2009 a/exp

Part One - Suggested Time: 2 Hours

Questions 1 and 2 are based on the following fact pattern:

The Columbia-Snake River system, in the Pacific Northwest, covers portions of Wyoming, Idaho, Washington, Oregon, and British Columbia. From its origin in northwest Wyoming, the Snake River flows westerly across southern Idaho until it reaches the Idaho and Oregon border. At that point, the river winds northward to form the border between those States for approximately 165 miles, and then the border between Washington and Idaho for another 30 miles. Next, it turns abruptly westward and flows through eastern Washington for approximately 100 miles, finally joining the Columbia River. The Columbia, before this rendezvous, flows southward from British Columbia through eastern Washington. After it is supplemented by the Snake, the Columbia continues westward 270 miles to the Pacific Ocean. For most of the distance, it forms the boundary between Washington and Oregon.

Among the various species of fish that thrive in the Columbia-Snake River system, Chinook salmon and steelhead trout (so-called "anadromous fish") lead remarkable and not completely understood lives. These fish begin life in the upstream gravel bars of the Columbia and Snake and their respective tributaries. Shortly after hatching, the fish emerge from the bars as fry and begin to forage around their hatch areas for food. They grow into fingerlings and then into smolt; the latter generally are at least six inches long and weigh no more than a tenth of a pound. The period the young fish spend in the hatching areas varies with the specie and can last from six months to well over a year.

At the end of this period, the smolts swim down river toward the Pacific. It is believed that they pick up the river's scent so that in their twilight years they can return to their original home. Even under the best of conditions, only a small fraction of the smolts that set out from the gravel bars ever reach the ocean.

Once in the ocean, the smolts grow into adults, averaging between 12 and 17 pounds. They spend several years traveling on precise, and possibly genetically predetermined, routes. At the end of their ocean ventures, the mature fish ascend the river. They travel in groups called runs, distinguishable both by specie and by the time of year. All the fish return to their original hatching area, where they spawn and then die.

At issue in these questions are the runs of spring Chinook between February and May, the runs of summer Chinook in June and July, and the runs of summer steelhead trout in August and September.

Since 1938, the already arduous voyages of these fish have been complicated by the construction of eight dams on the Columbia and Snake Rivers. In order to produce electrical power, these dams divert a flow of water through large turbines that have devastating effect on young smolts descending to the Pacific. Spillways have been constructed to permit the smolts to detour around the turbines. The dams also present great obstacles to the adults. Fish ladders - water covered steps - enable the returning adults to climb over the dams; in addition, the ladders provide an opportunity for compiling statistics. Varying water conditions and the demand for power can increase the mortality of both descending smolts and ascending adults. The mortality rate for ocean-bound smolts averages approximately 95%. Their adult counterparts die at a rate of 15% at each dam. Only 25% to 30% of the adults passing over the first dam, the Bonneville, succeed in running the gauntlet to traverse the Lower Granite Dam and enter Idaho.

Another factor depleting the anadromous fish population is fishing, sometimes referred to as "harvesting." In 1918, Oregon and Washington, with the consent of Congress, formed the Oregon-Washington Columbia River Fish Compact to ensure uniformity in state regulation of Columbia River anadromous fish. Idaho has sought entry into the compact on several occasions, but has been rebuffed. Under the compact, authorities from both States estimate the size of the runs to determine the length of a fishing season the runs can support. The States do not permit commercial harvests of Chinook salmon or steelhead trout in any of their Columbia River tributaries; they do, however, permit sport fishing in most locations.

Although the parties disagree as to the causes, runs of all the relevant species in recent years have been significantly lower. In these years, Oregon and Washington have not permitted commercial harvests of summer Chinook; in both States, steelhead trout are now designated game fish and may not be harvested commercially.

Recently, the state of Idaho brought an action in court claiming that the states of Washington and Oregon have adversely and unfairly reduced the number of fish arriving in Idaho through

the Columbia-Snake River system. This, says Idaho, severely impedes its sport-fishing and tourist industries. Idaho's action was fashioned as one seeking an "equitable apportionment" of the value of the fish allegedly denied entry into Idaho.

1. Please state the so-called capture doctrine (including its elements) in its entirety.

2. Assume that the states of Washington and Oregon have at least partially based their defense of the claim on the so-called capture doctrine. Briefly apply the elements to the stated facts to draw a conclusion whether Idaho will prevail.

