

FINAL EXAM
CAPITAL UNIVERSITY LAW SCHOOL
PROPERTY I A
FALL 2000
Professor Hirsch

Professor's Instructions: *Read Carefully*

1. At the beginning of this exam, you should have the following:
 - a. This 10-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 60 minutes on Part I (multiple choice), 45 minutes on Part II (rule against perpetuities problem), and 75 minutes on Part III (essay). 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. The multiple choice questions are to be answered only on the multiple choice scantron answer sheet. Mark your answers on the scantron form by filling in the space for the letter that corresponds to the best answer for each question. If you erase, do so thoroughly. Otherwise the computer may grade your response incorrectly. Answers written on the exam packet itself will not be considered.
6. Write the answers to Parts II and III in the colored answer books. Begin each Part with a new answer book and label the answer book accordingly. If you write more than one answer book for a given Part, number the books sequentially (e.g. Part II, book 1 of 3; Part II, book 2 of 3; etc.) Answers written on the exam packet itself will not be considered.

7. *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.***

GOOD LUCK

Part I
Multiple Choice Questions
(60 minutes)

For the questions below assume that O owns in fee simple. Also, assume that all the conveyances referred to were made in the United States in 2000. 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 . . .”)

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, ignore 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 future interest 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, ignore any future interests in the grantor. Also, ignore any Rule Against Perpetuities problems.

11. O conveys: "To A for life, then to A's eldest son then living." At the time of the conveyance A is living and has one son, B.
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.

For Questions 16-19 assume that the following facts are true: On January 1, 1999, Linda Landlord and Harry Holdover entered into a written lease for an apartment in a building that Linda owned. The document stated that the lease term was to "begin on January 1, 1999 and end on December 31, 1999," and that the rent was to be "\$6000.00 per year, to be paid in equal monthly rental installments on the first day of every month." Harry lived quietly in the apartment and always paid his rent on time. However, he did not move out on December 31, 1999 but, instead, remained living in the apartment.

16. What type of leasehold estate did Harry hold on January 1, 1999?

- A. A tenancy at will.
 - B. A periodic tenancy.
 - C. A term of years tenancy.
 - D. A tenancy at sufferance.
 - E. Harry did not hold any leasehold estate on that date.
17. What type of leasehold estate did Harry hold as of January 1, 2000?
- A. A term of years tenancy.
 - B. A periodic tenancy.
 - C. A tenancy at will.
 - D. A tenancy at sufferance.
 - E. Harry did not hold any leasehold estate on that date.
18. For the purposes of this question only assume that, on January 15, 2000, Harry sent Linda a check for \$500.00 and Linda cashed it. What type of tenancy would Harry hold just subsequent to Linda's cashing of the check?
- A. A week-to-week periodic tenancy.
 - B. A month-to-month periodic tenancy.
 - C. A year-to-year periodic tenancy.
 - D. A term of years tenancy.
 - E. A tenancy at sufferance.
19. For the purposes of this question only assume that prior to the end of the original lease term Linda, having received no request for renewal from Harry, rented the apartment to Tom Tenant for the year directly following Harry's lease term (i.e. from January 1, 2000 to December 31, 2000). However, when Tom arrived on January 2, 2000 to take possession he found Harry still living in the apartment with all of his furniture. Tom called Linda to complain but, two weeks later, Harry was still living in the apartment and Linda had done nothing to get him out. Angry about the way he was being treated, and aware that he had not yet paid Linda any rent or deposit, Tom moved instead into another

building across town not owned by Linda. A week later, Harry moved out of the original apartment and it remained vacant for the rest of the year. On January 1, 2001 Linda sued Tom for the full year's back rent. In an English Rule jurisdiction, how much rent would Tom likely be liable for:

