

**FINAL EXAM**  
**CAPITAL UNIVERSITY LAW SCHOOL**  
**PROPERTY I -A2**  
**FALL 2003**  
**Professor Hirsch**

Professor's Instructions: *Read Carefully*

1. At the beginning of this exam, you should have the following:
  - a. This 13-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 (3:00) examination consisting of a multiple choice section and an essay question. I recommend that you spend 90 minutes on the multiple choice section, and 90 minutes on the 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 the essay in the colored answer book (unless you are taking this exam on a computer). You are limited to **six pages** of writing, using only one side of each page. Write only on the lines and not in the margins. I will not consider any material beyond the six-page limit. If you cross out several lines you may exceed the

limit by the equivalent amount of space.

7. *At the conclusion of the exam, please insert your exam packet, answer book, 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 2003, 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.

\* \* \*

**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 24-28.**

In 2000, Albert, the owner of Blackacre, died intestate without a spouse. Albert had two daughters named Betty and Diana, and a son named Carl. Betty survived Albert and has a daughter of her own, Ethel, who is alive. Carl died before Albert and left a son, Frank, and a daughter, Grace, who are alive. At the time of his death, and while Albert was still alive, Carl willed all of his property to his wife, Zelda. Diana 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, Diana 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 Diana 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.
28. For the purposes of this question only, assume that in 1999 all of Albert's issue (children, grandchildren, etc.) died together in a plane crash on their way to celebrate Albert's 70<sup>th</sup> Birthday. Albert lived longer than all of them and did not have any more children. Assume that Albert later died without a will. Who would own Blackacre:
- (A) Albert's brother's and sisters, if they survived him.
- (B) Albert's parents, if they survived him.
- (C) Albert's grandparents, if they survived him.
- (D) The estates of Albert's deceased issue (children, grandchildren, etc.)
- (E) None of the above. Blackacre would escheat to the state.

\* \* \*

29. Which of the following is not commonly identified as one of the “sticks” in the bundle of rights:
- (A) The right to exclude others from one’s property.
  - (B) The right to transfer one’s property to another.
  - (C) The right to be free from governmental interference with respect to one’s property.
  - (D) The right to use one’s property.
  - (E) The right to be free from nuisances created by a neighboring property owner.
30. Upon exiting a restaurant a customer leaves her pocketbook, containing \$300.00 in cash, slung over the back of the chair on which she was sitting. The next customer to sit down at the table finds the pocketbook. He turns it over to the owner of the restaurant so that it may be returned to the true owner if she comes back to claim it. Three months pass and the true owner does not show up to claim the pocketbook. The customer who found the pocketbook (the “finder”) then asks the restaurant owner to give it back to him, stating that it is now his property. The restaurant owner refuses, claiming that the pocketbook is now *his* property. The finder sues the restaurant owner for return of the pocketbook and its contents. Under the cases we have read, the most likely result of this lawsuit is:
- (A) The finder will prevail because the pocketbook was mislaid.
  - (B) The finder will prevail because he acted honestly in turning the item over to the restaurant owner.
  - (C) The restaurant owner will prevail because the pocketbook was mislaid.
  - (D) The restaurant owner will prevail because the pocketbook was lost.
  - (E) Neither party can assert ownership over the pocketbook because three months is not long enough to wait for the true owner to come back and claim the item.
31. Under the “right of discovery” as recognized at the time of the settling of North America by British colonials, the native people then living on newly “discovered” lands possessed the right:
- (A) To use the land that they occupied, but not to transfer that land.

- (B) To use and transfer the land that they occupied, but not to exclude others from it.
  - (C) To cultivate the land that they occupied, and thereby to gain full title to it under John Locke's labor theory of property ownership.
  - (D) To defend themselves against any attempt by the European nations to take their land by conquest.
32. 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).
33. Bill and Joe, best friends, owned adjoining properties and lived next door to each other. In 1975, Joe built a garage on his property. At the time neither he, nor Bill, were aware that the north end of the garage encroached on Bill's property by one foot. From 1975 to 2000 Joe and Bill remained great friends and spent a lot of time in each others' houses. In 2000, Bill died and his niece Jane inherited his property. Jane had a boundary survey performed and discovered the garage encroachment. She promptly asked Joe to move his garage so that it no longer encroached on her property. Joe refused and Jane brought an action against him for ejectment. The jurisdiction in which the case has been brought has adopted a 21-year statutory period for adverse possession and applies **majority legal rules**. If Joe loses this suit, it will most likely be because:
- (A) At the time that he built the garage, he did not intend to take the property of another.

