

FINAL EXAM
CAPITAL UNIVERSITY LAW SCHOOL
PROPERTY I B
FALL 2001
Professor Hirsch

Professor's Instructions: *Read Carefully*

1. At the beginning of this exam, you should have the following:
 - a. This 8-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 two hour and forty-five minute (2:45) examination. It consists of three sections. I recommend that you spend 45 minutes on the multiple choice section, 60 minutes on the first essay, and 60 minutes on the second 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 (this goes even for those taking the exam on computer). 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 essays in the colored answer books (unless you are taking this exam on a computer). Begin each essay with a new answer book and label the answer book accordingly. If you write more than one answer book for a given essay, number the books sequentially (e.g. Essay I, book 1; Essay I, book 2, 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!

Multiple Choice Questions
(45 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.

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, until such time as the land no longer be used as a playground for children.” Name the possessory estate.
2. Same grant as 1. Name the future interest.
3. O conveys: “To A for life.” Name the future interest.
4. O conveys: “To A, but if A were ever to get divorced, then to B.” Name the possessory estate.
5. Same grant as 4. Name the future interest.
6. O conveys: “To A for life, then to B for life, then to C for so long as liquor is not sold on the property.” Name the possessory estate.
7. Same grant as 6. Name the future interest in C.

8. O conveys: "To A, on the condition that if alcohol were ever to be sold on the premises, O may re-enter and re-take possession." Name the possessory estate.
9. Same grant as 8. Name the future interest.
10. O conveys: "To A for the purposes of building and maintaining a home for the elderly." 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 B and his heirs ten years from today."
12. O conveys: "To A for 20 years, then to B for 5 years."
13. O conveys: "To A for life, then to A's first child to graduate from college." At the time of the conveyance A is living and has two sons B (age 12) and C (age 9), and a daughter D (age 18).
14. O conveys: "To A for life, but if A were to begin smoking again, then to B and his heirs."
15. O conveys: "To A for life, then to those of A's children who reach the age of 16." At the time of the grant, A is alive and has two sons B (age 12) and C (age 9), and a daughter D (age 18).

ESSAY I
(60 minutes)

Loretta Landlord owns a four-unit building in a poor section of Townsville. She lives in Apartment 1 with her ailing husband, Lou. She rents out Apartment 2 to Twyla Tenant, a single mother who lives there with her ten-year-old child. She has leased Apartment 3 to Ralph Renter, a single man who is moving to Townsville. Apartment 4 is currently empty. As is her usual practice, Loretta has hung a sign out in front of the building advertising “vacancy.” She usually need do no more to attract new tenants.

When Loretta initially showed Apartment 2 to Twyla Tenant she was sure to point out that, while most apartments in her building had functioning air conditioning units, those in Apartment 2 were broken. She mentioned to Twyla that, in the city in which they lived, summer temperatures sometimes climbed to more than 100 degrees and that the apartment became very hot without air conditioning. Given that the air conditioning units were out of order, she offered to lower her usual rental price from \$600.00/month to \$550.00/month, a reduction of \$50.00 per month. It would then be Twyla’s responsibility to either have the air conditioners replaced, or simply to live with the heat. Twyla assented to this and the agreement was added to her lease. Twyla signed the one-year lease and moved in on the first day of the lease term, March 1, 2001.

Shortly after Twyla moved into the apartment, she began to notice a problem with cockroaches in the bathroom and kitchen. She set out some roach traps, but this did not seem to help. Instead, the problem became worse. The bugs would sometimes turn up on her kitchen counter while she was cooking. One night, her daughter found one in her bed and was so upset that she could not get to sleep the whole rest of the night. In addition to the roach problem, Twyla found that as Spring turned into Summer, the apartment became far hotter than she had anticipated. On a hot day, the apartment seemed hardly to cool down even at night. Along with the bugs, the heat interfered with her and her daughter’s sleep and comfort. However, Twyla lacked the money to purchase an air conditioner for the apartment. She set up some fans, but this did not improve matters much. By the end of June, 2001, Twyla became so upset about the situation with the bugs and the heat that she decided the apartment was not worth the money she was paying for it. Without mentioning anything about the problems to Loretta Landlord (she found Loretta to be difficult to talk to), Twyla began to withhold her rental payments. However, she and her daughter continued to live in the apartment. On August 10, 2001, Loretta approached Twyla and asked why she had not paid her July or August rent. Twyla told her that the heat was terrible and that cockroaches had infested the apartment, and that she was refusing to pay her rent while these problems existed. This was the first Loretta had heard about the cockroaches and she felt bad about this situation. But she was adamant that Twyla had agreed to take on responsibility for the air conditioners and had gotten a rent reduction for it. Loretta told Twyla to pay the back rent she owes or to move out.

On April 1, 2001, Ralph Renter signed a one-year lease term for Apartment 3 and paid the first month’s rent. The lease term was to begin on May 1, 2001. This arrangement suited

Ralph perfectly. He had just accepted a new job in Townsville which started in mid-May. He planned to move into his new apartment in early May, get settled in, and then begin work. On April 15, however, Ralph's new employer told him that, due to the economic slowdown, the firm was downsizing and would not be able to hire him. Crestfallen, Ralph decided to cancel his move to Townsville. On April 16, he wrote Loretta an eloquent letter explaining the situation, asking for her understanding, and returning the key to Apartment 3. He never moved into the apartment and has never paid anything beyond the first month's rent. Loretta believes that Ralph is still responsible for the entire year's rent since he signed a one year lease.

