

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 or type your answers to the short answer and essay questions either in bluebooks or using the examination software. Remember to put your exam number on the answer sheet, this paper, and the short answers and essays. 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 have often 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 or more major conflicting views of the proper rule, you should indicate the different outcomes under each rule.

Multiple Choice Questions (Up to 100 minutes suggested)

1. The boundary between two landowners was the main channel of a river. During an extraordinary spring flood, the river cut a new channel across a place where it had previously been curved. After the flood, the boundary is:
 - a. The new channel because of the rule of accretion.
 - b. The new channel because of the rule of avulsion.
 - c. The old channel because of the rule of accretion.
 - d. The old channel because of the rule of avulsion.

2. Andrews owns Blackacre in fee simple absolute. Benton similarly owns Whiteacre, an adjoining parcel. There was a pool of oil underneath both parcels. Andrews drilled straight down through Blackacre and, over a two-year period, removed all the oil. Benton knew of the geologic situation but only complained after learning how much money Andrews had made. 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.

3. Andrews owns Blackacre and the mineral rights under Whiteacre, Benton's adjoining property. Andrews started a coal-mine on his land and proceeded, underground, to mine under Whiteacre also. One morning Benton discovered a beautiful (and valuable) natural pond on the surface of Whiteacre had collapsed into the mine. Fortunately there were no structures anywhere near the mined area. In an action by Benton for damages:

- a. Andrews will win because he had a right to mine the coal.
- b. Andrews will win unless Benton proves his actions were negligent.
- c. Benton will win without regard to any negligence by Anderson.
- d. Benton will win because mining is an ultrahazardous activity carrying strict liability.

4. In the case of a gift *causa mortis*

- a. The intent to convey full ownership may occur after delivery of possession.
- b. Symbolic delivery is generally effective.
- c. Neither a. nor b. is correct.
- d. Both a. and b. are correct.

5. Candide sold and delivered his collection of Dali prints to Pangloss in return for a check. Pangloss had already closed his account, so the check was returned in a few days, dishonored. In the interim, Pangloss had sold the prints to a legitimate collector who had no knowledge of the wrongdoing. In this situation:

- a. Candide may recover the prints in replevin.
- b. Candide may sue both Pangloss and the collector for conversion.
- c. Both a. and b. are correct.
- d. Neither a. nor b. is correct.

6. In a moment of distraction, Greenspan left his saxophone at a bus stop with no identifying labels on it. Springsteen found it and pawned it to a pawnbroker. When Springsteen failed to pay the loan, Pawnbroker sold it to a regular customer. Assuming Greenspan discovers the sax before any relevant statute of limitation has run:

- a. The ultimate buyer owns the sax and Greenspan has no remedy.
- b. The ultimate buyer owns the sax, but Greenspan can hold Springsteen and Pawnbroker liable for conversion.
- c. Greenspan owns the sax, and the buyer may sue Pawnbroker on the warranty of title.
- d. Greenspan owns the sax, and the buy has no remedy because there is no warranty of title from Pawnbrokers.

7. Same facts as in previous question except that Springsteen sold the sax outright to an ordinary musical instrument dealer.

- a. The ultimate buyer owns the sax and Greenspan has no remedy.
- b. The ultimate buyer owns the sax, but Greenspan can hold Springsteen and Dealer liable for conversion.

- c. Greenspan owns the sax, and the buyer may sue Dealer on the warranty of title.
 - d. Greenspan owns the sax, and the buyer has no remedy because there is no warranty of title on second hand goods.
8. O conveyed land, for value, to A who did not record. Then O conveyed, also for value, to unsuspecting B, who did not record. In a notice state, the land belongs to:
- a. A
 - b. B
 - c. The first to record.
 - d. A, unless B's deed was a general warranty deed.
9. O wrote a valid, enforceable will leaving his land to H. Later O developed a dislike for H. While entirely sane, O conveyed the land in secret to A as a gift. A did not record. O then died without changing his will. H entered into possession. A has made a timely appearance in Probate Court and claimed the land. This is a notice state. The land belongs to:
- a. A because the deed was first in time.
 - b. H because the will was first in time.
 - c. H because heirs have priority over donees.
 - d. A because he had no notice of the will.
10. O conveyed land to A for value. O then conveyed it to unsuspecting B for value. B then died, and B's heir H found B's deed and recorded it along with the appropriate documents to show the inheritance. Thereafter A recorded. This is a race-notice state. The land now belongs to:
- a. A because H is not protected by the recording act.
 - b. A because B did not record.
 - c. H because B's claim defeats A's and H is sheltered by B.
 - d. H because he is a BFPV.
11. Owner's valuable painting was stolen in a burglary. The burglar sold it to an unsuspecting collector. The Owner made no police report or any 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 minority (New Jersey's *O'Keefe*) 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.

