

Property - Final Examination

Professor Hurn

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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 and proceed with your answer. Caution: read carefully, familiar-looking questions may have been changed.

Applicable law: Unless otherwise indicated in a particular question, please assume that all events occur in a U.S. state following 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. 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 Questions (up to 110 minutes suggested)

1. Owner's valuable camera was lost (left on the floor of a bus). The finder sold it to a dealer. The dealer advertised it for sale. Owner saw the ad, but before Owner made contact, dealer sold it to an unsuspecting buyer in the ordinary course of business. Owner traced buyer, demanded to be paid for it, and, when rejected, sued buyer for damages. The name for Owner's action is:
 - a. Trover/Conversion
 - b. Unjust Enrichment
 - c. Replevin
 - d. Restitution

2. Same facts as in previous question. Legally the camera now belongs to:
 - a. The original Owner because of the dealer's warranty of title.
 - b. The original Owner because the finder had no title.
 - c. The buyer because Owner has elected to demand money.
 - d. The Buyer because the camera was entrusted to a dealer in goods of that kind.

3. A typical sales tax (percentage of the retail price) is a type of:
 - a. poll tax
 - b. property tax
 - c. excise tax
 - d. income tax

4. 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 efforts 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 and, when demand is refused, brings suit. Under the majority (New York) 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 the statute began running when Owner failed to make reasonable efforts to discover the loss or warn potential purchasers.

5. When a Tenant assigns a lease to an Assignee
 - a. The Tenant remains primarily liable.
 - b. The Tenant is secondarily liable (in case of default by the Assignee).
 - c. The Tenant and Assignee are jointly and severally liable.
 - d. The Tenant has no further liability unless there is a novation.

6. O conveys by deed to A so long as the timber is left in its natural state, but if the timber is cut, to B. The interest in B is:
- A possibility of reverter.
 - A contingent remainder.
 - A springing executory interest.
 - A shifting executory interest.
7. In the conveyance above, the interest in B:
- Violates the common law Rule Against Perpetuities.
 - Does not violate the Rule.
8. Same conveyance as above, but assume the state follows the 90-year wait-and-see provisions of the Uniform Statutory Rule Against Perpetuities. Which of the following is true?
- If the timber is cut before 90 years passes, B gets the land.
 - If the timber is cut before 90 years passes, A gets the land.
 - If the timber is still uncut after 90 years passes, B gets the land.
 - If the timber is still uncut after 90 years passes, there is a reversion in O.
9. O conveys by deed to A for life, then to A's first child to reach age 18, but if no child reaches 18, then to B. A has one child living, age seven. The interest in A's child is:
- A contingent remainder.
 - A springing executory interest.
 - A shifting executory interest.
 - A vested remainder subject to open.
10. In the conveyance above, the interest in A's child:
- Violates the common law Rule Against Perpetuities.
 - Does not violate the Rule.
11. In the conveyance above, the interest in B is:
- A contingent remainder.
 - A springing executory interest.
 - A shifting executory interest.
 - A vested remainder subject to open.
12. In the conveyance above, if there are living children when A dies, but none of them is yet 18, who has the next possessory interest?
- O in fee simple because the contingent remainder is destroyed.
 - O temporarily until the remainder in A's line either vests or fails.
 - B in fee simple because B has the next interest and A's line didn't meet the condition in time.
 - B temporarily until the remainder in A's line either vests or fails.
13. O conveys by deed to A for life, then B for life, then C. If C is already dead when B dies the property will go to:
- O, if living, otherwise to B's heirs or assigns.
 - O, if living, otherwise to O's heirs or assigns.
 - B's heirs or assigns.
 - C's heirs or assigns.
14. O transfers by will to A for life, remainder to O's grandchildren. O has two children and one grandchild living. The interest in O's grandchildren:
- Violates the common law Rule Against Perpetuities.
 - Does not violate the Rule.
15. Andrews owns Blackacre in fee simple absolute. Benton similarly owns Whiteacre, an adjoining parcel. There was a pool of oil underneath Benton's land. Andrews drilled a slant well through Blackacre and below Whiteacre. Over a twenty-five-year period Andrew's removed all the oil. Benton discovered the geologic situation only after the oil was gone. Under the common law, in an action by Benton for damages
- Andrews will win because the oil became his property by capture.