- A. \$6000
 - B. \$5500
 - C. \$3000 and Linda would have a duty to attempt to mitigate Tom's damages.
 - D. \$500
 - E. \$0
20. Under the cases that we read in our casebook, which of the following conditions would be most likely to serve as the grounds for a successful claim of a breach of the implied warranty of habitability:
- A. The small gas stove, the only cooking apparatus in the apartment, is broken, the tenant has requested that it be fixed and the landlord has not fixed it within a reasonable time.
 - B. The prior tenant splattered red paint all over the walls and floors of the apartment, the tenant has requested that it be cleaned up and the landlord has not done so within a reasonable time.
 - C. The toilet has become clogged and nonfunctional, the tenant requested two days ago that the landlord fix it and he has not done so yet.
 - D. The old steam radiators bang at night and make a racket that sometimes wakes the tenant up, the tenant requested that the landlord fix the problem and he has not done so within a reasonable time.
 - E. The front doorbell is broken, the tenant has requested that it be fixed and the landlord has not done so within a reasonable time.
21. Larry Landlord owns three, single-family homes in Columbus that he rents out. These are the only properties that he owns. Recently one of the homes was vacant and Ralph Renter and Tina Tenant, an unmarried couple, applied to rent it. The rental application

required them to state whether they were married and they responded “not married.” Larry rejected their application for this reason and, instead, rented the home to a married couple that had applied for the apartment after Ralph and Tina. Ralph and Tina sue Larry for violating their rights under the Fair Housing Act (FHA). Based only on the information given above, which of the following offers the best description of the merits of Ralph and Tina’s claim:

- A. Ralph and Tina’s claim is strong because Larry has discriminated against them on the basis of their “familial status.”
- B. Ralph and Tina’s claim is weak because the Fair Housing Act’s protection against discrimination based on “familial status” does not cover them.
- C. Ralph and Tina’s claim is weak because the Fair Housing Act does not cover the home they are seeking to rent.
- D. Ralph and Tina’s claim is weak for the reasons stated in both answers (B) and (C).

PART II
Rule Against Perpetuities Problem
(45 minutes)

O devises Blackacre “to Anthony for life, then to the first child of Anthony to publish a book.” At the time of the devise, Anthony is living and has two children: Beth, who is 21 years old and wants to be a novelist; and Charles, who is 10 years old and hates writing. Neither Beth nor Charles has, as yet, published a book.

Assess the above devise under the Rule Against Perpetuities. Apply the seven-step analysis that we discussed in class. I have laid out the seven steps below, but I would like you to write your answers in the blue book, not on this exam packet. Be sure to explain your reasoning at every step. A simple conclusion that the devise is or is not valid under the RAP will *not* be sufficient to get you full credit for this question. Number each of the seven steps in your bluebook as you address them in turn. For the purposes of this question, you should assume that the “wait and see” doctrine does **not** apply. The seven steps are:

1. Identify and name each interest created by this devise.
2. State whether the Rule Against Perpetuities applies to each of these interests.
3. For those interests to which the Rule Against Perpetuities applies, identify the conditional event upon the happening of which the interest must necessarily vest.
4. Identify all measuring lives.
5. Pinpoint the end of the perpetuities period for each measuring life.
6. Phrase the RAP question with respect to each measuring life. Then answer the RAP question, and explain your answer.
7. If the interest is void, strike it from the devise and identify what you are left with.

PART III
ESSAY
(75 minutes)

Fred and Fredericka Finder are amateur historians from Columbus, Ohio who collect historical items and like to spend their annual summer vacation visiting historical sites. This past summer the Finders decided to focus on sites related to the American Revolution. They traveled up and down the Eastern seaboard visiting battlefields, museums, and places frequented by the Founding Fathers. The Finders particularly enjoyed spending the night at locations where the heroes of the Revolution had themselves stayed many years ago. They were therefore delighted, while traveling through Connecticut, to hear about Humphreys House, a bed and breakfast in the town of Derby, Connecticut.

General David Humphreys had been a personal friend of George Washington and had served, for a time, as Washington's aide-de-camp during the Revolutionary War. Humphreys House had been his home and, even more exciting from the Finders' point of view, the great General Washington himself had spent several nights there while on a campaign against the British. The house still remained in the Humphreys family. David Humphreys XI lived there with his wife Doris and their child Dahlia. In recent years, the Humphreys had fallen on hard times and, to make some extra money, had decided open a bed-and-breakfast in their historic home. For a fee, visitors could spend the night in the old master bedroom where General Washington himself had once slept. They would then have breakfast the next morning with the Humphreys family, who continued to live in the other portions of the house.

