PACE UNIVERSITY SCHOOL OF LAW

PROPERTY
PROFESSOR HUMBACH May 9, 2023
FINAL EXAMINATION TIME LIMIT: 3½ HOURS

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

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

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

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

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

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

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

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

1. While having dinner at home, Owner glanced out the window and saw a stranger with a small dog standing on his lawn. The stranger was watching Owner through the window. When Owner told the stranger to leave, the stranger replied "I'm not hurting anything," and refused to go. Owner sued for trespass:

a. The court should dismiss the trespass action as long as the stranger caused no economic harm and was merely looking in out of curiosity.

b. If the stranger caused no economic harm, the court can only award nominal damages.

c. The court could properly award punitive damages to Owner in order to support and reinforce the right to exclude others.

d. The court would probably impose sanctions against Owner for bringing such a silly and frivolous lawsuit.

2. Walker was fishing from a boat on an inlet at the edge of Blue Lake. The inlet was nearly surrounded by land belonging to Owner, who also owned the bed and banks of the lake at that location. Walker caught several fish but was careful to avoid touching any portion of the bed or banks. He did not have Owner's permission to fish or even to be on the inlet. Could Walker be considered trespasser on these facts?

a. No, as long Walker touched only the water of the lake and not any portion of the bed or banks.

b. Yes, because Walker's boat and fishing gear touched water belonging to Owner.

c. Yes, because Walker and his boat were in airspace belonging to Owner.

d. Both b. and c. above.

3. Suppose in the preceding question that Walker caught three fish and his gear touched the bed of the lake. The court determines that Walker was trespassing on Owner's property at the time he caught the fish. According to the doctrine of *ratione soli*:

a. The three fish would now belong to Owner.

b. The three fish would belong to Walker, as first captor.

c. All of the fish swimming within Owner's boundaries would already belong to Owner.

d. Owner has actual possession of all the fish swimming within his boundaries at any given time and, so, Owner would be entitled to the three fish.

4. Owner captured a wild ocelot (a large wildcat) in the Rio Grande valley. He brought it to the upper Midwest, an area where ocelots do not occur naturally. Some weeks later the ocelot escaped. An egg farmer two miles away noticed that something was getting his chickens at night. He put out a trap and captured an ocelot. Owner heard about it and demanded the ocelot. The egg farmer refused. Owner is suing him in replevin.

a. In general, a captured wild animal becomes fair game if it regains its natural liberty, meaning that a second captor generally has a better right to it than the original possessor.

b. In deciding between Owner and the egg farmer, the court may consider it a relevant point (tending to favor Owner) that the animal was captured in an area where ocelots do not occur naturally.

c. Both of the above.

d. The egg farmer is entitled to the ocelot because it was getting his chickens.

5. A hunter saw a coyote and took a shot at it. He missed, and the coyote took off, disappearing over a small hill. A short time later the hunter heard a shot on the other side of the hill. Checking it out, he saw another hunter who'd just shot a coyote and was dragging it towards his truck. The first hunter sued the second hunter in trover. The law would generally favor:

a. The first hunter because "first in time, first in right."

b. The first hunter because it was his industry and labor that made the coyote run to a place where the second hunter could take it.

c. The second hunter because he was the first to take actual possession.

d. The second hunter because of *animus revertendi*.

6. Owner bought natural gas on the interstate market and injected it into a natural cavity under Owner's land. The gas traveled underground and settled under land belonging to Neighbor. When Neighbor discovered this, he dug a well on his own land and extracted large quantities of the natural gas that had been injected by Owner. Now Owner is suing Neighbor for conversion. Neighbor is counterclaiming for trespass. If the court decides the case based on the doctrine of capture:

a. Owner would have the better claim to the natural gas extracted by Neighbor because Owner had bought and paid for the gas.

b. Owner would no longer own the gas he injected into the ground and, therefore, he could not logically be considered a trespasser for causing the gas to flow underneath Neighbor's land.

c. Though Owner would continue to own the gas he injected into the ground, Neighbor would have a right to take it.

d. Neighbor would be entitled to take and sell any natural gas that he found under his land if Owner, by injecting gas in the ground, ceased to possess it.

