

PROPERTY - FINAL EXAMINATION

PROFESSOR HURN

SPRING 2003

Directions: This exam is for THREE hours and is closed book. Answer the multiple choice questions on the answer sheet provided. Write your answers to the short answer questions and the essays in one or more bluebooks. Remember to put your exam number on the answer sheet, this paper, and all bluebooks. If something in a question seems missing or mistaken, please state a corrective assumption in your bluebook and proceed with your answer.

Unless otherwise indicated in a particular question, please assume that all events occur in a U.S. state which has typical modern property law and which has a statute of limitations for actions for the recovery of real property of 20 years without color of title (7 years with color of title), the common law rule against perpetuities, and a race-notice recording act. All conveyances have been promptly recorded unless otherwise stated. Caveat emptor applies, with the usual modern exceptions. The age of majority for contracts and property matters is 18. If there is an issue in an essay that raises two major conflicting views of the proper rule, you should indicate the different outcomes under each rule.

MULTIPLE CHOICE

(Up to 90 minutes)

1. Sovereignty over and original ownership of land in North America by Great Britain and its successors, the United States, are legally based on
 - a. Discovery.
 - b. Conquest or Purchase.
 - c. Both a. and b. are correct.
 - d. Neither a. nor b. is correct.

2. In an arid, western state Andrew built a house next to a stream. From this stream he regularly drew 100 acre feet each year. Later, Bart acquired land upstream and began drawing 100 acre-feet also. Originally there was enough for both. However, in a year of severe drought, there was only 100 acre feet total along this stretch of river. Andrew sued Bart for all of it.
 - a. Andrew will win because he was first in time.
 - b. Bart will win because he is upstream.
 - c. Andrew will win because he has a riparian right to unimpeded flow.
 - d. The parties will have to split the available flow in proportion to their original rights.

3. Same facts as above, except that the occurrence was in an eastern state.
 - a. Andrew will win because he was first in time.
 - b. Bart will win because he is upstream.
 - c. Andrew will win because he has a riparian right to unimpeded flow.
 - d. The parties will have to split the available flow in proportion to their original rights.

4. In the case of a gift *causa mortis*
 - a. The intent to convey full ownership may occur after delivery of possession.
 - b. The gift is revocable if the donor recovers health.
 - c. Neither a. nor b. is correct.
 - d. Both a. and b. are correct.

5. Owner's valuable painting was stolen in a burglary. The burglar sold it to an unsuspecting collector. The Owner made no police report or other effort to inform the world of her loss. The unsuspecting collector has had possession for one year longer than

the relevant statute of limitations. Owner now demands the painting back. Under the minority (New Jersey) rule:

- a. Original Owner may recover the painting because burglar's "title" was void.
 - b. Original Owner may recover because the statute doesn't begin running until demand.
 - c. Collector wins because she is a BFPV without notice.
 - d. Collector wins because Owner failed to make reasonable efforts to discover the painting or to warn potential purchasers.
6. Dana and Pat (neither married nor related) lived together for some years, putting much of their income into a joint bank account, from which they paid household expenses. They had no contract between them about the account. At a time when there was substantial money in the account, they quarreled. Dana left the house and, without Pat's consent, withdrew the entire balance. The Bank has known all along that the parties had no legal relationship. In a suit by Pat against the Bank
- a. The Bank will win because each joint owner has a right to use the entire account.
 - b. The Bank will win because they had no prior notice of Dana's misconduct.
 - c. Pat will win the entire balance because each Joint owner has a right to the entire account.
 - d. Pat will win one-half the balance because Dana's withdrawal worked a severance.
7. Same facts as in previous question. In a suit by Pat against Dana
- a. Pat will win the entire balance because the law will not permit a person to profit from their own wrong.
 - b. Pat will win one half the balance because Dana's withdrawal worked a severance.
 - c. Pat will win that portion representing Pat's cumulative net contribution to the account because Equity will look past the form of the account.
 - d. Dana will win because each joint owner has a right to use the entire account.
8. A novelist told a screenwriter that the latter could have the exclusive rights to do a screenplay from his novel in return for 50% of whatever the screenwriter received from the work. Since that time, the screenwriter has begun the work. The novelist, however, has become popular and has more attractive offers. The novelist
- a. Is entirely free to accept a more attractive offer because an oral copyright license violates the statute of frauds.
 - b. Is entirely free to accept a more attractive offer because a screenplay is a derivative work.
 - c. Must permit the first screenwriter's work because the copyright statute of frauds applies to outright sales, not licenses.
 - d. Must permit the first screenwriter's work because an oral license can convey non-exclusive rights despite the statute of frauds.
9. A commercial landlord entered a lease to commence on July 1, 2003. The present tenant has warned that he will not be able to vacate by that time, although he is obliged to under the current lease. If the old tenant is still in possession at the time the new lease commences and the state follows the so-called American Rule
- a. The landlord is free of liability to the new tenant.
 - b. The landlord is secondarily liable to the new tenant.
 - c. The new tenant has an action against the landlord for breach of the covenant of quiet enjoyment.
 - d. The new tenant has an action against the old tenant for breach of the covenant of quiet enjoyment.
10. Creation of a private trust requires that the Grantor/Trustor (1) convey property to (2) one or more specific Trustees for the benefit of (3) one or more specifically identifiable beneficiaries. In the case of a trust for charitable purposes

