

FINAL EXAM
CAPITAL UNIVERSITY LAW SCHOOL
PROPERTY I -A
FALL 2004
Professor Hirsch

Professor's Instructions: *Read Carefully*

1. At the beginning of this exam, you should have the following:
 - a. This 15-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 for writing the short answer and essay portions of the exam.
 - d. A bluebook for the essay.
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 short answer section, a multiple choice section and an essay question. I recommend that you spend seventy (70) minutes on the short answer questions, thirty (30) minutes on the multiple choice, and eighty (80) 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 not grade your response correctly. Answers written on the exam packet itself will not be considered.
6. The short answer section is to be answered directly on the exam packet (this goes even for those taking the exam on computer). Write your answers, in pen, in the space provided directly after each question. In this section, you are to provide quick answers without lengthy explanations. If you feel that you absolutely need to explain your answer

and therefore need more space, write your explanation on the back of the page and identify the number of the question to which your explanation corresponds.

7. Write the answers to the essay in the colored answer book (unless you are taking this exam on a computer). There is no page limitation. However, you should attempt to draft a concise, well-organized answer. You may use additional answer books, if necessary (but again, you are encouraged to be concise, not lengthy, in your answer).
8. *At the conclusion of the exam, please insert your exam packet, scantron sheet, bluebook, scrap paper and pencil into the envelope. Then place the envelope in the box at the front of the examination room (or give it to the exam monitor if you are taking the exam on laptop). **You may not make a copy of or otherwise reproduce the exam packet.***

GOOD LUCK!

HAVE A GREAT HOLIDAY.

SHORT ANSWER
(70 Minutes)

Instructions for Short Answer Questions:

These are short answer questions. Unless instructed otherwise, you should answer these questions in a line or two in the space provided. If you feel that you absolutely need to explain your answer and therefore need more space, write your explanation on the back of the page and identify the number of the question to which the explanation corresponds.

Unless otherwise instructed, you are to identify all possessory and/or future interests created, and to identify the person(s) in whom these interests are created.

When you are asked to identify the future interests created, identify all future interests, including those created in the grantor. Space is provided for listing up to three future interests. This does not mean that you will need to identify three future interests for each question. List only those future interests that the grant creates.

Unless otherwise instructed, you should assume that:

- all fact scenarios described in these questions take place in 2004;
- all owners of property described in these questions own their property in fee simple absolute;
- all parties described are presently alive;
- and that the Rule Against Perpetuities *does not apply* to these questions.

* * *

1. Ozzie conveys Blueacre “To Ally, for so long as the garden of blue flowers from which this property derives its name is properly cared for.” What specific possessory and/or future interests are created, and in whom are they created?
 - a. Possessory Interest:
 - b. Future Interest(s):
 - i.
 - ii.
 - iii.
2. Otto devises Redacre “To my good friend Alan for life, and then to Alan’s youngest

child, Boomer.” At the time of the grant, Alan is alive and has three children: Ken, aged 6, Carson, aged 4 and Boomer, aged 2. What specific possessory and/or future interests are created, and in whom are they created?

a. Possessory Interest:

b. Future Interest(s):

i.

ii.

iii.

3. Olaf conveys Whiteacre “To Abby, for the purpose of establishing a park that will be open to all.” What specific possessory and/or future interests are created, and in whom are they created?

a. Possessory Interest:

b. Future Interest(s):

i.

ii.

iii.

4. Antoine lives in New York City. He owns a property, Purpleacre, in San Francisco. His son, Bongo, moved out to California three years ago to follow the Grateful Dead. Antoine is concerned that his son is wasting his life in this meaningless pursuit, and would like to attract him away from the life of a Dead Head. To accomplish this, he intends to offer Bongo full title to Purpleacre on the condition that Bongo stop attending Grateful Dead concerts. If Bongo goes to even one such event, Antoine wants to be able to deprive him of all rights to the property and return title to Antoine himself. What specific estate in land would you recommend Antoine convey to Bongo in order to best accomplish this purpose, and why do you choose this estate? Briefly explain your answer.

