

FINAL EXAM
CAPITAL UNIVERSITY LAW SCHOOL
PROPERTY I B
FALL 2002
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.
 - c. A #2 pencil to mark the scantron sheet, and a pen (or computer) 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.*
4. This is a two hour and forty-five minute (2:45) examination. It consists of two sections. I recommend that you spend 90 minutes on the multiple choice section, and 75 minutes on the essay question. 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 the essay in the colored answer books (unless you are taking this exam on a computer). If you write more than one answer book for the essay, number the books sequentially (e.g. Essay, book 1; Essay, 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
(90 minutes)

For all the multiple choice questions below assume that O owns in fee simple and that all conveyances referred to were made in the United States in 2002, unless otherwise stated in the individual question itself.

For questions 1 through 12, 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 (includes all types of executory interests)
- D. Remainder (includes all types of remainder interests)
- E. Reversion

For the purposes of questions 1-12, ignore any Rule Against Perpetuities issues. Assume that the words “and his heirs” need not be present to convey a fee simple.

1. O conveys: “To A, so long as A does not get divorced from B.” At the time of the grant, A and B are married. Name the possessory estate.
2. Same grant as 1. Name the future interest.
3. O conveys: “To A for life.” Name the possessory estate.
4. Same grant as in 3. Name the future interest.
5. O conveys: “To A, but if A intentionally and unnecessarily cuts down the tall spruce tree in the center of the property, then to B.” Name the possessory estate.
6. Same grant as 5. Name the future interest.
7. O conveys “To A.” Name the possessory interest.
8. O conveys: “To A for life, then to B if B survives A.” Name the possessory interest.

9. Same grant as 8. Name the future interest in B.
10. O conveys: "To A, but if guns are ever sold on the premises, then O may re-enter and re-take possession." Name the possessory estate.
11. Same grant as 10. Name the future interest.
12. O conveys: "To A for the purpose of creating a community garden that is open to the public." Name the possessory estate.

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For questions 13 through 23, you are to classify the future interest created in a transferee by the grant from O. You are to ignore any future interests in the grantor and to ignore any Rule Against Perpetuities issues. Your answer options are as follows:

- A. Vested remainder
 - B. Vested remainder subject to open
 - C. Vested remainder subject to complete divestment
 - D. Contingent remainder
 - E. Executory interest (includes all types of executory interest)
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13. O conveys: "To A for 100 years, then to B."
 14. O conveys: "To A for life, then to those of A's children who graduate from college." At the time of the conveyance A is living and has two sons B (age 17) and C (age 10), and a daughter D (age 24) who is a college graduate.
 15. O conveys: "To A for 25 years, but if A were to tear down the old family home that remains on the property then to B and his heirs."
 16. O conveys: "To A for 10 years, then to B for 15 years, then to C for 20 years but if C should ever take up smoking again then to D for life." Identify the future interest in C.
 17. O conveys: "To A for life, then to the heirs of A." At the time of the grant A has two children, B and C. Assume that the Rule in Shelley's case does not apply in this jurisdiction.
 18. O conveys: "To B for life then, ten years after B's death, to Z."

19. O conveys: "To A for life, then to A's children." At the time of the grant A is alive but has no children.
20. O conveys: "To A for life, then to B, but if B is ever convicted of a felony then to C and his heirs." Identify the future interest in B.
21. Same grant as in question 20. Identify the future interest in C.
22. O conveys: "To A for life, then to B if B is still married to C."
23. O conveys: "to A when A passes the bar exam." At the time of the grant, A has not yet passed the bar exam.

* * *

The following facts govern questions 24-27.

In 2000, Albert, the owner of Blackacre, died intestate without a spouse. Albert had three children: Betty, Clarence and Danielle. Betty survived Albert and has a child of her own, Ethel, who is alive. Clarence died before Albert and left two children, Frank and Gertrude, who are alive. At the time of his death, Clarence willed all of his property to his wife, Zelda. Danielle survived Albert and has no children.

24. At the time of Albert's death, Frank is entitled to what share of Blackacre:
 - (A) All of Blackacre
 - (B) 1/2 of Blackacre.
 - (C) 1/3 of Blackacre.
 - (D) 1/6 of of Blackacre.
 - (E) None of Blackacre.
25. At the time of Albert's death, Danielle is entitled to what share of Blackacre:
 - (A) All of Blackacre
 - (B) 1/2 of Blackacre.
 - (C) 1/3 of Blackacre.
 - (D) 1/6 of of Blackacre.
 - (E) None of Blackacre.
26. At the time of Albert's death, Ethel is entitled to what share of Blackacre:
 - (A) All of Blackacre

- (B) 1/2 of Blackacre.
- (C) 1/3 of Blackacre.
- (D) 1/6 of of Blackacre.
- (E) None of Blackacre.

27. For the purposes of this question only, assume that the above facts all occurred in England in 1700. What share of Blackacre would Frank be entitled to?

- (A) All of Blackacre
- (B) 1/2 of Blackacre.
- (C) 1/3 of Blackacre.
- (D) 1/6 of of Blackacre.
- (E) None of Blackacre.

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For Questions 28-31 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. Based only on these facts answer the following questions:

28. 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.

29. What type of leasehold estate did Harry hold as of January 1, 2000 (assume that Harry has not paid any rent since his last monthly rental installment paid on December 1, 1999).

- (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.

