

Note: The questions on this exam draw heavily on exams given 1996-2002

PACE UNIVERSITY SCHOOL OF LAW

PROPERTY

PROFESSOR HUMBACH

FINAL EXAMINATION

May 10, 2013

TIME LIMIT: 4 HOURS

IN TAKING THIS EXAMINATION, YOU ARE REQUIRED TO COMPLY WITH THE SCHOOL OF LAW RULES AND PROCEDURES FOR FINAL EXAMINATIONS. YOU ARE REMINDED TO PLACE YOUR EXAMINATION NUMBER ON EACH EXAMINATION BOOK AND SIGN OUT WITH THE PROCTOR, SUBMITTING TO HIM OR HER YOUR EXAMINATION BOOK(S) AND THE QUESTIONS AT THE CONCLUSION OF THE EXAMINATION.

DO NOT UNDER ANY CIRCUMSTANCES REVEAL YOUR IDENTITY ON YOUR EXAMINATION PAPERS OTHER THAN BY YOUR EXAMINATION NUMBER. ACTIONS BY A STUDENT TO DEFEAT THE ANONYMITY POLICY IS A MATTER OF ACADEMIC DISHONESTY.

GENERAL INSTRUCTIONS: This examination consists of 60 multiple-choice questions to be answered on a Scantron answer sheet.

- Write your **examination number** on the “name” line. *Write it NOW.*
- Mark "A" in the “Test Form” box on the right side of the answer sheet. *Mark it NOW.*
- Also write your examination number in the boxes where it says "I.D. Number" on the right side. Use **only** the first 4 columns and *do not skip columns*. Then carefully mark your exam number in the vertically striped area below. You should mark only one number in each of the first four columns. *This is part of the test.*

Because you have successfully completed the online Estate System Proficiency Test, this copy of the exam does not include the true-false questions covering the estate system. You do not need to write your “word” on your Scantron answer sheet.

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

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

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 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 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. Weston is a retired biology professor who owns a farm. It has several large meadows with many wildflowers that attract butterflies. Weston has been particularly pleased that a certain very rare species of blue-green butterfly, the so-called “Aqualina”, has established itself on his land. One day, to his chagrin, Weston saw his former colleague, Nettman, out in one of the meadows with a butterfly net. Weston had told Nettman several times that he was not allowed on Weston’s land. As Weston chased Nettman away, he noticed that Nettman had one of the prized Aqualinas in a collection jar. On the lepidoptera market, a specimen of this rare butterfly is worth over \$600. Under the usual common law rules:

- a. Weston would have no serious claim to recover the Aqualina captured by Nettman.
- b. Weston should be entitled to the Aqualina under the principle of *animus revertendi*.
- c. Weston should be entitled to the Aqualina under the principle of *ratione soli*.
- d. Nettman is entitled to the Aqualina because he was the first captor.

2. While vacationing in the north woods, Weston decided to do some butterfly hunting on a large tract of open land owned by a timber company. He spotted a fairly rare Spotted Zandorff butterfly and, with a skilled sweep, got it securely in his net. However, a few seconds later he tripped and fumbled, and the Zandorff got loose again. As it flittered across a field with Weston watching in helpless resignation, Weston’s old nemesis, Nettman, leapt out of the tall weeds and caught the Zandorff, about 75 feet away. Now Nettman refuses Weston’s demands for the Zandorff. Under the usual common law rules:

- a. Weston should be entitled to the Zandorff as the first captor, and no serious argument to the contrary could be asserted by Nettman.
- b. Nettman would have a strong claim to the Zandorff because he caught it after it had regained its natural liberty.
- c. Weston should have a better claim to the butterfly than Nettman under the principle of *Keeble v. Hickeringill* (the duck-decoy pond/gun-shooting case).
- d. Weston should have no rights as against Nettman if neither of them had permission from the timber company to go on the timber company’s land or capture butterflies there.

Facts for Hauser-Denman questions. Jeff Hauser wants high-speed Internet service for his home. This will require a new overhead wire from the nearest utility lines to his house. Unfortunately, because of the way the utility lines are laid out, putting in the wire will require a new, additional pole to be installed at Hauser’s considerable expense. There is, however, an inexpensive alternative, namely, passing the new wire across a corner of land belonging to Hauser’s next-door neighbor, Marcella Denman. Even though the new wire would be 20’ above the ground, and not interfere with Denman’s buildings or trees, Denman objects.

3. If there is no applicable easement:

- a. Hauser would have no right to run the new wire over Denman’s land.
- b. Hauser would normally have a legal right to commit a minor technical “trespass” in running the new wire across Denman’s land if the only other alternatives would involve major expense.

