FORDHAM UNIVERSITY SCHOOL OF LAW (1976-77)

MASTER COPY

EXAMINATION IN PROPERTY DATE: MAY 9, 1977

THERE ARE 10 PAGES TO THIS EXAMINATION PLUS AN ANSWER SHEET

NUMBER_____

CLASS DIVISION_____

PROFESSOR HUMBACH

YOU WILL HAVE 4 HOURS TO COMPLETE THE ENTIRE EXAMINATION

GENERAL INSTRUCTIONS:

The questions which follow are to be answered on the answer sheet attached to this booklet. You may tear out the answer sheet. Write your examination number on the answer sheet in the space provided. Write it Now.

Answer each question selecting the best answer. Indicate your choice on the answer sheet by making an "X" through the appropriate letter. Select only one answer per question; if more than one answer is indicated, the question will be marked wrong. DO NOT CIRCLE THE ANSWER YOU SELECT: MAKE AN "X" THROUGH IT.

If you want to change an answer, you must fully erase your original answer and place an "X" through the one which you consider correct.

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

Unless the context otherwise requires (such as where the facts are specifically stated to arise in New York), base your answers on general common law principles as generally applied in American common law jurisdictions. Do not assume the existence of any facts or agreements not set forth in the questions.

---

1. Henry Hargrave went to the Lincoln Lunch, a tavern close to his school, in order to wash away some of the day's tensions. He threw his overcoat over a chair at one of the tables and sat down at the bar. While sitting there, Henry spied (i) a silver I.D. braclet bearing the inscription "BIPPY" on the floor behind the bar and (ii) a quarter on the floor just beneath his feet. Henry picked up the quarter. The proprietor of the bar has said that he "didn't know" who owned either of these items.

As against the bar owner:

A. Henry is entitled to possession of both items.

B. Henry is entitled to possession of the quarter but not the braclet.

C. Henry is entitled to the braclet but not the quarter.

D. Henry is entitled to possession of neither item.

2. Assume in the preceding question that Henry had sneakily hopped over the bar, grabbed the I.D. braclet from the floor and then was confronted by the bar owner. Pick the best answer.

A. Under the so-called American rule, Henry would now be entitled to the braclet as against the bar owner.

B. Under the so-called English rule, Henry would now be entitled to the braclet as against the bar owner.

C. Both of the above.

D. Neither A nor B avove.

-Continued on Page 2-

3. Assume in the preceding question that Henry relinquished possession of the I.D. braclet to the bar owner, but the next day a friend of Henry's showed up and said: "I'm Wallace J. Morrison, III. My friends call me Bippy. I think I lost a silver I.D. braclet here." If the bar owner turns over possession of the braclet to Henry's friend, the bar owner should probably be:

A. Absolutely liable for misdelivery if the friend is not the "true owner."

B. Liable for misdelivery only if negligent if the friend is not the "true owner."

C. Under no liability, negligent or not, even if the friend is not the "true owner."

D. Entitled to demand a reward as a condition to returning the braclet to the "true owner."

4. If the friend in the preceding question gets possession of the braclet but is not the "true owner," the "true owner" could probably,

A. Have replevin against Henry's friend.

B. Have replevin against Henry.

C. Have replevin against the bar owner.

D. Any one of the above, at the true owner's option.

5. If the friend in the preceding question were not the "true owner," the bar owner could probably (pick the best answer):

A. Have replevin against the friend.

B. Have damages in trover against the friend.

C. Both of the above.

D. Neither of the above.

6. If the bar owner did recover the braclet or its value from the friend in the preceding question, then, under the strict application of the Winkfield doctrine:

A. The friend's liability to the true owner would be terminated.

B. The friend's liability to the true owner would be unaffected.

C. The bar owner's recovery would be contrary to generally accepted legal principles.

D. None of the above.

7. Assume that the friend were not the true owner, but that he acquired possession of the braclet as described in question 3. Assume further that, before the bar owner brought his action (in question 5), the friend had transferred the braclet to Fred Fence.