- a. Specific Trustees are not required.
 - b. Specifically identifiable beneficiaries are not required.
 - c. Neither specific Trustees nor specifically identifiable beneficiaries are required.
 - d. Both specific Trustees and specifically identifiable beneficiaries are required.
11. Grandfather had three children, A, B, and C. At the time of Grandfather's death, A has also died, leaving two children, B has died, leaving three children, and C is still living, although childless. If Grandfather's will leaves his estate "to my living descendants, per stirpes," each of B's children will receive
- a. One third.
 - b. One sixth.
 - c. One ninth.
 - d. Nothing until C dies.
12. Same facts as above except that the will states "to my living descendants, per capita." Each of B's children will receive
- a. One third.
 - b. One sixth.
 - c. One ninth.
 - d. Nothing until C dies.
13. Bob and Jane, a married couple, bought Blackacre. At their request, the seller made the Deed out to them "as Tenants in Common." Bob secretly conveyed his interest to Gladys who knew he was married. Bob then died. Gladys owns
- a. One half of Blackacre outright.
 - b. One half of Blackacre subject to a likely claim by Jane that the conveyance was in fraud of her marital rights.
 - c. Nothing because tenants in common must join in any conveyances of the common property.
 - d. Nothing because married people must take property either Jointly or by the Entirety.
14. Carla and John, a married couple bought Blackacre, taking the title as Tenants by the Entirety. Carla secretly conveyed her interest to Pierre who knew she was married. Carla then died. Who owns Blackacre?
- a. John.
 - b. John and Carla's heirs as tenants in common.
 - c. John and Pierre as tenants in common.
 - d. John and Pierre as tenants in common, but Pierre's interest is subject to a likely claim by John that the conveyance was in fraud of his marital rights.
15. Rich and Alice were married. During the marriage, Rich bought Blackacre, paying for it out of his wages. However, he had the seller make the Deed out in Alice's name only, hoping this would insulate the property from any creditors to who he might later become indebted. No such creditors arose and Blackacre is completely paid for, but Rich and Alice are now getting a no-fault divorce. All other property was held jointly and has been divided equally. Absent special divorce-related circumstances, the court will award ownership of Blackacre to
- a. Alice alone because Blackacre is her separate property.
 - b. Rich alone because he supplied all the consideration.
 - c. Equal shares to each because it was marital property.
 - d. Equal shares to each because married people must take property either Jointly or by the Entirety.
16. O conveys by Deed to A for life, remainder to A's children when the last of them shall have reached the age of 18. A has two infant children living. The interest in A's children is

