

## 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 statute of frauds applies to leases of one year or longer. 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 90 minutes suggested)

1. Peter and Quentin are landowners. Their two parcels are separated by a river. The original property line was defined as the center of the main channel and was very carefully mapped by modern methods. Last spring there was a flood that cut a new channel. The river now runs through what was Peter's land. In this situation:
  - a. Peter has lost the land beyond the new channel due to avulsion.
  - b. Peter has lost the land beyond the new channel due to accretion.
  - c. Because this was avulsion, the old property line controls.
  - d. Because this was accretion, the old property line controls.
  
2. Owner's valuable camera was lost (negligently 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 return of the camera, and, when rejected, sued to recover it. The name for Owner's action is:
  - a. Trover/Conversion
  - b. Wrongful Detainer
  - c. Replevin
  - d. Restitution
  
3. 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 lacked superior title.

- c. The Buyer because Owner was negligent.
  - d. The Buyer because the camera was entrusted to a dealer in goods of that kind.
4. O conveys by deed to A so long as the timber is left in its natural state for 90 years, but if the timber is cut within 90 years, to B. The interest in B is:
- a. A possibility of reverter.
  - b. A contingent remainder.
  - c. A springing executory interest.
  - d. A shifting executory interest.
5. In the conveyance above, the interest in B:
- a. Violates the common law Rule Against Perpetuities.
  - b. Does not violate the Rule.
6. In the conveyance above, the interest in B:
- a. Violates the Uniform Statutory Rule Against Perpetuities.
  - b. Does not violate the USRAP.
7. O conveys by deed to A for life, then to A's first child to graduate from college, but if no child graduates from college, then to B. A has one child living, age seven. The interest in A's child is:
- a. A contingent remainder.
  - b. A springing executory interest.
  - c. A shifting executory interest.
  - d. A vested remainder subject to open.
8. In the conveyance above, the interest in A's child:
- a. Violates the common law Rule Against Perpetuities.
  - b. Does not violate the Rule.
9. In the conveyance above, the interest in B is:
- a. A contingent remainder.
  - b. A springing executory interest.
  - c. A shifting executory interest.
  - d. A vested remainder subject to open.
10. 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:
- a. O, if living, otherwise to B's heirs or assigns.
  - b. O, if living, otherwise to O's heirs or assigns.
  - c. B's heirs or assigns.
  - d. C's heirs or assigns.
11. O created a revocable inter vivos trust. Part of the corpus conveyed to the trustee was O's house. Under the terms of the trust, O retains use of the house for life and the remainder goes to O's grandchildren. O is alive and has two children living. The interest in O's grandchildren:
- a. Violates the common law Rule Against Perpetuities.

- b. Does not violate the Rule.
12. In a community property state, on the death of one spouse, unless there is an enforceable agreement to the contrary the community property passes:
- To the surviving spouse.
  - One half to the surviving spouse, the other half as the decedent's will directs.
  - One half to the surviving spouse, the remainder to their descendants, if any, per stirpes.
  - To the surviving spouse for life, remainder to whomever the decedent's will directs.
13. When there are two or more owners of a piece of real estate, an owner has a right of contribution to the extent of disproportionate payments of:
- Property Taxes.
  - Necessary Repairs.
  - Both Taxes and Necessary Repairs.
  - Neither Taxes nor Necessary Repairs.
14. When there are two or more owners of a piece of real estate and one has brought an action for accounting and partition, an owner has a right to recover to the extent of disproportionate payments of:
- Property Taxes.
  - Necessary Repairs.
  - Both Taxes and Necessary Repairs.
  - Neither Taxes nor Necessary Repairs.
15. Your Aunt Fern wants to start a restaurant based on her grandmother's old fried chicken recipe. The recipe includes an unusual blend of spices. A comprehensive literature search indicates that a blend of this sort has never been used by others for fried chicken. Fern wants to prevent others from using the recipe. The best way to protect it is:
- to patent it as a composition of matter.
  - to write it down and copyright it.
  - to give it a distinctive name and register the name as a trademark.
  - to keep it secret.
16. Same facts as in previous question. If Fern goes into business and starts advertising her chicken as "Better than KFC," the KFC company has:
- An action for Copyright infringement.
  - An action for Trademark infringement.
  - An action for violating its rights of publicity.
  - No cause of action.
17. Same facts as in previous question except that instead of referring to KFC Fern runs print advertisements with a hand-drawn blue-haired female figure looking remarkably like the cartoon figure Marge Simpson and the caption "Marge would like Fern's Chicken." When the appropriate parties discover this Fern can expect:
- An action for Copyright infringement.

