

2008/wano

Part One - Suggested Time: 2 ½ Hours

Questions 1 through 5 are based on the following fact pattern:

On Friday, November 14, 2008, Megan Berns was driving her daughter to a preschool class at the People's Pentecostal Church in Holyfield, Delaware, where she was scheduled to perform excerpts from her role as Clara in the Central Delaware Dance Academy's performance of the Nutcracker Ballet. As Megan neared the church on Route 13, a two-lane highway with a posted speed limit of 40 miles per hour, she came upon a fallen tree that blocked the roadway entirely. Just before the fallen tree, on the right, was a driveway leading to the home of David and Debra Doan. In an attempt to turn around so she could reroute her trip and get her daughter to the church on time, Megan turned into the driveway and pulled up toward a parked car at the back of the driveway. Unbeknownst to Megan, the parked car was occupied by Debra Doan, who had just entered the vehicle and was in the process of starting it. After Megan's car was fully into the Doan driveway, and in front of Debra's parked automobile, Megan put the automobile into reverse and started to back out of the driveway. Just as the rear end of her car was about to enter the street, however, Megan stopped fully to check for traffic. Through her rear view mirror, Debra saw Megan pull in, stop, and start to back out. At that point, Debra put her car into reverse without looking again into the rearview mirror, and not realizing that Megan had stopped near the end of the driveway. The rear end of the Doan automobile collided with the front end of the Berns automobile, and Megan and her daughter were injured. The accident occurred entirely on the Doan property.

Berns sued Doan, contending that she negligently caused the collision that resulted in injuries to her daughter and her. A Delaware statute states that property owners owe a duty of reasonable care (they are liable for ordinary negligence) to all those who are lawfully on their property, but are only liable for willful or wanton conduct to trespassers. Doan claims that Berns and her daughter were trespassers, that there is no evidence that she engaged in willful or wanton conduct, and that the case should be dismissed on summary judgment.

Question 1 is on the next page.

1. Please state the definition of trespass.

2. Apply the elements to determine whether Megan Berns and her daughter were trespassers.

3. Which of the following exceptions provides the Berns's best argument that they were not trespassers? (Circle only one.)

Human Dignity
(State v. Shack)

Necessity/
Emergency

Hot Pursuit of
Property

Blocked Public
Way

Attractive
Nuisance

Question 4 is on the next page.

4. State the elements of, or describe, the exception that you circle above.

5. Briefly apply those elements to the facts.

Questions 6 through 10 are based on the following fact pattern:

Thanksgiving Day 2008 was ideal for hunters in southern Alaska. A soft blanket of freshly accumulated white snow covering the ground readily revealed the tracks left behind by wild animals as they scrambled for safety from their pursuers, and a low-atmospheric ceiling muted the cacophony of forest noises during open hunting season. Sarah Palin, a resident of Wasilla, knew

the neighboring forest well and, faced with such excellent conditions, decided to try her luck at fetching a moose that afternoon.

Ambling along a snowmobile trail, with her Elite 308 Model 99C rifle, with lever action and a Weaver 4-power scope, she noticed two moose tracks in the snow. Continuing to follow the moose tracks along the trail, she had walked only about one hundred yards when she also came upon the tracks of a human. For a while, the human's tracks joined the moose tracks, but soon the moose tracks diverged into the woods. It was unclear to Palin whether the moose tracks and human tracks were formed at the same time, but she doubted it. Palin left the snowmobile trail to follow the moose tracks into the woods.

The moose tracks looped through the woods for about a mile and, when Palin got within about 400 feet of returning to the snowmobile trail, she saw the moose. It was a beautiful, fully-antlered, mature male that caused Palin to mutter softly, "Do I want to bag me a mavericky, big old moose like you? You betcha. I'm gonna' hang those big old antlers above the fireplace in my family room, and feed my family moose stew for weeks!" Palin raised her Elite 308 Model 99C rifle and sighted the moose with the Weaver 4-power scope. She pulled the trigger and, with the crack of her gun and a puff of smoke, the moose dropped. Before she could repair to the fallen beast in order to gut it, however, the moose rose and galloped off toward the snowmobile trail. Palin followed in hot pursuit. Soon she was back on the snowmobile trail, directed ahead by the moose tracks and a trail of blood. Palin doggedly pressed on for over a mile. Then she saw the moose again; it obviously was slowing down. Soon, the moose was walking and Palin really started to gain. She was within 100 yards of the moose and, just as the moose was beginning an attempt to lie down in the snow, raised her gun and methodically sighted it in.

Before Palin could shoot, however, she heard a shot ring out from the other side of the moose. Immediately, the moose collapsed, completed its descent to the ground, and rolled over, dead. Palin started running toward the moose but saw that a man was also running toward it with his rifle, from the other side. The man got there first. As Palin approached she looked intently at the man and, in horror, realized it was him, Joe Biden. All Palin could utter was, "Say it ain't so, Joe." Biden bellowed, "It sure is Governor. I just bagged me a moose. Man, it's been a good year for me! The only thing missing is that I couldn't share this moment with my good friend, John

McCain. Although we disagree vehemently on politics, and I believe he lacks the temperament to be an effective President, I love that man. We're like brothers."