A. The bar owner could not recover the braclet from Fence unless Fence had reason to know that the friend was not the "true owner."

B. The bar owner could recover the braclet from Fence even if Fence were a bona fide donee causa mortis of the braclet.

C. The bar owner could not recover the braclet from Fence if Fence were a bona fide inter vivos donee of the braclet.

D. The bar owner could not recover the braclet from Fence under any circumstances.

8. Assume that the friend were not the true owner, but that he acquired possession of the braclet by writing a letter to the bar owner claiming to be Arthur Wealth, a well known rich person, and offering to buy the braclet with payment to be made by return mail. The bar owner then mailed the braclet to the friend. Friend neither paid nor ever intended to pay. The friend could transfer the braclet to a bona fide purchaser for value free of the bar owner's rights:

A. Under both the common law and the U.C.C.

B. Under the common law but not the U.C.C.

C. Under the U.C.C. but not the common law.

D. Under neither the common law nor the U.C.C.

-Continued on Page 3-

9. Assume that when Henry left the bar (that first day) he found a wrist watch which had not belonged to him in the pocket of his overcoat (which had been slung over a chair). The sweep-up person had found the watch on the floor near the coat, believed that the watch had fallen from the coat, and put it in the pocket. Under the circumstances:

A. Henry has no rights in the watch.

B. Henry has what amounts to full ownership rights in the watch subject only to the superior rights of the "true owner."

C. Henry is not a bailee of the watch.

D. Henry is obligated to take all steps necessary to return the watch to the true owner.

10. Assuming that the bar owner is responsible for the acts of the sweep-up person in the preceding question,

A. The bar owner is absolutely liable for misdelivery.

B. The bar owner is liable for misdelivery only if the sweep-up person were negligent in deciding to put the watch in Henry's pocket.

C. The bar owner is not liable at all since there was never an acceptance of a bailment of the watch.

D. None of the above.

11. If Henry lent the watch to his fiancee on the assumption that it was gold plated,

A. The fiancee would be liable as a converter if she discovered the watch was pure gold.

B. The fiancee would be guilty of common law larceny if she discovered that the watch were pure gold and then refused to give it back.

C. The fiancee would be guilty of common law larceny if she refused to return the watch irrespective of her reasons (assuming she was not the true owner or acting on the true owner's behlaf).

D. None of the above.

12. Assume that Henry got the watch back, but at a speed of 32 mph. (His fiancee threw it at him in a quarrel). If the watch did not work, and Henry took it to a watch repairman, and if the watch repairman sold the watch to Duff:

A. Duff would acquire Henry's rights in the watch at common law.

B. Duff would acquire Henry's rights in the watch under the U.C.C. irrespective of the circumstances of Duff's purchase.

C. Duff would acquire Henry's rights in the watch under the U.C.C. only if the presence of additional facts made the "entrusting" provisions (§2-403) applicable.

D. Duff would acquire the true owner's rights in the watch if the presence of additional facts made the "entrusting" provisions (§2-403) applicable.

13. Esther was on her deathbed coughing and wheezing from the effects of a life too-well spent. Her nephew Morris was sitting beside her. She said: "Take this safe-deposit key; I want you to have the contents of the box" Morris took the key, and Esther departed to her reward the next day. Shortly thereafter, Morris opened the box and found three diamond braclets and some cat food. He now possesses these. Select the <u>best</u> answer:

A. Title to the contents of the box probably passed to Morris on delivery of the key.

B. Title to the contents of the box probably passed to Morris on Esther's death.

C. Title to the contents of the box probably passed to Morris when he took possession of them.

D. Title to the contents of the box has probably not passed to Morris.

-Continued on Page 4-

14. In the preceding question,

A. It would make no difference that the box was not a safe-deposit box, but rather a lockbox in Esther's bedroom.

B. It would make no difference if Esther had bequeathed the contents of the box to Smithie in a will made a week earlier.