- b. Andrews will win because of adverse possession.
 - c. Benton will win because the oil was his property
 - d. Benton will win because Andrews captured the property through trespass.
16. The statute of limitations for an action for breach of the covenant of right to convey begins running:
- a. When the purchase and sale contract is made.
 - b. When the deed is delivered.
 - c. When the buyer should reasonably have discovered the flaw.
 - d. When the holder of better title sues or actually attempts to exercise ownership.
17. Ricky and Roz were married and owned Blackacre as Tenants by the Entirety. Ricky secretly gave a deed of his interest to Betty. Ricky died. Blackacre is owned:
- a. By Roz.
 - b. By Roz and Betty as tenants in common.
 - c. By Roz and Betty as joint tenants with right of survivorship.
 - d. By Roz and Ricky's heirs as tenants in common.
18. O conveyed realty to A, a purchaser for value; then O conveyed to B, a Donee; then B recorded; then A recorded. In a conflict between A and B, who wins under the common law?
- a. A wins.
 - b. B wins.
19. Same as above, but in a Race/Notice state.
- a. A wins.
 - b. B wins.
20. Same as above, but in a pure Notice state.
- a. A wins.
 - b. B wins.
21. Inventor conveyed a Patent to A, a BFPV. The next day Inventor conveyed to B, a BFPV without notice of the prior claim who immediately recorded in the Patent Office. A week later, A recorded in the Patent Office. The owner of the Patent is:
- a. A because s/he is first assignee in time.
 - b. A because s/he recorded within the look-back period.
 - c. B because s/he is the last BFPV without notice.
 - d. B because s/he recorded before A.
22. Merchant borrowed money from FirstBank, granting it a lien on his/her inventory as collateral. Shortly thereafter, desperate for money, Merchant went to SecondBank for another loan, fully disclosing the earlier deal and offering the same collateral. SecondBank makes the loan and properly records its lien in the Article 9 registry. Later, FirstBank records its lien. When Merchant goes into default there is a priority dispute between the banks. Which will win?
- a. FirstBank because it was the first grantee in time.
 - b. FirstBank because SecondBank took its lien with actual notice.
 - c. SecondBank because it was the last purchaser for value.
 - d. SecondBank because it was the first to record.
23. Alice, Betty, and Carla bought a vacation cabin as equal tenants in common, properly recording their deed. Over the years they quit going there. One season, without consulting the others or mentioning their interests, Carla signed in her own name a lease of Blackacre to Donald. If Alice or Betty shows up wanting to occupy the property,
- a. They may evict Donald and use the property.
 - b. They may use the property but must allow Donald to use it also.
 - c. They may not use the property, but have an action for accounting against Carla.
 - d. They may not use the property and may recover from Carla only if they file a partition action.

24. Alice, Betty, and Carla inherited Blackacre, a house, as tenants in common. Carla lives there, the others live elsewhere. Carla has paid all the property taxes and for necessary repairs to the roof of the house. In a suit for contribution from the others, Carla may recover:
- Nothing.
 - The others' share of the taxes.
 - The others' share of the roof repairs.
 - The others' share of both taxes and roof repairs.
25. Which of the following will render a title unmarketable?
- An enforceable private covenant (with which the property presently complies).
 - An unrecorded easement by estoppel of which the buyer acquired actual notice during the executory period.
 - Both a. and b impair marketability.
 - Neither a. nor b affects marketability.
26. When a Tenant assigns a lease to an Assignee
- The Tenant remains primarily liable.
 - The Tenant is secondarily liable (in case of default by the Assignee).
 - The Tenant and Assignee are jointly and severally liable.
 - The Tenant has no further liability unless there is a novation.
27. The one way to assure that an arrangement will be treated as a sublease rather than an assignment is
- For the fee owner to retain a reversion.
 - For the first sublessor to retain a reversion.
 - For the fee owner to consent in writing.
 - For the first sublessor to require payment to be made to him rather than the fee owner.
28. Sneaky went to an exhibit of 16th century erotic drawings. A prominent sign on the gallery door and a notice on the ticket (for which he paid) said no cameras were allowed. Sneaky covertly made photographs of some of the most vivid images, put them in a uniform format, and has been caught selling them as postcards over the internet. In an action by the owners of the drawings to prevent further distribution and recover damages
- Sneaky will win because there is no copyright in the work.
 - Sneaky will win because he is the author of his photographs.
 - Sneaky will lose because he has made a derivative work.
 - Sneaky will lose because he violated his license to enter the gallery.
29. Which of the following warranties cannot be disclaimed?
- title to real estate.
 - habitability of rental housing.
 - merchantability of chattels.
 - title to chattels.
30. Marge owned many pieces of property inherited from her speculator husband. Blackacre is one of them, a small vacant lot. Victoria owned an adjoining lot, with a little cabin. In 1984 Victoria put a fence around both her lot and Marge's, cleared all the many trees bushes and covered Blackacre with a vegetable garden which she has maintained ever since. In 1994 Marge suffered a severe head injury, becoming incapacitated. In 1995 a guardian was formally appointed for her. In 1997 Marge died, leaving everything by will to her two year old grandson. It is now 2005. In an action to quiet title based on adverse possession, Victoria will
- Win.
 - Lose because the statute was tolled when Marge became incapacitated.
 - Lose because the statute was tolled when the Guardian was appointed.
 - Lose because the statute was tolled when an infant acquired the possessory interest.
31. Many years ago a local family started a men's clothing store calling it "Britches." It became well known in that area by that name. They have never had another store and