Palin retorted, "Not so fast Joe. That's my moose, gosh darn it, and you're not gettin' it. Huntin' like that just isn't right. It's not the way we do it in Alaska." She fired three shots into the air. Within seconds a massive snowmobile powered onto the scene, hauling a large flat-bed sled. Todd Palin and his son, Track, jumped off the snowmobile, looking quite sharp in their racing jumpsuits. They pulled off their racing helmets and rolled the dead moose onto the flat-bed sled before Biden could even react. As they sped off with Sarah and the moose, Biden shouted, "I'm going to tell my good friend, John McCain, about this, Governor. As you know, we're great friends. In fact, I love him like a brother. And, you know what he's like when he gets angry." Palin, however, just rode off into the sunset, never looking back. She felt utter joy; it was just her, her men and her moose carcass.

Biden has sued Palin in the Alaska Superior Court, claiming he was the owner of the moose, that Palin converted it, and demanding compensation for the value of the moose.

6. What rule of law will apply in determining who owned the moose?

7. Please state the rule in its entirety.

Question 8 is on the next page.

8. Based *strictly* on the facts given above, and drawing no inferences from them in favor of either party, who has the best chance of prevailing under the rule of law you stated above? (Circle only one.)

Sarah Palin

Joe Biden

9. Please explain your reasoning for your answer to the prior question.

10. Sarah Palin has called noted Alaska veterinarian, Bull Winkler, DVM, to testify on her behalf. Dr. Winkler is an expert on the Alaskan moose, has been practicing large-animal veterinary medicine for more than 30 years, has published numerous articles on the subject, and claims to have done a full autopsy on the moose in question before Governor Palin gutted the animal. What expert opinion could Dr. Winkler give which, if uncontroverted, would warrant a finding in favor of Governor Palin?

Questions 11 through 26 are based on the following fact pattern:

Gary Glitzen, an only child, became an orphan in 1984 when his wealthy parents, Gerry and Glenda, were killed in an avalanche while skiing in the French Alps. Gary was 15 years old at the time, and was Gary and Glenda's sole heir. Among the various properties his parents left him at their death was a 1 acre waterfront tract of land with a small, cabin on Lake Chargoggagogmanchauggagoggchaubunagungamaugg (usually called "Webster Lake") in Webster, Massachusetts. The locals call the Glitzen property "Fishacre" because of its proximity to some of the finest fishing grounds on Webster Lake. Gerry had inherited Fishacre, and used it often prior to Gary's birth. However, Fishacre fell into disuse upon Gary's birth. Shortly thereafter, the property became overgrown, and the cabin slowly became rickety and in need of repair. Gary had never been to Fishacre prior to his parents' death, had never heard about it, and had no idea that he had inherited the property after his parents had died.

Attorney Primo Properi, one of the most prominent estate planning and estate administration attorneys in Massachusetts, was named the executor of Gerry and Glenda's estate. Primo is exceptionally ethical and competent, unlike his identical twin brother, Secundo Properi, who is also an attorney. Although Secundo is a known scamp in the legal community, he is fun-loving, fun to be with, and generally well-liked. Primo thinks the world of his brother, who often hangs out at Primo's office.

After Gerry and Glenda's death, Primo had Faith, his legal assistant, go to the Glitzens' safe deposit box to retrieve all the personal property and deeds to the various pieces of real estate the Glitzens had owned. Faith placed all the deeds into a box, brought the box back to Primo's office, and placed it on Primo's desk who, at the time, was attending a continuing education seminar in Palm Springs.

While Primo was at the seminar, Secundo came into his office and started to review the deeds. Realizing that no one would think twice about Fishacre, considering all the other valuable and impressive property that Gerry and Glenda owned, Secundo saw an opportunity when he came upon the Fishacre deed. He decided to take the deed, sell the property, and never tell Primo about it.

On June 23, 1985 Secundo forged Primo's name to a deed to Fishacre and, purportedly on behalf of the Glitzen estate,

delivered it to Alvin Angler, who paid \$125,000. Alvin moved in immediately and began to make improvements to the cabin.

Because the cabin was not winterized, Alvin was not able to live at Fishacre during the winter months of 1985-1986, 1986-1987, 1987-1988 and 1988-1989. But Alvin did live in and continue to improve Fishacre during all other months of the year. Alvin did finish winterizing the cabin in April 1989, and lived there year-round after at that time. Alvin also did substantial work to the landscaping on Fishacre. By 1990, he had cleared all the overgrowth on half of the one-acre lot, and continued to use and care for the cleared half acre throughout his time there. The remaining half acre consisted of woods, which was not used by anyone.