12. Grandfather had three children, A, B, and C. At the time of Grandfather's death, A has also died, leaving two children, B is alive with three children, and C is still living although childless and past childbearing age. If Grandfather's will leaves his estate "to my living descendants, per stirpes," each of B's children will receive from the estate:
- One sixth.
 - One ninth.
 - Nothing.
 - Nothing until B dies, then one ninth.
13. O conveyed by deed to A "so long as the timber is left in its natural state for 99 years." The interest that will become possessory if the timber is cut is:
- A possibility of reverter.
 - A right of entry.
 - A contingent remainder.
 - A shifting executory interest.
14. In the conveyance above, the future interest:
- Violates the common law Rule Against Perpetuities.
 - Does not violate the Rule.
15. In the conveyance above, if the state follows the Uniform Statutory Rule Against Perpetuities, the future interest:
- Violates USRAP.
 - Special USRAP analysis is unnecessary because the interest is void under the common law.
 - Special USRAP analysis is unnecessary because the interest is good under the common law.
 - Special USRAP analysis is premature until 90 years have passed.
16. O conveys by will to A for life, remainder to A's children when the last of them shall have graduated from high school. 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.
17. In the conveyance immediately above, the interest in A's children
- Is void.
 - Is good.

18. O conveys by deed to A for life, then B for life, then C in fee simple. 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.

19. In a community property state on the death of one spouse, unless there is an enforceable agreement to the contrary, the community property passes:

- a. To the surviving spouse.
- b. One half to the surviving spouse, the other half as the decedent's will directs.
- c. One half to the surviving spouse, the remainder to their descendants, if any, per stirpes.
- d. To the surviving spouse for life, remainder to whomever the decedent's will directs.

20. In a landlord-tenant dispute where the tenant was clearly in default on the rent, the landlord resorted to self-help, taking possession in the tenant's absence, changing the locks, and successfully excluding the tenant from possession. Landlord did not move tenant's goods and exercised great care to protect them (no negligence). Unfortunately some very skillful burglars stole tenant's goods. In a state following the modern trend on self-help:

- a. The landlord has no liability.
- b. The landlord is liable only for a technical trespass.
- c. The landlord is in breach and is liable to tenant for damages for re-location and any higher rent necessary for comparable space for the remainder of the term.
- d. The landlord is liable for the damages stated in answer c. plus the loss of tenant's goods.

21. 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:

- a. Property Taxes.
- b. Valuable Improvements.
- c. Both Taxes and Valuable Improvements.
- d. Neither Taxes nor Valuable Improvements.

22. Author conveyed a Copyright to A, a BFPV. The next day Author conveyed to B, a BFPV without notice of the prior claim. B immediately recorded in the Copyright Office. Two days later, A recorded in the Patent 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.

23. Seller made a contract with Vintage Hardwoods, Inc. agreeing that it could enter and remove all the salvageable beams and boards from an historic barn. The contract was not recorded. Without disclosing this, Seller then conveyed the land under the barn, by special warranty deed, to unsuspecting Buyer in return for a substantial cash price. Buyer promptly recorded. No lumber has yet been moved. In a lawsuit between Vintage Hardwoods and Buyer over the lumber:

- a. Vintage Hardwoods owns it because the lumber is goods.
- b. Vintage Hardwoods 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 Vintage Lumber's claim before paying.
- d. The Buyer owns it because it is still a fixture.