- c. As long as the new wire does not actually touch the ground, buildings, trees or other objects on Denman's land, it would not be considered a trespass to run it *over* her land.
- d. As long as Hauser offers to pay Denman a nominal amount for the nominal injury to her land, Denman has no legal objection that she can assert against the new wire.
4. After being implored by Hauser, Denman finally said: "Okay, go ahead and put the wire across my land." Before Hauser installed the new wire or otherwise relied, however, Denman changed her mind and told Hauser not to install it:
- a. Hauser would still be entitled to install the new wire because Denman's original statement granted him a legal right to do so.
- b. Hauser would still be entitled to install the new wire as long as it does not actually touch the ground (or buildings or trees, etc.) on Denman's land.
- c. If Hauser goes ahead and installs the wire anyway, Denman would not be entitled to have it removed as long as the workers managed to install the wire without touching her soil.
- d. Denman can lawfully refuse to allow the wire because a license is revocable by the licensor.
5. Suppose that Hauser offered Denman \$100, and Denman said: "Okay, go ahead and put in the wire across my land." Hauser did so, at substantial expense. A few months later, Denman wants Hauser to remove the wire. Which of the following arguments or theories might be helpful to Hauser?
- a. Easement by estoppel.
- b. Executed parole license.
- c. Both of the above.
- d. None of the above. The statute of frauds requires a signed writing in order to create an interest in real property, and Hauser has only an oral agreement.
6. Suppose that Hauser also needed a new water line to bring water service to his home. On the advice of a lawyer, he paid Denman \$2500 and she delivered Hauser a deed that was sufficient to create a valid express easement to install and maintain a new water line across her land. This easement would be presumptively:
- a. Appurtenant.
- b. Attendant.
- c. Engross.
- d. In gross.
7. Suppose again that Denman, in exchange for \$2500, delivered Hauser a deed that was sufficient to create a valid express easement for a new water line across Denman's land. If Denman later sells her property to Davis after the trench for the water line has been filled and covered over with grass (so its existence is not apparent):
- a. Hauser would probably not be able to enforce the easement against Davis unless the deed creating it was duly recorded before Davis purchased.
- b. Hauser would probably be able to enforce the easement against Davis even if the deed creating it has *not* yet been recorded.

c. Hauser would probably *not* be able to enforce the easement against Davis, recording or no recording, unless Davis said he was willing to allow the easement.

d. None of the above.

8. Laura discovered that her neighbor, Walt, made a deal with a big industrial concern, Gasfrack Corp., to store natural gas underground beneath Walt's farm. It recently occurred to Laura that the gas being pumped into the ground on Walt's property might be seeping into subterranean spaces under her own property. She inquires about her rights:

a. Laura would have no legal complaint against Walt or Gasfrack for underground gas seepage because inaccessible spaces deep beneath the land are part of the public domain.

b. In some states, where courts analogize natural gas to *ferae naturae*, the gas pumped into the ground by Gasfrack would cease to be the property of Gasfrack.

c. Both of the above.

d. Where courts analogize natural gas to *ferae naturae*, Laura would be guilty of larceny if she removed and sold gas that had been injected into the ground by Gasfrack.

9. Fort Redoubt Corp. has been pumping percolating water from a well on its land to use in maintaining its plantings and vegetation. As a result of the pumping, however, the wells go dry on neighboring land belonging to Salzman when the weather is hot and dry in the summer.

a. If the local courts use the so-called English rule, Salzman would have a legal remedy against Fort Redoubt if he could show that Fort Redoubt's use of the water was not a reasonable use.

b. If the local courts use the so-called American rule, Salzman would have no legal remedy against Fort Redoubt because Fort Redoubt, as a property owner, has an absolute right to anything, including water, that's under its land.

c. Both of the above.

d. Under either the so-called English rule or American rule, Salzman would probably have no legal remedy in this situation.

10. Webber and Plink were rafting down a stretch of the Winding River that's navigable-in-fact. A landowner along the river, Gordon, sued the two for trespass. If Gordon owned the bed and banks of the stream:

a. Webber and Plink could be held liable for trespass even if they just floated through Gordon's property, not touching either the bed or the banks.

b. Webber and Plink could be held liable for trespass if, for any reason, they touched either the bed or the banks as they floated through Gordon's property.

c. Webber and Plink could *not* be held liable for trespass for touching the bed or banks of the stream if they did so only when it was absolutely necessary in connection with navigation.

d. The Webber and Plink would be guilty of trespass unless they had a license from Gordon to pass down the stream.

11. Jasper owns a piece of land about the size of our law school's campus and located at the edge of his town. Recently the municipal council took several actions affecting Jasper's land. Which of them would require that "just compensation" be paid?

