EXAM#	
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FINAL EXAM CAPITAL UNIVERSITY LAW SCHOOL PROPERTY I-B1 FALL 1999 Professor Hirsch

Professor's Instructions: Read Carefully

- 1. At the beginning of this exam, you should have the following:
 - a. This nine-page exam packet.
 - b. A scantron form sheet for the multiple choice questions and a scantron instruction sheet.
 - c. A #2 pencil to mark the scantron sheet, and a pen for writing the narrative portions of the exam.
 - d. Answer books.
- 2. Please write your exam number on the front of your envelope, the upper right hand corner of your exam packet and on each of your answer books.
- 3. Please fill in the identifying information on your scantron form sheet, as indicated in the instruction sheet.
- 4. This is a three-hour examination. It consists of three parts. I recommend that you spend 50 minutes on Part I, 60 minutes on Part II, and 70 minutes on Part III. In grading the exam, I will allocate points roughly in proportion to these recommended time allocations. Manage your time wisely. Make sure that you reserve enough time to answer all Parts of the exam fully.
- 5. While taking this exam, you may have with you and may refer <u>only</u> to an outline of the course that you have prepared with others or alone.
- 6. The multiple choice questions are to be answered only on the multiple choice scantron answer sheet. Review the separate instruction sheet for filling out the scantron forms. Mark your answers on the scantron form by filling in the space for the letter that corresponds to the <u>best</u> answer for each question. If you erase, do so <u>thoroughly</u>. Otherwise the computer may grade your response incorrectly. Answers written on the exam packet itself will not be considered.
- 7. Write all your narrative answers on the colored answer books. Begin each Part of the exam

with a new answer book. If you write more than one answer book for a given Part, number the books sequentially (e.g. Part II, book 1). Answers written on the exam packet itself will not be considered.

- 8. At the conclusion of the exam, please insert your exam packet, answer books, and scantron sheet into the envelope. Then place the envelope in the box at the front of the examination room. You may not make a copy of or otherwise reproduce the exam packet.
- 9. For the purposes of this exam, answer all questions according to the current state of the law. Do not apply obsolete doctrines unless you are expressly directed to apply the law of an earlier era (*e.g.* "Assume that the year is 1600, . . .").

GOOD LUCK

Part I Multiple Choice Questions (50 minutes)

For questions 1 through 10, when you are asked to identify a *possessory estate*, your answer options are as follows:

- A. Fee simple absolute
- B. Fee simple determinable
- C. Fee simple subject to a condition subsequent
- D. Fee simple subject to an executory limitation
- E. Life estate

When you are asked to identify a *future interest*, your answer options are as follows:

- A. Possibility of reverter
- B. Right of entry
- C. Executory interest
- D. Remainder
- E. Reversion

For the purposes of questions 1-10, <u>ignore</u> any Rule Against Perpetuities problems. Assume that the words "and his heirs" need not be present to convey a fee simple.

- 1. O conveys: "To A, but if the land is not farmed O may retake possession." Name the possessory estate.
- 2. Same grant as 1. Name the future interest.
- 3. O conveys: "To A, but if the land is not farmed, then to B." Name the possessory estate.
- 4. Same grant as 3. Name the future interest.
- 5. O conveys: "To A for one year." Name the future interest.
- 6. O conveys: "To A so long as the land is farmed." Name the possessory estate.
- 7. Same grant as 6. Name the future interest.

- 8. O conveys: "To A for life, then to B so long as the land is farmed." Name the possessory estate.
- 9. Same grant as 8. Name the future interest in B.
- 10. O conveys: "To A for use as a school." Name the possessory estate.

For questions 11 through 15, you are to classify the <u>future interest</u> created by the grant from O. Your answer options are as follows:

- A. Vested remainder
- B. Vested remainder subject to open
- C. Contingent remainder
- D. Shifting executory interest
- E. Springing executory interest

For the purposes of questions 11-15, <u>ignore</u> any future interests <u>in the grantor</u>. Also, <u>ignore</u> any Rule Against Perpetuities problems.