C. It would make no difference if Esther had retained a duplicate key.

D. None of the above.

15. In question 13, if the gift were valid:

A. The gift could only have been a gift inter vivos.

B. The gift could only have been a gift causa mortis.

C. The gift was presumably a gift inter vivos.

D. The gift was presumably a gift causa mortis.

16. Presumably, Esther could have gotten title away from Morris (assuming it passed to him) if:

A. She properly executed a will giving the same specific property to Smithie after Morris took the key.

B. She survived her illness and returned to good health.

C. Both of the above.

D. None of the above.

17. Mary and Marty were married in a large formal ceremony that produced a handsome return in terms of presents. They are now having a dispute as to the ownership of the presents. In determining who has the ownership, the court should, in principle:

A. Determine whom the respective donors intended as the donee(s). (If this answer applies, ignore the others).

B. Hold that "domestic"-type items belong to Mary and the remainder are jointly owned.

C. Hold that "domestic"-type items belong to Mary and the remainder belong to Marty.

D. Divide the presents equally between Mary and Marty.

18. Sitting in his apartment in N.Y.C., Artie told Jones: "I want you to have the tennis racket that is down in my car. It's yours." As of that moment:

A. Jones has legal title to the tennis racket.

B. Jones had equitable title to the tennis racket.

C. Jones has right to title to the tennis racket but still does not have the right of title.

D. Jones has no rights in the tennis racket.

19. Artie handed his employee, Grump, the certificates for the stock which Artie owned in Artie's, Inc., a corporation of which Artie was the president and sole stockholder. Artie said, "Hold these till I die, then hand them over to my daughter, Jill." Artie voted the stock and took dividends until his death.

A. The gift to Jill was incomplete since Grump was Artie's agent.

B. The gift to Jill was complete to vest her with sole ownership of the stock, since Grump was intended to be Jill's agent.

C. The gift to Jill is incomplete for want of acceptance.

D. The gift to Jill may be upheld as an immediate gift of a future interest.

-Continued on Page 5-

20. Artie (who is in good health) lent his golf clubs to his brother, and when the latter offered them back, Artie said: "I want my son, James, to have them when I die. But don't let James have them now, because I may decide to take up golf again and want them back."

A. Artie has made a valid gift causa mortis.

B. Artie has made a valid conditional gift.

C. Artie has made no gift.

D. None of the above.

21. Yuckacre is a smelly bog of about 20 acres. In 1965, a neighboring landowner, Wade, began entering Yuckacre regularly in order to capture frogs which he sold to La Cuisine de la Terre restaurant. Wade thought erronesously that Yuckacre was included under his deed. Basically, Yuckacre wasn't much good for anything else and, due to its location, could not be fenced in with particular ease. On the other occasions when Wade found others on Yuckacre, he chased them away shouting "Get off my marsh!" Assume that the local statute of limitations on ejectment is 10 years.

A. Wade may have acquired title to Yuckacre under the common law rules.

B. Wade may have acquired title to Yuckacre in New York.

C. Both A and B are true.

D. Neither A nor B is true.

22. Assuming Wade did not acquire title by adverse possession, the possibility still exists that, by the conduct described above,

A. Wade acquired an easement by estoppel.

B. Wade acquired an easement by prescription.

C. Wade acquired an easement by implication.

D. Wade acquired an easement by acquiesence.

23. Croak, as an April Fool's stunt, placed a chemical in the Yuckacre marsh water which was absorbed into the frogs' bodies and sent anyone who ate the frogs' legs into paroxysms of laughter. La Cuisine quit buying the frogs from Wade.

A. Croak would be liable to Wade if Wade had acquired a ripened title to Yuckacre by adverse possession.

B. Croak would be liable to Wade even if Wade had not acquired a ripened title to Yuckacre by adverse possession.

C. Croak would be liable to Wade even if Wade had title neither to the frogs nor Yuckacre at the time of Croak's action.

D. All of the above.

24. Assume that Wade has acquired a ripened title to Yuckacre by adverse possession, and shortly thereafter acquired a deed to the adjoining farm (which included Yuckacre) from Short. Assume also that Short's title was defective (apart from Wade's rights), and that the right to the said adjoining farm (other than Yuckacre) was in Carryon.