- a. Modified the zoning regulations to forbid the use of the land for commercial purposes, decreasing its overall value by 25%.
- b. Widened a road so that it extended onto a strip of Jasper's property approximately three feet wide along the entire front, reducing the property's overall value by about 2%.
- c. Both of the above.
- d. Adopted a wetland regulation that reduced the number of possible building lots that could be carved out of the land, diminishing the property's overall value by 75%.
- e. All of the above.

12. Hanna found a diamond ring at the bottom of the swimming pool while visiting the home of her friend, Wilma. Nobody seems to know who the ring's true owner is. Under the so-called English rule applicable to finders:

- a. Neither Hanna nor Wilma is entitled to possess the ring since neither is the owner.
- b. Wilma, as the owner of the locus in quo, would probably have the better claim to possess the ring.
- c. Hanna, as finder, would probably have the better claim to possess the ring unless she was trespassing at the time she found it.
- d. Wilma would be entitled to the ring since the owner of the locus in quo is considered to own everything on her property.

13. Assume again that Hanna found a diamond ring at the bottom of the swimming pool at Wilma's home and that nobody knows who the true owner is. Under the so-called American rule applicable to finders:

- a. Hanna, as finder, would be generally preferred to possess the ring unless she was trespassing at the time she found it.
- b. Wilma, as the owner of the locus in quo, would be generally preferred to possess the ring unless she had never lived there.
- c. Hanna, as finder, would be entitled to possess the ring under any and all circumstances (the so-called "finders-keepers" rule).
- d. Wilma would be entitled to the ring since the owner of the locus in quo is considered to own everything on her property.

14. As Selena Powers settled herself into her airliner seat for a holiday trip, she found a portable DVD player stuffed in the seat pocket in front of her. In jurisdictions that apply the distinction between lost and mislaid property, it should be expected that (as between Selena and the airline):

- a. The airline would probably have the preferred claim to hold possession of the DVD player.
- b. Selena would probably have the preferred claim to hold possession of the DVD player.
- c. Both Selena and the airline would have equal rights to possess the DVD player.
- d. Neither Selena nor the airline would have any rightful claim to possess of the DVD player.

15. Duane bought a table for \$3 at a garage sale. While checking out a wobbly leg after he got home, Duane found five \$100 bills stuffed in a small gap between the leg and the tabletop. The seller's husband had stuffed money in the gap for safekeeping, and he suddenly remembered it while having dinner following the sale. The next day, the seller and her husband appeared at Duane's door and demanded the money.

- a. Duane is entitled to keep the \$100 bills because he is the finder.
- b. Duane is entitled to keep the \$100 bills because he is the owner of the locus in quo where they were found.
- c. Duane is entitled to keep the \$100 bills because they would almost certainly be considered to be "included in the sale" of the table.
- d. All of the above.
- e. None of the above.

16. Duane took his newly acquired table to Urban Varnish Inc. to have it refinished. While it was at Urban, a fire broke out destroying everything on the premises, including Duane's table.

- a. Urban would be liable for the loss because bailees are legally responsible for all losses that occur to the goods that are entrusted to them.
- b. In Duane's action against Urban for the value of the table, there would be a rebuttable presumption that Urban was negligent.
- c. In Duane's action against Urban for the value of the table, there would be a rebuttable presumption that Urban was committed a conversion.

- d. Both b. and c. above.

17. Bob Lorman bought a small warehouse that he wanted to convert to a discount retail store. In order to get building department approval, Lorman needed to provide fire exits on both sides of the building. However, one side of Lorman's building abuts land belonging to Caplan, who uses the area right next to Lorman's building as a driveway to the back of his own property. If Caplan grants Lorman an easement over the driveway:

- a. Caplan would have a dominant tenement.
- b. Lorman would have a servient tenement.
- c. Caplan would become Lorman's landlord and, as such, have a legal obligation to keep the driveway in good repair.
- d. None of the above.

18. Assume again that Caplan grants Lorman the needed easement in the preceding question. Lorman later conveys his store to Home Max, a large home-improvement supply chain. The deed to Home Max makes no express reference to the easement. Presumptively:

- a. Home Max is not entitled to use the easement in connection with the store.
- b. Home Max has an easement by necessity in connection with the store if the store would otherwise be illegal under the local building and fire laws.
- c. Home Max has an easement by implication in connection with the store if the store would otherwise be illegal under the local building and fire laws.
- d. The easement passes to Home Max as an appurtenance to the dominant tenement conveyed by Lorman.

19. The Sandstroms bought a lot near the beach in 2007. The grant included "an easement for pedestrian use only" on a path leading to the ocean. The path lies on land owned by Donette. The Sandstroms never made use of this easement because they had convenient access to the ocean over land belonging to their friends, the Reepoes. Thick woody overgrowth has made the pathway impassible over time, but the Sandstroms never said or did anything inconsistent with using it in the future. Last winter, the Reepoes sold their land, and the Sandstroms now want to reopen the path. Donette objects.