- 11. O conveys: "To A for life, then to A's eldest son then living." A has one son, B, alive at the time of the conveyance.
- 12. O conveys: "To A for life, then to B for 1 year."
- 13. O conveys: "To A so long as the land is farmed, then to B and his heirs."
- 14. O conveys: "To A for life, then, five years after A's death, to B."
- 15. O conveys: "To A for life, then to A's children." At the time of the grant, A is alive and has two children, B and C.

PART II Essay (60 minutes)

Mr. Holden Over rents Apartment 3 in a building owned by Larry Landlord. Holden's lease is reproduced below (on page 7 of this exam).

Larry is a client of yours and has come to see you this morning to discuss a legal problem. As Larry describes it, Holden has been a less then ideal tenant. While he pays his rent on time, he keeps two dogs and three cats. Larry's wife, Linda Landlord, is allergic to these animals and their presence has been causing her some distress. Despite repeated requests, Holden has refused to give up his animals, pointing out that the lease does not prevent him from keeping pets. For this reason, Larry decided a few months ago not to renew Holden's one-year lease which expires on November 30, 1999.

In early November, 1999, Larry agreed to rent Apartment 3 to Tina Tenant for the year beginning December 1, 1999 and ending November 30, 2000. Tina paid Larry the first month's rent and a security deposit in advance. Tina's lease is also reproduced below. Larry gave Holden 10 days notice, telling him on November 20, 1999 that he would have to be out of the apartment by the end of the month.

On December 1, 1999, Larry was awakened in the early morning by a loud rapping at his door. Outside stood a very angry Tina who announced that her moving truck with all her belongings was waiting outside but that she could not move in since the present occupant of the apartment had not yet moved out. Sure enough, when Larry in his bathrobe stumbled over to Apartment 3 he found that Holden, all his belongings, and his dogs and cats were still there. Larry demanded that Holden move out immediately, but to no avail. Holden calmly asserted that he liked the apartment and intended to continue living there. Tina and her movers went off in a huff. Later that day, Larry found a rent check in the usual amount (\$900.00) from Holden slipped under his door with a note saying that the check represented payment for the month of December. Larry has held on to the check but has not yet cashed it.

During the two weeks that have followed, Larry has asked Holden several times to vacate the premises. Holden has calmly refused. In the meantime, Larry has received a letter from Tina in which she returns to him the key to Apartment 3, states that she has found other accommodations, that she no longer wants the apartment, and that she requests the return of her first month's rent and security deposit.

Larry would like to do the following: (1) Get Holden Over out of Apartment 3; (2) Have Tina Tenant move in; or, if he cannot get her to move in, at least have her to pay rent for the entire year so that he need not show the apartment during this period; (3) In the event that he cannot get Holden out

of the apartment, at least require him to give up his pets. While these are Larry's preferred options, he is not sure of what his legal rights and obligations are and whether he can accomplish these objectives.

Write Larry a memorandum in which you explain his legal position and set out his possible courses of action. Apply the cases that we have read this semester. If you are not sure whether the majority or minority rule applies, explain the outcome under both rules. Make sure that, in the course of your memorandum, you fully explain Larry's legal rights and obligations vis-a-vis Holden Over and Tina Tenant.

Apartment Lease Agreement

Date: December 1,	1998			
Term Rent: \$10,80 Monthly Rent Inst Security Deposit: 5 Leased Premises: Resident: Holden O Owner: Larry Land	tallment: \$900.00 \$900.00 1234 Nowhere Street, Ap Over lord nt agrees to pay monthly r	pt. 3, Colur		y of the month for
Signed:	owner		tenant	
	*	*	*	
	<u>Apartme</u>	nt Lease A	<u>greement</u>	
Date: December 1,	1999			
Term Rent: \$12,00 Monthly Rent Inst Security Deposit: Leased Premises: Resident: Tina Ten Owner: Larry Land Conditions: Reside	tallment: \$1000.00 \$1000.00 1234 Nowhere Street, Apant lord nt agrees to pay monthly r	pt. 3, Colur rent installm		y of the month for
Signed:	owner		tenant	

