

Note: The questions on this exam draw heavily on exams given in 1999-2009

PACE UNIVERSITY SCHOOL OF LAW

PROPERTY

PROFESSOR HUMBACH

FINAL EXAMINATION

December 20, 2010

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 multiple choice questions and true-false questions. Answer the multiple-choice and true-false questions (if applicable) on the answer sheet provided.

- 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. *This is part of the test.*

If you successfully took the Estate System Proficiency test and have a “word,” write your “word” *above your exam number* on the “name” line of the answer sheet (and, of course, you don’t have to do the true/false questions). **Do not write the “word” anywhere else on the answer sheet.**

Answer each question selecting the *best* answer. Mark your choice on the answer sheet with the special pencil provided. *Select only one answer per question.* **If you change an answer, be sure to fully erase your original answer** or the question may be marked *wrong*. You may lose points if you do not mark **darkly** enough or if you write at the top, sides, etc. of the answer sheet.

When you complete the examination, turn in the answer sheet together with this question booklet.

Unlike in some recent previous years, **there is no “re-answer” feature on this test.**

Unless the context otherwise requires (such as where the facts are specifically stated to arise in New York), base your answers on general common law principles as generally applied in American common law jurisdictions. Do not assume the existence of any facts or agreements not set forth in the questions. **Unless otherwise specified, assume that: (1) the period of limitations on ejection is 10 years; and (2) the signed-writing requirement in the statute of frauds applies to “leases of more than one year.”**

Except as otherwise specified, all conveyances are to be considered as if made, in each case, by a deed having the effect of a bargain and sale, after the Statute of Uses, but ignoring the effects of obsolete doctrines such as the Rule in Shelley's Case, the Doctrine of Worthier Title and the destructibility of contingent remainders. Ignore the possibility of dower and, for perpetuities purposes, ignore the possibility of posthumous children in gestation.

1. Wharton found a muskrat in a trap he'd laid on his own land. As Wharton was removing the muskrat from the trap, it bit him and ran away. The next day Nelson went hunting on nearby land belonging to Cooper. During his hunt Nelson saw a muskrat (*ferae naturae*), shot it and took it home:

- a. If Nelson did not have a license from Cooper to hunt on Cooper's land, then Cooper would have a better claim than Nelson to the muskrat.
- b. If the muskrat was the same one that Wharton had trapped the previous day, then Wharton would have the best claim to the muskrat.
- c. Both of the above.
- d. Since the muskrat was on Cooper's land, the better (and more sensible) view is that Cooper already owned it when Nelson shot it.

2. Suppose that Cooper had told Nelson it was okay for him to "hunt and fish" on Cooper's land. While Nelson was hunting there, he discovered that trains passing on adjacent tracks spilled coal on Cooper's land—apparently because the tracks took a steep turn along the property line. Nelson collected as much coal as he could carry and, over the next several days, managed to remove nearly \$100 worth, which he intended to use for heating his home. Cooper has found out about this and wants the value of the coal.

- a. There is no way that Cooper could recover the value of the coal from Nelson because Cooper didn't own the coal any more than Nelson did.
- b. Cooper would have a strong argument for claiming the value of the coal because, in taking it, Nelson was exceeding the scope of his license.

c. As owner of the land, Cooper would be considered owner of all that's on it, including the coal.

d. Cooper could not get the value of the coal from Nelson because Nelson had a license to be on the land when he found and took the coal.

3. Lisa is constructing a patio in her backyard. The project requires a large amount of concrete. Because of the terrain, there's no way for a concrete delivery truck to get into Lisa's backyard from her street. This means the concrete would have to be carried in by hand (at great expense). Lisa's neighbor in back has an existing driveway that could provide easy access to Lisa's backyard. There would be no harm or inconvenience to the neighbor. Unfortunately, the neighbor refuses to let Lisa bring in the concrete over his driveway. If Lisa goes ahead and uses the neighbor's driveway anyway:

- a. It would not be a trespass because courts balance the hardships and refuse to enjoin a harmless use by one person of another person's land.
- b. It would not be a trespass because Lisa's neighbor is being unreasonable, and courts won't let a person be unreasonable when it causes great expense to others.
- c. It would be a technical trespass but no court is likely to award more than nominal damages unless the neighbor can show serious actual harm.
- d. It would be a trespass and some courts might even make Lisa pay punitive damages.

4. Jenkins has a home in a semi-rural area. He gets his household water from a well. Recently a truck depot near his house put in a truck-washing facility. It uses well water. The needs of the truck depot are so

great that it has lowered the local water table, causing Jenkins' well to go dry. In order get water on his own land, Jenkins has to extend the depth of his well—at a cost of several thousand dollars.

- a. If the state follows the so-called English rule, the truck depot would not be liable to Jenkins.
- b. If the state follows the so-called American rule, the truck depot would not be liable to Jenkins if its use of the water was deemed “reasonable.”
- c. Both of the above.
- d. None of the above. In most or all states the truck depot would be liable to Jenkins if it knowingly depleted the underground water supply.

5. The Bear Claw River is a small stream that is navigable in fact. The river crosses private land, including Greenacre, owned by a Mr. Green. As Walberg and Yellin were putting a small boat in the river at the public highway bridge, Mr. Green approached them and ordered them not to pass across his land. Walberg and Yellin ignored him and went on their way. In the middle of their passage through Greenacre, Walberg and Yellin were photographed dragging their boat along the shore in order to get around a short shallow section.

- a. Walberg and Yellin should be liable as trespassers because Green denied them permission to go through Greenacre.
- b. Walberg and Yellin should be liable as trespassers because they did not merely float down the stream but also went ashore.
- c. Walberg and Yellin should not be liable as trespassers because the law implies a license for members of the public to use rural lakes and streams.

d. Walberg and Yellin should not be liable as trespassers because the public navigation easement includes a right to make necessary use of the shore.

