil still in the ground belongs to Buyer2, not Seller.

16. Suppose in the preceding question that Seller and Buyer2 reach a settlement under which Seller is permitted to pump oil from the land. The county then adopts a new law that prohibits pumping oil on parcels of less than 500 acres. The effect of the new law is to make it commercially impracticable for Seller to extract any of the oil under Buyer2's land, thus depriving Seller of all economic value. Does the adoption of the new law result in a compensable taking?

a. Arguably yes, because making it commercially impracticable to extract particular oil is the same for constitutional purposes as destroying it, which requires just compensation.

b. No, because Seller still has ownership of the underground oil and has merely lost the right to extract it.

c. Yes, because *any* law the significantly impairs valuable property rights is, at least in theory, a compensable taking.

d. No, because there is no compensable taking unless the government physically intrudes on private property.

17. Owner bought a food truck. She planned to sell sandwiches while parked on the streets of the village where she lives. Local restaurant owners complained, and the village adopted an ordinance that prohibits food trucks from selling their wares on the village streets. Owner sold the truck at a substantial loss. Owner claims she has a right to just compensation because the village ordinance blatantly favors one class of property owners to the detriment of another.

a. Owner would be entitled to just compensation because, as she says, the village ordinance blatantly discriminates against one class of property owners in favor of another.

b. Owner would be entitled to just compensation because the ordinance was passed *after* she bought the food truck, and government cannot take actions that reduce the value of private property.

c. The court would decide the case based on whether, in the court's judgment, the ordinance furthers a legitimate public interest sufficient to justify the burden on Owner.

d. The ordinance would almost certainly be upheld as a valid exercise of the police power using the "rational basis" test.

18. Owner bought a parcel of undeveloped land. The size of the parcel was such that, under the local zoning, it could be divided into two separate building lots. Owner's plan was to build her home on one side of the property and sell the other side to help cover its cost. The local land-use authorities determined, however, that about 57% of the parcel was legally protected wetlands. As a result, Owner was not able to sell part of the property as a buildable lot. This cut the value of her property in half.

a. Owner would be entitled to just compensation for the 50% of her property value that she lost as a result of the wetlands law.

b. Owner would be entitled to just compensation for the value of any discrete and valuable property rights that she was deprived of.

c. Owner would be entitled to just compensation because substantial value was taken from her.

d. All of the above.

e. There is no compensable taking on these facts.

19. Assume again that Owner bought a parcel of land with the intention of building a home on it. After the home was built, the state decided to modify and straighten the road in front. The state physically appropriated about 200 sq,ft. of Owner's land for this project. The project did not affect her home, but it reduced the value of her property by about 5%. Is Owner entitled to just compensation for this governmental action?

a. Yes.

b. No, not as long as Owner's use of her property is essentially unaffected.

c. No, because only a small portion of the property was taken.

d. No, because the state did not take even close to "all economically beneficial use."

20. Owner lives in a small city. Owner received an official notice that the City Council voted to take Owner's home by eminent domain. The city's plan is to expand the

privately-owned airport that serves the city and region. Owner values his home far more than its "fair market value," and he doesn't want to sell. He also believes the city is misusing its governmental power to acquire land for a private, for-profit business.

a. For the city to take Owner's home under these circumstances would violate the "public use" requirement of the Takings clause

b. It's highly unlikely that a court would prevent this taking as long as there's a rational basis for concluding that the project serves the public interest.

c. Owner has no reason to complain because the usual rules for determining "just compensation" assure that Owner will be fully satisfied with the amount he's paid for his property.

d. Owner can be legally required to sell his home to the city, but only if a mutually acceptable price can be agreed.

21. Driving home from the West Coast, Owner was pulled over by the police. A search of Owner's car turned up nearly $20,000 rolled up in a small duffel. The police had probable cause to suspect that Owner was transporting the money for use in an illegal drug transaction. The police took the money pursuant to their powers of civil forfeiture. Owner asked: "Can you take my money without even arresting me?" The police replied, "Would you prefer that we arrest you?" Owner drove off leaving the money behind:

a. The police apparently exceeded their constitutional authority by taking Owner's money without charging him with a crime.

b. The police apparently exceeded their constitutional authority by taking Owner's money when he had not been convicted of a crime.

c. Both of the above.

d. None of the above. The actions of the police appear to be within their constitutional authority even though Owner was never charged with or convicted of a crime.