5. In 1500, in England, Lady Ashton devises Blackacre “To my nephew Blake, to have and to hold with all the rights of ownership until the end of time.” What specific possessory and/or future interests are created, and in whom are they created?
 - a. Possessory Interest:
 - b. Future Interest(s):
 - i.
 - ii.
 - iii.
6. Adrian conveys Blackacre “To Bennett, on the condition that if Bennett ever beats Adrian in fencing, then Adrian retains the right to re-enter and re-take the property.” What specific possessory and/or future interests are created, and in whom are they created?
 - a. Possessory Interest:
 - b. Future Interest(s):
 - i.
 - ii.
 - iii.
7. Ollie devises Greenacre “To Anderson for life, but if Anderson cuts down any of the pine trees that ring the property, then to Benson for life.” What specific possessory and/or future interests are created, and in whom are they created?
 - a. Possessory Interest:
 - b. Future Interest(s):
 - i.
 - ii.
 - iii.
8. Orson conveys Blueacre “To Amber when she becomes a doctor.” At the time of the

grant, Amber is a student in medical school and has not yet become a doctor. What specific possessory and/or future interests are created, and in whom are they created?

a. Possessory Interest:

b. Future Interest(s):

i.

ii.

iii.

9. Orville conveys Whiteacre "To April for life so long as she continues to exercise at least twice per week, otherwise to Betsy for life, but if Betsy takes up smoking then to Carter for life." What specific possessory and/or future interests are created, and in whom are they created?

a. Possessory Interest:

b. Future Interest(s):

i.

ii.

iii.

10. Adelaide conveys Redacre "To Bernard for life, but if he should make his principal residence outside the State of Ohio, then Adelaide retains the right to re-enter and re-take the property." At the time of the conveyance, Bernard is alive and lives in Ohio. What specific possessory and/or future interests are created, and in whom are they created?

a. Possessory Interest:

b. Future Interest(s):

i.

ii.

iii.

11. Alexandra devises Blackacre "To Billy and his heirs." At the time of the conveyance, Billy is 80 years old and has a single, surviving son named Charles. What interest does

the conveyance create in Charles?

12. Oliver conveys Greenacre “To Astrid for life.” Astrid then conveys her interest in Greenacre to Bennie. Bennie pre-deceases Astrid, leaving any remaining interest in Greenacre to his wife Clarissa. At the time of Bennie’s death what interest, if any, does Clarissa have in Greenacre?

13. Orpheus conveys Blackacre, on December 18, 2004, “To Alistaire for 10 years, then to Alistaire’s oldest child who is living on December 18, 2004, the date of this conveyance.” On the date of the conveyance (Dec. 18, 2004), Alistaire has three living children: Brandy aged 20, Cass aged 12, and Diana aged 10. What specific possessory and/or future interests are created, and in whom are they created?
 - a. Possessory Interest:
 - b. Future Interest(s):
 - i.
 - ii.
 - iii.

14. In 1500, in England, Alice devises Whiteacre “To my daughter Bernice and the heirs of her body.” What specific possessory and/or future interests are created, and in whom are they created?
 - a. Possessory Interest:
 - b. Future Interest(s):
 - i.
 - ii.
 - iii.

15. Same facts as in Question 14. Assume that Bernice dies without issue, devising all her property, real and personal, to her eldest male nephew, Carl. Who owns Whiteacre?

16. Oliver devises Greenacre “To Alison for life, and then to her eldest grandchild who is living at the time of her death.” At the time of the grant, Alison is alive, has two living children, and has one grandchild, Candice, aged 3. What specific possessory and/or future interests are created, and in whom are they created?

a. Possessory Interest:

b. Future Interest(s):

i.

ii.

iii.

17. Otto devises Blackacre “To Annie for life, or until such time as she cuts her beautiful golden hair shorter than shoulder length.” What specific possessory and/or future interests are created, and in whom are they created?

a. Possessory Interest:

b. Future Interest(s):

i.

ii.

iii.