6. Corwin found a valuable bracelet while walking through a public park on his way to work. He showed it to his boss, who told him he should turn it over to the police. In fact, his boss even offered to do it for him. A couple of weeks later, Corwin found out that his boss had sold the bracelet on E-Bay.

- a. Corwin has an action in trover to recover the value of the bracelet from his boss.
- b. Corwin can recover the value of the bracelet from his boss in replevin.
- c. Both of the above.
- d. Corwin has no action because he is not the true owner of the bracelet.

7. Suppose in the preceding question that Corwin had found the bracelet in a supermarket, in among the lettuce heads in the produce display. As between Corwin and the owner of the supermarket:

- a. Corwin would probably have the better claim under the so-called American rule.
- b. The supermarket owner would probably have the better claim under the so-called English rule, assuming the place where bracelet was found would be considered a public or semi-public place.
- c. Both of the above.

d. None of the above. Corwin would have no lawful claim to the bracelet because he is not the true owner of the bracelet.

8. Suppose again that Corwin found the bracelet in a supermarket, in among the lettuce heads in the produce display. In a state that makes the distinction between lost and mislaid property:

a. The supermarket's claim to the bracelet would be strengthened if it could establish that the bracelet had been lost.

b. The supermarket's claim to the bracelet would be strengthened if it could establish that the bracelet had been mislaid.

c. In a case like this one, it would not make any difference whether the bracelet was mislaid or lost.

d. The true owner would have a better legal claim to the bracelet if it had been mislaid rather than lost.

9. Some years before his death, Runyan signed a legal document with the intention of giving a bronze statue to Dagmar, his daughter. According to the document, Dagmar was to have possession of the statue from and after Runyan's death, but Runyan was to retain the possession during his lifetime. Runyan delivered the document to Dagmar right after he signed it.

a. If the document was in the proper form to make a testamentary gift of the statue, then Dagmar would have immediately received a future interest in the statue, subject only to Runyan's life estate.

b. If the document was meant to provide for a gift inter vivos, then the gift would not be complete until there was a delivery of the statue to Dagmar.

c. Both of the above.

d. If the document transferred a future interest to Dagmar, then Runyan could still make a charitable gift of his interest in the statue, but Dagmar would still be entitled to possession at Runyan's death.

10. An important difference between a testamentary gift and a gift causa mortis (as it is viewed in most states) is that:

a. A testamentary gift is subject to a condition precedent while a gift causa mortis is subject to a condition subsequent.

b. A testamentary gift is subject to a condition subsequent while a gift causa mortis is subject to a condition precedent.

c. A testamentary gift requires an intention that title to pass to the recipient *in praesenti* whereas a gift causa mortis does not require a delivery.

d. A testamentary gift must be made by a will that meets the requirements of the Statute of Wills while a gift causa mortis can only be made by delivering a deed.

11. Ostermann was about to have a very serious heart operation. There was a definite chance he would not survive. In apprehension of this possibility, he called his family members together and handed them various items of jewelry and some small antique matchboxes, which he had collected over his lifetime. He said he wanted to make sure these items were "in good hands" in the event he did not "make it." Presumptively:

a. Ostermann has made gifts inter vivos of the items of jewelry and antiques.

- b. Ostermann would be able to revoke any of these gifts at any time before his death, even before actually undergoing the operation.
- c. Ostermann would be able to revoke these gifts only if he actually had the operation and did not succumb to it.
- d. These gifts would be automatically revoked if, the day before the scheduled operation, Ostermann died from a fall (unrelated to his heart condition) and, therefore, never had the operation that had prompted his gifts.

12. For her husband's 45th birthday, Adele bought a player piano to give him. At his birthday party, when everyone was standing around the piano in the couple's living room, Adele said: "Everybody listen up! This is Harry's piano. I'm giving it to him for his birthday." From then on, Adele acted as though her husband was the owner of the piano. According to testimony, when people asked if they could play it, she'd say: "Don't ask me. It's Harry's. He's the one you need to ask."

- a. Mostly likely a court would and should hold that the gift has failed because the delivery requirement has not been met.
- b. When the donor and donee both live in the same household, courts tend to relax the delivery requirement for large items if there's strong evidence of donative intent.
- c. This was presumptively a gift in contemplation of marriage, since the donor and donee are married to each other.
- d. The donor became the bailee of the donee.

13. Rhonda was with her niece, Kim, when Kim admired Rhonda's ring. "Gee, that's a pretty ring," Kim said. Rhonda replied: "This ring used to belong to your grandmother. When I die, it will be yours." Has Rhonda made a valid gift of the ring?

- a. No. At most, she has attempted what would amount to a testamentary gift without complying with the Statute of Wills.
- b. No, because the law requires a signed writing in order to complete a gift of something very valuable, like this ring.
- c. No, because there has been no express indication of acceptance by the donee, and a completed gift requires an expression of acceptance.
- d. Yes, because the donative intent is very clear and, therefore, courts would hold that there has been a completed gift.

14. On her deathbed, Aunt Gwen handed Chet a key to a safe-deposit box saying: "Go to the bank and get the gold coins that are in this box. I want you to have them."

- a. The gift will probably succeed if Chet retrieves the coins before Aunt Gwen's death
- b. The gift will probably succeed if Chet retrieves the coins after Aunt Gwen's death.
- c. Both of the above.
- d. The gift cannot succeed unless Chet brings the coins to Aunt Gwen so she can deliver them to him before her death.

15. With the intention of making a gift of money, Gretchen wrote a check to Patty in the amount of \$25000. Gretchen then handed the check to Patty. In most states:

- a. The gift will fail if Patty does not cash the check before Gretchen dies.

- b. The gift will succeed if the Patty cashes the check and receives the funds during Gretchen’s lifetime.
- c. Both of the above.
- d. None of the above.

