

## Property - Final Examination

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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. Andrews owns Blackacre in fee simple absolute. Benton similarly owns Whiteacre, an adjoining parcel. There is a pool of oil underneath both parcels. Andrews drills straight down through Blackacre and, over a five year period, removes 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
  - a. Andrews will win because the oil became his property.
  - b. Andrews will win because Benton slumbered on his rights.
  - c. Benton will win to the extent he can prove some portion of the oil was under his land.
  - d. Benton will win the full value of the oil, less whatever Anderson can prove was not taken by passive trespass.
  
2. Same facts as previous question, but Benton's complaint is not about the oil. Removal of the oil caused the ground under Benton's house to subside, severely cracking his foundation and requiring expensive major repairs. Under the common law, in an action by Benton for damages
  - a. Benton will win because Andrews violated his right of subjacent support.
  - b. Benton will win because Andrews' created a nuisance.
  - c. Andrews will win because structures are not covered by the right of subjacent support.
  - d. Andrews will win because there is no liability for subsidence caused by lawful capture of fugitive resources.

3. In the case of a gift *causa mortis*
- The intent to convey full ownership may occur after delivery of possession.
  - The gift is revocable if the donor recovers health.
  - Neither a. nor b. is correct.
  - Both a. and b. are correct.
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 effort to inform the world of her loss. The unsuspecting collector has had possession for one year longer than the statute of limitations for actions to recover personal property. Owner recently discovered collector's possession and demanded the painting back. Under the majority (New York) rule:
- Original Owner may recover the painting because burglar's "title" was void.
  - Original Owner may recover because the statute doesn't begin running until demand.
  - Collector wins because she is a BFPV without notice.
  - Collector wins because Owner failed to make reasonable efforts to discover the painting or to warn potential purchasers.
5. Grandmother had four children, A, B, C, and D. At the time of Grandmother's death, A has also died, leaving two children, B has died, leaving three children, C is still living, although childless, and D is living, with one child. If Grandmother's will leaves her estate "to my living descendants, per stirpes," each of A's children will receive
- One eighth.
  - One Seventh.
  - One ninth.
  - Nothing until C and D die.
6. O conveys by deed to A so long as the timber is left in its natural state for 99 years, but if the timber is cut within 99 years, 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. In the conveyance above, if the state follows the Uniform Statutory Rule Against Perpetuities, the interest in B:
- Violates USRAP.
  - Does not violate the USRAP.
  - USRAP analysis is unnecessary because the common law rule is satisfied.
  - USRAP analysis is premature until the relevant period passes.

9. O conveys by Deed to A for life, remainder to A's children when the last of them shall have reached the age of 20. A has two infant children living. The interest in A's living children is
- An indefeasibly vested remainder.
  - A vested remainder subject to total divestment.
  - A vested remainder subject to open.
  - A contingent remainder.
10. In the conveyance immediately above, the interest in A's children
- Is void.
  - Is good.
11. 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.
12. In a tenancy by the entirety state, on the death of one spouse, unless there is an enforceable agreement to the contrary the entirety 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. Bernie and Thelma own considerable real estate as community property since they have been married, 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:
- Take Bernie's half interest.
  - Take all the property.
  - Take nothing.
  - Take nothing unless they can show Thelma is also personally liable on the business debts.
14. When separately owned buildings share a party wall, each owner
- Has a right of contribution for necessary repairs.
  - Has a right to partition the co-owned wall.
  - May collect disproportionate share of necessary repairs only in a partition action.
  - Is liable only in tort if the other party fails to maintain and thereby causes damage.
15. When there are two or more owners of one piece of real estate and one has brought an action for accounting and partition by sale, an owner has a right to recover to the extent of disproportionate payments of:
- Property Taxes.

- b. Necessary Repairs.
- c. Both Taxes and Necessary Repairs.
- d. Neither Taxes nor Necessary Repairs.

16. 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.

17. O conveys land to A, a BFPV, who does not record. Then O conveys to B, a BFPV, who does not record. Under the common law rule who owns the property?

- a. A owns it.
- b. B owns it.

18. 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.

19. Now we are back in a race-notice state. O conveys land to A, a BFPV who does not record. Then A conveys to B, a BFPV who does not 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.

20. 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. Two months 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 during the look-back period.

21. Seller made a contract with Timber Company agreeing that it could enter and take all the marketable timber on his land. The contract was not recorded. Without disclosing this, Seller then conveyed the land, by general warranty deed, to Buyer in return for a substantial cash price. Buyer promptly recorded. In a dispute between Timber Company and Buyer over the right to cut the Timber:

- a. The Timber Company owns it because an Article 2 contract need not be recorded.
- b. The Timber Company owns it because its contract is a constructive severance, making the timber goods.
- c. The Buyer owns it unless Buyer had actual or inquiry notice of Timber Company's claim before paying.