In 1985, Alvin built a dock on Webster Lake and thereafter fished it regularly, except when it was frozen. He erected a mail box, had the mail and a newspaper delivered daily, built a driveway visible from the road, shoveled that driveway in the winter, came and went regularly, paid the taxes on Fishacre, and became friendly with several of the neighbors. He continued to make improvements to the camp. As to the Glitzen estate, Secundo was right; no one even realized that Fishacre should have been part of the estate.

Alvin lived on Fishacre until he died in 1996, with a valid will leaving Fishacre "to my best fishing buddy, Colin Carp." Colin used Fishacre much the same way as Alvin did until he sold it by deed to Delvin Dogfish for \$225,000 in 2003. Delvin has continued to live on Fishacre until presently, and has used it in the same way as both Alvin and Colin.

In 1986, when Gary was 17 years old, he was injured in an automobile accident, and went into a coma for the next three years. Gary came out of the coma in 1989, when he was 20, and has been fine since.

Last month, November 2008, Gary ran into his Uncle Charlie, who he had not seen since his parents' death. Uncle Charlie was Gary's father's brother. Charlie told Gary all about the fun times he and Gary's father had spent on Fishacre, and how much they enjoyed fishing together. Gary immediately wondered whatever happened to Fishacre. After he and Primo looked into it, they figured the whole thing out with Secundo's forged deed.

It is December 2008, and Gary has just brought an eviction action against Delvin.

11. What title did Secundo give to Alvin in 1985 when he delivered the forged deed?

12. In the space below, please explain your answer to the prior question.

13. What was the status of Alvin when he moved onto Fishacre in 1985?

14. Please state the rule of law you employed in coming to your conclusion in your answer to the prior question.

Question 15 is on the next page.

15. Apply the facts to show how the elements you stated in the rule above were satisfied.

16. Please list the five elements of adverse possession.

1. _____
2. _____
3. _____
4. _____
5. _____

17. Please describe each of the elements you listed above in your answer to the prior question.

1.

18. In the space below, apply each of the elements to the facts to determine whether each element is met. Don't forget to state whether each element is satisfied.

1. _____

2. _____

3. _____

4. _____

5. _____

19. In the space below, please explain the seasonal use doctrine.

Question 20 is on the next page.

Wilma, the state in which they lived, as well as a vast majority of states in the United States, did not recognize 24 hour divorces from the Caribbean island they had gone to. No state in the United States allows anyone to marry another if he or she is already married to someone else.

Harry contacted Lola almost immediately after he returned. The two dated for about two weeks, then flew off to the "Elvis Pressley Love Chapel" in Las Vegas where they joined in a wedding ceremony presided over by a minister clad as "The King." The next day they flew back to their home in "Multistate."

A short time later, Harry and Lola decided to purchase a home. They found "Blissacre," made a down payment, granted a mortgage to Bank, and took a deed granting title to: "Harry Holdonnow and Lola Holdonnow, husband and wife, as tenants by the entirety."

27. Please state the concurrent estate and fractional interest that Harry and Lola obtained in Blissacre.

28. In the space provided below, please fully explain why you chose the concurrent estate and fractional interest stated above.

About a year after buying Blissacre, Harry and Lola found that they were having trouble making their mortgage payments to Bank. At that point they decided to have Lola's sister, Liza, and her husband, Butch, take joint title with them, and help them lower their monthly payments. Liza and Butch, matched the downpayment Lola and Harry had put down, put their names on a refinance mortgage (with Lola and Harry), and took title in a new deed from Harry and Lola that read as follows: to "Harry Holdonnow and Lola Holdonnow, husband and wife, as tenants by the entirety, who as a couple own as tenants in common with another couple, Butch Blusterer and Liza Blusterer, who as to each other are husband and wife, as tenants by the entirety."

29. After this grant, please state the concurrent estates and fractional interests owned by Harry and Lola and Butch and Liza.

Question 30 is on the next page.

32. Under the purchase and sale agreement, what present estate, if any, did Harry agree to give to Salvatore?

Forty-five days after the purchase and sale agreement was signed, Harry and Mitzie appeared at the closing, with Mitzie passing herself off as Lola. Harry delivered to Salvatore a general warranty deed signed by Harry and Mitzie (which forged Lola's name), and which granted to Salvatore "the entire right, title and interest of Harry Holdonnow and Lola Holdonnow in said Blissacre." Harry and Mitzie took the money directly from the closing, got on a plane, flew to a Caribbean island, and commenced spending it at the chemin de fer tables in the local casinos.

33. In the space below, please fully explain what interest Salvatore obtained as a result of accepting the deed from Harry.

Then, a week after Harry disappeared, Liza was hit and killed by an automobile while she was crossing the street. She had a will which, surprisingly, left her entire interest in Blissacre to Harry. It seems that, unbeknownst to anyone but themselves, Liza and Harry had been carrying on a secret affair.