30. 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.
31. 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 immediately wrote Linda a letter asking her to get Harry out of the apartment, and had it delivered to her by overnight mail. Three weeks later, Harry was still living in the apartment and Linda had taken no action to get him out. Angry about this and aware that he had not yet paid Linda any rent or deposit, Tom took an apartment in another building across town not owned by Linda. On January 31, 2000 Harry Holdover moved out of the original apartment without paying Linda any rent for the month of January. The apartment remained vacant for the rest of the year. On January 1, 2001 Linda sued Tom for the full year's back rent. In a jurisdiction that follows the American Rule, how much rent would Tom likely owe to Linda:
- (A) \$6000
 - (B) \$5500
 - (C) \$3000
 - (D) \$500
 - (E) \$0
32. Assume that Tanya Tenant rents an apartment and moves in. Under the cases that we read in our casebook, which of the following conditions in the apartment would be **least 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. Tanya requested three days ago that the landlord fix it and he has not done so yet.
 - (B) The prior tenant threw a party before moving out and left empty beer cups lying all about, spilled beer and broken glass on the floor, and obscene words spray-painted on the walls. Tanya requested a month ago that the landlord clean up the mess but he has not yet done so yet.

- (C) The toilet has become clogged and nonfunctional. Tanya requested two weeks ago that the landlord fix it and he has not done so yet.
 - (D) The front door lock is broken and Tanya cannot lock the door. Tanya asked the landlord a week ago to fix it and he has not done so yet.
33. 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 weak because the protections contained in the Fair Housing Act do not apply to their situation.
 - (B) Ralph and Tina’s claim is strong because Larry has discriminated against them on the basis of their “familial status.”
 - (C) Ralph and Tina’s claim is weak because Larry is exempt from the Fair Housing Act.
 - (D) Ralph and Tina’s claim is weak for the reasons stated in both answers (A) and (C).

ESSAY
(75 minutes)

Gloria Grantor and Ned Neighbor were neighboring landowners in rural Cornucopia County in the State of Affairs, a state somewhere in the Midwest. Each owned a large farm and held the property in fee simple absolute. Grantor lived and worked on her farm. Neighbor had retired and moved to Florida and had hired a manager to run his farm for him. Every few years he journeyed North to take a look at the place, but he never stayed long and soon found himself back in sunny Florida.

In January 1975, Abner Adams expressed to Grantor his interest in purchasing her farm. Grantor had grown up on the property and it held strong sentimental value for her. However, she eventually came to terms with Adams and sold her entire interest in the farm to him for good value on February 1, 1975. Unknown to both Grantor and Adams, the deed that had been specially prepared for this conveyance contained a typographical error in the description of the parcel. It improperly included in the description three acres of Ned Neighbor's land – a one-acre field and a two-acre wood lot. Based on the deed, Adams mistakenly believed that he owned these three acres.

On March 1, 1975, when Adams took possession of his new property, he treated the three acres as his own. He built a fence around the entire property, including the three acres. And he began to cultivate all of the open fields, including the one-acre field that actually belonged to Ned Neighbor. Following the typical practice in the area, Adams took some timber each year from the 2-acre wood lot and sold it or used it himself, but he was careful to conserve the resource and not to over-harvest the trees.

Adams specialized in growing organic vegetables which he sold at nearby farmers' markets. Organic farms were becoming the trend in Cornucopia County and, after a season or two, Adams found that his farm was quite profitable. In order to cut down on the use of fertilizer he adopted the practice, common among farmers in the region, of leaving each field fallow and undisturbed once every four years. This applied to all of Adams' farmland, including the one-acre field actually owned by Neighbor so that, one year out of every four, this field remained untouched. Each Fall, Adams held a week-long family reunion on his property. Members of the Adams clan from far and wide came to attend this event. The centerpiece of the event was a game of "paintball" on the two-acre wood lot (that actually belonged to Neighbor). Family members crept around in camouflage shooting each other with paint and whooping with excitement.

After a decade of the rural life, Abner Adams got tired of farming. The competition for organic vegetables had grown significantly and the farm was no longer as profitable as it once had been. Abner decided to get out of the business and, on March 1, 1990, sold his entire interest in the farm to Belinda Bass. The deed from Adams to Bass contained the same error in the description of the parcel as had the original deed from Grantor to Adams. Immediately after

the sale, Bass entered into possession of the entire farm including the three acres that actually belonged to Neighbor. Rather than farming the land herself, she rented it out to Carlos Caballero. The lease from Bass to Caballero used the same description of the property as had appeared in the two faulty deeds. Caballero utilized the land, including the field and wood lot, in the same manner that Adams had. He even continued the practice of leaving each field to lie fallow for one year out of four, which had continued to be common practice in the region.

In September, 2002, Dolores Debutante approached Ned Neighbor about purchasing his farm. Debutante wanted to subdivide the land and build an upscale, gated community. In preparation for the sale, Neighbor had a professional surveyor mark out the boundaries of his land. Much to his surprise, he found that three acres on Bass's side of the fence were actually part of his parcel. Neighbor had always gotten along well with Bass (and with Adams before her) and usually had dinner with her when he visited from Florida. But the three-acre encroachment onto his property bothered him. He marched over to see Caballero (the renter) and loudly demanded that he vacate the three acres at once and take down the portion of the fence that enclosed this land. Caballero went directly to see Bass and complained that Neighbor's rude demands were preventing him from quietly enjoying the rental property. Bass promised to see what she could do about the situation.

After talking with her lawyer, Bass has brought a legal action against Neighbor seeking a declaration from the court that the three acres properly belong to her, not to Neighbor, and affirming her title to the land. Her lawyer has told her that the statute of limitations in the State of Affairs establishes a limitations period of 21 years for ejectment actions.

Write an essay in which you analyze whether, as of the time that the suit was filed in 2002, the field and the wood lot belonged to Bass or to Neighbor. Be sure that you identify the legal issue (or issues) on which this matter turns, state the rules that govern this issue (or issues), apply each rule to the facts, and draw sound conclusions. For the purposes of your essay, assume that the State of Affairs follows the majority rule as to all legal doctrines.