- a. The Sandstroms probably have a right to clear the path and commence use of the easement.
- b. The easement is probably extinguished by reservation.
- c. The easement is probably extinguished by abandonment.
- d. The easement is probably extinguished by estoppel.

20. An easement in gross is usually transferable:

- a. In connection with a transfer of the dominant tenement.
- b. When it is a "commercial" easement rather than a merely personal one.
- c. If has been created by implication from prior use.
- d. All of the above.

Facts for Shepard-Torren questions. Shepard bought a house on a large parcel in a semi-rural area. The house had been built by a previous owner, who placed an underground septic field on the eastern side of the parcel—the only place where the soils were suitable. There was no surface indication of the septic field's existence or location, and

there still is not. Recently, to raise some needed cash, Shepard conveyed the eastern part of his land, including the area with the septic field, to Torren.

21. Torren discovered the septic field on his land a few months after the conveyance. He wants it removed. The location of the septic field has come as a genuine surprise to both Shepard and Torren, but Shepard will incur substantial expense if the septic field has to be relocated. Shepard's lawyer hopes he can make a case that there's an easement by implication from prior use to have the septic field on Torren's land. Factors tending to weigh against such a case include:

- a. The use was not very apparent at the time of the conveyance to Torren.
- b. As grantor, Shepard would be claiming the easement by implied reservation rather than by implied grant (at least this would be a problem in some states).
- c. Both of the above.
- d. There was no quasi-easement at the time of the conveyance to Torren.

22. Suppose that, after protracted negotiations, Torren delivered a deed granting an easement for the underground septic field to Shepard. Two years later, Torren planted a beautiful ornamental garden over the area occupied by the underground septic field.

- a. Torren's garden is a trespass on Shepard's rights and Shepard can have it dug up any time he wants to.
- b. Shepard can dig up the garden on Torren's land if, at any time, it becomes necessary to do so in order to carry out needed maintenance or repair of the septic system.

- c. Torren's possessory rights to his property are unaffected by the grant of the easement to Shepard, and Shepard has no right under any circumstances to dig up Torren's garden without his consent.
- d. Torren's garden does not in itself violate Shepard's rights, but if Shepard decides to use the septic field area for grazing his horse, he's entitled to do so.

Facts for Hendry-Collins questions. Hendry conveyed a large parcel of heavily wooded riverside land to Collins Electric Co., which intended eventually to use the land for hydropower generating plant. In the deed, Hendry reserved for himself "his heirs, successors and assigns" an "exclusive perpetual easement to hunt and fish on the premises conveyed hereby." The grantee Collins covenanted in the deed that the premises "shall never be developed for purposes other than hydroelectric generation." At the time of Hendry's deed to Collins (which was promptly recorded), Hendry retained an adjacent parcel of land on which he'd built a hunting lodge.

23. Suppose that Hendry has subsequently conveyed his retained hunting lodge parcel to Ford and that Collins has conveyed its parcel to H & R Vacation Homes, Inc.:
- a. Ford probably has a right to use the H & R parcel for hunting and fishing.
 - b. Hendry probably has a right to use the H & R parcel for hunting and fishing.
 - c. Both of the above.
 - d. The hunting and fishing easement was presumptively extinguished when Hendry ceased to have any use for it.

24. Suppose that Hendry still owns the parcel with the hunting lodge but Collins has sold its parcel to H & R Vacation Homes, Inc.:

- a. Hendry can probably enforce the restrictive covenant against H & R—in part because the covenant touches and concerns the land.
- b. Hendry can probably enforce the restrictive covenant against H & R—in part because there is "privity of estate."
- c. Both of the above.
- d. None of the above. Hendry probably cannot enforce the restrictive covenant against H & R.

25. Suppose again that Hendry still owns the parcel with the hunting lodge but Collins has sold its parcel to H & R Vacation Homes, Inc. Hendry can probably enforce the restrictive covenant against H & R as an *equitable servitude*:

- a. Whether or not H & R bought with actual notice of the covenant.
- b. Based on the presence here of both vertical and horizontal privity of estate.
- c. Both of the above.
- d. None of the above. This restriction was created as a real covenant, not an equitable servitude and, therefore, it cannot be enforced as an equitable servitude.

26. Suppose that Collins still owns the parcel that it bought from Hendry, but that the upstream riparian neighbor, a municipal water works, used eminent domain to condemn Collins's hydropower

generation rights in the river. As a result, Collins has no valuable use of its property.

- a. The action by the water works, taking Collins' right to the downstream flow, has effectively destroyed vertical parity, making the hydropower covenant unenforceable.
- b. There is authority holding that, under circumstances similar to these, the covenant should be declared extinguished.
- c. Both of the above.
- d. Even if the covenant might still be enforceable against Collins, it could not be enforced against a purchaser from Collins.