24. A purely commercial lease includes the following term: "Assignment or Sublease, in whole or in part, is absolutely prohibited." The most likely treatment of this term is

- a. The term is void as an unreasonable restraint on alienation.
- b. The term violates the contractual duty of good faith.
- c. Assignment or sublease by the tenant remain possible if commercially reasonable.
- d. The term adds nothing to the Landlord's rights under the common law default rule.

25. A and B are joint inventors of a patented invention and have remained equal co-owners. As such:

- a. Each may profitably use the invention without accounting to the other.
- b. Each may grant an exclusive license to third parties but must account to their co-owner for half the resulting gains.
- c. Both a. and b. are correct.
- d. Neither a. nor b. is correct.

26. Fierce Law Center has a full time Director of Alumni/ae Affairs. The Director regularly takes photographs at Fierce events for use in alumni publications, press releases, the website, etc. One of these events was a reception for a visiting delegation of judges from several Central Asian republics during which there was an attempted assassination. Copies of the Director's dramatic photos were used by law enforcement and CNN with the permission of the school. Now the Director wants to sell the copyright to the photos to a publisher doing a history of terrorism in the region. In this situation:

- a. The Director is the author (and so may sell the copyright).
- b. Fierce Law Center is the author (and so may prevent sale).
- c. The Director and Fierce are co-authors, so Director alone may only grant a license.
- d. The pictures are now in the public domain and may be used by anyone.

27. O legally subdivided his land and conveyed part of it to X. The deed contained some ambiguous, non-standard language about X's anticipated use of the land. Without knowing the exact words, what is the most likely interpretation a court would make if X doesn't do what O expected?

- a. The words will be a condition subsequent with a right of re-entry.
- b. The words will be a covenant running with the land.
- c. The words will be a personal covenant binding only the parties.
- d. The words will have no legal effect.

28. O legally subdivided his land and conveyed part of it to X. Although there was nothing in the deed about it, the only sewer connection to X's parcel was one previously installed by O and running through the portion retained by O. In this situation:

- a. X has an easement by necessity for the sewer line.
- b. X has an easement by implication for the sewer line.
- c. X has an easement by estoppel for the sewer line.
- d. X has no enforceable rights to use of the sewer line.

29. Decedent's Will recited that he had always been grateful for the intellectual discipline he developed while debating in college. It left a large sum of money "in trust forever to the Ozark Rhetorical Academy for the sole purpose of using the income to support the intercollegiate debate team." After so using the money for some years, the Academy has decided to terminate debate instruction and competition, intending to change its name and devote its resources to the performing arts instead. In an action in the appropriate court, which of the following claimants is most likely to win the money?

- a. The Academy, free of the restraint.
- b. The heirs of Decedent, for failure of the condition.
- c. A newly organized non-profit corporation set up by Academy alums to fund scholarships for debaters attending other area schools.
- d. The State, by escheat.

30. The statute of limitations for breach of the covenant of quiet enjoyment in a warranty deed begins running:

- a. When the purchase and sale contract is made.
- b. When the deed is delivered.
- c. When the buyer or his successor should reasonably have discovered the flaw in the title.
- d. When a superior claimant actually interferes with the buyer or his successor's use and enjoyment.

31. Bonnie and Clyde owned Blackacre as joint tenants with right of survivorship. Bonnie secretly gave a deed of her interest to Elliot. Clyde died. Blackacre was then owned:

- a. By Elliot.

- b. By Elliot and Bonnie as tenants in common.
 - c. By Elliot and Clyde's heirs as tenants in common.
 - d. By Clyde's heirs.
32. Sal 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. Sal 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 Sal'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 Sal's withdrawal worked a severance.
33. Same facts as in previous question. In a suit by Pat against Sal
- 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 Sal'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. Sal will win because each joint owner has a right to use the entire account.
34. Which of the following warranties cannot be disclaimed?
- a. Title to real estate.
 - b. Title to goods.
 - c. Habitability of real estate.
 - d. Merchantability of goods.
35. 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 LENDER is:
- a. Obligor and Mortgagor.
 - b. Obligee and Mortgagee.
 - c. Obligor and Mortgagee.
 - d. Obligee and Mortgagor.