It was in this room that the Finders stayed one weekend last July. As they lay in the dark before going to sleep the Finders talked excitedly about how the Great Washington must have lain awake in that very spot the night before a battle. Knowing that they had to be up and on their way back to Ohio early the next morning Fred Finder reached for his watch to find out the time but, in the dark, knocked it off the night table and onto the floor. When he turned on the light the watch was nowhere to be seen. Finder got down on his hands and knees to look under the bed and, upon doing so, noticed a crack between the floorboards. It was just wide enough for him to fit his hand through. When he reached in he was surprised to feel, not the watch, but a small box that was wedged between the floorboards and the ground (early houses of this type being built without a basement or foundation). With a gentle tug, Finder was able to dislodge the box and pull it out into the light.

The box appeared to be quite old and, in its pearl-inlaid design, the monogram "GW" was plainly visible. "Open it," exclaimed Fredericka. Fred opened it and there, to his great astonishment, lay a perfect set of false teeth. "Could it be . . .?" he wondered aloud? "Do you think . . .?" said Fredericka. And all at once they knew: General Washington himself had once chewed with these very teeth.

The next morning at breakfast the Finders proudly told the Humphreys of their discovery. Fred produced the box and teeth and handed them to David Humphreys saying: "While we

would love to keep these items ourselves, we believe that, for the present, they should be displayed in the historic room where we found them so that others, too, can enjoy this delightful bit of history in its original location. Displaying them in this way will also give you some time to notify George Washington's heirs, with whom we know you are still friends, so that they can assert any claim they might have. If the Washington family does not lay claim to the teeth we may decide to retrieve them from you for a historical museum we are thinking of founding." David Humphreys XI smiled graciously and accepted the teeth and box from the Finders.

A few weeks after returning home to Columbus the Finders, as was their habit, logged on to the eBay on-line auction site to see if there was any interesting historical merchandise for sale. They were shocked to see that the featured item was an original set of George Washington's false teeth and accompanying pearl-inlaid box, offered by David Humphreys XI with an initial bid price of \$50,000. "Hey, we found those teeth," said Fredericka, "they would never have even known about them if not for us." "Yeah," echoed Fred, "they were supposed to display them or give them back to the Washington family, not sell them."

The next morning the Finders called the Humphreys. David Humphreys XI told them that he had contacted Washington's heirs who had renounced any claim to the teeth and box. He had subsequently decided to sell them. "But we want them back," said Fredericka. "Sorry," said David, "you found them at our house and so they are ours, not yours."

That afternoon the Finders came to you, their attorney, seeking legal advice. They told you the above story and asked what their chances would be if they were to sue the Humphreys to get the teeth and box back. Essentially, they want to know whether, under the prevailing case law and legal doctrines, the items belong to them or to the Humphreys.

Write the Finders a memo in which you identify the relevant cases and legal principles (case names are not required), apply them to the facts of this case, and reach a conclusion about the Finders' chances of success in their potential lawsuit. For the purposes of this memo assume that all the cases that we read this semester are binding law in this jurisdiction. Also assume that Washington's heirs and devisees have indeed renounced their claims to the teeth and box so that you can disregard any potential claims they might have. You also need not address any claims that the public might have with respect to these historic items and can further disregard any contractual rights that may have been created when the Finders gave the items to the Humphreys. Your memo should concentrate on property doctrines that we studied this semester and should address the question of whether, given the facts set out above, the teeth and box are the property of the Finders or of the Humphreys. Since this is a client memo you should write in an "objective" fashion, i.e. you should lay out both the arguments that favor, and those that run counter to, your client's position. However, after laying out these arguments, you should be sure to reach a conclusion about the Finders' chances of success in their potential lawsuit against the Humphreys.