In the following questions, do *not* assume that the state's law makes a distinction between lost and mislaid property unless the question so specifies.

22. Walker found a gold watch on the ground next to a public tennis court. He took it to a jewelry shop to have it checked out. The next day the jeweler's assistant inadvertently misdelivered the watch to a person whose identity is unknown. Walker plans to sue the jewelry shop for conversion. The proper action to recover damages would be:

a. Replevin.

b. Trover.

c. Trespass to chattels.

d. Restitution.

e. None of the above.

23. Suppose in the previous question that Walker does in fact sue the jewelry shop for damages:

a. The jewelry shop should win because Walker is not the legal owner of the watch.

b. Walker's possession of the watch would create a rebuttable presumption that he owns it, but the jewelry shop should win if it can rebut this presumption.

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

d. The judgment should be for Walker for nominal damages because Walker paid nothing for the watch.

24. Owner hired an electrician to put up a ceiling fan in the family room of his home. The electrician found $8000 hidden in the ceiling. The previous owner who lived in the house heard about the $8000 and claims it—even though he admittedly has no idea whose money it is or how it got there. Now Owner, the electrician and the previous owner of the house all claim the money. Following the logic of the traditional English cases on finding, who should have the better claim to the money?

a. Owner.

b. The previous owner who lived in the house.

c. The electrician as finder.

d. A charity selected by the court.

25. Late one evening, after dining at a restaurant. Walker headed back to his car, parked in a bank parking lot nearby. He found a bracelet on the ground in the bank parking lot. Now the bank, which owns the locus in quo, is suing Walker claiming it is entitled to the bracelet found on its property. Because of the bracelet's high value, the court does not consider it "abandoned property." Under the American line of cases on finding:

a. The bank should win if Walker was trespassing at the time he found the bracelet.

b. The bank should win *whether or not* Walker was trespassing at the time he found the bracelet.

c. Walker should win because the American line of cases generally prefers the owner of the locus in quo.

d. Legally, neither Walker nor the bank has any *legal* right to the bracelet.

26. Ken lives in a rented house under a three-year lease. One day, while planting flowers in the front yard (as permitted by his lease), Ken discovered an antique bronze medallion buried in the ground. From all the evidence, the medallion had been there since the late 1800s. Ken's landlord is suing Ken for the medallion. In a state that follows the traditional English cases on finding, who is entitled to the medallion?

a. Ken, as the finder.

b. The landlord, as earliest known possessor.

c. Neither of the above.

d. The government because the medallion is treasure trove.

27. Last year, Buyer bought a vacant lot across the street from her home. She received a deed from the seller. Though Buyer didn't know it, the seller was a fraudster who didn't have any title to convey. After receiving the deed, Buyer secretively kept a watchful eye on the land through her front windows, and she made a mental note of the comings and goings of every person she saw trespass on it. But she never did live on the land, build on it or put a fence around it: Based on these facts, will Buyer eventually acquire a ripened title to the vacant lot by adverse possession?

a. Probably not because (among other possible problems) her actions do not seem to meet the "open and notorious" requirement.

b. Probably not because (among other possible problems) there is nothing here that shows she performed any acts of ownership on the land.

c. Both of the above

d. Probably not because an adverse possessor can acquire title by adverse possession only if she lives on the land for at least 10 years.

e. Probably yes.

28. In 2010, Buyer bought a piece of land and received a deed. Now, years later, the property is claimed by the seller's heirs. They allege that, when Buyer got his deed, the seller was an elderly individual who was legally incompetent. The heirs challenge the deed to Buyer based on the seller's alleged incompetence, claiming they are the true owners of the land. Buyer hopes he can keep the land by using the doctrine of adverse possession.

a. The acts of ownership required for Buyer to be considered in adverse possession would depend a lot on the nature and character of the land and the uses for which it was suitable.

b. If Buyer can show that he's met the requirements for acquiring title by adverse possession, the effect would be to "cure" the defective title he received from the seller.

c. Both of the above.

d. None of the above. It is not proper to use the doctrine of adverse possession for this purpose.