7. A land developer built a retirement community approximately one-half mile from a long-established cattle feedlot. Beginning the very first summer, the new residents of the community were plagued by large biting insects, odors, sounds and various other discomforts that emanated from the feedlot. It was a serious annoyance. In response to complaints, the legislature enacted a new law that prohibits feedlots within two miles of any retirement community. The feedlot owner has been ordered to shut down, which will negatively impact the value of his land.

a. Requiring the feedlot to shut down under the new law would probably be regarded as a valid exercise of the government's police power.

b. The due process clause would allow the legislature to protect the residents of the retirement community but not at the expense of another private owner (i.e., the feedlot owner).

c. The new law protecting the residents is valid, but the feedlot owner is constitutionally entitled to just compensation.

d. Both b. and c. above.

8. Elegant Gardens is a landscaped property that is rented out for weddings and other such events. The gardens are graced by many reflecting pools, waterfalls and other natural features. Down the road, Owner runs a large organic vegetable farm. He's recently installed several new wells to serve his operation. The wells draw so much water that the pools in Elegant Gardens are drying up and the waterfalls are down to a trickle. Elegant Gardens has sued Owner for damages:

a. Some courts would say Owner has an absolute right to withdraw and use the percolating water under his land even if it adversely affects the neighbors' access to underground water.

b. Some courts would say that Owner's right is to make reasonable use the percolating water under his land but that this right is subject to the similar or correlative rights that neighboring owners have to the underground water.

c. Both of the above.

d. All modern courts would say Owner is liable for any harm that his groundwater withdrawals cause to neighboring owners.

9. Owner bought a piece of land as an investment. She received a deed and duly recorded it. In the deed, Sellers reserved the right to certain minerals, including the express right to remove them without liability to the surface owner. Later, before any minerals were removed, Owner resold the land. The buyer, O-2, never agreed to allow minerals to be removed. Now an engineer reports that removing minerals will probably damage the house that O-2 has built on the land.

a. Sellers may remove the minerals even if O-2 objects, but Sellers would be liable to O-2 for any harm that results.

b. O-2 is not bound by Sellers' reservation of minerals in the deed because O-2 never agreed to it.

c. The law of property does not allow surface ownership to be separated from the mineral rights.

d. The reservation of minerals is binding on O-2 because Owner was unable to sell O-2 a greater interest than she had.

10. Suppose in the preceding question that, after the deed to Owner, the legislature adopted a new law that forbids any mining operations that could harm valuable structures on the surface. The court finds that the effect of this law is to render it commercially impracticable to remove any of the underground minerals on O-2's land—thus depriving the mineral rights of all economically beneficial use.

a. The new law may well be considered to be an unconstitutional taking because of its drastic economic impact on a valuable interest in land (the mineral interest).

b. The law is unconstitutional because, after *Lucas*, legislatures do not have the power to pass laws that negatively affect the value of private property rights.

c. Both of the above.

d. According to the U.S. Supreme Court, laws rendering it commercially impractical to mine minerals in the ground are in no way comparable to an actual governmental "taking" of the minerals.

11. Owner received a notice that the city plans to take Owner's home by eminent domain. The city's plan is to bulldoze the home and sell the land to a private developer who will build a new private industrial park. Owner loves his home and doesn't want to sell. He believes that the city is misusing its governmental power to acquire land for private developers. According to the US Supreme Court in a case like this:

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

b. The taking of Owner's home for sale to a private developer would not be considered "for public use" and, therefore, would violate the Takings clause.

c. Owner can be compelled to sell his home in exchange for just compensation as long as there's a rational basis for holding that the project serves the public interest.

d. The Takings clause prohibits government from taking private property without the owner's consent.

12. Driving home from a night of partying, Owner was pulled over by the police. A breath test showed he was driving DWI. Police seized Owner's car under a city ordinance that authorizes the seizure and sale of cars driven by DWI drivers. Owner sues to challenge the forfeiture of his car. Owner should prevail in his challenge because:

a. The effect of the ordinance is to deprive Owner of all economic use, which violates the Takings clause.

b. The ordinance probably violates the Due Process clause because it is unduly harsh on individuals.

c. Forfeitures of private property are no longer permitted by the US Supreme Court.

d. None of the above. Owner appears to have no legal basis for preventing the forfeiture of his car.

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

13. Walker found a wallet on the street. The wallet contained some money but no identification. As a finder:

a. Walker has an absolute property right to the wallet and the money.

b. Walker is entitled to possession of the wallet but not the money.

c. Walker has a right good against all but rightful owner to possess the wallet and money.

d. Walker has bare possession of the wallet and the money but does not have any actual legal right to possess them.