16. Carrolberg Mfg. Co. pumps large quantities of natural gas into a natural subterranean cavity for storage. It acquires the gas from a long distance pipeline company. Recently, Carrolberg has discovered that one of its neighbors has been removing the gas and selling it on the open market. The gas is removed from a portion of the cavity that extends under the neighbor’s land.

- a. By analogy to *ferae naturae*, there’s no basis to conclude that Carrolberg’s ownership rights were affected when the gas flowed away to the neighboring land.
- b. Some courts would hold that Carrolberg’s actions do not constitute a “trespass” because Carrolberg no longer owns the gas once it’s been pumped back in the ground.
- c. If Carrolberg has been using the underground cavity for a sufficiently long period of time, it very probably has a ripened title to the cavity by adverse possession (or, at least, an easement by prescription).
- d. If Carrolberg were found to be trespassing with the gas, the neighbor should be entitled to the offending gas because forfeiture of the intruder’s offending property is a normal remedy for cases of trespass.

17. Pershing went onto some vacant land owned by the Cuttham Timber Co. Over a period of years, he harvested more than 300 tons of

mushrooms, at a considerable personal profit. Now Cuttham sues Pershing for trespass.

- a. As landowner, Cuttham would be deemed in constructive possession of the vacant land for purposes of suing Pershing for trespass, provided there was no adverse possession.
- b. As landowner, Cuttham would be deemed in constructive possession of the vacant land purposes of suing Pershing for trespass, *irrespective* of whether there was an adverse possessor.
- c. Pershing probably could successfully defend by showing that Cuttham wasn’t using the mushrooms anyway, so it suffered no loss.
- d. As landowner, Cuttham could maintain an action in trespass against Pershing whether or not it had any kind of possession of the vacant land

18. Onslow owned a piece of riverfront land. About 25’ from shore there was an island of several acres. Although Onslow did not own the island, he built a makeshift pontoon bridge over to it. The only way to get to the island (without a boat) is across Onslow’s land. For the past 15 years, Onslow has acted as though he owns the island. He’s chased people off who landed from the river and he presumed to give permission to fisherman and trappers who wanted to go there. At no time, however, did Onslow ever live on the island or have any kind of structure there. Under these facts:

- a. It looks like it would be just about impossible for Onslow to have acquired a ripened title to the island by adverse possession because he never actually occupied it.
- b. Generally, as a matter of common law, some sort of structure or cultivation is required to claim a ripened title by adverse possession.

c. Lacking a fence or other enclosure, it would very difficult for Onslow to show that he had “exclusive” or “continuous” possession of the island.

d. These facts appear to present at least a jury question whether Onslow has acquired a ripened title to the island.

19. Walter bought Blueacre from Turnbull 7 ½ years ago. Turnbull had been there for at least the 6 previous years. Suppose that Walter’s activities on the land, and those of Turnbull before him, have been of the sort that could, in enough time, ripen into title by adverse possession.

a. Walter could well have a ripened title to the land if there was “privity of estate” between Walter and Turnbull.

b. In order for Walter to have a ripened title to the land, there’d need to be not only “privity of estate,” but also conduct that touches and concerns the land, and an intention that possession run with the land.

c. There’s no way for Walter to have a ripened title to the land. The duration of Walter’s possession is simply too short.

d. Privity of estate, or its absence, has nothing to do with whether Walter has a claim to a ripened title to Blueacre.

Facts for Boone questions. Boone and his family started camping on a certain area of vacant land over 15 years ago. Boone never built a dwelling on the land (using camping trailers instead), but he’s made a number of durable improvements that enhance convenience. He cleared an area of about 3 acres, which he and his family use fairly intensively. In addition, they frequently use the trails in a larger area (up to 100 acres), picking berries and mushrooms and also hunting in the larger area. Others also use the larger area, for purposes similar to those of the Boone and his family.

20. The land (if any) to which Boone may have acquired a ripened title is:

a. Quite possibly the 3 acres, but probably not the 100 acres.

b. Quite likely not only the 3 acres but also the 100 acres.

c. Most likely neither the 3 acres nor the 100 acres.

d. Whatever Boone has constructively possessed.

21. If Boone wants to claim a ripened title by adverse possession:

a. It is practically essential to success that Boone has told other people that he’s the owner of the land

b. It is practically essential to success that Boone gave actual notice to the true owner that he was claiming the land by adverse possession.

c. The hostility requirement could be met if Boone can show that he acted on the land as though he’s the true owner.

d. Boone could not have a ripened title to any of this land by adverse possession because he never built a dwelling there.

22. If Boone wants to claim a ripened title by adverse possession, the kinds of factors that would affect whether Boone’s acts could result in a ripened title would include:

a. The nature and situation of the property, the kinds of things it’s useful for, and the kinds of uses that Boone plans to make if he is recognized as the owner.

- b. The nature and situation of the property, the kinds of things it's useful for, and the kinds of uses that an ordinary owner might make of land similarly situated.
- c. The nature and situation of the property, the kinds of uses that Boone plans to make, and the kinds of uses that the true owner proposes to make if the court lets him retain ownership.
- d. Mostly, whether Boone placed any sort of permanent dwelling on the land or a fence around it.

23. Carlton Fitton owned a parcel of land with railroad tracks running behind it. He didn't own up all the way up to the tracks, however. He was separated from them by a 10 ft. strip of land owned by Roberts. For more than 10 years, Fitton openly occupied right up to the rail bed, using the strip of Roberts' land for garden, lawn and the other usual domestic purposes that were normal for the vicinity. When asked about this situation, Fitton once said: "I don't think Roberts knows he owns the strip, and I hope he doesn't find out."

- a. Fitton cannot acquire a ripened title to the strip by adverse possession because his possession is not open and notorious.
- b. In order for Fitton to acquire a ripened title to the strip by adverse possession, he'd have to notify Roberts that he's in "hostile" possession.
- c. Both of the above.
- d. Fitton can acquire a ripened title to the strip even if Roberts doesn't realize he owns it.