- b. An action for Trademark infringement.
  - c. An action for violating rights of publicity.
  - d. No cause of action.
18. Randy and Ruth were married and owned Blackacre as Tenants by the Entirety. Randy secretly gave a deed of his interest to Betty. Randy died. Blackacre is owned:
- a. By Ruth.
  - b. By Ruth and Betty as tenants in common, subject to a possible claim by Ruth based on Randy's fraud against her marital rights.
  - c. By Ruth and Betty as joint tenants with right of survivorship subject to a possible claim by Ruth based on Randy's fraud against her marital rights.
  - d. By Ruth and by Ricky's heirs as tenants in common.
19. 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.
20. 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.
21. O conveyed Blackacre to A for valuable consideration. Then O contracted to convey Blackacre by quitclaim deed to B for valuable consideration, taking a small down-payment. B recorded the contract. Before the closing A discovered the contract and warned B that A had a prior deed. B sued O and A. In this suit:
- a. B will win specific performance and clear title to Blackacre because he is a BFPV who recorded.
  - b. B will win specific performance and clear title to Blackacre because of the pro tanto rule.
  - c. B will recover the amount of his down-payment from either O or A, plus the amount of any provable damages from O.
  - d. B will recover nothing because he only contracted for a quit-claim deed.
22. There was a legally binding purchase and sale agreement on some land. During the executory period buyer discovered that the seller honestly and reasonably believed he had good title, but in fact does not own the lot in question and cannot close. If buyer sues seller for the breach, buyer can recover:
- a. Only sums already paid (e.g. a deposit or downpayment).

- b. Sums already paid plus the purchase price.
  - c. The fair market value of the property.
  - d. Sums already paid plus the difference between the fair market value of the property and the purchase price, if any.
23. A and B enter into a written agreement for the sale of A's house to B. Closing is set for 60 days later. Two weeks after the agreement is signed, B learns that the house is under lease to C for the next 4 months. B immediately sends notice canceling the contract. A sues B for breach. What result?
- a. B will win because A lacks marketable title.
  - b. A will win because B has actual notice of the encumbrance.
  - c. A will win because B repudiated the contract before the closing.
  - d. B will win because a reasonable buyer would find the condition of the title unacceptable.
24. Consider the following phrase: "subject to all easements and encumbrances of record." This would be a reasonable and common term in:
- a. A Purchase and Sale Contract.
  - b. A Warranty Deed.
  - c. Either a. or b.
  - d. Neither a. nor b.
25. The law governing foreclosure of a mortgage is the law of:
- a. any state agreed by the parties.
  - b. the law governing the promissory note that the mortgage secures.
  - c. the law of the state of domicile of the borrower.
  - d. the law of the state where the land sits.
26. O conveys land to A, a BFPV, who does not record. Then O conveys to B, a BFPV, who does not record. In a state with a notice statute who owns the property?
- a. A owns it.
  - b. B owns it.
27. O conveys land to A, a BFPV, who does not record. Then O conveys to B, a BFPV, who does not record. Finally B conveys to C, a donee., who records. In a state with a notice statute who owns the property?
- a. A owns it.
  - b. B owns it.
  - c. C owns it.
28. Now we are back in a race-notice state. O conveys land to A, a BFPV who does not record. A then conveys to B, a BFPV who does record. Finally O conveys to C, a BFPV who records. Who owns the land?
- a. A owns it.
  - b. B owns it.
  - c. C owns it.