14. Walker was sitting in the private office of a bank officer applying for a loan. He saw an Air Pod partially hidden under a large chair and picked it up. The true owner is

unknown, and the Air Pod might have been there for months. As between Walker and the bank:

a. Walker would have the better entitlement to the Air Pod under the so-called American rule, which generally favors the finder.

b. Walker would have the better entitlement to the Air Pod under an exception to the rule that generally favors the owner of the locus in quo.

c. Both of the above.

d. Because the Air Pod was found on the bank's property, the bank would have the better entitlement to the Air Pod under the American rule.

15. Suppose Walker found a wallet on the floor of a supermarket aisle while he was shopping. The area of the supermarket where Walker found the wallet was open to the public. He and the supermarket owner both claim the wallet.

a. Walker would have the better entitlement to the wallet under the so-called American rule.

b. Walker would have the better entitlement to the wallet under an exception to rule that generally favors the owner of the locus in quo.

c. Both of the above.

d. The owner of the supermarket (the locus in quo) would have the better entitlement to the wallet under both the so-called English rule and so-called American rule.

16. Suppose in the preceding question that the state applies the approach that generally favors the owner of the locus in quo. At trial, Walker concedes that he was the first customer in the supermarket the day he found the wallet. The factfinder concludes that the wallet must therefore have been locked in the supermarket during the previous night. Should these facts matter to the outcome? That is, should it matter that the wallet was locked in the supermarket overnight?

a. Yes, without these facts the supermarket owner probably loses but with them, the supermarket owner logically should prevail.

b. No, the supermarket owner, as owner of the locus in quo, would logically have the better claim to the wallet anyway, even without these facts.

c. No, Walker, as finder, would logically have the better claim to the wallet anyway, even with these facts.

d. No, these facts are irrelevant because, admittedly, neither Walker nor the supermarket is the true owner of the wallet.

17. Walker plucked his suitcase from the baggage carousel at the airport. When he got home and opened the suitcase, he found a string of pearls. It was not his. Nobody knows who owns the pearls, and the airline representative surmises that an unknown TSA agent must have placed them in Walker's suitcase by mistake. The airline demands the pearls from Walker.

a. Under the approach applied in some states (so-called English rule), the airline should logically be entitled to the pearls as against Walker because it is the earliest known possessor of them.

b. There is no legal theory on which the airline could logically be entitled to the pearls because it was never aware of their existence.

c. Both of the above.

d. Walker should have the better entitlement to the pearls because the baggage carousel where he got them was a public or semi-public place.

18. Walker found an “Aaron Judge” rookie-year baseball card lying on a table at a college bar. He asked the bartender to hold the card up and make an announcement asking if anybody owned it. Nobody spoke up. The bartender refused to return the card to Walker, and Walker now sues in replevin. Assuming that the card was mislaid and the state makes the distinction between lost and mislaid property:

a. Walker, as finder, would have the better claim to possess the card.

b. The owner of the bar (locus in quo) would have the better claim to possess the card.

c. Because the card was mislaid, it should be treated as abandoned property.

d. The card should be treated as treasure trove.

19. Owner left an expensive watch at a jewelry shop for repairs. When she returned to pick it up, it had a large scratch. The jewelry shop denies responsibility. In order to make out a prima facie case of negligence against the jewelry shop:

a. Owner must affirmatively prove (among other things) that the jewelry shop was negligent in causing the damage to her watch.

b. Owner need only prove that there was damage to her watch.

c. Owner need only prove that there was a bailment of the watch and that the damage occurred to the watch while it was in the bailee's possession.

d. Owner must overcome the presumption that the damage to her watch was not the bailee's fault.

20. Owner raises rare tropical orchids as a hobby. When Owner had to go out of town on business, he asked his neighbor if she would take care of his orchids. She agreed and he brought the orchids to her home. Unfortunately, while the orchids were in the neighbor's possession, her cat took an interest in them and ripped them to shreds.

a. The bailment described in these facts is a gratuitous bailment.

b. Under the more traditional rule, still applied by some courts, the neighbor would not be liable to Owner unless she was grossly negligent.

c. In most states, proof that the damage was caused by a cat would not, by itself, rebut the presumption that the damage was due to the bailee's negligence.

d. All of the above.

