

FINAL EXAM
CAPITAL UNIVERSITY LAW SCHOOL
PROPERTY I -B
FALL 2006
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.
 - d. A two-page, lined bar essay sheet for writing the bar-style essay.
 - e. A colored answer book or computer for writing the longer essay.
 - f. A piece of scrap paper.
2. *Write your exam number on the front of your envelope, the upper right hand corner of your exam packet, on your bar essay sheet, and on your answer book.*
3. *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, a bar-style essay question, and a longer essay question. I recommend that you spend seventy-five (75) minutes on the multiple choice questions, thirty (30) minutes on the bar-style essay (Essay 1), and seventy-five (75) minutes on the longer essay (Essay 2). 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 bar-style essay (Essay 1) is to be answered only on the two-page, lined, bar essay

sheet (this goes even for those taking the exam on computer). Write your answers, in pen, in the space provided. **Any answer not written on the bar essay sheet will receive zero (0) points.**

7. Write the answers to the longer essay (Essay 2) in the colored answer book (or on a computer). There is no page limitation. However, you should attempt to draft a concise, well-organized answer. If you find that you must use additional answer books, be sure to label them with the name of the course and your exam number.
8. *At the conclusion of the exam, please insert your exam packet, scantron sheet, bar essay sheet, bluebook, scrap paper and pencil 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!

HAVE A GREAT HOLIDAY

MULTIPLE CHOICE

(75 minutes)

Unless otherwise stated in the question itself, assume for all the multiple choice questions below that: (1) the Grantor (i.e. the initial Owner) owns in fee simple absolute; (2) all conveyances referred to were made in the United States in 2006; and (3) the transaction takes place in a majority rule jurisdiction. For the purposes of multiple choice questions 1-27, you should ignore any Rule Against Perpetuities issues.

1. Orin conveys Blackacre by deed that uses the following language: “To Alberta forever. I give my entire interest to Alberta.” Identify the possessory estate that Alberta receives, if any:
 - A. Life estate
 - B. Fee tail
 - C. Fee simple
 - D. Fee simple determinable
 - E. None of the above

2. Orin conveys “To Abraham for life, then to Bernard and his heirs, but if Bernard starts drinking alcohol again, then to Charlotte and her heirs.” Identify the future interest in Bernard, if any:
 - A. Shifting executory interest
 - B. Vested remainder subject to complete divestment
 - C. Contingent remainder
 - D. Vested remainder subject to open
 - E. Springing executory interest

3. Same conveyance as in Question 2. Identify the future interest in Charlotte, if any:
 - A. Shifting executory interest
 - B. Springing executory interest
 - C. Possibility of reverter
 - D. Contingent remainder
 - E. Executory limitation

4. In 1600 in England, Olivia conveys “To Andre.” Identify the possessory interest created in Andre.
 - A. Fee simple
 - B. Fee tail
 - C. Life estate
 - D. Fee simple determinable

5. Same conveyance as in Question 4. Identify the future interest(s), if any:
 - A. Right of entry
 - B. Reversion
 - C. Possibility of reverter
 - D. Vested remainder
 - E. The conveyance creates no future interest

6. Orric conveys Blackacre “To Adelaide at such time as Ohio State Buckeyes Football Team finishes the regular and bowl seasons ranked number one in the nation in the B.C.S. rankings.” Identify the possessory interest created in Adelaide, if any:
- A. Fee simple
 - B. Fee simple subject to condition precedent
 - C. Possibility of a fee simple
 - D. Life estate
 - E. None of the above
7. Same conveyance as in Question 6. Identify the future interest(s) created, if any:
- A. Contingent remainder
 - B. Shifting executory interest
 - C. Springing executory interest
 - D. Possibility of a fee simple
 - E. None of the above
8. In 1990, Ovid conveys “To Andrew for life, then to Belinda’s children.” At the time of the conveyance Belinda is alive and has two children, Carrie who is 21 and David who is 15. In 1991, Ovid dies. In 1993, Carrie dies. In 1995, Andrew dies. In 1997, Belinda has another child, Ellie. In 1999, Belinda dies. When did the class of future interest holders close?
- A. 1991
 - B. 1993
 - C. 1995
 - D. 1997
 - E. 1999
9. Which of the following are non-freehold estates?