PART III Essay (70 minutes)

Locasia Owner, a real estate magnate in Central Ohio, owned a 500-acre parcel of undeveloped forest land near the Hocking Hills, an area known for its caves and unusual rock formations. Locasia had never set foot on the Hocking Hills property. She hired a caretaker to watch over the property and instructed him to let visitors hike and camp on the land for a \$10.00 fee. Locasia intended to hold onto this property until such time as market conditions allowed her to develop it.

One late November day Fred Finder, a law student at Capital University Law School, paid his \$10.00 and went for a long hike on the property to escape the pressure of law school exams. Fred had chosen a difficult route that took him away from existing trails and up into a narrow gorge with steep rock faces on either side. While walking, Fred was trying to puzzle out the Rule Against Perpetuities and became so lost in thought that he tripped over a large root. As he was standing up, Fred noticed something golden shining on the ground beside him. He picked it up and found it to be a gold coin. He gently brushed the dirt off of it and was amazed to see the date: "1801." Finder put the coin in his pocket. He marked the spot with a large stick, hiked back out to his car, and left the area without telling the caretaker of his find. Finder resolved that, after finals were over, he would return to look for more coins.

On a bitter cold day in mid-December, Finder paid his fee and hiked back up to where he had found the coin. He spent the morning looking all around the area. Just as he was about to give up, Finder saw what he thought was a small opening high up on the rock face above the spot where he had found the coin. After a difficult and dangerous climb, Finder was able to reach the opening which, he discovered, led to a small cave. The opening to the cave had narrowed over time and he had to scrape away at it with his knife for over an hour in order to make it wide enough to enter. Once inside, he illuminated the interior with his flashlight and was delighted by what he saw. Against one wall stood the musket and pack of a traveler from a much earlier period. This long-ago explorer must have had to exit the cave in a hurry, leaving most of his belongings behind. The pack had decayed over time and Finder reasoned that the coin must have fallen out of it and rolled out of the cave. The musket remained in good shape. Finder picked the musket up and took it home. Once again, he did not tell the caretaker of his find.

The next day Finder visited an appraiser who authenticated the items and valued the gold coin at \$5000.00 and the musket at \$8000.00. Overcome with pride, Finder then visited the offices of the Columbus Dispatch and told them of his discovery. The Dispatch ran a front page story telling of the find, including its location. On the way home from the paper, the 1801 coin fell out of Finder's pocket. It was found on Broad Street by Lucky Duck, another student at the law school, who told all her friends what she had found. When word got back to Finder that Duck had found his coin, he asked her

for it. She refused, saying that the coin now belonged to her. Finder then filed a legal action for against Duck seeking the return of the coin.

A week later, Locasia Owner, who had read of Finder's discovery in the paper, brought suit against him. In her suit, Ms. Owner claims that the coin and the musket belong to her since they were found on her property. She seeks the return of the items or, alternatively, their assessed cash value. Finder defends on the grounds that, but for his efforts, Locasia Owner would never have known of the historic items on her property.

The two lawsuits, <u>Locasia Owner vs. Fred Finder</u> and <u>Fred Finder v. Lucky Duck</u>, have been consolidated and are to be decided by the same judge. You are that judge. Write an opinion in which you determine who owns the coin and the mustket. If necessary, devise a remedy. For the purposes of your opinion, you should assume that the parties have stipulated to the above facts and have each moved for summary judgment (in other words, there will be no trial; assume the above facts to be true for the purposes of your opinion). Do not concern yourself with any claims by the State or others based on the historical significance of the items, or with the doctrine of "treasure trove". The only issues before you are the property disputes between Owner and Finder, and between Finder and Duck. Assume that all of the cases that we read this semester on the acquisition of property (the first section of the course) are binding precedent in your jurisdiction. Base your decision on the cases and doctrines that we studied and on the policies that underlie them.