Harry's return, Salvatore brought a two-count complaint against Harry.

38. The first cause of action in the two-count complaint was for breach of the covenant to convey marketable title contained in the purchase and sale agreement. Who should prevail in that cause of action? (Circle only one.)

SALVATORE

HARRY

39. In the space provided below, please fully explain why you chose your answer to the prior question.

40. If you represented Salvatore, what cause of action would the second count articulate?

Question 41 is on the next page.

Questions 43 through 48 are based on the following fact pattern:

In 1999, Oliver, the owner of Blackacre in fee simple absolute, conveyed by deed as follows: "to my daughter, Alice, for her life, then to the children of Alice for their lives, and then to the grandchildren of Alice who survive their parents. At the time of the grant, Alice was 62 years old, unmarried, and had a 26 year old son named Jason.

43. What was the state of the title *immediately* after Oliver's grant, *not considering* application of the common law rule against perpetuities? (Give fully developed interests such as "vested remainder subject to complete divestment." Partial answers, such as "vested remainder," or "future interest," are incorrect.)

Oliver: _____

Alice: _____

Alice's Children: _____

Alice's Grandkids: _____

44. What was the state of the title *immediately* after Oliver's grant, *specifically considering* application of the common law rule against perpetuities? (Give fully developed interests such as "vested remainder subject to complete divestment." Partial answers, such as "vested remainder," or "future interest," are incorrect.)

Oliver: _____

Alice: _____

Alice's Children: _____

Alice's Grandkids: _____

45. Things change. In 2005, Alice died. Oliver was alive at the time. Alice's only surviving child was Jason, then 32 years old. Jason had a three year-old daughter named Bella. What was the state of the title *immediately* after Alice's death, *specifically considering* application of the common law rule against perpetuities? (Give fully developed interests such as "vested remainder subject to complete divestment." Partial answers, such as "vested remainder," or "future interest," are incorrect.)

Oliver: _____

Jason: _____

Alice's Grandkids: _____

46. Things change, again. In 2007, Jason was killed in a hunting accident. His only child was Bella, who was five years old at the time. What was the state of the title *immediately* after Jason's death, *specifically considering* application of the common law rule against perpetuities? (Give fully developed interests such as "vested remainder subject to complete divestment." Partial answers, such as "vested remainder," or "future interest," are incorrect.)

Oliver: _____

Bella: _____

Question 47 is on the next page.

47. Things change, one final time. In 2009, Oliver died with a will leaving "my entire right, title and interest in Blackacre to my grandson, Jason, except that if he shall predecease me, then Jason's children shall take in equal shares, by right of representation, the share Jason would have." What was the state of the title *immediately* after Oliver's death, *specifically considering* application of the common law rule against perpetuities? (Give fully developed interests such as "vested remainder subject to complete divestment." Partial answers, such as "vested remainder," or "future interest," are incorrect.)

48. Considering the original grant and all the "things that changed," what is ironic about the end result?

Questions 49 through 52 are based on the following fact pattern:

Figaro owned Mozartacre, a vacant lot, in fee simple absolute. In 1990, in consideration of \$5,000, he granted an underground easement to the City of Salzburg which permitted Salzburg to construct, maintain and repair a water and sewer line over a 30-foot wide path of land down the middle of Mozartacre. The scope of the easement was such that nothing could be built upon it, because that would be deemed an interference with Salzburg's rights. Salzburg immediately recorded the easement.

In 2003, Figaro sold Mozartacre to Susanna for \$125,000. The general warranty deed that Figaro delivered said nothing about the easement, and Susanna recorded the deed immediately. It included the covenant against encumbrances, the covenant of

quiet enjoyment, and the covenant of further assurances. In 2005, Susanna sold Mozartacre to Bartolo for \$135,000. The special warranty deed that Susanna delivered said nothing about the easement, and Bartolo recorded the deed immediately. It included the covenant against encumbrances, the covenant of quiet enjoyment, and the covenant of further assurances.

In 2007, Bartolo entered into a purchase and sale agreement with Cherubino in which Bartolo agreed to deliver marketable title to Cherubino within 60 days. Cherubino caused a title search to be conducted, found the easement granted to Salzburg, and has refused to take title due to a lack of marketable title.

Unable to sell Mozartacre because of its unmarketable title, Bartolo has brought an action for breach of deed covenants against Susanna and Figaro.

49. Will Bartolo be able to recover at all against Susanna for breaching either the covenant against encumbrances or the covenant of quiet enjoyment? (Circle only one.)