A. If Wade continues his past activities on Yuckacre, he can thereby acquire a ripened title to the whole farm.

B. If Wade continues his past activities on Yuckacre, he will not thereby acquire a ripened title to the whole farm.

C. If Wade cultivates a part of the farm (outside Yuckacre), he may acquire a ripened title, but in no event to more than the part cultivated.

D. None of the above.

-Continued on Page 6-

25. Assuming that Wade has acquired a ripened title to Yuckacre by adverse possession,

A. Wade will lose that title if he engages in no further acts of possession for a continuous period of 10 years.

B. Wade will be entitled to a deed from the previous owner confirming Wade's ownership.

C. Wade will still be liable for trespass and mesne profits from periods to the ripening of title.

D. None of the above.

26. Assume that Wade has acquired a ripened title to Yuckacre by adverse possession. If Wade and a neighbor, Prim, exchange promises "as burdens and for the benefit of themselves and their respective successors" to use their respective parcels (Yuckacre and Prim's land) solely for commercial purposes:

A. Such agreement would be void for lack of consideration.

B. Such agreement would not be enforceable as a real covenant by or against successors to Wade and Prim under the majority rule with regard to privity of estate.

C. Such agreement would not be enforceable as a real covenant by or against successors to Wade and Prim under the New York rule with regard to privity of estate.

D. Both B and C above.

27. In the preceding question:

A. Such agreement could be enforced against successors (with notice) of Wade by recovery of damages on an equitable servitude theory.

B. Such agreement could be enforced against successors (with notice) of Wade by injunction on an equitable servitude theory.

C. Such agreement is an example of "implied reciprocal equitable servitudes."

D. None of the above.

FACTS FOR QUESTIONS 28 to 32

Milo and Millie Mitvik, husband and wife, bought a house in upstate New York. The deed simply named the two of them as grantees: "to Milo and Millie Mitvik and their heirs". Millie was a citizens-band radio operator. One day Harold Handsome, a truck driver on the local interstate, was talking to Millie on the C.B., and he invited himself over for tea. When the big rig roared off again, Millie was giggling inside. She has been gone since. Now, about six months later, Carlo Creditori—a haberdasher in a neighboring town—wishes to levy execution on the house in satisfaction of a judgment for bills run up by Millie to buy new outfits for Harold. Milo would like to partition the real estate.

28. On these facts:

A. Milo and Millie acquired title as tenants in common.

B. Milo and Millie acquired title as tenants by the entireties.

C. Milo and Millie acquired title as tenants by the entireties, but they are now tenants in common.

D. Milo and Millie acquired title as joint tenants which they remain.

29. On these facts:

A. Creditori may now levy execution on both Milo's and Millie's "share" of the title.

B. Creditori may now levy execution on Millie's "share" only, and if he does, the tenancy will become an ordinary tenancy in common.

C. Creditori may now levy execution on Millie's "share" only, but even if he does, Milo's right of survivorship (if any) would be unaffected.

D. Creditori may not levy execution on the house to satisfy his judgment against Millie.

-Continued on Page 7-

30. If Milo brings an action for partition, such action

A. could succeed.

B. could not succeed.

C. could succeed only if Milo consents to a "sale" partition.

D. could not succeed because there would be prejudice to Creditori.

31. If Millie does not show up for ten years, and Milo remains continuously in possession, alone:

A. Sole title will surely ripen in Milo as a result.

B. Sole title probably cannot ripen in Milo until there is some substantial furthe period of possession by Milo.

C. Milo would be legally prevented from making any transfers so long as Millie remains away.

D. Milo would be within his rights to shoot Millie when she re-appears.

32. If the deed had read "to Milo and Millie Mitwik and their heirs as joint tenants with right of survivorship,"

A. The answer to question 28 would be the same.

B. The answer to question 29 would be the same.

C. The answer to question 30 would be the same.

D. The answer to question 31 would be the same.

33. Which of the following creates a fee simple determinable?

A. "to A and his heirs for church purposes"

B. "to A and his heirs so long as the premises are used for church purposes."

C. "to A and his heirs, but if the premises are not used for church purposes the grantor may re-enter."

D. All of the above.

34. Prior to the Statute of Uses, O (who is in possession) makes a transfer by feoffment "to A for life and one day after A dies to B and his heirs."