27. Larry and Camilla were listening to CDs at Camilla's home. Larry remarked how much he liked the CD they were listening to. Camilla said, "Since you like it so much, it's yours." Larry said nothing. They continued listening to the CD, and just as it ended Camilla said, "You know Larry, I really like that one myself. I don't want to give it to you until I'm sure I can buy another copy for myself." At this point:

- a. Larry now owns the CD in question.
- b. Larry does not yet own the CD, but Camilla is legally obligated to give it to Larry as soon as she finds out that she can buy another copy.
- c. Camilla is still owner of the CD because there was no delivery.
- d. Camilla is still owner of the CD because there was no adequate expression of donative intent.

- e. Both c. and d. above.

28. Suppose again that Larry and Camilla were listening to CDs at Camilla's home. Larry mentioned that he still had the Mylène Farmer CD that Camilla had lent him the week before (and which was at Larry's apartment at the time).

- a. Camilla said: "Since you like it so much, you can just keep it." Larry said: "Thanks." The CD would now be Larry's.
- b. Camilla said: "Do me a favor; I want to give it to Barr. Please get it to him for me." Larry said: "Sure." The CD would now be Barr's if Larry were deemed to be acting as agent for Camilla in this situation.
- c. Both of above.
- d. None of the above. In neither a. nor b. has the delivery requirement been met.

29. Burton was about to undergo a serious operation. Aware that there was a significant chance of a terminal outcome, he said to his nephew, Taylor: "Since you've always liked my antique sword so much, it's yours." Taylor said "Thanks," and at Burton's nod he removed the sword from its place over the fireplace and took it home. Burton survived the operation and lived in good health for 5 more years before passing away due to entirely unrelated causes. There were no further conversations about the antique sword.

- a. The attempted gift by Burton to Taylor, if effective at all, would have been presumptively a gift causa mortis.
- b. The attempted gift by Burton to Taylor, if effective at all, was probably revoked by operation of law long before Burton eventually passed away.

- c. Both of the above.
- d. The attempted gift by Burton to Taylor was probably effective to give Taylor only a future interest in the sword.

30. Winslow, in perfect health and looking forward to many more years, wrote a letter to his grandson, Franklin, stating: "I know you have always admired the Ming vase that sits in my study. I want you to have it after I'm gone and can't enjoy it anymore." Winslow's letter goes on to say that he "hereby" gives Franklin the vase but that he is retaining the "possession for life" for himself. "Just show this letter to my executors," he adds, "and there should be no problem." Winslow delivered the letter (but not the vase) to Franklin. If the letter did not comply with the formality requirements of the Statute of Wills.

- a. The letter amounts to an invalid will and has no legal effect.
- b. The letter can be interpreted as giving Franklin a future interest in the vase.
- c. Franklin did not receive any valid legal interest in the vase because Winslow did not deliver the vase to Franklin.
- d. Once Winslow delivered the letter to Franklin, later attempts by Winslow to give the vase to Semma Museum could not be effective to transfer any property rights to Semma.

31. In 1994, Bradley Bostick conveyed Blackacre to "Bob Smitt and Ken Morton and their heirs." Smitt and Morton presumptively received:

- a. A tenancy in common with one another and their respective heirs.
- b. A tenancy in common with one another.
- c. A joint tenancy with right of survivorship.
- d. A joint tenancy but without right of survivorship.

32. Assume that Bostick conveyed a tenancy in common to Smitt and Morton and that Smitt entered immediately into sole possession. If he remains in sole possession:

- a. Smitt would, under the majority rule, be liable to pay money to Morton because Morton is equally entitled to enjoy the benefits of possessing the land.
- b. Smitt would, under the majority rule, be liable to pay money to Morton if Smitt prevented Morton from joining him in possession.
- c. Morton would have an action in ejectment to remove Smitt from possession if Smitt prevented Morton from joining him in possession.
- d. All of above.

33. Assume that Smitt and Morton received a joint tenancy in Blackacre:

- a. If Smitt separately conveyed his own interest in Blackacre to Turley, then Morton would no longer have a right of survivorship.

b. If Smitt separately conveyed his own interest in Blackacre to Turley, then Turley would be a tenant in common.

c. Both of the above.

d. It would not be legally possible for Smitt to separately convey his own interest in Blackacre to Turley.

34. Assume that Smitt and Morton had a tenancy in common in Blackacre. Smitt leased his own interest in the premises to Fred Fett for three years.

a. Such a lease would constitute an ouster of Morton unless Morton had consented to the lease.

b. Morton would be entitled to share possession of the premises with Fred.

c. The rights of survivorship would be destroyed.

d. The lease would be unenforceable.