YES NO

50. Briefly state the legal grounds for your answer to the prior question.

promissory note, secured by a mortgage, giving Mingus National Bank an interest in Birdland. Mingus National Bank, which had no actual notice of the mortgage to Coltrane Savings Bank, recorded its mortgage immediately. In 2004, Thelonious gifted Birdland by deed for no consideration to his favorite niece, Billie. Thelonious did not disclose either deed to Billie, who immediately recorded her deed. In 2005, Coltrane Savings Bank recorded its mortgage. In 2007, Billie sold Birdland by valid deed to Miles for \$375,000, its fair market value. Miles had no actual notice of either of the mortgages mentioned above. Jazz has a recording statute stating:

No interest in real property is superior to a subsequent interest for substantial value, and taken without notice, unless it is first recorded at the county where the property is located.

After the sale to Miles, no one has made any mortgage payments to either the Coltrane Savings Bank or the Mingus National Bank.

54. What kind of recording statute does Jazz have?

55. In an action between Miles and Mingus National Bank, in which Miles claims he is not subject to that mortgage, who will win? (Circle only one.)

MILES

MINGUS NATIONAL BANK

56. In the space provided below, give your reasoning for your prior answer.

57. In an action between Miles and Coltrane Savings Bank, in which Miles claims he is not subject to that mortgage, who will win? (Circle only one.)

MILES

MINGUS NATIONAL BANK

58. In the space provided below, give your reasoning for your prior answer.

Question 59 is based on the following fact pattern:

Othello, who owned Globetheatreacre in fee simple absolute, borrowed \$300,000 from Desdemona, as evidenced by a signed promissory note and mortgage granting an interest in Globetheatreacre. Desdemona immediately recorded the mortgage.

Then, Othello sold Globetheatreacre to Cassio for \$25,000, subject to the \$300,000 mortgage to Desdemona. Cassio made all mortgage payments while he owned Globetheatreacre.

Then, Cassio sold Globetheatreacre to Iago for \$35,000 and Iago's promise to assume the mortgage obligations due on the Desdemona mortgage.

Two years later, Iago's financial business failed because of the consistently bad advice he had given his clients. He abandoned Globetheatreacre and has made no mortgage payments in some time. Desdemona foreclosed her mortgage and was left with a \$75,000 deficiency. She has sued Othello, Cassio and Iago on the deficiency.

Question 59 is on the next page.

59. As to each of the defendants, please circle whether Desdemona will or will not recover and then, in the space below the answer you circle, briefly state the legal grounds for your answer.

Othello: SHE **WILL** RECOVER SHE **WILL NOT** RECOVER

Grounds: _____

Cassio: SHE **WILL** RECOVER SHE **WILL NOT** RECOVER

Grounds: _____

Iago: SHE **WILL** RECOVER SHE **WILL NOT** RECOVER

Grounds: _____

Questions 60 through 62 are based on the following fact pattern:

Jay Gatsby, a mysterious man of questionable character, who nevertheless was an ardent environmentalist, owned WestEggAcre, an undeveloped parcel of land in the State of Fitzgerald. Fearing that a crazed George Wilson was stalking him, and might cause his untimely end, Gatsby conveyed his beloved WestEggAcre

to Nick Carraway but placed in the deed a restriction that stated:

By accepting this deed, the grantee, and his heirs, devisees, assigns, and grantees hereby agrees to use WestEggAcre for passive recreational purposes only, including but not limited to hiking, camping, bird watching, and the like, but in no event shall the property be developed or improved upon.

Carraway immediately recorded the deed. Unfortunately, Gatsby was correct about Wilson. Shortly after the conveyance to Carraway, Wilson shot him while he was floating in his pool.

For five years, Carraway maintained WestEggAcre exactly as required in the deed, but then he moved back to the Midwest to live permanently. One year after Nick moved back to the Midwest, Daisy Buchanan moved onto WestEggAcre and, meeting all the elements of adverse possession, lived there for more than 20 years. Thereafter, Daisy went to a court of competent jurisdiction and obtained a declaratory judgment that she had become the owner of WestEggAcre by adverse possession. She properly recorded the judgment at the registry of deeds, within the chain of title.

Five years later, Daisy sold WestEggAcre to Meyer Wolfsheim for \$2.5 million. Two years after he bought the property, Wolfsheim sold WestEggAcre to Tom Buchanan for \$3 million. Tom Buchanan has started to construct a "luxury hunting lodge" with 250 rooms, which he believes will attract large numbers of patrons from New York City.

The executor of Gatsby's estate, Mr. Gatz, has brought an action to enforce the restriction in the deed from Gatsby to Carraway and to enjoin Buchanan's building efforts.

Question 60 is on the next page.

60. State and describe the three elements necessary to create a covenant enforceable in equity.

1. _____

2. _____

3. _____

Question 61 is on the next page.

61. In the space provided below, please state whether the Gatsby estate will prevail in its action and the reasons for your conclusion.

Question 62 is on the next page.