Questions 3 through 7 are based on the following fact pattern:

In 2003, Congress passed the so-called "Partial-Birth Abortion Act" (the Act). The Act states: "Any physician who, in or affecting interstate or foreign commerce, knowingly performs a partial-birth abortion and thereby kills a human fetus shall be fined under this title or imprisoned not more than 2 years, or both." The Act defines a partial-birth abortion as:

> An abortion in which the person performing the abortion, deliberately and intentionally vaginally delivers a living fetus until, in the case of a head-first presentation, the entire fetal head is outside the body of the mother, or, in the case of breech presentation, any part of the fetal trunk past the navel is outside the body of the mother, for the purpose of performing an overt act that the person knows will kill the partially delivered living fetus; and performs the overt act, other than completion of delivery, that kills the partially delivered living fetus.

The medical procedure targeted by the Act is called an "intact dilation and extraction." Although some physicians proclaim that the procedure is sometimes necessary to save a mother in emergency situations, Congress issued findings (that are included in the Act) proclaiming that a "partial-birth abortion . . . is . . . unnecessary to preserve the health of the mother." Although most laypeople believe that so-called partial-birth abortions occur when the mother would otherwise be ready to give birth (some 40 weeks into the pregnancy), in fact doctors usually employ the procedure in the second trimester (in the 14^{th} to 27^{th} week of a 40 week pregnancy).

A man has been conducting anti-abortion protests outside a doctor's office for the past year. The doctor conducts a full-service obstetrics and gynecological practice; he attends to women's gynecological health issues, delivers babies and conducts abortions. The protester is a member of the protest group known as "Operation Rescue." The protester's manner of protest is to approach women entering and leaving the doctor's office and tell them about the evils of abortion. He never threatens the patients entering and leaving the office, but sometimes shows them photographs of aborted fetuses and tells them that they are violating God's law. The protester has

always stayed at least 50 feet away from the entrance of the doctor's office, in accordance with applicable law.

One day, the protester observed an obviously-pregnant woman approach the doctor's office. The woman's appearance made it clear that she had progressed very late into her pregnancy. She had engaged the doctor to deliver her baby, and the doctor had been following her throughout her pregnancy.

The man approached the woman and began to tell her about the evils of abortion. Although the woman was not contemplating an abortion, she was in no mood to engage the protester, and sarcastically told the protester that she was on her way into the doctor's office to have a partial-birth abortion. She then turned away from the protester and brusquely walked past him and into the doctor's office.

Not realizing that the woman was being sarcastic, the protester pulled out his cell phone, called the Operation Rescue regional headquarters, and asked what he should do. The regional director informed the protester that Congress had outlawed partial-birth abortions and that the doctor was about to murder a baby. Without waiting for the regional director's further instructions, the protester dropped his cell phone and dashed into the doctor's office, waving his arms and shouting that the doctor must cease the partial-birth abortion immediately. He charged into an examination room where the doctor was conducting an obstetrical examination of the pregnant woman. The doctor called the police, who arrived within minutes.

3. Please state the definition of trespass.

_____

_____

_____

Go onto the next page.

4. Apply the elements of trespass to determine whether the protester was a trespasser.

5. Which of the following exceptions provides the protester's best argument that he should not be liable for trespass? (Circle only one.)

Human Dignity (State v. Shack) | Necessity/ Emergency | Hot Pursuit of Property

Blocked Public Way | Attractive Nuisance

Go onto the next page.

6. State the elements of, or describe, the exception that you circled above.

7. Briefly apply those elements to the facts.

Questions 8 through 12 are based on the following fact pattern:

A restaurant runs a coat-check concession as a convenience to its customers. A woman dining at the restaurant wore a cloth coat and silver fox fur piece out to dinner one evening. (Don't dwell on the tackiness of her choice of clothing!) Upon arriving at the checkroom, she stuck the fur piece into the sleeve of the coat, folded the coat around it, and handed the coat (with the fur piece inside) to the person running the checkroom on behalf of the restaurant. The person running the checkroom, who did not know there was a fur piece inside the coat, handed a check to the woman. After dinner, the woman presented the check to the person running the checkroom and the person delivered the correct coat. The fur piece, however, was no longer in the coat. The woman has brought an action against the restaurant for the value of the fur piece.

It is recommended that you peruse all the questions pertaining to this fact pattern before answering any of the questions.

8. What is the general legal relationship between the woman who checked her coat and the restaurant?

_____

9. State the specific type of that relationship between the woman who checked her coat and the restaurant *at common law*?

_____

10. What is the standard of care owed by the restaurant under the specific type of that relationship you identified in your answer to Question 9?

_____

_____

_____

_____

_____

11. What is the standard of care owed by the restaurant under the modern rule?

12. Briefly make your best argument for the restaurant under the modern rule.

Questions 13 through 21 are based on the following fact pattern:

A childless widower, who was elderly and no longer ambulatory, gratuitously conveyed his vacation home on the ocean to "[my sister] and her heirs for as long as it is used solely as a residential vacation home, but if it is not, to [my brother] and his heirs." The sister and her family immediately commenced using the vacation home as a residential vacation home during the appropriate vacation seasons. Two years after the widower's

conveyance of the vacation home, he died with a valid will leaving his entire estate to a charitable organization espousing the prevention of cruelty to animals.