- a. An indefeasibly vested remainder.
 - b. A vested remainder subject to total divestment.
 - c. A vested remainder subject to open.
 - d. A contingent remainder.
17. In the conveyance immediately above, the interest in A's children
- a. Is void.
 - b. Is good.
18. O conveys by Will to A for life, remainder to O's grandchildren when the last of them shall have reached the age of 18. O has two children living and no grandchildren. The interest in the grandchildren is
- a. An indefeasibly vested remainder.
 - b. A vested remainder subject to total divestment.
 - c. A vested remainder subject to open.
 - d. A contingent remainder.
19. In the conveyance immediately above, the interest in the grandchildren
- a. Is void.
 - b. Is good.
20. O conveys by will to A for life then to O's children so long as the property is not sold or otherwise transferred to anyone not descended from O. O has three children living. The interest in the children is
- a. An indefeasibly vested remainder.
 - b. A vested remainder subject to total divestment.
 - c. A vested remainder subject to open.
 - d. A contingent remainder.
21. In the conveyance immediately above, the interest in O's children
- a. Is void.
 - b. Is good.
22. John bought in 1999 the original manuscript of an unpublished play for \$1 million, directly from the heirs of the author. No written agreement was involved. John decides to recoup some of his investment in the play by selling recordings of it being read by a famous actor. Which of the following is the best legal advice under U.S. copyright law?
- a. John has the right to do so because purchase of the manuscript implies transfer of the copyright in the work.
 - b. John has the right to do so because purchase of the manuscript implies at least a non-exclusive license to make derivative works.
 - c. John does not have the right to do so because purchase of the manuscript is merely a sale of goods.
 - d. John does not have the right to do so because the transaction violated the relevant statute of frauds.
23. A and B acquired a condominium apartment as tenants in common. Each now wants to live in it exclusively. Over A's objection, B brings an action for partition. Which is most likely true?
- a. The relief will be granted.
 - b. The relief will be granted unless A has a claim against B for contribution on account of disproportionate expenditure on the carrying costs of the property.
 - c. The relief will be denied since partition of a condominium unit requires the consent of all co-owners.

- d. The relief will be denied because A and B are not joint tenants.
24. A and B are joint inventors of a patented invention. As such
- Either of them can individually license someone to use the invention.
 - Either of them can individually sell his or her interest in the invention.
 - Neither a. nor b. is correct because they must act jointly.
 - Both a. and b. are correct.
25. Landowner's land was clearly posted against trespassing. Nevertheless, Xavier snuck onto the land in pursuit of his hobby— searching for arrowheads. Buried in the soil, he found what he thought was a rare obsidian blade. He took it to Yanni, a famous dealer in such artifacts, for his opinion. The Yanni refused to give it back. In a replevin suit by Xavier against Yanni
- Xavier will win because the blade belongs to the first taker.
 - Xavier will win because his possessory right is superior to Yanni's.
 - Yanni will win because Xavier may not benefit from his own wrong.
 - Yanni will win because the Landowner is the true owner.
26. Same facts as above, except that Yanni sold the blade to Zeppo, a buyer in the ordinary course of business. In a replevin suit by Xavier against Zeppo
- Xavier will win because the blade belongs to the first taker.
 - Xavier will win because his possessory right is superior to Zeppo's.
 - Zeppo will win because Xavier may not benefit from his own wrong.
 - Zeppo will win because Xavier entrusted the blade to Yanni.
27. Same facts as above, except that the Landowner sues Zeppo for replevin.
- Landowner will win because his possessory right is superior to Zeppo's.
 - Landowner will win because Yanni was a thief.
 - Zeppo will win because Xavier had at least voidable title.
 - Zeppo will win because Xavier entrusted the blade to Yanni.
28. If a state's landlord-tenant law recognizes both the doctrine of illegal leases and the warranty of habitability, if a landlord cuts off water to an apartment during a dispute with the tenant
- The illegality doctrine will apply.
 - The habitability warranty will apply.
 - Neither will apply.
 - Both will apply.
29. The acronym CERCLA is primarily significant in
- Zoning Law.
 - Property Tax Law.
 - Trademark Law.
 - Hazardous Waste Law.
30. Lucius owned a scenic lot on a high bank above a large river where he planned to build a resort hotel. Many people thought he was foolish because that general area was known for sudden collapses of the banks during floods. Lucius had expert geologists and engineering experts who were convinced that his particular lot would be unaffected by ordinary erosion for many years and by anything short of a once-in-500 years flood. Despite this, and before Lucius could get any permits, the state legislature passed a statute forbidding any new structures within 50 yards of the river. Old structures, including at least one hotel, were grandfathered. This rendered the lot in question essentially worthless (it was too small and the soil too poor for agriculture or a golf course). The statute

- a. Is a valid exercise of the police power.
- b. May be a valid exercise of the police power, depending on the state's traditional law of nuisance.
- c. May be unconstitutional under the Equal Protection Clause, depending on the similarity of the situations of the grandfathered structures.
- d. Is unconstitutional under the Taking Clause.