24. In 1990, Howard put up a boundary fence around his land. He accidentally enclosed about 40 sq. ft. of land belonging to his neighbor, Rachael. Neither of them noticed the discrepancy. Rachael recently had

a survey done and told Howard about the encroachment. Howard apologized and immediately removed the fence.

- a. If Howard had already acquired a ripened title to the 40 sq. ft. by adverse possession, he could not undo it by merely apologizing and moving the fence.
- b. In some jurisdictions, Howard's acts of apologizing and moving the fence might be taken as evidence that there never was a hostile claim of right in the first place.
- c. The best way to clear up this situation is probably for Howard to deliver Rachael a quitclaim deed to the 40 sq. ft.
- d. All of the above.

25. Assume in the preceding question that Rachael was 8 years old when, in 1990, Howard put up the fence and enclosed the 40 sq. ft. of Rachael's land. Using the statute of limitations that we studied in connection with disabilities (with a 21 year basic period and a 10 year disability period), and assuming the age of majority is 18 years, the earliest that Howard could acquire a ripened title would be:

- a. 2008
- b. 2010
- c. 2011
- d. 2021

26. Snyder's driveway crosses a bridge over a small brook running through his property. When this bridge washed out 2001, he began getting from the road to his house by means of a bridge on the property next door, the home of his neighbor, Cliff. However, Cliff was a tenant

for years, holding under a 20-year lease from Hendricks. The lease expires in 2015.

- a. If Snyder’s use ripens into an easement by prescription in 2011, it will be good against Cliff for the duration of the lease.
- b. If Snyder’s use ripens into an easement by prescription in 2011, it will be good against Hendricks following the expiration of the lease.
- c. Both of the above.
- d. Until Snyder’s use ripens into an easement by prescription, either Cliff or Hendricks would have standing to bring a trespass action against Snyder for making unpermitted use of the bridge.
- e. All of the above.

27. Some years ago Davis Gravel Co. received a deed to a parcel of gravel land known as Pebbleacre. They opened up a pit on the *east* side of Pebbleacre and have been extracting gravel from it. So far, however, they have made no move to develop or use the west side, which has remained unoccupied and unused. Now it turns out that the seller of Pebbleacre did not own it. The entire parcel belongs to the heirs of a certain Gump.

- a. Davis has a color of title to west side of Pebbleacre, but that provides Davis with no legal advantage.
- b. If Davis engages in sufficient acts of possession on one side of Pebbleacre to acquire a ripened title it, then Davis could thereby eventually get a ripened title to the whole parcel.
- c. Both of the above.

d. Davis can only acquire title by adverse possession to the part of Pebbleacre that it *actually* possesses.

Facts for Alston questions. Edna Alston bought a two-acre parcel of land. She intended to build two houses, one for herself and one for her mentally disabled daughter, who needs living assistance. At the time Alston bought, the local zoning required a minimum lot size of one acre per dwelling unit.

28. By the time Alston saved enough money to start construction, the town had amended the zoning law. It now requires a minimum of two acres per dwelling unit. As a result, the value of Alston’s property is close to half of what she paid for it, and she cannot build the two houses she planned. Nor can she sell the land for enough money to buy two adjacent building lots elsewhere in town.

- a. The amendment to the zoning law probably effectuated a taking of Alston’s property and she is entitled to just compensation.
- b. If Alston had lost all use of a portion of her property, she would probably be entitled to compensation for a “taking” of that portion.
- c. As long as there is no physical intrusion, the action by the town government could not constitute a taking of Alston’s property.
- d. On these facts the rezoning does not appear to constitute a compensable taking of any part of Alston’s property.

29 After Alston bought her property, the town decided it needed to have sidewalks in her neighborhood. It passed an ordinance requiring all lot owners to build public sidewalks, to certain specifications, across their respective lots. The ordinance also provides that owners will be fully reimbursed by the town for the cost of building the sidewalks.

- a. The sidewalk ordinance appears to violate the Takings Clause.
- b. The sidewalk ordinance probably did not effectuate a compensable taking because it provided full reimbursement for the cost of building the sidewalks.
- c. The sidewalk ordinance probably did not effectuate a compensable taking because the incursion is minor.
- d. The sidewalk ordinance probably did not effectuate a compensable taking of Alston's property because nothing was actually "taken."

30 Willie leased to Greg who then assigned the lease to Sally. If Willie sues Sally for nonpayment of rent, his suit would be founded on:

- a. The reservation of rent in the original lease.
- b. The promise to pay rent in the original lease.
- c. Both of the above.
- d. Nothing. Willie could not recover rent from Sally.

31 In the preceding question, if Alston wants to contest the validity of the sidewalk ordinance:

- a. She'd probably be better off claiming a deprivation of property without due process of law instead of trying to proceed under the Takings Clause.
- b. She'd probably be better off claiming that her private property had been taken without just compensation.
- c. Her claim would be very weak whether she proceeded under a "due process" theory or a "takings" theory.
- d. Her claim would be very strong under both a "due process" theory and a "takings" theory.

32 As Lauren Brundage drove home from a night of carousing with friends, she got pulled over for DWI. Local law provides that motor vehicles used in DWI offenses are subject to "forfeiture" to the town. The car belonged to Mr. Brundage, who was out of town at the time of these events.

- a. Under the Takings Clause the town cannot constitutionally take the car without compensation since doing so would deprive Mr. Brundage of "all value."
- b. Under the Takings Clause the town cannot constitutionally take the car without compensation if the owner had nothing to do with the DWI offense.
- c. Under the Due Process Clause the town cannot constitutionally take the car without compensation since doing so would be "unduly burdensome on individuals."
- d. None of the above.