21. Owner left his car at a gas station for an oil change. He didn't tell the attendant about his trombone in the trunk. When Owner returned to pick up his car, the trombone was missing. Owner wants to hold the gas station liable as bailee for the loss. Can he?

a. Some cases would say no because the trombone's presence was not disclosed and, therefore, there was no legal delivery of it.

b. Yes, because there's a rebuttable presumption that the missing object was lawfully bailed to the gas station and the loss was due to its negligence.

c. No, because there was no bailment on these facts since bailments require a contract with offer, acceptance and consideration.

d. Yes, because a bailee is liable for all losses to items left in its possession.

22. Owner lent his surfboard to Todd for the weekend. On his way to the beach with the surfboard on his car, Todd was involved in a crash when another driver negligently ran a red light. Todd was in no way at fault in causing the crash, but Owner's surfboard was destroyed. Later, Todd put in an insurance claim against the other driver's insurance company. He included a claim for the value of the surfboard, which was still in his possession. Can Todd properly recover for the value of the surfboard?

a. No, because Todd didn't own the surfboard and, so, the other driver isn't liable to Todd for its value.

b. No, because Todd isn't liable to Owner for the loss to the surfboard and, so, the other driver isn't liable to Todd for its value.

c. Yes, because the wrongdoer can be properly held liable to the bailee, Todd, for the value of the surfboard.

d. Yes, because the other driver cannot defend by asserting a jus tertii under which he does not claim.

e. Both c. and d. above.

23. Owner has a parcel of country land where he plans to build a home. For the time being the land is undeveloped. A trespasser (T) entered the land and removed several valuable hardwood trees. Owner sued T in trespass. T's lawyer has moved to dismiss the case alleging that Owner did not, and still does not, have possession of the land.

a. Even without possession of the land, Owner would be entitled to sue T in trespass and recover damages from T.

b. Owner would be deemed to have constructive possession of the land for purposes of suing in trespass as long as there was no adverse possessor.

c. Owner would be entitled recover damages from T in trespass even if somebody else has adverse possession of the land.

d. If somebody has adverse possession of the land, there would be no one who could (at the moment, at least) recover damages from T in trespass.

24. A reason for having the doctrine of adverse possession is:

a. To provide an economical alternative for persons of limited means to acquire land when purchase is financially out of reach.

b. To provide an additional reason for land buyers to purchase title insurance.

c. To reallocate land to those who need it most.

d. To protect honest buyers and owners of land from having to defend against stale allegations of title defects.

25. Owner delivered a deed conveying a parcel of land to Buyer-1. Two years later Owner delivered a deed purporting to convey the very same parcel to Buyer-2. As a result of these transactions (and ignoring possible effects of the recording acts):

a. Buyer-1 would have title to the land because his deed was earlier.

b. Buyer-2 would have title to the land because his deed was more recent.

c. Owner would still have title to the land because the two inconsistent deeds cancel each other out.

d. Buyer-1 became an adverse possessor.

26. A little over 17 years ago, Landlord received a deed to a house which he then leased to Tenant. Since then, Tenant has visibly lived there, under series of leases, for a total of 17 years. It now appears that the person who purportedly sold the house to Landlord didn't actually own it. The true owner at the time, a guy named Cobb, is suing Landlord in ejectment to recover possession of the house.

a. Landlord could not have a ripened title to the house by adverse possession because Landlord has not been in possession of it.

b. Tenant would probably now own the house by adverse possession.

c. Both of the above.

d. By now, Landlord has probably acquired a ripened title to the house by adverse possession.

27. Suppose in the preceding question that Landlord *did* receive a good title to the house under the deed. However, a survey shows that, for the entire 17 years, Tenant's actual possession of the property has visibly encroached 3 feet onto the neighboring property—due to a misplaced fence. If Tenant's possession of the boundary strip has met the physical requirements for adverse possession, who'd be entitled to the 3-foot boundary strip after Tenant moves out at the end of his current lease?

a. Tenant.

b. Landlord.

c. The owner of the neighboring property.

d. None of the above.

28. Twelve years ago, Walker received a deed to a 10-acre parcel of land. He cleared the land and built a house on approximately 2/3-acre of the property. He left the rest of the 10 acres as it was, i.e., he did not perform acts of ownership on it. For the past nearly 12 years Walker has lived normally in the house. It now appears that the person who sold the parcel to Walker didn't have good title. The person who actually owned the property is

now suing Walker in ejectment. He wants to recover possession of as much of the land as he can. Under the color-of-title rule, it should be held that:

a. Walker has acquired a ripened title to the entire 10 acres.

b. Walker has acquired a ripened title to only the 2/3-acre that he's actually lived on and occupied.

c. Walker has not acquired a ripened title to any part of the 10 acres.

d. Walker has acquired a ripened title to the 2/3-acre and an easement over the rest of the 10 acres.