In mid-June the Singletons, a young, married couple with no children, saw the "vacancy" sign in front of the building and approached Loretta Landlord about renting an apartment. Loretta took them directly to Apartment 4, the one that had been vacant the longest, and did not show them Apartment 3, the one that Ralph had abandoned. The Singletons liked Apartment 4 and signed a lease to rent it for a year beginning July 1, 2001. Shortly thereafter, they moved in.

Since Apartment 3 was empty (Ralph having failed to take possession) Loretta left the "vacancy" sign up outside. In mid-July, the Hassles, a family with three young children (ages 2, 4 and 6) who were walking in the neighborhood saw the sign and came in to ask Loretta about renting an apartment. Loretta saw firsthand how the Hassle children tumbled and fought and shrieked with each other, and decided that this family would not be a good fit for her calm building. She was particularly concerned about her husband Lou who was slowly recovering from a stroke and needed peace, quiet and rest. In addition, she was concerned that the Hassles were unable to provide her with any solid references from prior landlords, and that their financial situation seemed precarious. Loretta declined to show them Apartment 3 and told them it was already under lease to Ralph Renter. The Hassles asserted that she was discriminating against them because of their children, and stalked off threatening legal action.

On August 15, 2001, Loretta came to you, her attorney, and described the above situations. Write Loretta a memo in which you describe fully her legal rights and obligations with respect to Twyla Tenant, Ralph Renter, and the Hassles. In particular, you should address: (1) whether she can collect the rent that Twyla has withheld, whether she can evict Twyla for failure to pay rent, and whether she has any other rights or duties with respect to Twyla; (2) whether she can hold Ralph Renter liable for the entire year's rent and whether she has any other rights or duties with respect to him; and (3) whether the Hassles have a valid legal claim against her for failing to show them the apartment and whether she has any other rights or duties with respect to them. For the purposes of your memo, assume that all the cases we read this term are binding law in your jurisdiction.

ESSAY II
(60 minutes)

The waters off the coast of northern Maine are one of the best areas in the United States for catching lobster. For many generations, the residents of harbor towns along the coast have earned a good living trapping these creatures. Trapping is best method of capturing lobsters.

The Maine coastal waters, and the lands that lie beneath them, are legally owned by the public. However, over the years, groups of lobster trappers along the Maine coast have developed customary rights to catch lobsters located in certain areas. According to the local custom, only the members of the group are allowed to set traps in the group's territorial waters. In addition, custom holds that a lobster trapping group "owns" all lobster that venture into its designated area. Once a lobster leaves the area without being captured, however, the group no longer has any rights to it. Each group identifies its territory by painting, in the group's colors, the buoys they used to float their traps. This informal arrangement has existed for many generations and lobster trappers in the region have largely respected it. Some who have studied the region believe that the practice of dividing the lobster fisheries among the various groups encourages these groups to limit their catch in order to preserve their valuable resource. This, in turn, may have helped to sustain the abundant lobster population in the region, without which the area's lobster industry could not have survived.

One of the lobster trapping groups that operate out of Portsmouth Harbor in northern Maine is known as the Oldtimers. The group has existed for several generations and many of the members are related to one another. The Oldtimers have always set their traps in waters off of Metinic Island where many lobster are to be found. They have marked their turf with buoys bearing a blue and white stripe – the colors of the group. In order to increase their catch, the Oldtimers periodically spread in their area a special organic mixture, the recipe for which is passed down from generation to generation, that is said to attract lobsters to the area.

Recently, the demand for lobster has grown and the price of this delicacy has gone up substantially. The increasing profits associated with lobstering have caused some new people to become interested in the business. Among these is Burt Newcomer, a man who recently moved to the area and set up his own lobstering operation out of Portsmouth Harbor. Newcomer has developed an improved style of lobster trap. After trying out various areas in which to set his traps, Newcomer decided that he would have the best success by trapping in the waters off of Metinic Island and set up his equipment there. Having only recently arrived in town, he did not know about the customary allocation of lobstering territories, nor was he aware that the Oldtimers had for generations laid claim to the area in which he had set his traps.

Newcomer's innovative traps proved to be more effective at catching lobsters than the Oldtimers' traditional equipment, and he began pulling large numbers of prime lobsters from the sea. This enraged the Oldtimers who felt that, according to the custom of the area, the lobsters in the waters off Metinic island belonged to them. Several weeks after Newcomer began to set his traps, members of the group approached Newcomer and requested that he remove his traps from

their territory. Newcomer refused, asserting that he had just as much right to trap lobsters in public waters as any other person. “Just you wait,” said one of the Oldtimers, “you won’t get away with this, you thief.”

Some of the Oldtimers wanted to rough Newcomer up or smash his traps, but cooler heads prevailed. Instead, the Oldtimers filed a lawsuit against Newcomer asserting that, under the prevailing custom, the lobsters off Metinic Island belonged to the group and that Newcomer had, accordingly, taken their property. The Oldtimers’ suit seeks damages in the amount of the value of the lobsters that Newcomer has removed from their territorial waters. Under local law, lobsters in coastal waters are considered *ferae naturae* (wild animals).

You are the judge hearing this action. Write an opinion in which you analyze, and reach a conclusion about, the Oldtimers’ claim against Newcomer. For the purposes of your opinion, assume that all of the above facts are true. In addition, assume that all the cases that we read this semester are binding law in your jurisdiction.