33 A bag of salt fell off the back a truck belonging to Crown Co. Before Crown's driver could circle back to retrieve it, the bag was spotted by a driver for Bass Enterprises, who picked it up off the street and threw it in his own truck, intending to use it on icy walkways. A short time after that, however, the bag slipped off the Bass truck and was found by Harry Hughes, who put it in his car and took it home. The whole series of events was captured by on-street video cameras. Copies of the videos are in the possession of Crown's lawyer:

- a. One bag of salt is pretty much like any other (of the same brand), so even if Crown originally owned the salt, Crown would have lost title to it once it fell off Crown's truck.
- b. Since neither Bass nor Harry ever owned the salt, Bass would have no better right to the salt than Harry.

- c. Both of the above.
- d. Crown could recover the value of the salt from Bass in trover

34 Gorman conveyed “to Melissa and her heirs, but if babies are born on the moon, then to Walter and his heirs.” The future interest in this conveyance:

- a. Violates the rule against perpetuities.
- b. Does not violate the rule against perpetuities.
- c. Is not subject to the rule against perpetuities.
- d. None of the above

35 O is writing his will and is considering several possible devises. Which of the following would create a future interest that violates the common law rule against perpetuities? Assume that Chet has one child, age 2, and that all *named* persons are living at the time the will becomes effective.

- a. To Chet for life, then to Chet’s first child to reach age 18
- b. To Chet for life, then to Chet’s first child to reach age 24.
- c. To Chet for life, then to Chet’s first child now alive to reach age 24.
- d. More than one of above would violate the Rule Against Perpetuities.

36 The main purpose of the Rule Against Perpetuities is:

- a. To convert remainders into executory interests.
- b. To make it possible to create legal springing and shifting interests.

c. To invalidate conveyances that deprive the grantor of title for a duration longer than a life in being plus 21 years.

d. To reduce the dampening effects of contingencies on the use and value of land.

37 Willie leased Whiteacre to Greg who then assigned the lease to Sally. If Sally did not assume the lease, then Sally and Willie are:

- a. in privity of estate
- b. in privity of contract
- c. Both of the above.
- d. None of the above

38 Alissa Stanford leased an apartment to Calvin and Gale for a term ending “at 12:01 am on December 10, 2014.” The lease prohibits assignment or subleasing without lessor’s consent. Calvin and Gale have now split up and want to have as little as possible to do with each other. Bob Conway wants to take over the apartment but Stanford says “no.” Nonetheless, Calvin and Gale sign a document in which they purport to “sublease” the premises to Conway until 12:01 am on December 10, 2014. If Stanford sues declaring the lease forfeit due to tenant breach, she would (under the traditional rule):

- a. Likely lose unless she had “reasonable” grounds for withholding consent.
- b. Likely win because the law disfavors subleases.
- c. Likely win because the lease forbids subleasing without the landlord’s consent.
- d. Likely win because the lease forbids assignment without the landlord’s consent.

39 Same facts as previous question except the document stated that Conway's possession would expire on December 9, 2014. Stanford's attempt to terminate will:

- a. Likely succeed because the assignment now would put her in both privity of contract as well as privity of estate with Conway.
- b. Likely succeed because the lease forbids assignment without the landlord's consent.
- c. Both of the above.
- d. None of the above. There is no assignment here.

40 Last week, Pearman made an oral lease of 1567 Bacon Street to Lasswell for one year. The lease reserved a rent of "\$120,000 per year payable in monthly installments of \$10,000 each." The local statute of frauds applies to leases for more than one year. Lasswell has just entered into possession. He has:

- a. A tenancy from month to month.
- b. A term of years
- c. A tenancy from year to year.
- d. A tenancy at will.

41 Same facts as preceding question except the agreed term of the lease is exactly two years. Lasswell has just entered into possession. He has:

- a. Nothing. The oral lease is void.
- b. A term of years for one year.
- c. A tenancy at will that may convert into a tenancy from year to year.
- d. A tenancy at will that may convert into a tenancy from month to month.

42 Pearman demised 177 Front Street to Sutter for three years. Two weeks after the end of the three years, Sutter continues to occupy the property. However, no new lease has been discussed or entered into:

- a. Under the common law rule Pearman can hold Sutter for a new term.
- b. Sutter can be removed as a holdover tenant.
- c. Sutter is a tenant at sufferance
- d. All of the above.

43 Manville demised a run-down apartment loft to Sizwick from month to month starting on December 1, 2010. Today (December 20), Manville decided that he wanted to terminate ASAP. The earliest date that Manville could regain possession by causing Sizwick's tenancy to terminate would be:

- a. January 1, 2011
- b. January 7, 2011
- c. February 1, 2011
- d. February 7, 2011

44 Same facts as preceding question except that the lease is for a term of one year. The reserved rent is \$1600 per month. Manville wants Sizwick to vacate at the end of the term. How much advance notice is Manville required by law to give to terminate the lease at the end of the term of years?

- a. Notice by July 1, 2011
- b. Notice by June 1, 2011
- c. Notice by January 1, 2011
- d. None of the above. No notice is required.

45 Greta rented an apartment from Whitestone Properties (“Whitestone”). Afterwards, Whitestone leased a neighboring building, which it also owns, to Alcott Mills for use as a small furniture factory. Now, however, the noise from the factory’s machinery, especially the power saws, is very disturbing to Greta. She asks whether she can lawfully stop paying rent. Under the traditional rule:

- a. If the factory noise makes her apartment untenantable, she would be justified in ceasing to pay rent even if Whitestone does not cause the noise and can’t prevent it.
- b. Greta could not claim a constructive eviction if she does not at least partially vacate the premises.
- c. Both of the above.
- d. None of the above. Greta could stop paying the rent if Whitestone’s failure to prevent the noise was a material breach of the lease.

Facts for Helene-Dennis questions. Helene leased a house for \$60,000 per year, payable at the rate of \$5,000 per month. Within weeks of moving in, she discovered that the roof leaks in many places. When it rains, water drips down in nearly every room. Dennis, her landlord, made a few attempts to solve the problem, but the leaks and drips still remain. Due to the resulting dampness and mold, Helene can hardly stand to live there and is ready to move out, but Dennis says he intends to hold her liable for future accruing rent until the originally agreed end of the lease.