A. O would have a reversion for one day only.

B. O would have a reversion of potentially infinite duration.

C. B would have a contingent remainder.

D. B would have a vested remainder.

35. After the Statute of Uses, O (who is in possession) makes a transfer by bargain and sale "to A for life and then to B and his heirs if B gives A a suitable burial."

A. O would have nothing.

B. O would have at most a one day reversion.

C. B would have a contingent remainder.

D. B would have a (springing) executory interest.

36. O (who is in possession) makes a transfer of legal title "to A and his heirs, but if liquor is used on the premises, then to B and his heirs."

A. Such a transfer would have been invalid as to B's interest prior to the Statute of Uses.

B. Such a transfer gives a right of entry to B.

C. Such a transfer gives a possibility of reveter to B.

D. Such a transfer is surely void because it imposes an unreasonable limitation on land use.

-Continued on Page 8-

37. If the foregoing transfer (question 36) were made in 1938, and you represent P (in 1977) who is thinking about buying a fee simple absolute in the land from A:

A. You should have no hesitation in advising P to take and pay for the title.

B. You should advise P to reject the title as unmarketable.

C. If P and his family are tee-totalers, you should regard the liquor restriction as immaterial.

D. You should advise P that he would be required to accept the title if a title insurance company will insure that A can convey a "fee simple subject only to an executory interest held by B."

FACTS FOR QUESTIONS 38-49.

Rose acquired a piece of land in 1964 and named it after her husband—Bellyacre. The land ran between River Road, a north-south arterial, and the Redolent River, about 300 feet to the east. The frontage on the road and the river was about 100 feet, thus the lot was about 100' by 300'.

In March, 1969 Rose divided Bellyacre into two parcels: Eastacre, a 150' x 100' lot on the river side and Westacre, a 150' x 100' lot on the road side. At the time neither lot had a building on it. Rose, who retained Eastacre, built a one-story house shortly thereafter, creating a dirt lane across Westacre in order to get the builders and materials in. Also, at the same time, the buyer of Westacre (coincidentally named West) built a house in his lot.

38. If the deed to West mentioned no easements, then as to the new dirt lane:

A. Rose would probably have an easement by implication in New York

B. Rose would probably have an easement by implication under the majority rule.

C. On these facts there is no theory on which Rose could have an easement under any respectable authority (e.g. the Restatement).

D. None of the above.

39. If the facts were such that Rose may have acquired an easement of way across Westacre by implication in the conveyance to West,

A. It would be an easement by implied grant.

B. It would be an easement by implied reservation.

C. It would last only so long as Rose made continuous use of the easement.

D. It would continue only so long as West was willing.

40. Assume that after her house was built Rose simply continued to use the dirt lane across Westacre as often as necessary for ingress to and egress from her lot. If she is still engaging in such use in 1980, and the period of limitations for ejectment is 10 years:

A. Rose could, under the virtually universal rule, acquire an easement by prescription even if West objected in writing to such use.

B. Rose could, under the virtually universal rule, acquire an easement by prescription even if, to placate West, she said that she would negotiate to buy a formal easement as soon as her finances permitted.

C. Rose could acquire an easement by estoppel if, without more, West merely tells her that it is all right to use his land for a right of way.

D. Rose would, in any case, have an implied license to use West's land for a right of way.

41. If Rose did negotiate to buy an easement of way from West, the easement would presumptively be:

A. An easement in gross.

B. An appurtenant easement.

C. A negative easement.

D. An estate in Westacre.

-Continue on Page 9-

42. In question 41, if Rose accepted a deed for the easement of way, then under New York law:

A. It could not be recorded unless acknowledged or attested to.

B. It would have to be recorded in order to make the easement effective.

C. Failure to record the easement could very likely result in the extinction of the easement, even though the dirt lane is plainly visible and being used.