18. Ozio conveys Whiteacre “To Anton for five years, then to my sister Benita, but if Benita does not continue to take care of our parents until their death, then to Carlos.” At the time of the conveyance, Ozio and Benita’s parents are alive and Benita is caring for them. What specific possessory and/or future interests are created, and in whom are they created?
- a. Possessory Interest:
 - b. Future Interest(s):
 - i.
 - ii.
 - iii.
19. Oscar conveys Blueacre “To Audrey for life, and then to Audrey’s children.” At the time of the conveyance, Audrey is alive and has one child, Buster, who is five years old. What specific possessory and/or future interests are created, and in whom are they created?
- a. Possessory Interest:
 - b. Future Interest(s):
 - i.
 - ii.
 - iii.
20. Andrea conveys Blackacre “To Bob.” What specific possessory and/or future interests are created, and in whom are they created?
- a. Possessory Interest:
 - b. Future Interest(s):
 - i.
 - ii.
 - iii.

MULTIPLE CHOICE

(30 Minutes)

For Questions 1-4 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 \$ 500.00 per 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:

1. 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.

2. 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; he was a trespasser.

3. **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 periodic tenancy.
 - (B) A term of years tenancy.
 - (C) A tenancy at sufferance.
 - (D) A tenancy at will.

4. **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 English Rule, how much rent would Tom likely owe to Linda:

- (A) \$6000
- (B) \$5500
- (C) \$3000
- (D) \$500
- (E) \$0

5. 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 a two weeks ago that the landlord fix it and he has not done so yet.
- (B) The toilet has become clogged and nonfunctional. Tanya requested a month ago that the landlord fix it and he has not done so yet.
- (C) 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 two months ago that the landlord clean up the mess but he has not yet done so yet.
- (D) The front door lock is broken and Tanya cannot lock the door. Tanya asked the landlord three months ago to fix it and he has not done so yet.

6. Larry Landlord owns a small, four-unit building. He lives in apartment 1, and rents out the three other apartments. Recently one of the apartments 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 apartment to a married couple that had applied for it 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
(80 Minutes)

Alan Adler went away for two weeks on a holiday to Italy. He hired Betsy Barnes, a professional pet sitter, to take care of his dog, Cuddles. Betsy was to come to Alan's townhouse, which was located in the Beacon Hill section of Boston, Massachusetts, three times a day and walk Cuddles in the back yard. She was also to feed and play with the dog.

Four days after Alan left, Betsy was running with Cuddles out in the back yard when her foot caught on something sticking up out of the ground, causing her to stumble. After regaining her balance, she looked back to see what she had tripped on. She noticed what appeared to be the corner of an old metal box sticking a half-inch out of the ground. She got a small shovel from her car and dug the box out of the ground. It was about one-foot square and, judging from the rusted metal exterior, had been buried for a long time. When she opened the box she found four glass capsules, each closed with a metal clasp that was, itself, secured with a small lock. Also in the box was a key chain with four, small keys on it, one for each locked capsule, and a note. The note read: "We four, best friends have buried these time capsules on this day, October 1, 1914. We have put some of our favorite things in them. Whoever unlocks them and looks inside can learn about us and the things we liked. Signed: Mickey, Lou, Joe and Reggie – best friends forever!"

Betsy took the box and its contents home with her and showed them to her husband, Conrad. They carefully opened each of the four time capsules using the keys that had been in the box and examined most of the items contained in them. They consisted of the types of things that young boys in 1914 might have treasured -- yo-yo's, sticks of chewing gum (decayed), bottle caps, matches, a few small toys, pictures from magazines, etc. After looking at the items, Betsy and Conrad carefully placed them back in their original capsules and locked them back up.

"What should we do with these fascinating old things," Betsy asked? "I know," said Conrad, "you have been wanting to reconnect with your four best childhood friends - Diana, Edith, Francis and Gracie. Why don't you give one of these time capsules to each of them as a symbol of friendship. You could explain about how you found them, and the note that the four boys left in the box. That would be a really neat gift." "Great idea," said Betsy, "except for Gracie. She ignored me when we were in college together. She acted as if she were better than me, or something. I will have to think long and hard before I decide to give *her* one of these."

A week later, Betsy went over to her friend Diana's house, which was in nearby Concord, Massachusetts. She brought with her one of the time capsules, with all its contents intact, and handed it to Diana along with the key to the capsule and a copy of the original note from the boys. She proceeded to tell Diana about how she had found the box with the time capsules inside and that she was now giving one to her. At first, Diana protested, saying that the capsule and its contents were too valuable. "Oh nonsense," Betsy replied, "Conrad and I looked through most of the stuff – its just a bunch of bottle caps and clippings and toys, a lot of fun but not particularly valuable. I want you to have it." Diana agreed to the gift.