46 If Helene promptly moves out, she would likely *not* be liable for future rent:

- a. Because, under the traditional rule she could probably claim to have been constructively evicted.
- b. Because Dennis has breached the implied warranty of habitability.

- c. Both of the above.
- d. Simply because she would no longer be using the premises.
- e. All of the above.

47 Suppose Helene does not move out because she has trouble finding another place to live. Instead, for the time being, she continues to stay in the leaky house and tries to live with it all as best she can.

- a. Under the contract doctrine of mutual dependence of covenants (the *real* one) she would probably be legally excused from paying all or at least part of the rent.
- b. Under what courts sometimes mistakenly call “ordinary contract law” applicable to leases, she would probably be legally excused from paying all or at least part of the rent.
- c. Both of the above.
- d. None of the above. Absent constructive or actual eviction, there is no legal basis for excusing a lessee from paying the full agreed rent before the end of the lease.

48 Suppose that Dennis, the landlord, finally managed to fix all the leaks but, in meantime, Helene decided to move out anyway. At a time when the lease had 21 months to run, she unjustifiably abandoned possession and quit paying rent. Under the traditional rules:

- a. Dennis would be permitted, but not required, to accept the proffered surrender.
- b. By accepting the keys, Dennis would be deemed to be accepting the proffered surrender.

- c. If Dennis does not accept the proffered surrender, he must take reasonable steps to mitigate by attempting to find a new tenant.
- d. Helene's obligation to pay rent would automatically terminate when she ceases to be in privity of estate.

49 Coleridge owns a suburban house and lot. A railroad formerly ran behind his property, separating it from the property of his neighbor in back. For a number of years, no trains have run on this line and, in fact, the railroad company has even removed the tracks. Research at the recording office shows that, over 100 years ago, the farmer who owned the area had delivered a deed to the railroad granting "a right of way 25' wide and running from [east] to [west]. The deed also stated: "This right of way is granted for railroad purposes." Coleridge would like to make use of the portion of the 25' strip behind his house. Most likely:

- a. The railroad would have received an easement under the original deed from the farmer, an incorporeal interest that very possibly has been terminated by abandonment.
- b. The railroad would have received a fee simple under the original deed from the farmer, an estate in the land that would still be in existence.
- c. The railroad would have received an easement under the original deed from the farmer, an estate in the land that would still be in existence.
- d. The railroad would have received an executed parole license under the original deed from the farmer, a license that could now be revoked by Coleridge.

50 Maurice leased Morrisacre to Greg. Later on, Greg assigned the lease to Elmer, who assumed the lease:

- a. Maurice can recover rent from Elmer.
- b. Maurice can recover rent from Greg.
- c. Both of the above.
- d. None of the above.

Facts for Matthew-Keene questions. Matthew owned a house near the ocean but did not have direct access to the beach. His neighbor across the street, Mr. Keene, had property that was right on the beach. In exchange for a payment of \$300, Mr. Keene delivered a deed granting Matthew "a right to use the pathway along the fence at the eastern edge of my property for passage between the public street and the beach."

51 If Matthew sells his house in the future:

- a. The easement would be presumptively extinguished.
- b. The easement would presumptively still belong to Matthew.
- c. The easement would presumptively go to the buyer of the house as part of the dominant tenement.
- d. The easement would presumptively belong to the owner of the servient tenement.

52 Suppose the deed from Mr. Keene also stated: "This right of way shall be personal to Matthew."

- a. In light of the reference to "personal," the interest received by Matthew could be an easement in gross.
- b. In light the reference to "personal," the interest received by Matthew could be a license, in which case it would be revocable by the neighbor at any time.

- c. If the reference to “personal” had not been in the deed, Matthew would presumptively have received an easement appurtenant.
- d. All of the above.

53 A portion of Matthew’s property lies between Mr. Keene’s house and the nearest utility pole. When Mr. Keene, signed up for cable TV service, it was necessary to install a new pole. Mr. Keene asked Matthew if he could install the pole on a corner of Matthew’s property. Matthew said “sure,” and the pole was installed at a cost to Mr. Keene of about \$700. Now, however, after Matthew’s teenage son backed into the pole twice with the family car, Matthew wants the pole removed. Having gone to law school for several weeks, he announced to Mr. Keene: “Your license is revoked!”

- a. Mr. Keene may well be able to claim a right to keep the pole in place on the theory that he has received an executed parole license.
- b. Mr. Keene may well be able to claim a right to keep the pole in place on the theory that he has received an easement by estoppel.
- c. Both of the above.
- d. Because the agreement for the pole was not in writing, Mr. Keene could not have acquired an irrevocable right to use Matthew’s land for purposes of the pole.

54 Matthew needed a place to park his boat trailer. Mr. Keene sold him a strip of land running along the entire road frontage of Mr. Keene’s lot. Even though Mr. Keene’s driveway cut across the strip, the deed did not mention it. Mr. Keene wants to claim an easement by implication to use the portion of the driveway that’s on the strip conveyed to Matthew:

- a. He wouldn’t be allowed to because such an easement would be in derogation of the grant.
- b. Mr. Keene could claim an easement by necessity since the easement is necessary for him to use his driveway.
- c. On these facts there was a quasi-easement that has now probably become an actual easement.
- d. Mr. Keene could claim a quasi-easement to use the driveway, but not an actual easement.

Facts for Hotchkiss-Camden questions. Hotchkiss owned a piece of country land. It had a septic field to the east of the house. Being underground, the septic field was not visible to a surface observer. When Hotchkiss sold the eastern part of his property to Camden, the new boundary line ran through the septic field. About half of the underground facility is on the land that Hotchkiss conveyed to Camden. This fact was discovered when Camden dug to lay a foundation for a planned new garage.

55 Camden demands that the septic field be removed from his property, something that would cause great expense to Hotchkiss.