- (B) Joe cannot “tack” his property onto Bill’s.
  - (C) It took a survey to reveal the encroachment.
  - (D) Joe and Bill remained good friends and so Joe’s possession of Bill’s land cannot be said to have been “hostile.”
34. In 1970, Albert enters and adversely possesses Blackacre. In 1980, Albert leaves the property and, that very same day, Bobby peacefully enters Blackacre and begins adversely possessing it himself. Albert and Bobby do not know each other. In 1995 Cindy, the true owner of Blackacre, brings an ejectment action against Bobby. The jurisdiction has adopted a 21-year statutory period for adverse possession. The most likely result of Cindy’s ejectment action is that:
- (A) Bobby will win because his period of possession, combined with Albert’s period of possession, add up to more than 21 years.
  - (B) Bobby will win because he acted peacefully when he took over the property.
  - (C) Cindy will win because Bobby has only been on the land for 15 years.
  - (D) Cindy will win because Bobby did not enter the property under color of title.
35. Early Company designs women’s shoes. In January, 2003, Early Company came out with a new style of shoe that was distinguished by an extremely elongated, pointy toe. The new style soon became all the rage. In March, 2003, Late Company came out with a shoe that copied the Early Company design and was identical to it. Late Company sold its shoe for \$20.00 less than Early Company, and soon cut deeply into Early Company’s market for the new style of shoe. Early Company sues Late Company for violation of its common law property right in its design of the shoe. Assume that only the common law property right is relevant here, and that copyright, patent and trademark law are not. The most likely outcome of this suit is that:
- (A) Early Company will win because Late Company deliberately stole its design idea and copied it in order to make a profit.
  - (B) Early Company will win because Late Company has unfairly and tortiously interfered with its business.
  - (C) Late Company will win so long as it does not try to sell too many shoes and left a reasonable market share for Early Company.
  - (D) Late Company will win because a Early Company’s common law property right is limited to the actual shoes that it produced.

36. Alison began adversely possessing Whiteacre in 1980. At that time Brenda, the true owner of Whiteacre, had just turned ten years old. In 1986, Brenda suffered a terrible car accident. She was in a coma and unable to attend to any matters related to the property until 1996 when she miraculously recovered and regained all her faculties. The jurisdiction has adopted a 21-year statutory period for adverse possession. The age of majority in the jurisdiction is 18 years old. Assuming that she meets all other criteria for adverse possession, in what year would Alison, the adverse possessor, acquire title of Whiteacre:
- (A) 1986.
  - (B) 1996.
  - (C) 1998.
  - (D) 2001.
  - (E) 2006.

ESSAY  
(90 minutes)

Linda Landlord owns an apartment building that was built in the 1920's and consists of twenty-four units as well as a commercial storefront space that faces the street. On February 15, 2003, Linda came to you, her lawyer, with legal issues related to Apartments 1 and 2, and the commercial storefront. She recounted to you the following facts, which you can assume to be true for the purposes of this question.

Apartment 1: Linda rents Apartment 1 to Tony Tenant. Tony moved in on August 1, 2003. He performed a “walk-through” of the apartment the week before on a hot, July day. Following the walk-through Tony pronounced that he was satisfied with the apartment. He signed a 1-year lease in which he agreed to take the premises “as is.”

When October rolled around, and the weather began to get colder, Linda started to heat the apartments. The building employs an old steam heating system whereby steam is sent up to radiators in the apartments. This often results in banging noises being emitted from the radiators as the steam moves through system. The banging has been particularly bad in Apartment 1. Ever since the heat has been turned on, Tony has been experiencing loud banging throughout the night that sounds like someone is hitting his metal radiators with a large hammer. He has had great difficulty sleeping, catching only two or three hours of sleep per night. He has tried earplugs and a white noise machine, but nothing seems to help. As soon as the furnace kicks in, and the heat starts traveling again throughout the building, the racket wakes him up. The only way that he has found to avoid the noise is to turn off the heaters altogether. This renders the apartment unbearably cold.