29. Just over 10 years ago, Owner purchased a new home and moved in. Three years ago, while Owner was on assignment for her employer in a distant city, Owner leased the property to a tenant for 11 months. As a result, Owner has been in actual personal possession of the premises for a few months less than 10 years. Now someone claims that Owner's deed was defective. Owner hopes to use the doctrine of adverse possession to defend her right to the property.

a. The tenant's possession under the 11-month lease would be attributed to Owner, so the lease shouldn't affect Owner's ability to use the doctrine of adverse possession to defend her claim to the property.

b. Owner will not be able to use the doctrine of adverse possession to defend her claim to the property because her actual possession of the property is less than 10 years.

c. The tenant's 11-month possession of the property really messes things up, and it's not at all clear what the effect would be on the Owner's ability to use the doctrine of adverse possession to defend her claim to the property.

d. The tenant's 11 months of possession under the lease must be deducted from the Owner's adverse possession because the tenant did not intend to adversely possess the property.

30. When an adverse possessor meets all the requirements for title by adverse possession,

a. Title is automatically transferred from the former owner to the adverse possessor, with no need for a deed.

b. The adverse possessor acquires title by original acquisition.

c. The adverse possessor receives a derivative title.

d. The adverse possessor is entitled to a deed from the former owner confirming the transfer of title.

31. AP entered into wrongful possession of a residential property. In order for AP to acquire a ripened title by adverse possession, most courts would say he would have to (among other things):

a. Possess the property in the honest belief that it's his.

b. Notify the true owner that he has possession of the property.

c. Notify the true owner that he's asserting a claim to the property.

d. Openly engage in acts of ownership that objectively manifest an intention to claim the property as his own.

e. All of the above.

32. Owner bought a cabin on a piece of wooded land. Even though her property had highway access, Owner found it more convenient to use a paved shortcut across Neighbor's land. Neighbor repeatedly warned Owner to stop the trespasses, but Owner ignored the warnings and continued using the shortcut whenever she was at the cabin. This has gone on for over 10 years. Neighbor (as servient owner) can prove that he *also* regularly used the paved shortcut during the entire 10-year period.

a. Owner does not have an easement by prescription because, due to Neighbor's use of the shortcut, Owner's unlawful use would not be considered "exclusive."

b. Owner does not have an easement by prescription because, due to Neighbor's use of the shortcut, Owner's unlawful use would not be considered "continuous and uninterrupted."

c. The fact that Neighbor also used the shortcut would not in itself prevent Owner from acquiring an easement by prescription.

d. Owner would have a right to stop Neighbor from making further use of the shortcut once Owner has acquired an easement by prescription over it.

e. Both c. and d. above.

33. Suppose in the preceding question that Neighbor did *not* also use the shortcut. However, because Owner bought the cabin as a vacation place, she used the shortcut only in the summer for about one month each year.

a. Under the circumstances, this seasonal use of the shortcut would likely be considered "continuous" enough to meet the continuity requirement for Owner to acquire an easement by prescription.

b. Usually, "continuous" requires that the use be nearly constant, and it's doubtful that an easement by prescription could ripen on these facts.

c. Because seasonal use of an easement is necessarily occasional and episodic, there would be no continuousness requirement in a case like this.

d. For an easement by prescription to ripen, the use must be sufficiently continuous to show adverse "possession."

34. Owner erected a metal shed at the back of his property. Due to an honest mistake as to the location of the boundary, the shed encroached 17 inches onto the neighboring land. There it stood for over 15 years. A routine survey was done when the neighbor was preparing to sell. When Owner learned of the encroachment, he apologized and relocated the shed to a spot entirely inside the boundary described in his deed. Now, a year later, Owner wants to move the shed back to its previous location. Owner's actions of apologizing and relocating the shed:

a. Would constitute an effective abandonment by Owner of any rights that he may have acquired by adverse possession due to the 15-year encroachment.

b. Would be deemed to be an effective re-conveyance by Owner to his neighbor of any rights or title that Owner may have acquired by adverse possession.

c. Would not, in most states at least, affect the rights that Owner had acquired by adverse possession.

d. Would, under the usual rule, be treated as proof that the original placement of the shed was not hostile, thus defeating adverse possession by Owner.