29. Owner acquired a parcel of land by inheritance but never went there. In 2012, AP found the land vacant and took adverse possession of it. In 2019, AP2 took over adverse possession of the land. AP2 now claims ripened title to the land. Can the claim succeed?

a. Yes, because tacking is always allowed between successive adverse possessors.

b. Yes, as long as AP2 did not actually oust AP from possession.

c. Yes, as long as there was privity of estate between AP and AP2.

d. No, a new adverse possessor must always start the possession period over again.

30. Which of the following *must* a person do on a parcel of land in order to be considered in adverse possession of it?

a. Enclose the property with a fence or other substantial enclosure.

b. Build some sort of building or other improvement on the property.

c. Cultivate or keep livestock on the property.

d. None of the above.

31. Owner leased a one-car garage to Tenant for 6 years. Tenant used the garage until the lease came to an end. When Tenant stopped using the garage at the end of the lease, Neighbor took adverse possession of it and has been visibly using the garage, rent free, for the past 5 years. Owner never did anything about it. After Owner recently passed away, his heir discovered what Neighbor was doing and brought an ejectment action.

Neighbor claims a ripened title by adverse possession. For purposes of this claim, the 6 years of possession by Tenant under the lease:

a. Can be tacked onto Neighbor's 5 years of adverse possession.

b. Can *not* be tacked onto Neighbor's adverse possession.

c. Could be tacked onto Neighbor's 5 years of adverse possession if Tenant didn't care that Neighbor used the garage after Tenant left.

d. Could be tacked onto Neighbor's 5 years of adverse possession if Owner's heir did not provide reasonable supervision of the property after Owner's death

32. Owner has a parcel of land on the shore of a small lake. Right next to Owner's parcel is land belonging to the state. Fifteen years ago, Owner built a landing facility and boathouse that extends onto the state's land. Now, after 15 years, the state is demanding that Owner remove, without compensation, all structures that extend onto its land.

a. Because the boathouse and landing facility have been in place openly and notoriously for more than 10 years, Owner probably has a right by adverse possession to keep them there.

b. In most states there is no legal reason why Owner could not acquire a right by adverse possession to keep the boathouse and other facilities where they are as long as the requirements for adverse possession are otherwise met.

c. The usual rule is that the state government is treated like any other owner as far as adverse possession is concerned.

d. All of the above.

e. None of the above. In most states Owner could not acquire rights by adverse possession against the state.

33. Owner bought a vacation cabin on a piece of wooded land. She used the cabin only in the summer for about a month each year. Even though her property had highway access, Owner found it was more convenient to take a paved shortcut across Neighbor's land. Neighbor repeatedly warned Owner to stop the trespasses, but Owner ignored the warnings and regularly used the shortcut whenever she was at the cabin. This went on for over 10 years. Neighbor comes to you for legal advice. Your advice should be:

a. Neighbor can lawfully build a fence with a locked gate across the shortcut to prevent Owner from using it.

b. Owner probably does not have an easement by prescription to use the shortcut because Owner's use of it became wrongful after Neighbor warned her not to.

c. Owner probably does not have an easement by prescription to use the shortcut because her adverse use of it would not satisfy the requirement that the use be continuous.

d. Owner probably has an easement by prescription to use the shortcut.

34. Owner leased a parcel of open land to a construction company for a period of 10 years. The lease still has over six years to go. It was recently discovered that another company, Beamus Demolition Co., has been depositing construction debris without permission on a remote corner of the demised premises. Both Owner and the construction company have brought trespass actions against Beamus. According to the *Dietrich* case (that we read in class):

a. Owner's trespass action should be dismissed because Owner is not the proper party to sue Beamus in trespass.

b. The construction company's trespass action should be dismissed because it is not the proper party to sue Beamus in trespass.

c. The trespass actions by both Owner and the construction company should be allowed to go forward because both of them are proper parties to sue Beamus in trespass.

d. Both of the trespass actions should be dismissed because neither Owner nor the construction company is a proper party to sue Beamus in trespass.