Tony informed Linda of problem on November 1, 2003. A week later, she sent a repairperson to look at the problem. He tinkered with radiators and pronounced them “fixed.” The noise lessened a bit for a couple of days, but then came back in full force. On November 20, Tony informed Linda that the noise was still a major problem. She made no further efforts at repair. Instead, she reminded him that under the terms of his lease he had taken the apartment “as is.” She also informed him that the local housing code contains no provisions related to noise levels in an apartment.

On December 1, Tony began to withhold rent. He took no steps to move out of the apartment and is still living there. He has not paid the December, January or February rental payments. Linda wants to collect this back rent from him, and to make sure that he meets his remaining rental payments under the terms of the lease.

Apartment 2: Linda Landlord also has a problem brewing in Apartment 2. In early September 2003, she leased the apartment to Rita Renter for a one-year lease term beginning October 1, 2003 at a rent of \$1000.00 per month. Rita paid the first month’s rent in advance, and also paid a security deposit of \$500.00. The prior tenant’s one-year lease term ended

September 30, 2003. On September 15, 2003, Linda put a note under the door of Apartment 2 informing the existing tenant that his lease would expire at the end of the month and that she was not renewing it. Linda intended that Rita would take over the apartment.

When Rita arrived to take possession on October 1 she found the apartment completely filled with old furniture, boxes full of clothing and books, plants, food in the cupboard, dishes in the sink, dirty laundry on the floor – all manner of personal goods belonging to the prior tenant. The tenant himself was not there, but his bed had recently been slept in and it appeared that he had not yet moved out of the apartment. Rita was unable to move into the apartment and so could not take possession on October 1 as provided in her lease. She temporarily moved in with a friend.

Rita called Linda that same day and told her that she was unable to move in. Linda responded that the apartment belonged to Rita for the lease term beginning October 1, and that it was her responsibility to get the prior tenant out. This greatly angered Rita, who insisted that it was Linda's duty to provide her with an apartment that she could actually move into. The lease itself said nothing about whether the landlord, or the incoming tenant, would bear responsibility for removing a prior tenant who had stayed past his lease term.

By October 15 Linda had taken no action to remove the prior tenant or his belongings. On that day Rita rented another apartment in a nearby building for \$1200.00 per month in rent, or \$200.00 per month more than she was going to pay Linda. That same day, she sent Linda a letter stating that she was "terminating" the lease and that she wanted her first month's rent and security deposit back. On November 15, the prior tenant finally moved out of the apartment without paying any additional rent to Linda. Rita has not paid rent to Linda for the months of November, December, January or February 2003 and has not moved into the apartment. Linda believes that Rita is still bound by their lease and wants to collect back rent from her for these four months.

Commercial storefront: Linda also has an issue with respect to her lease of the commercial storefront that faces the street. Linda has been renting the space to Lorenzo Lessee under a five-year lease that commenced October 1, 1998. Lorenzo operates a children's book store on the premises. On October 1, 2003, Linda renewed Lorenzo's lease for a new five-year term. The lease expressly provided that any assignment or sublease of the premises would require the landlord's consent and placed no limits on the landlord's ability to withhold consent.

On January 1, 2004, Lorenzo informed Linda that he wished to assign his new five-year lease to the Socialist Party of America (SPA), an organization of which he was a member. The SPA plans to make the space into its national headquarters. The organization had been operating out of a larger office but, due to dwindling membership and financial difficulties, it has decided to move to a smaller and less expensive location. Lorenzo informed Linda that SPA would need to do some work on the premises to transform the space from a bookstore into offices. He assured Linda that SPA would perform the work in a professional way, and that the changes would not decrease the value of the premises, but she was a bit skeptical about this.

The proposed assignment has greatly upset Linda. She harbors strong political objections against socialism and does not want her property used by the SPA. She is also concerned that some of her current or prospective tenants might feel the same way and that the presence of the SPA headquarters in her building might interfere with her ability to rent her apartments. On January 25, Linda informed Lorenzo that she would not consent to the proposed assignment of the lease. Lorenzo responded that this was unfair and illegal. He threatened a lawsuit if she refused to consent to the proposed assignment to the Socialist Party of America.

*Write Linda a memo in which you explain: (1) whether Linda can successfully collect back rent from Tony Tenant; (2) whether Linda can successfully collect back rent from Rita Renter, and whether she has to return Rita's security deposit and first month's rent to her; and (3) whether Linda can legally withhold her consent to the assignment of the storefront lease to the Socialist Party of America. Assume that all the cases we read this semester are binding law in this jurisdiction.*