29. Author conveyed a Copyright to A, a BFPV. The next day Author conveyed to B, a BFPV without notice of the prior claim who immediately recorded in the Copyright Office. A week later, A recorded in the Copyright Office. The owner of the Copyright 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 during the look-back period.

30. Consolidated Coal Company owns mineral rights to a great deal of land in the county. It owns nothing else. Assuming there is no special statutory classification in this state, the proper name for Consolidated Coal's right is:

- a. Profit a prendre
- b. Easement
- c. Negative Easement
- d. Equitable Servitude.

31. In the previous question, Consolidated Coal's right is:

- a. Appurtenant
- b. In Gross
- c. Personal
- d. Indivisible

32. A sold a portion of his land to B in fee simple absolute. B gave A oral permission to cross a strip of B's land. After three years of use, A paved the strip and constructed a fence on both sides of it. For the past two years both parties have been using the paved strip. What is the most likely legal status of the strip?

- a. A has acquired an easement by prescription.
- b. A has not acquired an easement since the transfer of the interest violates the statute of frauds.
- c. A had a license which has become irrevocable and an easement by estoppel.
- d. B is subject to an implied restrictive covenant not to interfere with A's use of the strip.

33. 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 of the family.”

The will has no other references to real estate. The most likely state of the title is:

- a. Fee Simple Absolute in the grandchildren.
- b. Fee Tail in the grandchildren.
- c. Fee Simple Determinable in the grandchildren.
- d. Fee Simple on a Condition Subsequent in the grandchildren.

34. Nine years ago your client contracted to purchase a piece of land. The contract provided for installment payments over ten years, at the end of which the seller would convey the property by warranty deed. Buyer was allowed to occupy the land and required to pay the taxes. The contract provided that time was of the essence as to each payment and the final closing. Due to an error by his bank, the most recent payment was not transferred to the seller's account. Seller has declared a default, refuses to accept late payment, and insists the land is his free and clear. There are no local statutes regulating such transactions. Your client:

- a. Has no remedy against the seller and must look for any relief to the bank.
- b. Is limited to recovering the difference, if any, between the fair market rental value of the property and the amounts paid.
- c. Is limited to recovering the taxes paid on an unjust enrichment theory.
- d. Can get an injunction to compel seller to accept the payments plus interest for the delay.

35. Debtor was desperate for cash but had such bad credit that a proper bank would not loan him any money, even with a mortgage. Debtor turned to Moneybags, who told him "I will lend you what you want with Blackacre as collateral, but I don't like the technicalities of our mortgage laws. Deed me Blackacre in fee simple, and when you pay me back, I will reconvey it to you." Debtor did this and improved his fortunes sufficiently to repay Moneybags in five years. When Debtor demanded reconveyance, Moneybags refused, claiming he had bought Blackacre outright. In action to compel reconveyance of the land, assuming he offers sufficient testimony to prove the original agreement, Debtor will:

- a. Lose because a Deed is an integrated writing and parol evidence cannot be admitted to change the terms.
- b. Lose because the loan and mortgage agreement violates the Statute of Frauds.
- c. Win because Equity will look behind the deed and enforce the mortgage.
- d. Win because mortgages are governed by property law rather than contract law.

### Short Answers

(Please write your answers in bluebooks,  
up to 20 minutes suggested.)

1. State, without elaboration, the three present covenants in a warranty deed.
2. State, without elaboration, the minimum essential terms of a contract to sell real estate.
3. There are six ways to acquire a private easement. State, without elaboration, five of them.
4. The common law recognized only four types of negative easements. State, without elaboration, three of them.
5. There are at least three defense theories we discussed in class which can prevent eviction of a residential tenant who has stopped paying rent. Without elaboration, list them.
6. You represent three unrelated couples who are buying Blackacre together in equal shares. They are Mr. and Mrs. Andrews, Mr. and Mrs. Black, and Mr. and Mrs. Cardozo. Each couple wants their own share to be with survivorship. The seller is

Lakeside Realty, Inc. Without explanation, finish the words of a granting clause to accomplish their objective. "Lakeside Realty, Inc. hereby grants .....