Short Answers
(Up to 10 minutes)

1. Please list, without elaboration, the six ways an easement may be created.
2. Please list, without elaboration, the six covenants of a warranty deed.
3. Please list, without elaboration, the three requirements for an enforceable equitable servitude.

Essay I
(Up to 40 minutes)

Landlord Enterprises, Inc. (L) owns a large commercial building and the land on which it sits. Some time ago L leased two floors of the building to a business called Trustworthy Tenants, Inc. (T). The lease has seven years remaining, with a further option for the Tenant to renew for an additional five years.

The original lease provided "This lease is subject to the condition that Tenant shall not assign or sublease any portion of the premises without prior written consent of Landlord, which consent shall not be unreasonably denied. Any attempt to assign or sublease without such written consent shall be a material breach of the lease for which the landlord may declare it forfeit and re-enter the premises."

The lease also included escalator clauses protecting L against inflation and increases in taxes and other carrying costs, but did not have any specific mechanism for the landlord to benefit from rising property values. Those values have risen dramatically, and T saw an opportunity to make some money by subleasing one floor. Trustworthy Tenants opened negotiations with Silicon Systems, Inc. (S) for a five-year sublease of one floor at a rent significantly higher than what T was paying L. They notified L, submitted financial statements for Silicon Systems, and requested permission to sublease.

The landlord's executives delayed in responding. They were worried because Silicon Systems was a speculative start-up company with much less financial strength than Trustworthy Tenants. They were also unhappy to see the windfall profit go to their tenant. Because Silicon Systems urgently needed the space and threatened to go elsewhere, T went ahead and signed the sublease without L's written permission.

You represent S who is now in possession. L has sent your client a demand letter alleging that T has forfeited its lease and requiring that your client enter into a new lease directly with L with the same terms as are contained in the sublease. T has also sent a letter insisting that L's delay and failure to consent was unreasonable and warning that any failure to pay them the rent under the sublease will result in a suit for rent and possession. Your client cannot afford to pay double rent, and neither party will negotiate with the other or with your client. It looks like you may have to sue both L and T in some sort of declaratory judgment action, but before doing so you want to think through the possibilities.

Please outline the foreseeable actions by the other party, possible defenses, and any appropriate replies for each of the two following scenarios:

- A. You ignore L's demand and perform under the sublease with T.
- B. You ignore T's demand and enter into a new lease directly with L.

Essay II
(Up to 40 minutes)

Henry and Wilma were a wealthy, married couple who owned many parcels of real estate as Tenants by the Entirety. They often fought, lived separately for long periods, and were not honest with each other, but they never divorced. This question involves one of their parcels—Smallacre. Smallacre was Henry's hideaway, a rustic

hunting and fishing camp in the mountains. Wilma never went there and rarely thought about it.

As Henry got older, his desire for comfort exceeded his pleasure in the outdoors. He stopped going to Smallacre. Then, in 1983 he sold it to Aaron, one of his hunting buddies, for cash. Not wanting to deal with Wilma, Henry forged her name on the quitclaim deed. Aaron didn't suspect anything, but neglected to record his deed. He enlarged and insulated the camp building and occupied it about five weeks a year for the next ten years. Aaron then died in 1993, leaving Smallacre to his daughter Bonnie. Bonnie decided to build a real house on the land. During the financial arrangements Bonnie's bank discovered that she did not have record title, but she found the deed to her father and recorded it. Satisfied, the bank gave her a loan and took back a mortgage on Smallacre. Aaron and then Bonnie have been paying the property taxes, which are trivial.

Henry had died in 1988, five years before Aaron. In 1989, one year later, and six years after the deed to Aaron, Wilma was placed under legal guardianship due to irreversible mental illness. Her original guardian was her older brother who listed Smallacre as one of her assets in all his records and reports to the court but took no action and seems not to have noticed the absence of tax bills. This neglect continued for 14 years, but in 2003 Wilma's son legally ousted his Uncle and was appointed guardian. He hired you and you have promptly discovered all the above facts.

In an action against Bonnie and the Bank for ejectment and to quiet title, what plausible theory or theories do you have and what are the foreseeable responses, appropriate replies, and possible outcomes?

END OF EXAMINATION