September 2001, Opie delivered the deed for the front two acres to Byer. The deed contained the following provision:

Grantor reserves to himself, his heirs, successors and assigns a right of way over the lands conveyed hereby to Grantee for vehicular and pedestrian traffic between Forest Avenue and the remaining lands of Grantor.

In 2003, Barney contracted to sell his front parcel to Gomer. Barney approached Opie and requested Opie to designate the location of his right of way. Opie refused to do so and demanded instead that Barney purchase his remaining property at a price that was then twice its fair market value. Barney refused and conveyed his parcel to Gomer by a special warranty deed containing the covenant against encumbrances and the covenant of quiet enjoyment. Barney said nothing to Gomer about the right of way.

In 2004, Gomer erected a fence around the perimeter of his property. Recently, Opie decided to develop the back two acres by erecting an office building, but Gomer refuses to recognize any rights of Opie to cross over his land to reach Forest Avenue.

Please discuss the rights, duties and liabilities of the parties.

END OF EXAM

ANSWERS TO PART ONE

1. (4) √ Intentionally going onto √ someone else's property √ without permission.
√ The intent is to go where you are going, not to be a trespasser.
2. (3) √ Megan intended to go where she was going.. √ The driveway was someone else's property: the Doans'. √ There is no evidence that the Doans gave permission.
3. (1) Blocked Public Way
4. (3) √ A person is allowed to go over someone else's land to continue on his or her journey √ if the public road is blocked or impassible. Nevertheless, the intruder is √ liable for the cost of repairing any damage he creates in passing through.
5. (6) √ The public way was impassible. √ Megan was allowed to go on the Doan property to continue the trip. √ One might argue that turning around was not continuing the trip. √ On the other hand, rerouting was a continuation of the trip. √ Although the rule does not precisely state so, √ a good argument exists that Megan was taking the chance of going onto someone else's property and √ should not be able to collect for injuries sustained during an exception to the rule of trespass.
6. (1) √ The capture/ownership of wild animals doctrine.
7. (4) √ One must deprive a wild animal of its natural liberty in order to own it. This can happen in three ways: √ killing it; √ mortally wounding it; and √ physically controlling it in a trap, net house, barn, corral or the like.
8. (1) Joe Biden
9. (3) The strongest conclusion to draw from the facts is that √ Joe Biden killed the moose. As stated in the facts, √there is insufficient evidence to support a claim that Palin's shot mortally wounded the moose. √ She will need some type of expert testimony or other evidence to support the claim.
10. (2) √ That Palin's shot mortally wounded the moose; √ it would have died even if no one shot it after Palin's first shot.
11. (1) None.
12. (4) √ Brooklyn Bridge Rule; √ you can't sell what you don't own; √ the forged Signature was a nullity; √ the deed was invalid.
13. (1) √ Trespasser

14. (3) ✓ Intentionally going onto ✓ someone else's property ✓ without permission.
15. (3) Alvin went onto ✓ someone else's property (Gary's) ✓ without Gary's or Primo's Permission, and he ✓ intended to go there.
16. (5)
 ✓ Open & Notorious
 ✓ Hostile
 ✓ Exclusive
 ✓ Actual
 ✓ Continuous
17. (9)
 1. Open & Notorious: ✓ Holding yourself out to the community as the ✓ actual owner of the land.
 2. Hostile: ✓ Trespassing or ✓ otherwise acting adversely to the owner's property rights.
 3. Exclusive: ✓ No use by the owner.
 4. Actual: ✓ Physical presence. ✓ You only get what you possess.
 5. Continuous: ✓ Meet all other criteria for ✓ the statutory period (20 years).
18. (13)
 1. Open & Notorious: ✓ Satisfied. ✓ Landscaping, dock, mail box, newspaper delivery, fishing, driveway, paying taxes are ✓ all acts that actual owners of real estate customarily do.
 2. Hostile: ✓ Satisfied. ✓ Alvin, Colin and Devlin were all trespassers
 3. Exclusive: ✓ Satisfied. No facts suggest that ✓ Gary used Fishacre until the ✓ eviction action in 2008.
 4. Actual: ✓ Satisfied. Alvin, Colin and Devlin were all ✓ physically using the property.
 5. Continuous: ✓ Satisfied. ✓ All of the elements were met ✓ between 1985 and 2008
19. (5) If a particular property is ✓ appropriate for seasonal use, ✓ one does not have to possess the property year-round to make out a ✓ continuous possession. ✓ You need only use the property seasonally and ✓ it will be treated as if you were there continuously.
20. (6) ✓ From 1985 to 1989, ✓ Fishacre was only usable as a seasonal residence. Since ✓ Alvin resided there during the appropriate season, he will be treated as a ✓ continuous possessor during that time. He will be able to ✓ add those four years onto the other 19 years to ✓ exceed the 20 year statute of limitations.