### Essay Questions

#### I. (up to 30 minutes suggested)

Drew has made a written purchase and sale agreement to convey to Brady, by warranty deed, Blackacre, a commercial building built in the 1920's. The form contract was minimal. The only express condition was securing bank financing at no more than 2% over the prime rate. During the executory period Brady has discovered the following things:

1. The city has adopted an historic district zoning ordinance which will permit future exterior renovations of the property only in conformity with Art Deco design standards. Brady hates Art Deco.
2. At the suggestion of a neighbor he re-examined the basement and discovered large moist foundation cracks behind a bank of empty shelves.
3. The registry of deeds contains a document from 1929 granting a local insurance company an option to buy the property at any time for twice its assessed value for property tax purposes. The insurance company still exists.
4. A professional survey reveals that a parking area that appeared to be a part of the property in fact encroaches 18 inches onto an adjoining vacant lot.

Brady is your client. He's beginning to feel uncomfortable about Drew and this deal. He may try to negotiate a price reduction, but he needs to know where he stands legally. He can get the financing if he needs to, but he has been delaying the paperwork. We are now close to the agreed closing date and Brady has asked for a 30-day extension. We don't have a reply yet. Describe and explain the legal options in the absence of a new agreement, the foreseeable countermoves, and the likely outcomes. If more information is important, indicate what facts you need and what difference they would make.

#### II. (Up to 40 minutes suggested)

You represent Old Reliable Realty Co., owner of a substantial office building. One of Old Reliable's tenants is Trusty Temps, Inc., a business which, despite its name holds a twenty-year lease on three floors of Old Reliable's building with seven years left to run. The rent is indexed for taxes, insurance, inflation, etc.

A couple of years ago, without consulting you, the managers of Old Reliable consented to an arrangement between Trusty Temps and Slick Software, Inc., a startup company. The basic idea was that Slick Software would occupy one of Trusty's three floors for five years with an option to renew for the remainder of Trusty's term. Slick Software would pay an amount equal to 1/3 of Trusty's rent directly to Old Reliable and an additional 20% of that sum to Trusty.

The writing embodying the agreement was titled "Partial Assignment." Among other things it provided:

Trusty Temps hereby assigns five years of its leasehold interest in the twelfth floor of the Old Reliable Building to Slick Software, with an option to renew on the same terms for the remainder of Trusty Temps' tenancy (i.e. four additional years).

Slick Software assumes the duty to pay one third of the rent due to Old Reliable under the master lease directly to Old Reliable according to the terms of the master lease. Slick Software will in addition, as consideration for this assignment, pay an additional twenty per cent of such rent each month directly to Trusty Temps.

Slick Software agrees to vacate the premises at the end of the assigned period unless it exercises the option to renew. Slick Software agrees to assume and abide by all the terms of the master lease between Old Reliable and Trusty Temps.

If Slick Software fails to perform any of these covenants and fails to cure such default within 10 days of notice by either Old Reliable or Trusty Temps, then this assignment shall be void and Trusty Temps may re-enter the property.

Authorized agents of all three parties signed this document.

Recently it has become clear that the area where the building sits is enjoying a surge in popularity. Rental values have increased dramatically. The rent escalator clauses will not capture this appreciated value.

However, your client may have gotten lucky. Slick Software has had a cash flow crisis. Their last checks to Old Reliable and Trusty Temps were dishonored (bounced). Eleven days ago you hand-delivered to both Trusty and Slick a notice of default and a demand for cure. Payment for the twelfth floor has not followed. However, Trusty has said it will have that money next week and it is current on the rent for its remaining floors. This is a concern because the grace period for curing default in the master lease is thirty days, not ten.

Assume there is no apparent prospect for a negotiated settlement. Outline your client's legal options and the possible responses of the other parties, with the legal arguments for each.

**END OF EXAMINATION**