35. Owner inherited a parcel of land some years ago, but she lives in a distant state and has hardly ever visited the land. Recently Owner learned there was an adverse possessor on the land who had been there continuously for nearly 10 years. The adverse possessor's recent activities on the land have caused harm and reduced the property's value. Late last month, Owner recovered possession of the land in an ejectment action. Assuming the period of limitations for trespass actions is 3 years, Owner would be entitled to bring a trespass action to:

a. Recover damages for harm done to the land.

b. Recover mesne profits.

c. Both of the above.

d. None of the above.

36. AP2 claims ripened title to a parcel of land based on his own adverse possession and that of AP, who originally took possession in 2011. There would be privity of estate between AP and AP2:

a. If AP2 took over possession as AP's sole heir after AP died in 2018.

b. Based simply on the fact that both AP and AP2 were successive adverse possessors of the same parcel of land.

c. Only if there was a landlord-tenant relationship between AP and AP2.

d. All of the above.

e. None of the above.

37. Which of the following conveyances (if any) purports to create a future interest that would be void under the traditional rule against perpetuities?

a. To A for life, then to B and her heirs.

b. To A and her heirs as long as the premises are used for school purposes, then to B and her heirs.

c. To A for life then to A's eldest child who survives him. (A is childless at the time of conveyance).

d. All of the above conveyances purport to create a future interest that would be void under the traditional rule against perpetuities.

e. None of the above.

38. Owner purchased a pony to give to his young granddaughter for her birthday. During the birthday party, at Owner's home, a truck pulled up with a trailer and the pony was led to the backyard. Owner then said to his granddaughter, "Happy birthday! The pony is yours." The young donee lept with joy and said "Yay!" Assuming there was no deed of gift, which of the following ordinarily must be shown to establish that there was a valid gift of the pony?

a. Possession of the pony was delivered to the granddaughter in point of fact.

b. The granddaughter clearly and affirmatively expressed her intention to accept the gift.

c. Witnesses to the event all agreed that a valid gift was intended by the donor.

d. All of the above.

e. None of the above.

39. While in good health and looking forward to a long life, Owner gave a valuable ring to his nephew, Arthur, "because I want you to have it after my death." Some years later, while on his deathbed, Owner gave a prized family heirloom to his niece, Sarah. At about the same time as the gift to Sarah, Owner (still on his deathbed) executed a valid will leaving his stamp collection to Martin. Which of the foregoing is presumptively a gift causa mortis?

a. The gift to Arthur.

b. The gift to Sarah.

c. The gift to Martin.

d. All of the above.

e. None of the above.

40. Suppose in the preceding question that Owner, before his death, changed his mind and decided he wanted all the above items to go to his loyal nurse and caregiver. The law would allow Owner to revoke:

a. The gift of the ring to Arthur

b. The gift of the heirloom to Sarah.

c. The will giving the stamp collection to Martin.

d. Both b. and c. above.

e. All of the above.

41. Owner and a friend went to a party together. The friend wore a moderately valuable bracelet that Owner had lent her earlier in the day, just for the party. During the party Owner said to her friend, "That bracelet looks great on you. I want you to have it as a gift. It's yours." Her friend smiled and said "Thanks!" The next morning Owner changed her mind and asked for return of the bracelet.

a. Owner should be entitled to get the bracelet back because there was no delivery of the bracelet to the donee.

b. Owner should be entitled to get the bracelet back because the only delivery was for purposes of a bailment and not a gift.

c. Based on the facts stated, it looks like the delivery requirement was met and there was a completed irrevocable gift of the bracelet.

d. Based on the facts stated, Owner would be entitled to get the bracelet back (revoke the gift) because oral gifts are presumptively revocable.

42. Owner has an antique clock that he very much admires. He wanted his son to have the clock following his death, but he wanted to keep it during his lifetime. Owner's first idea was to leave the clock to his son in his will. On the advice of his lawyer, however, he's now decided to deliver a deed of gift transferring a remainder interest to his son while retaining a life estate for himself. Assuming the clock is worth $50,000:

a. If Owner had executed a will leaving the clock to his son, the effect would have been to immediately reduce Owner's net worth by $50,000.

b. When Owner delivers a deed of gift transferring a remainder interest in the clock (while retaining a life estate), the effect will be to immediately reduce Owner's net worth by $50,000.

c. If Owner had executed a will leaving the clock to his son, there would have been no immediate effect on Owner's net worth.

d. When Owner delivers a deed of gift transferring a remainder interest in the clock (while retaining a life estate), there will be no immediate effect on Owner's net worth.

e. Both c. and d. above.