After Diana's house, Betsy went to the post office. She mailed a letter, telling the story of the time capsules, to her friend Edith who now lived across the country in California. In the letter, she explained that she was giving Edith one of the time capsules, but that she could not mail it to her because it was glass and would probably break in transit. Instead, she was sending Edith the key to one of the capsules. This would encourage Edith to come to Boston to see her old friend, pick up the time capsule that was now hers, and open it with the key.

She also mailed a letter to her friend Francis, who lived on Cape Cod, an hour's drive away. The letter explained about the time capsules and that Betsy was giving one to Francis. It asked Francis to come to Betsy's home to receive the key (which was not included in the letter) and capsule.

Finally, Betsy wrote to Gracie, the friend who had so hurt her feelings years before. In the letter, Betsy explained about the time capsules and how she was giving one to each friend. However, she explained that she did not want to see Gracie and that she was not giving Gracie a capsule right away. "I will leave it in my dresser drawer," she wrote, "and upon my death it will become yours, but you will not own it while I am alive."

A few days later, Diana opened the capsule that Betsy had handed to her and removed the contents. As she was unfolding one of the old magazine pages that had been in the capsule, a small baseball card fell out. It was a Babe Ruth rookie card from 1914, his first year in the major leagues when he was a pitcher with the Boston Red Sox (professor's note: this was before the Red Sox traded him to Yankees, starting the "curse of the Bambino" which was just broken this year when the Sox won the World Series). Diana took the card to a dealer in sports memorabilia who pronounced it to be extremely rare and valued it at \$50,000.

Some weeks later, before either Edith or Francis had been able to come to visit her, Betsy got into a serious car accident and, tragically, died. In her will, she left "all her property, both real and personal," to her husband Conrad.

Soon thereafter, the Boston Globe published a human interest story about the time capsules. The article described the location at which the capsules had been found, the circumstances of the find, and the valuable Babe Ruth card that had been inside the capsule given to Diana. Conrad learned of this and asked Diana to return the capsule and all the contents, including the Babe Ruth card, but she refused. He then contacted Edith, Francis and Gracie and asked them to renounce all interest in the capsules that had been promised to them. They, too, refused. Instead, each of them asked Conrad to turn over a capsule to them. Conrad then brought suit against Diana, Edith, Francis and Gracie, requesting that the court declare Betsy's "gifts" to them invalid, and that it recognize his ownership of the capsules. (Assume, for the purposes of this question, that there are no procedural problems with this suit).

In the meantime, Alan Adler also read the Boston Globe article. He was very upset that Betsy had never told him about her find, and that she had simply taken the box and capsules home with her. He called Conrad and told him "you have no right to the box or capsules. They were found

on my property, and they rightfully belong to me.” Conrad disagreed, saying that Betsy had been the owner of the capsules because she was the one who had found the items, and that Betsy had left all her property to him (Conrad). Alan then brought suit against Conrad seeking return of all the capsules and their original contents. (Assume, for the purposes of this question, that there are no procedural problems with this suit).

*You are the law clerk to the judge who is hearing all of these claims. Write the judge a memo analyzing these claims and providing your legal conclusion as to: (1) who should win the cases that Conrad has brought against Diana, Edith, Francis and Gracie seeking to set aside the gifts (in this part, you should only be concerned with Conrad’s rights in relation to Diana, Edith, Francis and Gracie; Alan’s rights or interests, such as they are, should not enter into this part of the essay); and (2) who should win the case that Alan has brought against Conrad. Address Conrad’s suits first, before you address Alan’s, and treat the two parts as independent of each other. In analyzing these matters, you should draw on the legal doctrines and cases that we studied this semester. Be sure to identify all **issues**, explain all relevant **rules**, **apply** the rules to the facts, and reach **conclusions** (IRAC). Assume that all cases we read this semester are binding law in this jurisdiction. If two cases conflict on a given point, assume that the majority rule applies.*