- A. Fee simple
 - B. Life estate
 - C. Fee simple determinable
 - D. Life estate per autre vie
 - E. None of the above
10. Olivia conveys Blackacre “To Adam on the express condition that if Blackacre be used for a purpose other than as a baseball diamond then Olivia may re-enter and re-take the property.” Identify the possessory interest that Adam receives, if any:
- A. Fee simple determinable
 - B. Fee simple subject to condition subsequent
 - C. Fee simple
 - D. Life estate determinable
 - E. None of the above
11. Same conveyance as in Question 10. Identify the future interest(s), if any:
- A. Right of entry
 - B. Possibility of reverter
 - C. Reversion
 - D. Possibility of reversion
 - E. Vested remainder

12. In 1600 in England, Oscar conveys Blackacre “To Ambrose and his heirs.” At the time of the conveyance, Ambrose is alive and has three children: Harry, who is ten years old; William who is five years old; and Helen who is three years old. At the time of O’s conveyance to Ambrose, what estate in land did Harry receive?
- A. Fee simple
 - B. Fee simple by rule of primogeniture
 - C. Vested remainder subject to open
 - D. Possibility of a fee simple
 - E. None of the above
13. Ozzie conveys “To Abby for 10 years, and then to Buster if at that time he has graduated from a four-year college with a G.P.A. of 3.0 or better.” Identify the possessory interest created in Abby, if any:
- A. Life estate
 - B. Leasehold estate
 - C. Term of years
 - D. Fee simple for 10 years
 - E. None of the above
14. Same conveyance as in Question 13, Identify the future interest(s) if any:
- A. Contingent remainder and reversion
 - B. Vested remainder and possibility of reverter
 - C. Contingent remainder
 - D. Shifting executory interest
 - E. Shifting executory interest and reversion

15. Addie conveys Blackacre “To Orlando for the express purpose of building an orphanage for homeless children.” Identify the possessory interest Orlando receives, if any:
- A. Fee simple determinable
 - B. Fee simple subject to condition subsequent
 - C. Defeasible fee simple
 - D. Fee simple
 - E. Fee simple subject to complete divestment
16. Same conveyance as in Question 15. Identify the future interest(s), if any:
- A. Right of entry
 - B. Springing executory interest
 - C. Possibility of reverter
 - D. Reversion
 - E. None of the above
17. Oliver conveys “To Anna for life, and then to Bennie and his heirs.” Identify the possessory interest created in Anna, if any:
- A. Fee tail
 - B. Fee simple
 - C. Life estate subject to executory limitation
 - D. Life estate
 - E. None of the above

18. Same conveyance as in Question 17. Identify the future interest(s) created:
- A. Possibility of reverter
 - B. Shifting executory interest
 - C. Springing executory interest
 - D. Right of entry
 - E. None of the above
19. O conveys Blackacre “To Allen and the heirs of his body.” Identify the possessory interest created in Allen, if any:
- A. Fee tail
 - B. Fee simple
 - C. Life estate
 - D. Fee simple determinable
 - E. Fee simple subject to condition subsequent
20. Ophelia conveys Blackacre “To Augie for life so long as he does not get divorced, otherwise to my best friend Cindy and her heirs.” Identify the possessory interest created in Augie, if any:
- A. Life estate subject to executory limitation
 - B. Fee simple subject to executory limitation
 - C. Life estate
 - D. Life estate determinable
 - E. Life estate subject to condition subsequent

21. Same conveyance as in Question 20. Identify the future interest(s) created, if any:
- A. Shifting executory interest
 - B. Contingent remainder
 - C. Reversion
 - D. Shifting executory interest and reversion
 - E. Springing executory interest
22. Ollie conveys Blackacre “To Annie for life.” Annie then conveys her interest in Blackacre to Betty. When does Ollie (or his heirs) regain a possessory interest in Blackacre?
- A. When Betty dies?
 - B. When Annie dies?
 - C. When Annie and Betty die?
 - D. At the conclusion of the life estate “per my et per tout”
 - E. None of the above
23. Orestes conveys “To Annabelle, but if Bennett ever returns to live in the United States then to Bennett.” At the time of the conveyance, Bennett is living in France. Identify the possessory interest created in Annabelle, if any:
- A. Fee simple subject to complete divestment
 - B. Possibility of a fee simple
 - C. Fee simple subject to executory limitation
 - D. Fee simple subject to open
 - E. None of the above