Short Answers
(Up to 10 minutes suggested.)

1. There are several exceptions to the rule that the finder of lost property has a claim good against everyone but the true owner. Please state, without elaboration, three of them.
2. Please state, without elaboration, the minimum essential terms of a lease of real estate.
3. There are several exceptions to the traditional rule that a landlord is not liable to a tenant injured by a dangerous condition on the premises. Please state, without elaboration, three of them.

Essay I
(Up to 30 minutes suggested)

Lydia is the owner of a fairly modern duplex, one side of which she leased to Theresa for a term of one year starting about five months ago. The rent is at the local going rate, but residential rentals are scarce in this area. The other side is occupied rent-free by Lydia's nephew.

The lease has a section titled "House Rules" which says all residents must be "quiet after 10 PM," and that they may not hang anything on the walls without the Lydia's permission.

Recently Lydia has heard that Theresa has been considering marriage to a man who owns his own house. She thinks that is the reason Theresa recently asked if she could get out of the lease on a month's notice. Theresa had also complained frequently about the nephew playing very loud music after 10 PM. Disliking Theresa and not wanting to face an extra clean-and-paint cycle, Lydia put off answering for a few days.

While Theresa was away Lydia let herself in the house and discovered the walls marred by dozens of little nails holding up tasteless little pictures and the carpets marred by cigarette burns. Angry, she confronted Theresa with her discoveries. She told Theresa that she could not get out of the lease, that the small damage deposit was clearly going to be exhausted, and that Theresa had better fix the walls and replace the carpets before the end of the term or expect to get sued.

The latter was outraged at the "invasion" and refused to talk. The next day she gave Lydia a written demand that she never again enter without permission, and that she silence or evict the nephew. Two nights later Theresa called the police at 1:00 AM on a noise complaint. They ticketed the nephew for a noise violation. The next morning Theresa packed a good sized suitcase and went to stay with her boyfriend. She left leaving a note saying "I'm sick of this. I don't intend to let you bully me." The next month's rent was due that day and has not been paid.

Lydia is our client and you are our landlord/tenant expert. Explain to me (senior partner) each of her legal options and each of the possible countermoves by Theresa.

Essay II
(Up to 40 minutes suggested)

In 1987 Junior Jones was 25 years old. He had a younger brother, Bubba Jones who was 21 and away at college. The brothers were the only living descendants of Jasper Jones, their grandfather. Jasper had been a big man in the county and held quite a bit of real estate. However, by 1990 Jasper was indisputably senile. Junior was taking care of him and covering up his disability, but running out of money to care for his grandfather. Rather than publicly put Jasper under guardianship, Junior, with the help of a sympathetic relative who was a notary, forged and backdated a very broad Durable Power of Attorney giving him authority over Jasper's property. Junior then started making deeds to himself under the forged authority. These deeds and the Power of Attorney were all properly recorded. Bubba didn't know what was going on, but was grateful that Junior was taking good care of their grandfather.

The first parcel Junior sold off was a large lakeside lot. He sold it to Henrietta Black with a warranty deed, which she recorded. Henrietta, a free-lance journalist, built a small second home on one end of the lot, which she occupied weekends and most of each summer. She left the rest of the lot in its original, overgrown state.

Jasper finally died, intestate, in 1997. Junior and Bubba automatically inherited all his property as tenants in common. Junior also got married that year. In 2003 Henrietta sold her lot to Harley, who financed it through a Bank, giving a mortgage on the lot to secure the loan. Henrietta gave a special warranty deed.

Last year, during a bitter divorce, Junior's now ex-wife revealed what Junior had done. After a thorough investigation the prosecutor concluded that Junior had done everything for the benefit of his grandfather and nothing that wouldn't have been reasonable if he had simply applied for guardianship. He declined to prosecute. Bubba, however, became obsessed with the idea of recovering the "family property." In April of 2008 he threatened to sue Harley and the Bank to quiet title in his own name.

You represent Harley. Please state and explain all the claims that might be made against him on these facts, and all the defenses he could raise or steps he could take to avoid or minimize a loss.

End of Examination