- a. Hotchkiss could not claim an easement by implied reservation from prior use because there was no quasi-easement.
- b. If Hotchkiss claims an easement by implied reservation from prior use (as opposed to an easement by necessity) he would not have to show that the easement was necessary.
- c. If Hotchkiss claims an easement by implied reservation from prior use, the requirement of apparentness would be satisfied because Camden now knows about the septic field.

d. If Hotchkiss claims an easement by implied reservation from prior use, he would have to show that the easement was reasonably necessary—in some states *strictly* necessary.

56 Suppose in the preceding question that Camden tried to build his garage (and learned about the septic field) more than 10 years after the conveyance. Hotchkiss probably could not successfully claim an easement by prescription for the septic field because:

- a. His use of Camden’s land over the 10-year period was permissive.
- b. His use of Camden’s land over the 10-year period was not open and notorious.
- c. His use of Camden’s land did not meet the requirement of “hostile.”
- d. None of the above. Hotchkiss probably *could* successfully claim an easement by prescription.

57 Hotchkiss and Camden reached a settlement on the septic field, allowing it to remain in place. A couple of years later, Hotchkiss bought some wooded acres located on the other (west) side of his property. Because his present house is a bit ramshackle, Hotchkiss wants to tear it down and build his dream home on the new wooded acreage. To save money, however, he plans to connect the new house to the existing septic field. Camden wants to know if he has a legal right to object to the use of the septic field in connection with the new house.

- a. Camden has no legal right to object if the physical burden would be essentially the same as with the existing house.

b. Camden has no legal right to object even if the physical burden would be somewhat greater than with the existing house.

c. Camden *does* have a legal right to object but the court might deny an injunction on equitable grounds.

d. Camden *does* have a legal right to object and the court should grant an injunction as a matter of course.

58 Grimsley and Hollister are joint tenants. Grimsley has ousted Hollister:

- a. In most states, Hollister should be able to recover money from Grimsley after the ouster.
- b. Hollister should be able to successfully maintain an ejectment action against Grimsley.
- c. Both of the above.
- d. Grimsley’s right of survivorship would be extinguished.
- e. All of the above.

59 Burt and Sandy Martindale, a married couple, bought Greenacre as tenants by the entirety in 2009. In 2010, Ellis acquired Sandy's interest in Greenacre as satisfaction of a tort judgment. (The jurisdiction follows the minority approach to this kind of situation). Burt and Sandy have continued as the sole occupants of the property. Ellis has:

- a. A right to share possession of Greenacre with Burt for as long as Sandy remains alive.
- b. A right to enjoy sole possession of Greenacre at Burt's death, provided that Burt predeceases Sandy.

c. A right to maintain an ejectment action against Burt if Burt ever refuses to let Ellis join in possession of Greenacre.

d. All of the above.

60 Burt is wondering if, by being the only *owner* in occupancy of Greenacre, he could ever acquire a ripened title to sole ownership of the property. The answer is:

a. No.

b. Yes, in 2020.

c. Yes, in 2020 if Burt tells Ellis today that he will “never let Ellis join in actual possession of Greenacre.”

d. Yes, provided that he pays a fair rent to Ellis.

61 Randall and Marcia Cantwell are married and live in a state that does *not* recognize the tenancy by the entirety. Since getting married, Randall saved some money from his job and bought a motorboat. Marcia took some of her personal inheritance and bought a sports utility vehicle. Presumptively:

a. The vehicle belongs solely to Marcia and the motorboat solely to Randall if they are in a community property state.

b. Both the vehicle and the motorboat are shared 50-50 by Marcia and Randall if they are in a "common law" property state.

c. The vehicle belongs solely to Marcia and the motorboat is shared 50-50 by her and Randall if they are in a community property state.

d. Both the vehicle and the motorboat are shared 50-50 by Marcia and Randall if they are in a community property state.

62 A conveyance was made to "Pete and Woodrow Wilson and their heirs." The conveyance presumptively gave them:

a. A tenancy in common with each other.

b. A tenancy in common shared among themselves and their heirs.

c. A joint tenancy with right of survivorship.

d. A joint tenancy but without right of survivorship.

63 Assume that the conveyance was to "Pete and Woodrow Wilson and their heirs as joint tenants."

a. In some states the conveyance would give Pete and Woodrow a joint tenancy.

b. In some states the conveyance would give Pete and Woodrow a tenancy in common.

c. Both of the above.

d. In most states the conveyance would create a joint tenancy shared among Pete, Woodrow and their respective heirs.

64 Assume that Pete and Woodrow received a joint tenancy:

a. If Pete mortgages his interest in order to get a loan, the joint tenancy would be severed.

- b. If Pete mortgages his interest in order to get a loan and then dies (predeceasing Woodrow), Woodrow would be the sole owner by right of survivorship.
- c. If both Pete and Woodrow both sign a mortgage of both their interests in order to get a loan, they would become tenants in common.
- d. All of the above.

65 Assume that Pete and Woodrow received a tenancy in common. Assume also that Pete entered into and has remained in sole possession:

- a. Pete could never acquire a sole title by adverse possession because his possession is deemed to be the possession of both him and his co-tenant.
- b. Pete would, under the majority rule, presumptively be liable for rent or damages to Woodrow, who is equally entitled to enjoy the benefits of possessing the land.
- c. If Pete committed an ouster of Woodrow, and Woodrow did not sue or re-enter, Pete would probably acquire a sole title by adverse possession no later than 10 years after the ouster.
- d. All of the above.

66 Assume that Pete and Woodrow had a tenancy in common. Pete leased his own interest in the premises to Fred for three years:

- a. It would be logical for a court to require Pete to share any rental proceeds equally with Woodrow.
- b. Such a lease would constitute an ouster of Woodrow unless Woodrow had consented to Pete's making the lease.

- c. The rights of survivorship would be destroyed.
- d. Woodrow would be entitled to share possession of the premises with Fred.