24. Same conveyance as in Question 23. Identify the future interest(s), if any:
- A. Springing executory interest
 - B. Shifting executory interest
 - C. Shifting executory interest and reversion
 - D. Contingent remainder
 - E. Contingent remainder and reversion
25. Otto conveys Blackacre “To Allison for life or until such time as Blackacre is used for commercial purposes.” Identify the possessory interest that Allison receives, if any:
- A. Fee simple determinable
 - B. Life estate determinable
 - C. Life estate
 - D. Life estate subject to condition subsequent
 - E. Life estate subject to complete divestment
26. Same grant as in Question 25. Identify the future interest(s), if any:
- A. Possibility of reverter in Otto
 - B. Right of entry in Otto
 - C. Executory interest in Allison’s heirs
 - D. Possibility of reverter and reversion in Otto
 - E. Possibility of reverter and executory interest in Otto

27. Oswald conveys “To Artemis for life, then to Bubba.” Identify the future interest(s) created, if any:
- A. Vested remainder in fee simple
 - B. Vested remainder in life estate
 - C. Vested remainder in life estate and reversion
 - D. Contingent remainder and reversion
 - E. Shifting executory interest

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28. **DO consider the Rule Against Perpetuities with respect to this question:** Owen conveys Blackacre “To my aunt Anya for life, and then to the first of my children who publishes a book.” At the time of the conveyance, Owen has two children, Avery who is 12 and Barb who is 10, neither of whom has yet published a book. Which of the following most accurately describes the status of this grant under the Rule Against Perpetuities:
- A. The grant is not subject to the Rule Against Perpetuities (RAP)
 - B. The grant is valid under the RAP because Owen is a validating life
 - C. The grant is valid under the RAP because both Avery and Barb are validating lives
 - D. The grant is valid under the RAP because the first child of Owen to publish a book is a validating life
 - E. The grant is invalid under the RAP

ESSAY 1
(30 Minutes)

Tommy Tenant wanted to open a record store on Main Street to be known as “Vintage Vinyl”. He signed a lease with Loretta Landlord in which he agreed to rent storefront retail space that she owned on Main Street on a “year-to-year” basis beginning January 1, 2006. The lease provided for monthly rental payments of \$1000. It further stated that Tenant “must obtain the written consent of Landlord before subleasing or assigning Tenant’s leasehold interest in the premises.” The lease contained no express limits on Landlord’s right to withhold this consent.

The vintage record business did not do well and Tommy found himself losing money. In early September, 2006, Arnold Assignee approached Tommy Tenant and offered to take over the lease so that he could open a DVD and video movie rental store on the premises. He offered to pay Tommy \$1500 per month for the right to use the storefront space from December 31, 2006 to December 31, 2007. Arnold demonstrated to Tommy that the space could be converted from a record to a DVD/video store without any significant remodeling. He also provided bank records that showed he had the financial means to pay the \$1500 monthly rental amount.

On September 15, 2006, Tommy wrote to Loretta Landlord requesting permission to assign the balance of his lease to Arnold Assignee. He shared with Loretta the information that Arnold had provided about his sound finances and about the ease of converting the store. Loretta called Tommy several days later to say that she would only consent to the assignment if Tommy paid her a “premium” of \$3000. Tommy refused to pay the premium. He told Loretta that she had no right to withhold her consent to the assignment.

On October 1, 2006, Tommy received a letter from Loretta’s lawyer stating that Loretta would not consent to the assignment. The letter further informed Tommy that Loretta was terminating her lease arrangement with him. It requested that Tommy vacate the premises by December 31, 2006.

Tommy has filed suit seeking a judicial declaration that: (1) he is entitled to remain on the premises through December 31, 2007, and (2) that he has a legal right to assign his remaining leasehold interest to Arnold Assignee without paying the premium to Loretta. *Write an essay in which you explain whether Tommy is likely to win this suit. Be sure to write in IRAC format. For the purposes of this question, you may assume that all cases we read this semester are binding law in the jurisdiction. **You must write your answer on the two-page bar essay sheet that is included in your packet. Answers written in a bluebook or on a computer will receive zero (0) points.***

ESSAY 2 (75 Minutes)

In 1970, Chuckles Norris and his wife Giggles purchased a working farm in a rural area in the fictional State of Bliss near the town of Happiness. The couple farmed the land, raising soybeans and corn. In 1972, they had a son, Chuckles Norris, Jr. (“Junior”), who grew up on the farm. In 1980, Hughie Grant (no relation to the actor by that name), an Englishman by birth, moved into an old mansion in the town of Happiness. The mansion came with 30 acres of undeveloped forest land that was located in an area of both forests and farmland and was adjacent to the Norris farm. Hughie purchased this parcel which he (modestly) named Grant’s Forest. He occasionally brought friends there and went for walks but otherwise did not use the land. Once, a timber company offered to pay Hughie for the right to remove timber from his property, as it was doing on some other forested lands in the area, but he turned the company down.