don't plan any. Later, a famous designer started a national chain of men's clothing stores and applied for a federal trademark for the name "Britches". Neither party had actual knowledge of the other. After the time period for contesting the designer's application had passed the designer was granted federal registration. The designer has now discovered the local store and threatened an infringement suit. In such a suit

- a. Designer will win because of federal pre-emption.
- b. Designer will win because the local family failed to contest his application in time.
- c. Local family will win because they have a valid, pre-existing mark.
- d. Local family will win because Designer failed to give them notice.

32. Fierce Law Center assigned its in-house public relations director to write a short history of the school. There was no discussion of rights to the resulting work and no other relevant writing, custom, or policy. He wrote it. Before it was published, there was an unrelated dispute and the director quit. He registered the work under his name in the Copyright Office. He has now filed an action to prevent Fierce from using the history. In this action

- a. He will lose because Fierce is the author.
- b. He will lose because Fierce has a non-exclusive license.
- c. He will win because he is the author.
- d. He will win because he was the first to file with the Copyright Office.

33. Chen had some undeveloped land along his "back forty." In return for \$5000 (fully paid) Chen granted Sanchez Oil Exploration, Inc. and its successors the perpetual right to enter the land to explore, drill, and remove any oil they might discover. This grant was in writing, but, by mistake, not recorded. Later Chen sold his land to an unsuspecting Rostov. Ten years later, Sanchez Oil demanded access to begin exploration. Rostov refused. In a suit to enforce their claim, Sanchez will:

- a. Win because Sanchez has had color of title for more than seven years.
- b. Win because Rostov is in privity as Chen's assignee and steps into his shoes.
- c. Lose because this interest is subject to the rule against perpetuities.
- d. Lose because Rostov is a BFPV.

34. Bernie and Thelma own considerable real estate as tenants by the entirety (in a state with the strongest form of that estate). Bernie suffered reverses in his business, and his unpaid creditors are attempting to collect out of that property. Assuming no relevant homestead exemption, they will be able to:

- a. Take Bernie's half interest.
- b. Take all the property.
- c. Take nothing.
- d. Take nothing unless they can show Thelma is also personally liable on the business debts.

35. Same facts as in previous question except that the real estate is community property. Creditors will be able to:

- a. Take Bernie's half interest.
- b. Take all the property.
- c. Take nothing.
- d. Take nothing unless they can show Thelma is also personally liable on the business debts.

36. Buyer and Seller signed a purchase and sale contract on Blackacre with a "time is of the essence clause." In critical passage, the contract provided "Seller will convey the property in fee simple by general warranty deed, subject to any existing zoning and further subject to all easements and encumbrances of record." During the executory period, buyer's lawyer discovered a recorded right of way that would make the property useless for Buyer's undisclosed purposes. It is the day of closing. Seller has tendered a general warranty deed containing this same language. On these facts

- a. Buyer may refuse to close because title is unmarketable.
- b. Buyer may refuse to close because the warranty against encumbrances is breached.
- c. Buyer must close because his undisclosed needs are not binding on Seller.
- d. Buyer must close because the Seller is performing as agreed.

37. A and B are neighbors. A really values privacy. For valuable consideration and in a signed writing B covenants not to cut trees or brush within so many feet of the property line. The covenant is not recorded. B then sells his property in fee simple to C by warranty deed that does not mention the agreement. Which of the following is the best statement of the law?

- a. C is not bound by the covenant because it does not touch and concern the land.
- b. C is not bound because the covenant lacks horizontal privity.
- c. C is bound by the covenant IF A and B intended the covenant to run AND C had notice of it.
- d. C is bound without regard to notice because there is both horizontal and vertical privity.