- d. The Buyer owns it.
22. Same facts as in the previous question. Now the dispute is between Seller and Buyer:
- Seller will win because a general warranty deed has nothing to do with sales of goods.
  - Buyer will win because seller breached the Article 2 warranty of title.
  - Buyer will win because Seller breached the warranties in the deed.
  - Seller will win if, and only if, Buyer had actual or inquiry notice of Timber Company's claim before paying.
23. A purely commercial lease includes the following term: "Neither assignment nor sublease is permitted without consent of the landlord." The most likely interpretation of this term is
- The term is void as an unreasonable restraint on alienation.
  - Landlord has unlimited discretion to give or withhold permission.
  - Landlord's decision must be commercially reasonable.
  - The term adds nothing to the Landlord's rights under the common law default rule.
24. 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
- Specific Trustees are not required.
  - Specifically identifiable beneficiaries are not required.
  - Neither specific Trustees nor specifically identifiable beneficiaries are required.
  - Both specific Trustees and specifically identifiable beneficiaries are required.
25. A and B are joint inventors of a patented invention and have remained co-owners. As such
- Each may profitably use the invention without accounting to the other.
  - Each may compel partition of the property.
  - Both a. and b. are correct.
  - Neither a. nor b. is correct.
26. Mr. Peterson and Mr. Quinn owned adjoining lots on which their houses sat. Mr. Peterson had an express easement for a driveway over Mr. Quinn's lot. The driveway was not paved. One day Peterson's son Junior passed the metal detector he used to find lost items on the beach over the driveway. Getting a strong signal, he dug a few inches into the soil and discovered small jar filled with 19<sup>th</sup> century pennies. What had once been a child's play-treasure was now worth a large sum of money. In a dispute about ownership of the pennies:
- Mr. Quinn will win.
  - Mr. Peterson will win if the easement pre-dates the time the pennies were buried.
  - Mr. Peterson will win without regard to age of the easement.
  - Junior will win.

27. John bought in 1999 the original of the last painting by a recently deceased, famous artist. No written agreement was involved. John decides to recoup some of his investment in the play by selling prints made from photographs of the painting. 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 painting implies transfer of the copyright in the work.
- b. John has the right to do so because purchase of the painting 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 painting 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.

28. 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.

29. 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.

30. When money has been borrowed with a promise to repay secured by a mortgage on land, in regard to the promise and the mortgage, the borrower 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 30 minutes suggested.)

1. Please state, without elaboration, the three future covenants in a warranty deed.
2. Please state, without elaboration, the minimum essential terms of a lease of real estate.
3. Please state, without elaboration, three maxims of equity.

4. There are six ways to acquire a private easement. Please state, without elaboration, five of them.
5. Please state, without elaboration the minimum essential terms of a contract to purchase and sell real estate.
6. Please state, without elaboration, three future interests which cannot be defeated by the Rule against Perpetuities even though they may come into possession after a life in being and 21 years.
7. Please state, without elaboration, each of a tenant's remedies for breach of a warranty of habitability of rented residential property.

**Essay I**  
(Up to 40 minutes suggested)

The late Arthur Addison was a modern painter who clung to impressionism long after it was out of date but who was moderately successful and known in artistic circles. Like his hero Monet he did many paintings of the same subject—in his case birds in flight rather than water lilies. He left his favorite niece Betty a painting called “Flight, Number 7.” She had it appraised for insurance purposes. It was worth \$50,000. A couple of years later Betty moved to a loft in New York. Her new renters’ insurance did not cover the painting.

An art-student ex-boyfriend (Carl) who still had a key snuck into her apartment one night and stole Flight Number 12. He hauled it around in his car for a few days, spilling soda on it. Then he took it to your client, Dependable Dealer, owner of a sales gallery specializing in modern painting. Dealer recognized it as an Addison. No one knew the number of Flight pictures of this general configuration there were but it was assumed there were several. Dealer checked all the websites and organizational registries for lost or stolen Addisons. None were listed. Dealer bought the painting from Carl for \$10,000, knowing its retail value was considerable greater.

Dealer assumed the paint was the kind Addison typically used and tried to remove the dried soda with warm water. He quickly stopped as this produced an unexpected smear in the small area where he started. He displayed it in its slightly damaged state with a price of \$25,000. One of his wealthy local collectors, Edward, bought it for cash.

Edward consulted the best restoration people in New York about the soda and smear. Given the availability of other similar Addisons and a chemical analysis of the paint, they estimated it could be restored to nearly original condition for about \$3,000.

Before Edward could decide what to do, the police showed up and told him the painting was stolen.

All the above facts have become known to all parties, including Betty. Unfortunately Carl has since died of a drug overdose, leaving nothing but debts.

You represent Dealer. Betty’s lawyer has not yet indicated what she has in mind. Dealer wants to know all the legal options Betty might have that would effect him, what

his exposure would be on each of them, and what, if any, responses or defenses he might have.

**Essay II**  
**(Up to 20 minutes suggested)**

Sam Seller has made a written purchase and sale agreement to convey to Bob Buyer, by warranty deed, Blackacre, a commercial building built in the 1950's. The form contract was minimal. The only express condition was securing bank financing at no more than 7%. There was a time is of the essence clause on closing.

During the executory period Bob has discovered the following things:

1. A small area behind the building was briefly used to store industrial solvents including some which apparently leaked into the soil. This violates state environmental laws. Some expensive cleanup may be necessary.
2. At the suggestion of a neighbor he re-examined the area above the dropped acoustic ceiling tiles. This area contains blown-in asbestos, very dangerous, and will require costly abatement.
3. The registry of deeds contains a document indicating that the big powerline across the rear parking lot not only serves this property, but is pursuant to an easement over this property to permit such lines (and access for maintenance) to serve other buildings on the block.
4. The registry also reveals an old driveway easement that would, if acted upon, go right through the middle of the building.

Bob Buyer is your client. He is beginning to realize why Sam accepted an apparently low offer for the building. He may try to negotiate a further price reduction, but he needs to know where he stands legally. Even with items 1 & 2 above, Bob's project might be profitable. 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 Bob 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.

**End of Examination**