In the fall, the Norris Family liked to go deer hunting together. In September 1987, Junior asked his parents whether it would be possible for the family to go hunting in Grant’s Forest. Chuckles was an acquaintance of Hughie’s, having shared a few friendly beers with him at the local bar, and decided to go into town and ask Hughie for permission. When he arrived at Hughie’s home he found a notice taped to the door stating that, while Hughie still owned the mansion (and Grant’s Forest), he had moved back to England to live. The notice provided a mailing address in London but Chuckles did not write it down. Chuckles figured that Hughie would not be using the forest for hunting and so would not mind if the Norris Family hunted there.

That fall, the Norris Family went hunting in Grant’s Forest for the first time. The woods were beautiful and the game more plentiful than the Family had ever experienced. They decided to do all their hunting there and visited Grant’s Forest repeatedly during the 6-week hunting season. The following year, the Norris Family again hunted in Grant’s Forest and had a wonderful time. They began to go back year after year, hunting in Grant’s Forest at least 6 times each fall during the six-week hunting season, although they did not use the land during the non-hunting season. The family always hunted together and usually invited a group of friends to join them (although never the same friend twice in a row).

Their hunting expeditions covered the entire 30-acre lot. Over time, they built hunting platforms in the trees of Grant’s Forest and, during the season, erected temporary hunting blinds (structures covered in burlap in which they could hide and stay warm while waiting for game). They always hunted in camouflage so as to reduce their chances of being seen by deer and other game. They established a meeting spot with logs for seating and a big metal fire ring where they would converge at the end of the day over a warm fire. As the years passed and Hughie Grant remained in England, the Norris Family began to feel that Grant’s Forest was their own, especially since it was right next to their farm. They never saw any other hunters there. The only encounters they had were with the occasional hiker using the backpack trail that ran through Grant’s Forest and through many of the other forested properties in the area. The Family tried to

be aware of these hikers so as not to injure them while hunting, but otherwise did nothing to prevent them from crossing the property. The Norris Family continued to hunt in the Forest each fall.

As it turned out, Hughie Grant had gotten married back in England and had settled down in London. In 1988, he had a daughter, Gwyneth. While he retained his home and forest land in the State of Bliss, and continued to pay taxes on them, he never again returned to see them. In 2000, Hughie and his wife died in auto accident, leaving a legally valid will that devised all their property to their daughter Gwyneth. In 2006, having reached age 18, Gwyneth decided to travel to Happiness to see the mansion and forest land that her father had left to her and had told her so much about.

She was shocked by what she found. While the mansion was intact and largely as her father had described it to her, Grant's Forest was not. Instead, someone had built a dirt road leading into the Forest. Gwyneth followed the road and, at the end, found a building site on which the foundation for a small house had been laid. As Gwyneth stood looking at the site, Junior drove up. He told how the Norris Family had been hunting on the land since 1987 and had tried to ask her father for permission. Over time, the Family had come to see the land as their own. He explained that, just a year before, the Family had decided that, in addition to hunting on the land, they would build a small cabin on the property for Junior to live in. That was the reason for the road and building activity. Gwyneth said she was sure that her father would have given permission to hunt on the land, had he been asked. But building on it was unacceptable. "Get off my property at once," she exclaimed, "and never enter it again, you or your family!" Junior got back into his truck and drove away.

Three weeks later Chuckles, Giggles and Junior filed a quiet title suit against Gwyneth Grant in which they sought to establish their ownership of all 30 acres of Grant's Forest. Gwyneth has defended on the ground that she is the owner of the Forest, and has brought a counter-claim for ejectment. The State of Bliss has an 15-year statute of limitations for ejectment actions. *Who is likely to win this case, and why? Be sure to consider all arguments and counter-arguments, and then to reach a firm conclusion. Write your answer in IRAC format. With respect to legal doctrine, assume that majority rules apply in the State of Bliss.*