35. Owner inherited a parcel of land but never went there. In 2012, AP found the land vacant and took adverse possession of it. In 2019, AP2 took over adverse possession of the land. AP2 could now have a ripened title to the land if:

a. AP delivered a deed to AP2 purporting to convey the land to AP2.

b. There was privity of estate between AP and AP2.

c. Both of the above.

d. AP left the land voluntarily and AP2, finding it vacant a few days later, moved in and took possession.

e. All of the above.

36. Owner inherited a parcel of land some years ago. Because she lives in a distant state, she has hardly ever visited the place. Recently Owner learned that, for the almost 10 years, there has been an adverse possessor on the land. The adverse possessor's recent activities on the land have caused harm and reduced the property's value. Late last month, Owner recovered possession of the land in an ejectment action. Owner would be entitled to bring a trespass action to:

a. Recover damages for harm to the land occurring within the period of limitations for trespass.

b. Recover mesne profits for wrongful possession within the period of limitations for trespass.

c. Both of the above.

d. None of the above.

37. Suppose in the preceding question that Owner did not sue in ejectment on a timely basis. Now the adverse possessor has acquired ripened title to the land. Owner would be entitled to bring a trespass action to:

a. Recover damages for the harm done to the land during most of the past 3 years (up until the title ripened).

b. Recover mesne profits for most of the last 3 years (up until the title ripened).

c. Both of the above.

d. None of the above.

38. Owner bought a home about 8 years ago and moved in. A short time later, Reckless lost control of his car and crashed into the side of the house, causing substantial damage. When Owner sued Reckless to recover for the damage, Reckless pointed out a defective deed in Owner's chain of title, arguing that Owner is, in fact, an adverse possessor.

a. As a mere adverse possessor, Owner is not entitled to sue Reckless for damage resulting from the crash.

b. According to some courts, Owner could recover for injury to the use and possession (use and enjoyment) of the home but not for permanent depreciation.

c. Under the practically universal rule, Owner should be able to recover for the permanent depreciation to her home resulting from the crash even if she is just an adverse possessor.

d. Owner would not be permitted to recover damages from Reckless because Owner's possession is only constructive and not actual.

39. Tenant leased an apartment from Landlord "for 3 years reserving an annual rent of $24,000 payable at a rate of $2,000 per month." Even though the parties never got around to signing the lease, Tenant took possession and paid rent monthly for several months. What type of tenancy does Tenant probably now 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.

e. No tenancy at all.

40. Tenant has a month-to-month tenancy running from the 14th to the 13th day of each month. From today (August 16), what is the earliest date as of which the landlord can terminate the tenancy?

a. August 31.

b. September 13.

c. September 16.

d. October 13

e. October 16

41. Tenant entered possession of an apartment under a written lease for three years. The lease contained the usual promises and reservation with respect to rent. Tenant later assigned his interest in the apartment to Aristo, who assumed the lease. Aristo wrongfully abandoned the apartment, and stopped paying rent, with about a year left on the lease:

a. Landlord can recover rent from Tenant.

b. Landlord can recover rent from Aristo.

c. Both of the above.

d. None of the above

42. Suppose in the preceding question that Aristo did not abandon possession. Instead, he reassigned the lease to Walker with about a year left in the term. Later, before the lease expired, Walker wrongfully abandoned possession and stopped paying rent.

a. Landlord can recover rent from Aristo because he assumed the lease.

b. Landlord could recover rent from Aristo even if he had not assumed the lease.

c. Aristo's duties as an assignee who assumed the lease would automatically come to an end when he reassigned the lease to Walker.

d. All of the above.

43. Tenant leased Landlord's guesthouse for two years under a written lease containing the usual promises and reservation with respect to rent. Tenant then assigned her interest to Aristo, who assumed the lease and remains in possession. Which of the following is ***not*** true?

a. Aristo is in privity of contract with Landlord.

b. Aristo is in privity of estate with Landlord.

c. Tenant is in privity of contract with Landlord.

d. Tenant is in privity of estate with Landlord.

e. None of the above is *not* true (*i.e.*, all are true).