43. Landlord said to Tenant "I'm leasing the house at 925 Penrose to you, beginning tomorrow, for a term of three years reserving a rent of $24,000 per year payable in equal monthly installments of $2000." There was no effort to comply with the statute of frauds. The next day, Tenant moved in. What kind of tenancy did Tenant initially have?

a. A term of years for 3 years.

b. A term of years for 1 year.

c. A periodic tenancy.

d. A tenancy at will.

e. No tenancy at all because the oral lease is void under the statute of frauds.

44. Suppose in the preceding question that Tenant has held possession under the oral demise for several months and has regularly paid the agreed rent each month as it came due. The kind of tenancy that Tenant probably has now is:

a. A term of years for 3 years.

b. A term of years for 1 year.

c. A periodic tenancy from month to month.

d. A periodic tenancy from year to year.

e. No tenancy at all because the oral lease is void under the statute of frauds.

45. Suppose that Landlord leased an apartment to Tenant from month to month and the lease began on February 5, 2023. The Landlord now needs the apartment for her son who just dropped out of college due to poor grades. The earliest date (from today, May 9) as of which Landlord can terminate the lease and recover possession is:

a. May 31.

b. June 5.

c. June 30.

d. July 5.

e. July 31.

46. Landlord leased an apartment to Tenant under a 3-year written lease reserving a rent of $3000 per month. After a few months, Tenant moved to another city and let T2 take over exclusive possession of the apartment "for the rest of my lease." A court would probably regard the transaction between Tenant and T2 as:

a. An assignment.

b. A sublease.

c. A license.

d. Cannot be determined without more facts.

47. Landlord leased to Tenant under a 3-year written lease reserving a rent of $3000 per month. After about a year, Tenant assigned the lease to A1, who did not assume the lease but moved in and started paying rent. Now, though A1 still has possession, he's stopped paying rent, and the rent is several months in arrears.

a. A1 is liable to Landlord for the back rent that he should have been paying.

b. Tenant can be held liable to Landlord for the back rent that A1 should have been paying

c. Both of the above.

d. A1 is not liable to Landlord for the back rent since the facts do not say that A1 ever promised or agreed to pay rent to Landlord.

e. Tenant is not liable to Landlord for the back rent since he has assigned the rent obligation to A1.

48. In the preceding question, after the assignment of the lease,

a. Tenant can be held liable to pay the back rent to Landlord based on privity of contract.

b. Tenant can be held liable to pay the back rent to Landlord based on privity of estate.

c. Tenant can be held liable to pay the back rent to Landlord based on the "reservation" of rent.

d. All of the above.

e. None of the above. Tenant cannot be held liable to pay the back rent to Landlord after the assignment.

49. Landlord leased to Tenant under a 3-year written lease reserving a rent of $3000 per month. After about a year, Tenant assigned the lease to A1, who assumed the lease, moved in and started paying rent. After a few months, A1 moved to another city and reassigned the lease to A2 who did *not* assume the lease. A few months after that, A2 ceased paying rent but retains possession. The rent is now several months in arrears. Who can Landlord hold liable for rent?

a. Tenant.

b. A1.

c. A2.

d. All of the above.

50. Landlord leased the upper floor of her house to Tenant under a 3-year written lease. After Tenant moved in and started paying rent, she realized that Landlord had three large dogs that barked constantly. Even worse, the dogs sometimes chased Tenant as she went out to her car, causing great fright. Tenant was unaware of the dogs when she signed the lease. Now she wants to withhold rent in hopes that will encourage Landlord to keep the dogs under control. A law student friend tells Tenant she can lawfully withhold rent under the doctrine of constructive eviction. To justify nonpayment of rent under this doctrine, Tenant must show that:

a. Landlord's failure to keep the dogs under control was a breach of a duty that Landlord owed to Tenant.

b. Landlord's failure to keep the dogs under control rendered the demised premises untenantable.

c. Tenant gave up possession of the demised premises because of Landlord's failure to keep the dogs under control.

d. All of the above.

In the following questions, do not assume that any of the parties are married unless the question so specifies.