21. (5) √ Successive Adverse possessors are allowed to √ add their time together, or tack, if √ there is privity of title, which requires a √ formal instrument (deed or will) or √ legally-recognized transfer device (intestate distribution) between them.
22. (5) Alvin √ devised to Colin by “valid will” so there was √ privity of title between them. Colin √ conveyed to Devlin by deed so there was √ privity of title between them. √ Together, Alvin, Colin & Devlin adversely possessed continuously from 1985 to 2008, some 23 years.
23. (6) √ The statute of limitations should not run against someone who has a disability and, as a result, is √ unable to commence an ejectment action. √ Such disabilities include incompetence, minority and confinement to a penal institution. A disabled owner √ will receive 10 years after the disability is removed to eject the trespasser, √ but in no case less than 20 years after the trespass began. For tolling to occur, √ the disability must have been in place prior to the commencement of the adverse possession.
24. (2) √ Gary will be unable to assert tolling because his disability √ did not occur until After Alvin’s trespass began.
25. (5) A person who √ meets all the elements of A. P. √ can get more than s/he actually possessed if s/he √ has a deed showing greater possession that was √ defective, and if s/he took the deed with a √ good faith belief that it was valid. In such case s/he will get √ all the land described in the deed.
26. (7) √ Alvin did receive a deed that was √ defective because of a √ forged signature. √ He took the deed with a good faith belief that he was purchasing all of Fishacre. √ Alvin and his successor tackers √ met all elements of adverse possession. Therefore, Alvin’s successor, Devlin, √ ends up with all the property described in the deed to Alvin.
27. (1) Joint tenancy.
28. (6) Although Harry and Lola √ thought they were legally married, they were not. √ Only people who are legally married can own as tenants by the entirety. They cannot possess the √ unity of marriage/person required of persons who own tenants by the entirety. When a couple attempts to create a tenancy by the entirety cannot because they are not legally married, √ the co-tenancy defaults to a joint tenancy, which has a √ right of survivorship and √ four unities: time, title, interest and possession.
29. (9) Harry and Lola continue to own as to each other as √ joint tenants, √ with a right of survivorship. Liza and Butch, √ who are legally married, own as to each other as √ tenants by the entirety, √ also with a right of survivorship. The relation between the two couples is a √ tenancy in common, which has √ no right of

survivorship. Each owns a $\frac{1}{4}$ fractional interest. Charted out, the ownership would look like this:

(Harry ^{JT} Lola) ^{TC} (Liza ^{TBE} Butch)
 $\frac{1}{4}$ $\frac{1}{4}$ $\frac{1}{4}$ $\frac{1}{4}$

30. (6) \checkmark Harry and Lola still are not legally married, and thus cannot own between them as tenants by the entirety. \checkmark They continue to own as joint tenants. Butch and Liza \checkmark are legally married. Since the grant \checkmark expressly stated that they took as tenants by the entirety, that is how they own as to each other. Finally, the \checkmark grant expressly states that the relationship between the couples is as tenants in common. \checkmark This clear, express language applies.
31. (1) Marketable title.
32. (3) \checkmark Fee simple absolute \checkmark in co-tenancy.
33. (4) \checkmark Tenant in common as to Lola, Butch and Liza, with Butch and Liza owning only as to each other as \checkmark tenants by the entirety. \checkmark Salvatore cannot own as joint tenants with anyone because of lack of unity of title and time. \checkmark He cannot own as tenants by the entirety with anyone because he was not married to any of the other co-tenants.
34. (7) \checkmark Salvatore owned a \checkmark $\frac{1}{4}$ interest \checkmark as tenants in common with \checkmark Lola (\checkmark $\frac{1}{4}$ interest) and \checkmark Butch (\checkmark $\frac{1}{2}$ interest).
35. (4) \checkmark Liza could not leave by will because \checkmark the tenancy by the entirety had a right of survivorship in favor of Butch. \checkmark Butch got Liza's fractional share, giving him a $\frac{1}{2}$ interest. \checkmark Salvatore and Lola retained their $\frac{1}{4}$ interests as tenants in common.
36. (5) \checkmark Sal and \checkmark Lola own as \checkmark tenants in common with \checkmark Sal owning a $\frac{1}{4}$ interest and \checkmark Lola owning a $\frac{3}{4}$ interest.
37. (6) \checkmark Butch, free of the tenancy by the entirety, \checkmark and only owning as a tenant in common, \checkmark which has no right of survivorship, \checkmark was free to leave his share by will to anyone he wanted. Thus, \checkmark the devise of his $\frac{1}{2}$ interest to Lola \checkmark increased her share to $\frac{3}{4}$.
38. (1) Harry.
39. (3) \checkmark It is too late for Salvatore to claim a breach of the covenant to convey marketable title. Harry's obligation to deliver marketable title under the purchase and sale agreement \checkmark terminated when the purchase and sale agreement terminated: \checkmark when Harry delivered the deed to Salvatore.
40. (1) \checkmark Estoppel by Deed.