35. When one of three joint tenants conveys to one of the other joint tenants:

a. The whole joint tenancy becomes a tenancy in common.

b. The two remaining tenants remain joint tenants as to an undivided two-thirds of the premises.

c. The two remaining tenants become 50-50 owners, each with an undivided one-half.

d. The right of survivorship of the joint tenant who accepted the conveyance is totally forfeited.

36. If Whiteacre is owned by two cotenants, and one of them dies intestate:

a. The surviving cotenant would be entitled to sole ownership and possession if the two cotenants had a joint tenancy.

b. The decedent's heir would be entitled to an undivided shared possession if the two cotenants had a tenancy in common.

c. The surviving cotenant would be entitled to sole ownership if the two cotenants had a tenancy by the entirety.

d. All of the above.

Facts for Tremper questions. George and Linda Tremper received a co-tenancy in Greenacre in 1990. In 2003, Denton acquired Linda's undivided interest in Greenacre in satisfaction of a tort judgment that he had against her. Despite the judgment, however, George and Linda have continued to occupy the property as they did before.

37. If the Trempers had held title as tenants by the entirety and their jurisdiction follows the minority (New York) approach to this kind of situation, Denton would have acquired in 2003:

a. A right to share possession of Greenacre with George.

b. A right to maintain an ejectment action against George if the latter refuses to allow Denton to join him in possession of Greenacre.

c. Both of the above.

d. None of the above.

38. If the Trempers' estate had been a joint tenancy and Linda's undivided one-half was conveyed to Denton:

- a. Denton would now be the sole owner of Greenacre.
- b. George's right of survivorship would still be in effect.
- c. George's right of survivorship would have been destroyed when Denton acquired his interest.
- d. Denton would now hold Linda's right of survivorship.

Facts for Armstrong-Brant questions. For many years Armstrong has owned a small parcel of land along the Duckworth River. Although his property has river access, the riverbank nearest his house is marshy, so Armstrong has always gone upstream about 200' to reach the water, to launch and land his boat, etc. Recently, Armstrong received a letter from a lawyer stating that the area he's been using to access the river is actually owned by a Mr. Brant, who now wants to build a small marina there. The marina would greatly annoy Armstrong by destroying the now rather pristine nature and isolated "feel" of the place. Armstrong wants to know if he might, because of his many years of use, have acquired ripened title to the area where Brant wants to build the marina

39. In order to prove he has a ripened title by adverse possession, which of the following "elements" would Armstrong *not* have to show?

- a. Continuous and exclusive possession for the requisite period.
- b. Reasonable notice to Brant that Armstrong was using Brant's land.

c. That he had actual physical possession of the area he claims.

d. Open and notorious possession.

e. Armstrong would have to show all of the "elements" listed in a. through d. above.

40. Suppose Brant was fully aware that Armstrong was making use of his property to access the river, etc. but that he and Armstrong both thought the property line was about 250' further upstream than it actually is. In other words, all these years both he and Armstrong had been assuming (erroneously) that Armstrong's possessory acts were occurring only on land belonging to Armstrong.

a. If Armstrong's wrongful possession of Brant's land was due to an honest mistake, some courts would hold that no title could ripen because the element of hostility was missing.

b. Under the better understanding of the hostility requirement, Armstrong could acquire ripened title only if he actually had a genuine belief that he was wrongfully possessing land that belonged to another person.

c. Both of the above.

d. If neither Armstrong nor Brant knew the location of the actual property line, then the possession by Armstrong of the Brant land could not be considered "open and notorious."

e. All of the above.

41. In order to establish that he had adverse possession of the area of land he now claims, Armstrong would have to show that:

- a. He had built a fence, a house or at least some permanent structure on the area.
- b. He had an actual belief that the area was his.
- c. He acted with respect to the area as if he were the true owner.
- d. All of the above.

42. Greta inherited a piece of land from her grandmother, Edith. Four years earlier, Edith had bought the land from Reilly. Five years before that, Reilly had contracted to buy the land from Malley, but he never made payments (except the first one) and he never received a deed. Nonetheless, Reilly took possession of the land, built a house on it and lived there until he purported to sell it to Edith. As it turns out, Malley himself had a defective title to the land, having received his deed from a man who, without authority, pretended to be an agent for Koch—the farmer who originally owned it. Now Koch has become insolvent and his creditors are threatening an ejectment action against Greta. In computing whether the statute of limitations has run out:

- a. Greta may tack her possession onto that of Edith.
- b. Greta may tack together the possession of herself, Edith and Reilly.
- c. Both of the above.
- d. Edith may tack together the possession of herself, Edith, Reilly and Malley.
- e. All of the above.