67 Archie, Daniel and Millen were joint tenants of Bellyacre. Archie conveyed his interest to Grayne. If Grayne then dies intestate:

- a. Daniel and Millen will own the land in equal shares (50-50).
- b. The land will be owned in equal thirds by Daniel and Millen and Grayne's heir.
- c. The land will be owned by Daniel and Millen and Grayne's heir, and they will be joint tenants with one another.
- d. Daniel will become the sole owner of the land if he survives Millen.

Facts for "Bentley" questions. Bentley bought an old chest of drawers and decided that it needed to be refinished. He left it at a furniture repair shop in order to get an estimate of the cost. While the chest was in the shop awaiting the estimate, there was a fire. The chest burned to a crisp.

68 As result of the legal relationship established between Bentley and the shop owner under these facts:

- a. The shop owner should be liable to Bentley for the loss if it resulted from the shop owner's failure to use ordinary care to protect the chest from fire.
- b. The shop owner should be liable to Bentley for the loss only if the shop owner could be considered to have "converted" the chest.

- c. The shop owner should not be liable to Bentley for the loss unless the shop owner actually started the fire.
- d. The shop owner should not be liable to Bentley for the loss unless the shop owner was guilty of gross negligence.

69 In an action by Bentley against the shop owner:

- a. Bentley would, like any other negligence plaintiff, have to prove every element of his case and there would be no presumptions in his favor.
- b. Bentley would have the benefit of an irrebuttable presumption of negligence in his favor.
- c. Bentley would have the benefit of a presumption of negligence in his favor, though the shop owner should be permitted to present evidence rebutting the presumption.
- d. There would be no presumptions about negligence because the shop owner would probably be deemed a gratuitous bailee.

70 Before taking the chest in for repair, Bentley had it appraised at a passing "antique road show." He learned that the chest was once in the family of President Millard Fillmore and, therefore, worth more than \$5000. However, to all appearances it looked like an ordinary used chest, worth only \$20-\$100 at most. Bentley purposely did not tell the shop owner the true value of the chest when he dropped it off to get the estimate.

- a. The shop owner should be liable to Bentley for the \$5000 value if he did not use the ordinary care appropriate for a \$5000 piece of furniture (even if he used the care appropriate for a \$20-\$100 piece of furniture).

- b. The shop owner should be liable to Bentley for the \$5000 value if he did not use the ordinary care appropriate for a \$20-\$100 piece of furniture.

- c. The shop owner should not be liable to Bentley for anything since Bentley, by his silence, misled the shop owner as to the true value of the chest.

- d. None of the above. The shop owner should be liable to Bentley, but only for, at most, the apparent value of the chest (\$20-\$100).

71 When Bentley left the chest at the repair shop for the estimate, he accidentally forgot to remove some gold coins that he had placed in the chest's hidden compartment. Under the better analysis:

- a. The shop owner should not be considered a bailee of the coins because he had no knowledge of them.
- b. The shop owner should not be considered a bailee of the coins because he never had any kind of possession of them.
- c. The shop owner should not be considered a bailee of the coins because he had accepted the chest only for purposes of making an estimate, and he had not actually taken it for purposes of doing the refinishing.
- d. The shop owner should be considered a bailee of the coins because he had unconscious possession of them.

Facts for Priscilla-Deuce questions. Priscilla left a valuable furpiece with the Deuce Storage Co. for safekeeping during the summer. She received a numbered claim ticket of the kind that Deuce provided to each of its storage customers.

72 Later the same year, Prufrock presented a claim ticket bearing a number very similar to the one on Priscilla's ticket. Deuce mistakenly misdelivered Priscilla's furpiece to Prufrock. In an action by Priscilla to recover the value of the furpiece from Deuce:

- a. Priscilla should recover even if it were proved that Deuce was not negligent in misdelivering the furpiece to Prufrock.
- b. Priscilla's best argument would be to rely on the rebuttable presumption of negligence, forcing Deuce to prove that it was not negligent in misdelivering the furpiece to Prufrock.
- c. Priscilla will have to include Prufrock as a defendant so that there will be no risk that Deuce will be held liable twice for the value of the furpiece.
- d. None of the above.

73 Assume that Deuce had a window cleaner come in to clean the windows in its storage room during the time that the furpiece was there. Due to a negligent mishap, the window cleaner damaged the furpiece:

- a. Deuce may recover for the damage to the furpiece in an action against the window cleaner, but only if it first receives express authority from Priscilla.
- b. Only Priscilla may recover for the damage to the furpiece in an action against the window cleaner.
- c. Either Priscilla or Deuce (but not both) may recover for the damage to the furpiece in an action against the cleaner.
- d. Both Priscilla and Deuce may recover for the damage to the furpiece in actions against the cleaner.

74 Assume again that Deuce had a window cleaner come in during the time that the furpiece was in storage and that, due to a negligent mishap, the window cleaner damaged the furpiece. If Deuce alone brings an action against the cleaner to recover for the damage to the furpiece:

- a. The cleaner would not be permitted to defend by asserting a *jus tertii* under which he does not claim.
- b. Deuce would be permitted to recover full damages just as though it was the true owner of the furpiece.
- c. Both of the above.
- d. None of the above. Deuce's action should be dismissed.

75 Assume again that Deuce had a window cleaner come in during the time that the furpiece was in storage and that, due to a negligent mishap, the window cleaner damaged the furpiece. Assume also that the trial court allows Deuce to recover from the cleaner for the damage to the furpiece:

- a. Deuce would be required to account to Priscilla for the money it recovers from the window cleaner.
- b. Deuce can retain the money it recovers from the window cleaner.
- c. The window cleaner should win on appeal.
- d. There is a real chance that the window cleaner can end up being held liable twice for the damage to the furpiece, first to Deuce and then a second time to Priscilla.

Omitted: Questions re Estate System and Future Interests. See "Estate System-Review Questions" at humbach.net.