41. (6) ✓ There is an excellent argument that Salvatore will prevail on the estoppel by deed count ✓ if you determine that Harry represented that he was delivering the entire title to the property. ✓ Harry misrepresented that he was conveying more title than he owned; ✓ he delivered a general warranty deed (required for estoppel by deed); and ✓ Harry subsequently received at least a part of the title he had purported to deliver. ✓ Harry should be estopped from claiming that he lacked the $\frac{3}{4}$ interest he purported to sell to Salvatore.
42. (3) ✓ Salvatore owns 100% of the property in ✓ fee simple ✓ absolute.
43. (4)
- | | | |
|---|----------------|----------------------------------|
| ✓ | Oliver: | Reversion |
| ✓ | Alice: | Life Estate |
| ✓ | A's Children: | Vested Remainder Subject to Open |
| ✓ | Grandchildren: | Contingent Remainder |
44. (4)
- | | | |
|---|----------------|----------------------------------|
| ✓ | Oliver: | Reversion |
| ✓ | Alice: | Life Estate |
| ✓ | A's Children: | Vested Remainder Subject to Open |
| ✓ | Grandchildren: | Nothing |
45. (3)
- | | | |
|---|----------------|-------------|
| ✓ | Oliver: | Reversion |
| ✓ | Jason: | Life Estate |
| ✓ | Grandchildren: | Nothing |
46. (2)
- | | | |
|---|---------|---------------------|
| ✓ | Oliver: | Fee Simple Absolute |
| ✓ | Bella: | Nothing |
47. (1) ✓ FSA in ✓ Bella
48. (2) ✓ Although the RAP initially cut Bella out entirely from the grant, ✓ she got the entire estate anyway ✓ through Oliver's will.
49. (1) ✓ No
50. (4) ✓ Susanna gave Bartolo a special warranty deed, which ✓ limited her liability to

Problems created only by her. ✓ She didn't create the easement at issue; ✓ her processor, Figaro, did.

51. (1) ✓ No
52. (12) ✓ The covenant against encumbrances is a present covenant that ✓ does not run with the land. ✓ It is not enforceable by ✓ remote grantees like Bartolo. Furthermore, the ✓ 6 year statute of limitations long ago expired. ✓ While the covenant of quiet enjoyment, ✓ a future covenant, does run with the land and ✓ is enforceable by remote grantees, it is ✓ not breached until put into use, and ✓ no evidence suggests that Salzburg has used it.
53. (2)
✓ \$135,000 (amount paid by Bartolo)
✓ \$135,000 (amount received by Susanna)
54. (1) ✓ Race Notice
55. (1) ✓ Mingus National Bank
56. (5) ✓ MNB recorded first and, ✓ because it recorded timely, ✓ put the deed in the chain of title for all to find. ✓ Miles will find the mortgage by a proper title search and ✓ thus has received notice.
57. (1) Miles
58. (4) ✓ CSB did not record within the chain of title because ✓ it waited to record until after Thelonious conveyed to Billie by a recorded deed. ✓ Miles will stop his grantor search at Billie, and ✓ will not find the CSB mortgage.
59. (14)
Othello
✓ She WILL recover.
✓ There is privity of contract between Desdemona and Othello because ✓ they were parties to the same contract (✓ the promissory note).
- Cassio
✓ He WILL NOT recover.
✓ No privity of contract between Cassio and Desdemona (✓ not parties to the same promissory note). ✓ No third-party beneficiary contract favoring Desdemona (✓ Cassio only took "subject to" the mortgage).
- Iago
✓ He WILL recover

√ No privity of contract between Iago and Desdemona (√ not parties to the same promissory note). √ There is third-party beneficiary contract favoring Desdemona (√ Iago “assumed” the mortgage obligations).

60. (16)

1. √ Intent: The creator of the covenant must √ intend that it run with the land. This can be accomplished √ expressly, or by √ recording the covenant within the chain of title.
2. √ Touch & Concern: The covenant must either: √ affect the land (√ maintain fence, etc.), √ be a use restriction, or √ affect the value of the land (√ maintain insurance, pay taxes, non-compete).
3. √ Notice: The person against whom the covenant will be enforced must receive √ actual (√ actual knowledge), √ constructive, (√ properly recorded covenant), or inquiry (√ facts that would suggest further inquiry) notice.

61. (7) √ The Gatsby estate WILL prevail. √ Gatsby satisfied intent because √ the covenant was recorded. √ Gatsby satisfied touch & concern because √ the covenant was a use restriction. √ Gatsby satisfied notice because √ Tom Buchanan would have found the covenant √ by a proper title search.

62. (6) √ YES. √ The notice requirement would be replaced with a √ privity of title Requirement. √ This means that Tom Buchanan would have to be in the √ same chain of title with Gatsby. √ Adverse possession breaks the chain of title. √ Daisy’s adverse possession broke the chain of title between Gatsby and Tom.