44. Tenant leased premises from Landlord for three years. The written lease states: "This lease may not be assigned without consent of the lessor." The lease does not mention subleases. After taking possession of the demised premises, Tenant transferred the possession to Wilkes for the entire remaining term except for the last day. Landlord sued claiming that Tenant violated the no-assignment clause in the lease. Who wins?

a. Landlord wins because Tenant has relinquished possession of the premises

b. Tenant wins because Tenant retains a reversion.

c. Landlord wins because the lease required Tenant to get permission before making any transfers of possession like this one.

d. Tenant wins because he's still in privity of contract with Landlord.

45. Tenant leased a dance studio from Landlord Holdings, Inc. Landlord also owns an open lot right next door. After Tenant moved in, Landlord leased this lot to an excavating contractor, which uses the space to store equipment and materials. Due to this use, constant noise and dust emanates from the lot, making it impossible to use the demised premises. After numerous complaints, Tenant wants to know if he has to continue paying rent for space that he cannot use.

a. Tenant would be justified in abandoning and ceasing to pay rent if (but only if) Landlord was somehow legally responsible for or able to control and prevent the noise and dust coming from the lot.

b. Tenant can be relieved of its rent obligation based on constructive eviction even if Tenant doesn't actually vacate the premises.

c. Both of the above.

d. None of the above. Most courts would hold that Tenant must pay the agreed rent even if Tenant is forced to abandon possession.

46. Bob Downing leased a house to Karen Gaines. For Gaines, a major reason for entering the lease was that the house would be her home and provide basic protection from the elements. What is more, the lease contained an express provision that Downing would maintain the premises. During the first big rain, Gaines discovered that the roof was full of leaks. Downing ignored her pleas for assistance and repairs. Under the traditional doctrine of "independence of covenants":

a. Gaines would be relieved of her rent obligations even if she retains possession.

b. The landlord's substantial breach of the lease means that Gaines is relieved of her obligation to pay rent.

c. Downing can evict Gaines for nonpayment if Gaines withholds rent even if the lease does not provide for such forfeiture.

d. None of the above.

47. Same facts as previous question except the lease did not contain an express provision that Downing would maintain the premises. As a result of modern legal reforms applicable to residential tenancies:

a. Gaines is entitled to have Downing repair the roof to keep the premises habitable despite the absence of an express provision calling for such repairs.

b. Gaines would probably be able to retain possession without paying the full amount of the rent for the rental periods in which the roof was leaky.

c. Both of the above.

d. These facts would constitute a constructive eviction of Gaines.

e. All of the above.

48. Landlord leased an apartment to Tenant. Later, Tenant transferred the apartment to Walker:

a. If the transfer was a sublease, Tenant remains in a landlord-tenant relationship with Landlord.

b. If the transfer was an assignment, then Tenant is in a landlord-tenant relationship with Walker.

c. Both of the above.

d. If the transfer was a sublease, Landlord is entitled to recover rent directly from Walker.

e. All of the above.

49. Landlord leased an apartment to Tenant, and Tenant later transferred the apartment to Walker. The best way to tell whether the transfer is an assignment or a sublease is to:

a. Look at what it says at the top of the document ("Assignment" or "Sublease").

b. See whether Tenant retained a reversion (or, in some states, a right of entry). If he did, then the transfer is an assignment.

c. See whether Tenant retained a reversion (or, in some states, a right of entry). If he did, then the transfer is a sublease.

d. See whether Walker assumed the lease. If he did, then the transfer is a sublease.

50. Grandmother handed some ornate pewter tongs to Granddaughter and said: "These have been in the family since the War of 1812. When I die, they will be yours."

a. Grandmother has made a valid inter vivos gift.

b. Grandmother has made a valid gift causa mortis.

c. Grandmother has not made a valid inter vivos gift because she has not expressed *in praesenti* donative intent.

d. Grandmother has made a valid testamentary gift.

e. Both c. and d. above.

51. One day, while home from college, Donor said to his high-school age sister: "Sis, since you like my Taylor Swift T-shirt so much, you can have it." The gift would be complete:

a. If Donor, then and there, physically handed the T-shirt to his sister.

b. If the T-shirt was already in the sister's possession.

c. Both of the above.

d. Even if the T-shirt was in Donor's dorm room back at school.