51. Owner conveyed a piece of property "to A and B and their heirs." Under the usual modern interpretation, this conveyance would create a:

a. Joint tenancy.

b. Joint tenancy with right of survivorship

c. Tenancy in common.

d. Tenancy by the entirety.

52. Suppose in the preceding question that A died intestate following the conveyance. Who would own the property?

a. B alone.

b. B and A's heir.

c. B and Owner.

d. B and the heirs of A and B.

53. A and B are tenants in common of a house they inherited from their parents. B lives elsewhere and has left the house for A to occupy alone. Recently A asked B to contribute some money to help pay the property taxes. B responded by suggesting that A ought to be paying B rent since A is getting the whole benefit of the house all to himself. A said "no" and has never agreed to pay rent. Under the majority rule:

a. B would ordinarily be entitled to recover rent from A on these facts.

b. In the absence of an agreement to pay rent, B would ordinarily be entitled to recover rent from A only if A ousted B from possession.

c. It would be totally up to B whether to charge rent, and A would be obligated to pay whatever rent B sets, as long as the amount is reasonable.

d. Tenants in common are never obligated to pay rent to their co-tenants.

54. A and B acquired a piece of land as joint tenants. B later died intestate. A claims sole ownership, but B's heir claims to have a right to an undivided 50% share. B's heir has a good chance of prevailing in this claim if, before B's death:

a. A had leased her interest in the property to X for a term of six months.

b. B had leased his interest in the property to Y for a term of six months.

c. B had mortgaged his interest in the property in order to secure a loan (in some states).

d. All of the above are correct statements.

e. None of the above.

55. Owner has a piece of land. Her main access to it is over an old farm lane that crosses the neighboring property. Owner has a legal right to use the lane, and the right runs with the land. However, the neighboring owner retains lawful possession of the area traversed by the lane. The interest that Owner has is:

a. An easement in gross.

b. A negative easement.

c. An irrevocable license.

d. An appurtenant easement.

e. An appendant easement.

56. In the preceding question, Owner's land would be:

a. The servient tenement.

b. The dormant tenement.

c. The dominant tenement.

d. The appurtenant tenement.

e. The accessory tenement.

57. By express deed Owner acquired an appurtenant easement for a utility line across the neighboring parcel. When Owner sells his land,

a. The easement would automatically go to the buyer of Owner's land unless otherwise specified.

b. The easement would ordinarily continue to belong to Owner rather than pass to the buyer.

c. The easement would ordinarily cease to exist.

d. The easement would ordinarily become revocable at the option of the neighboring owner.

58. There is a steep 4-foot embankment along Owner's property line. To prevent erosion, Owner decided to build a retaining wall against the embankment. Because some of the wall would intrude across the line onto the neighbor's property, Owner asked if it would be okay to build the wall (with the intrusions). The neighbor said yes. Owner built the wall in reliance. Owner never got around to getting a written document between himself and the neighbor. Now the neighbor has sold his land to Buyer who demands that Owner remove the wall. On these facts:

a. A court could find that Owner has an easement by estoppel for the wall.

b. A court could find that Owner has an executed parol license for the wall.

c. Both of the above.

d. It doesn't look like Owner has any basis for claiming a permanent right for the wall because there was never a signed writing.

59. In order to prevent his basement from flooding, Owner built a shallow ditch to channel rainwater away from his house and into the northern half of his property. The ditch is obvious to anyone who sees the property. Four years ago, with the ditch in place,

Owner sold the northern half of his property to Buyer. No mention was made of the ditch, in the deed or otherwise. Buyer now objects to the ditch pointing out (correctly) that it's unlawful to channel rainwater into another's property without an easement or license to do so. In order to keep the ditch, Owner's best chance would be:

a. To claim an easement by implied grant based on prior use.

b. To claim an easement by implied reservation.

c. To claim an easement by prescription.

d. To claim an easement by estoppel.

60. In the preceding question, suppose Owner's lawyer decides to try for an easement by implication from prior use. If the court applies the traditionally predominant rule concerning the necessity requirement:

a. It should suffice to establish the easement if Owner can persuade the court that the ditch is *reasonably* necessary.

b. Owner would need to persuade the court that the ditch is *strictly* necessary.

c. Owner should be able to establish an easement by implied grant since that would require him to show only reasonable necessity.

d. None of the above. Owner cannot establish an easement by implication under these facts because the deed to Buyer did not mention the ditch.

<End of examination>