43. In 1992 O was the owner of Blackacre. During that year, an adverse possessor, A, entered into possession and has remained ever since. Assuming that the local statute of limitations is like the one we studied in class (with a basic 21-year period and a 10-year disability period), A would acquire a ripened title in:

- a. 2013 if O was under no disability in 1992, died in 1993, and left H, age 5 years, as his heir.
- b. 2014 if O was insane in 1992, died in 2004 while still insane, and left H, age 5, as his heir.
- c. Both of the above.
- d. 2013 if O was under no disability in 1992, became insane in 1993, and died in 2004 while still insane, leaving H, an adult, as his heir.
- e. All of the above.

44. In 1995 Harbin leased the state highway department a parcel of land to use as a storage site for road maintenance materials, salt, etc. The term of the lease was 25 years. A neighboring farmer, Wilson, began using a pathway across the leased parcel as a shortcut to move cows to and from his west pasture, without the state's permission. Recently the new highway commissioner sent Wilson a letter demanding that he stop using the pathway. Because an alternate route is inconvenient, Wilson is not pleased:

- a. As a neighboring landowner, Wilson would in any event have a right to make harmless entries on and reasonably use the land immediately adjacent to his own.
- b. Even if Wilson only used the pathway during the summer pasturing season, his usage could be considered

continuous enough for him to eventually acquire an easement by prescription (assuming that is possible against the state in his jurisdiction).

- c. The fact that Wilson’s claim for an easement would be against the state doesn’t have any particular legal relevance under the usual law applicable to easements by prescription.
- d. If Wilson succeeds in asserting an easement of prescription over the parcel, it would in any event be binding only on Harbin and not on the state.

45. Suppose that in early 2003 a private contractor, Mickey’s Road and Paving, leased a parcel of land to provide a storage site for road maintenance materials, salt, etc. The parcel was owned in fee simple by a Dunwoody Enterprises, Inc., a private corporation. The term of the lease was 25 years. Shortly after the lease was made, a neighbor named Carter ran a power line across the leased parcel, without Mickey’s permission. Now, after more than ten years of not objecting to Carter’s encroaching power line, Mickey wants it removed:

- a. Mickey will probably succeed because Carter could not get an easement against a mere lessee, like Mickey.
- b. Carter’s use can be terminated but only Dunwoodie, as owner of the land, is a proper party to decide whether Carter’s use can or cannot continue.
- c. If Carter’s use has been such as would meet the requirements for prescription, then he has a right to keep the power line in place as long as he needs it.
- d. If Carter’s use has been such as would meet the requirements for prescription, then he has a right to keep the power line in place until the end of Mickey’s lease.

46. Boron conveys “to Mirella for life, then to her first child now alive to graduate from college.” Mirella has 3 children, ages 1½, 3, and 4. 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.

47. Cadmon conveys “to Mirella for life, then to her first child to reach age 25.” Mirella has 3 children, ages 15, 18, and 20. 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.

48. Jonquiers conveys “to Mirella and her heirs, but if babies are born on the moon, then to NASA.” 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.

49. Denise and Lorie negotiated a detailed written 10-year lease—with Denise as landlord and Lorie as tenant. However, before either of them signed the final document, Lorie moved into the premises (with Denise’s permission). The local statute of frauds has an exception for leases of one year or less. The lease remains unsigned.

- a. Lorie occupies with no estate in the premises at all.
- b. Lorie initially had at very least a tenancy at will, since there was a demise of possession.

- c. Lorie has received a term of years for ten years.
- d. Lorie has received a term of years for one year.

50. Suppose that Denise and Lorie had entered into an arrangement under which Lorie became Denise's tenant from month to month, the monthly period running from the 15th to the 14th of each month. If Denise wants to remove Lorie from possession:

- a. She can do so at any time by simply giving reasonable notice.
- b. She can do so at any time by simply giving one month's notice.
- c. She can do so as of the end of any period (the 14th of any month) by simply giving one month's notice to terminate as of the end of a period.
- d. She can do so at the end of any calendar month, with a month's notice.
- e. Both c. and d. above are true.

51. Suppose that Denise and Lorie had entered into a duly executed written agreement under which Denise demised an apartment to Lorie for 5 years, reserving a rent of \$2000 per month, which Lorie promised to pay. Ordinarily, under such an arrangement:

- a. Denise would be entitled to receive rent based on privity of contract.
- b. Denise would be entitled to receive rent based on privity of estate.

- c. Both of the above.
- d. None of the above.

52. Suppose in the preceding question that, after only three years, Denise had physically dispossessed Lorie because Lorie failed to pay the rent on time. There was no lease provision or statute that modified the common law rule on eviction for non-payment of rent:

- a. Denise would have violated Lorie's rights in evicting her.
- b. Lorie, as leasehold tenant, should be able to maintain an ejectment action against Denise.
- c. Lorie's obligation to pay rent would be suspended or extinguished for as long as the eviction continued.
- d. All of the above.