52. While visiting his cousin Leila, Jesse picked up a book and opened it. Leila said: "If you want it, you can have it." Jesse replied, "Oh thank you. That's very nice of you." Leila said, "I just have a few more pages to read." Handing the book to Leila, Jesse said: "Fine, I'll pick it up next week."

a. It looks like the donor became the bailee of the donee.

b. There could be no completed gift under these facts because Jesse left the book in Leila's possession.

c. By holding possession of the book overnight, Leila would have "undone" any gift that might have occurred based on the parties' actions and words.

d. There is nothing in these facts that could be construed as a delivery.

53. On his deathbed, Donor took off his college lacrosse ring and handed it to Donee, saying: "Here, I won't be needing this anymore. You take it." Donee said thank you and later left wearing the ring.

a. The gift would be presumptively revocable.

b. The gift would presumptively be causa mortis.

c. Both of the above.

d. The gift could not have been an "inter vivos" gift because the donor was on his deathbed when he made it.

e. All of the above.

54. Walker and Wicker owned Greenacre as joint tenants. Wicker conveyed his interest to Buyer. As a result:

a. Walker and Buyer are joint tenants.

b. Walker and Buyer are tenants in common.

c. Walker no longer has a right of survivorship.

d. Both b. and c. above.

e. None of the above; the conveyance is not lawful because joint tenants cannot separately convey their interests in the land.

55. Owner conveyed a residential property to "to A, B, and C and their heirs" using language in the deed that made the three joint tenants. B took sole occupancy of the property right after the conveyance. A and C did not object. No agreement was made with respect to rent:

a. B would not owe rent to A and C under the majority rule because B has a right to possession of the whole.

b. B would owe rent to A and C in some states, but not under the majority rule.

c. A and C are both entitled to share possession with B, and B has no right to exclude them.

d. All of the above.

56. Owner conveyed an investment property "to A and B and their heirs" using language in the deed that made A and B tenants in common. If B dies intestate, survived by A, then:

a. A would be the sole owner of the property.

b. A and B's heirs would be tenants in common.

c. A and B's heirs would be joint tenants, each holding an undivided one-half.

d. B's heirs would be the sole owners of the property.

57. Suppose in the preceding question Owner had conveyed "to A and B and their heirs" using language in the deed that made them joint tenants. If B died with a will, survived by A, then:

a. A would be the sole owner of the property.

b. A and B's heirs would be tenants in common, each holding an undivided one-half.

c. A and B's heirs would be joint tenants, each holding an undivided one-half.

d. A and the devisees named in B's will would be joint tenants, each holding an undivided one-half.

58. Owner conveyed an investment property to "to A, B, and C and their heirs" using language in the deed that made them joint tenants. C then borrowed $50,000 from a bank. To secure the loan, C mortgaged her interest in the property:

a. The three grantees would still be joint tenants in a state that follows the lien theory of mortgages.

b. The three grantees would still be joint tenants in a state that follows the title theory of mortgages.

c. Both of the above.

d. The three grantees would no longer be joint tenants in any state, whether lien theory or title theory.

59. Owner deeded a portion of his land to Buyer "reserving to the grantor personally the right to use the existing driveway across the lands conveyed hereby for as long as the grantor continues to own the lands immediately to the north." Now Buyer is dumping piles of boulders on the driveway in an effort to block it. Owner sues to enjoin this interference claiming that he has a right to use the driveway. The court should hold that the deed reservation gave Owner:

a. A revocable license because the deed used the word "personally."

b. An appurtenant easement that would run with the land that Owner retained.

c. An executed parole license because Owner's right to use the driveway was included and spelled out in the deed.

d. An easement in gross.

60. A year or so ago, Owner sold a part of his land to Buyer. The part that Owner sold had certain necessary wires running over it between Owner's house and a nearby utility pole. The deed to Buyer mentioned no easements. Now Buyer wants to remove the wires running over his land, calling them "unsightly." Under these circumstances, the best advice to Owner would be that he could properly claim:

a. An easement by implied grant.

b. An easement by implied reservation.

c. An easement by prescription.

d. An easement by estoppel.

e. More than one of the above.

<End of examination>