38. In an arid, western state Andrew built a house next to a spring-fed lake. From this lake he began drawing 100 acre-feet each year for agricultural purposes. Later, Bart acquired land adjoining the lake and began drawing 300 acre-feet for the same purposes. In a year of severe drought, the level began to drop and the shore retreated, leaving Andrew's boat dock on dry land. However, it is a deep lake and there is enough water to supply 400 acre-feet for the foreseeable future. Andrew has stopped withdrawing water and sued to enjoin Bart's withdrawals until the normal level returns.

- a. Andrew will win because he was first in time.
- b. Bart will win because he has a right to water so long as there is more than Andrew's claim.
- c. Andrew will win because he has a riparian right to the lake in substantially its natural volume.
- d. Bart will win because Andrew has waived his claim.

39. 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 has a right to water so long as there is more than Andrews' claim.
- c. Andrew will win because he has a riparian right to the lake in substantially its natural volume.
- d. Bart will win because Andrew has waived his claim.

40. When money has been loaned with a promise to repay secured by a mortgage on land, in regard to the promise and the mortgage, the lender is

- a. Obligor and Mortgagor.
- b. Obligee and Mortgagee.
- c. Obligor and Mortgagee.
- d. Obligee and Mortgagor.

Short Answers

(Please write your answers in bluebooks,
up to 10 minutes suggested.)

1. State, without elaboration, the essential elements of a non-charitable trust.
2. Under the traditional, majority rule, landlords are not liable to tenants for injuries due to the condition of the premises. State, without elaboration, three of the exceptions to this general rule
3. State, without elaboration, the minimum essential terms of a lease.
4. Generally the finder of a chattel has a title good against all the world except the true owner. State, without elaboration, three exceptions to this general rule.

Essay Questions

I. (up to 20 minutes suggested)

Two and a half years ago Betty rented a nice two-bedroom townhouse on a three-year lease for \$1,200 a month. Although the zoning forbids it, with the full agreement of the landlord she has been working as an investment advisor, using one bedroom as a home

office where she met clients. The past tense is significant. The electric baseboard heat in the office completely failed two months ago, and despite Betty's complaints and various repair efforts it has not worked since. Except during warm afternoons the room is extremely uncomfortable. She now has to meet clients at restaurants. While the air temperature in the rest of the place tolerable, there is something wrong with the water-heater. About one night in three it shuts off leaving her with no hot water at all until she discovers it and resets the circuit breaker.

Betty is sick of this. She has already unsuccessfully tried to negotiate repairs or a rent abatement. You are her lawyer. State and explain all her plausible legal options, any foreseeable responses, and possible replies and outcomes.

II. (Up to 40 minutes suggested)

Grandpa Jones died a wealthy man at an advanced age in full possession of his mental faculties. The relevant portion of his will said:

"Having previously made adequate provision for my children and their spouses, I leave Blackacre to my grandchildren in common, in equal shares, to continue farming and pass it on to the next generation."

Grandpa only knew about four grandchildren. His living daughter Alex had three children: Abby, Aaron, and Arthur. His deceased son Bill had one son named Bill Junior. All these grandchildren are young adults, and they all get along very well. After his estate was settled, Grandpa's will was recorded in the registry of deeds along with a factual affidavit by the family lawyer stating that there were four grandchildren, and naming them.

These grandchildren liked Grandpa, but after 8 years became sick of farming. Blackacre was then prime land for a residential subdivision and they decided to develop it. They hired surveyors, architects, and a general contractor. They borrowed a large sum from a Bank to finance construction, secured by a mortgage of Blackacre (signed by all four). The Bank recorded immediately. Only three houses have been started, and one has been finished and sold. The buyers immediately recorded. At the closing, the Bank released its mortgage on that one lot, retaining its rights to the rest of Blackacre. At least 4/5ths of Blackacre is essentially in its original state: a wheatfield.

It is now 10 years since Grandpa died and there is a problem. Bill Senior had a secret girlfriend, Carla, with whom he had a daughter, Cindy. He had not gotten the courage up to tell the rest of the family about this baby before he died in a sudden accident. Grandpa had five grandchildren, and in this state illegitimacy makes no difference unless the will expressly says otherwise. Carla recently told Cindy, who is now 26, about her father and relatives. Cindy is an angry, impetuous romantic. She has bluntly told her half-brother and cousins they have betrayed Grandpa's intentions, and that she wants to stop further development if possible and extract as much money from them as possible if not.

You represent the four older grandchildren. Before negotiating you need to figure out the legal possibilities. What are Cindy's possible legal options, what consequences might they have for your clients, and what legal options do you have to block her or minimize any losses.

END OF EXAMINATION