53. Suppose again that Denise and Lorie entered into a duly executed written agreement under which Denise leased premises to Lorie for 5 years reserving a rent of \$2000 per month, which Lorie promised to pay. Suppose that, after 2 years, Lorie assigned her lease to Daly, who is now in possession. Ordinarily in such arrangements:

- a. Lorie would have no further obligation to pay rent to Denise.
- b. Denise would be able to look either to Lorie or to Daly for payment of rent.
- c. If Denise made Daly pay the rent, it would be as a "surety," and Daly could then turn around and recover the amounts paid from Lorie, in "subrogation."

d. Daly would be liable to pay rent only if he assumed the lease.

54. Suppose in the preceding question that Lorie had decided to sublet to Daly instead of assigning her lease to him.

a. Denise and Lorie would continue to be in privity of contract and privity of estate under their original landlord-tenant relationship.

b. If Denise did not receive the rent when due, she could recover it in an action directly against Daly.

c. Lorie's rights would be no different than if she had assigned the lease.

d. All of the above.

55. Suppose again that Denise is Lorie's landlord. When Lorie first suggested subletting to Daly, Denise objected, and did not want her to do so.

a. If the lease was silent on the subject, the presumption would be that Lorie could not assign or sublet without Denise's consent.

b. The presumption is in favor of free alienability of land, so courts generally allow assignment and subletting unless the lease expressly provides to the contrary.

c. If a lease says "no subletting without the landlord's consent," the courts are all in agreement that this means the landlord cannot withhold consent unreasonably.

d. Most courts permit assignment only when the lease expressly allows it, but they freely permit subletting.

56. Suppose again that Denise and Lorie entered into a duly executed written agreement under which Denise leased premises to Lorie for 5 years reserving a rent of \$2000 per month. Suppose Lorie then abandoned possession and ceased to pay rent, without justification:

a. Under the traditional common law rule, Denise would not be expected to "mitigate damages" by finding a substitute tenant.

b. Under many modern cases, the traditional rule has been changed so that, today, Denise wouldn't be expected to "mitigate damages" by finding a substitute tenant.

c. Under both the traditional rule and virtually all of the modern cases, Denise would be expected to "mitigate damages" by finding a substitute tenant.

d. Under neither the traditional rule nor under any of the modern cases would Denise be expected to "mitigate damages" by finding a substitute tenant.

57. Radnor Corp. leased office space from Waterson Realty Co. Waterson also owns an open lot right next door. After Radnor moved in, Waterson leased the open lot to an excavating and scaffolding contractor that uses the space to store equipment and materials. Because of the nature of this use, there is constant noise and dust emanating from the lot, making it extremely difficult for Radnor to use its space for office purposes. After numerous complaints, Radnor wants to know if it has to continue paying rent for space that it essentially cannot use. Under the doctrine of constructive eviction:

a. Radnor would be justified in abandoning and ceasing to pay rent only if Waterson was somehow responsible for or

able to control and prevent the noise and dust coming from the lot.

- b. If Radnor wants to be relieved of its obligation to pay rent, it would have to actually vacate its premises, at least partially.
- c. Both of the above.
- d. None of the above. Radnor cannot blame the landlord if it finds that the premises it chose are less useful than it expected or hoped.

58. A reason that many modern courts have moved to recognize the implied warranty of habitability is that:

- a. The implied warranty corresponds more closely to the expectations of both landlords and tenants than did the old doctrine of waste, which places virtually all responsibility to maintain the premises on the tenant.
- b. The courts have traditionally treated leases as ordinary contracts anyway, and it would be normal to imply such a warranty in an ordinary contract.
- c. The courts wanted to get away from the harsh doctrine of constructive eviction and its effect of depriving landlords of rents that they're entitled to.
- d. All of the above.

59. Walter Flowers leased an apartment under a 2-year lease. After a few months, the landlord experienced financial difficulties and allowed the building to fall into disrepair, resulting in numerous serious housing code violations and bad living conditions. Flowers

and the other tenants have “had it.” They would be entitled to a reduction in their liability for the agreed rent:

- a. Under the doctrine of “independence of covenants.”
- b. Under the cases that say they are treating leases as ordinary contracts rather than as conveyances.
- c. Only if the situation would qualify as a constructive eviction.
- d. None of the above. They would not be allowed a reduction in their liability for the agreed rent under any recognized body of authorities.

60. Which of the following is probably a bailment (assuming it's not meant as a gift)?

- a. Greg lends his iPad to Kaylee.
- b. Bill lends \$10.00 to Trevor.
- c. Carol lends her apartment to Angela while Carol's out of town on travel.
- d. All of the above.
- e. None of the above.

<End of examination.>