D. The easement would be an easement by express reservation.

43. In question 41, if Rose did acquire an valid and effective easement over the lane by deed:

A. Then presumptively, if Rose divided Eastacre into three smaller parcels, all three parcel owners could use the easement.

B. West would be required to keep the lane in a servicable condition.

C. West could not use the lane himself.

D. West could require Rose to use a somewhat different pathway if that were necessary in connection with the reasonable use by West of his land.

44. Rose's one-story house was low enough that West enjoyed an unobstructed view of the river and the hills beyond. Now, however, Rose is talking about eventually putting a second story on the house and this would seriously interfere with West's view.

A. If West's view remains unobstructed long enough, he can acquire an easement of view by prescription.

B. West probably already has an easement of view by implied grant.

C. West could not now have an easement of view by implied reservation.

D. Easements of view do not exist under the general common law in the United States.

45. West approached Rose and inquired about purchasing an easement of view. In exchange for $300, Rose signed a document stating:

> "The undersigned hereby agrees, on behalf of herself, her heirs, successors and assigns, that during the next 50 years no building shall be maintained on Eastacre which obstructs the view of the river from the present structure on Westacre."

Assume that Rose sells Eastacre to Bye, and the latter proposes to put a second story on the house which will then obstruct West's view.

A. Rose's promise is enforceable against Bye as a real covenant under the majority view.

B. Rose's promise is enforceable against Bye as a real covenant in New York.

C. The main problem with enforcing Rose's promise as a real covenant is that, being "negative," it does not touch or concern the land.

D. West might obtain damages on an equitable servitude theory.

46. In question 45,

A. West could enforce Rose's promise against Bye as an equitable servitude even if the document were not recorded--provided Bye bought with notice of it.

B. West could enforce Rose's promise against Bye as an equitable servitude only if the document were recorded.

C. West could not enforce Rose's promise against Bye as an equitable servitude because there is no privity of estate.

D. West could not enforce Rose's promise against Bye as an equitable servitude because there is no general plan of scheme of restrictions.

-Continued on Page 10-

47. If West excavates Westacre very close to the boundary, and Eastacre subsides so as to undermine and cause collapse of Rose's house:

A. West could be held liable for the damage to the house only if he were negligent under the virtually universal rule.

B. West could be held liable for damage to the house even if he were not negligent in some states.

C. The presense of Rose's house extinguishes West's duty to provide lateral support.

D. The presense of Rose's house correspondingly increases West's duty to provide lateral support.

48. For several years, Rose has been collecting and using surface waters which flow down from West's land to water her garden. The land is in a rural area.

A. West can be enjoined from preventing the natural downward flow under the so-called "civil-law" rule.

B. Rose can block the flow to her land, if necessary for the reasonable use of her land, under the so-called "common-law" rule.

C. Rose can block the flow to her land, if necessary to the reasonable use of her land, only under the so-called "civil-law" rule.

D. None of the above.

49. The Green Sudds Brewing has recently built a new plant three miles upstream from Eastacre. In the summer, when the water level is lowest and the demand for beer is highest, the brewery is taking so much water from the river that its level is reduced noticably. Rose would like to enjoin the brewery from taking so much water.

A. Rose's chances would be best in a state which applies the so-called "English rule" in its full vigor.

B. Rose's chances would be best in a state which applied the American majority (reasonable user) rule.

C. Rose's chances would be lessened if she were seen drinking Green Sudds Beer in the summer.

D. None of the above.

50. In 1973, O was the owner of Blackacre, an unoccupied tract of forest land. In that year, O conveyed to A, who did not record. In 1975, O executed a deed purporting to convey Blackacre to B (who had no notice of A's deed). The land is in a state having a "race-notice" recording act.

A. O had title in 1974.

B. If O had died in 1974, his heir would have inherited Blackacre.

C. B would have title in 1976 if he first records.

D. B would have title in 1976 whether or not he records.