Five years after the widower's conveyance of the vacation home, the sister hired a painting contractor to remove the old paint from the exterior of the vacation home and to stain the wood a natural color. The sister did not carefully check the painting contractor's references and failed to inquire whether he carried sufficient liability insurance. In fact, the painting contractor carried no liability insurance. The painting contractor attempted to remove the paint with a heat gun. In doing so, he accidentally set the house on fire, which resulted in a near total destruction. The painting contractor has since declared bankruptcy, and the sister lacks the funds to rebuild the vacation home.

13. What was the state of the title *immediately* after the widower'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.) NOTE: If a party owns no interest, answer: "none."

The Sister: _____

The Brother: _____

The Widower: _____

14. What was the state of the title *immediately* after the widower's death, *specifically considering* and applying 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.) NOTE: If a party owns no interest, answer: "none."

The Sister: _____

The Brother: _____

The Charity: _____

For the remaining questions, assume that, after the painting contractor's discharge in bankruptcy, the brother and the charitable organization sued the sister for waste.

15. What is the definition of waste?

16. What is voluntary waste?

17. What is permissive waste?

18. Will the brother prevail against the sister in his action for waste? (Circle one.)

YES NO

Go onto the next page.

19. Please apply the law to the facts to support the answer you circled for Question 18.

20. Will the charitable organization prevail against the sister in his action for waste? (Circle one.)

YES NO

Go onto the next page.

21. Please apply the law to the facts to support the answer you circled for Question 20.

Questions 22 through 35 are based on the following fact pattern:

In 1985, a prospective seller and buyer entered into a valid and binding purchase and sale agreement under which the seller contracted to sell her home to the buyer. Shortly before the closing was to occur, the seller died with a valid will leaving all her real estate to her daughter and all her personal property to her son. At the time of the seller's death, the daughter was 15 years old and the son was 22. The seller's ex-husband served as executory of the seller's estate. The seller's estate never pressed the matter, and the closing with the buyer never occurred. Nevertheless, the buyer moved into the home in 1985 as if the closing had occurred, and although he never paid the purchase price.

The buyer lived life to its fullest in the home. He threw frequent and lavish parties, often inviting the neighbors. He had the grounds professionally landscaped and hired numerous contractors to tend to the structure. The buyer paid all the real estate taxes upon moving in. He had several newspapers and magazines delivered to the home. He was an ardent bicyclist, and was often seen riding his bicycle around the neighborhood. He enjoyed croquet, which he often played with friends on his

front lawn. And then, in 1995, the buyer died suddenly of a massive heart attack. His valid will left all of his real and personal property to his niece, who moved into the home almost immediately after the buyer's death.

The niece lived a much more reserved life than the buyer. Although she occasionally invited friends to the home, she never threw lavish parties. Rather than riding a bicycle around the neighborhood and engaging the neighbors in conversation, as had been the buyer's practice, the niece took quiet walks from the home and rarely spoke with any of the neighbors. Rather than conducting boisterous croquet tournaments, the niece could occasionally be seen sunbathing and reading alone around the grounds of the home. She continued to pay the real estate taxes, and did receive mail, magazines and newspaper deliveries at the home.

In 1999, the niece took a two week vacation to the Galapagos Islands. When she returned, the niece was shocked to find a stranger living in the home. The stranger refused to leave, stating that he had just as much right as the niece to possess the home.

22. What was the status of the stranger when the niece returned from vacation and found him in the home?

Go onto the next page.

23. Please apply the law to the facts to support your answer to question 22.

24. What was the status of the niece just before she left for her vacation?

25. Please apply the law to the facts to support your answer to question 24.

26. Is the stranger correct in asserting that he had just as much right as the niece to possess the home? (Circle one.)

YES NO

27. Please apply the law to the facts to support your answer to question 26.

Assume for the remaining group of questions based on this fact pattern that the niece convinced the stranger to leave the premises.

In 2001, the niece sold the home to a young couple with two toddler children. The young couple moved into the home immediately and used it much as had the niece, except that they entirely enclosed the back yard with a stockade fence and erected a swing set in the back yard for the children. The young couple and their children were often seen using the yard and strolling around the neighborhood streets.

It is now 2009 and the seller's daughter has just brought an action to eject the young couple and their children. The young couple has defended on the ground of adverse possession.

28. Did the niece's trip to the Galapagos Islands in 1999 cause her adverse possession claim to cease?

YES NO

29. Please apply the law to the facts to support your answer to question 28.

30. In the space below, please describe "tacking" and its elements.

Go onto the next page.

31. In the space below, please apply the law of tacking to these facts.

32. In the space below, please describe "tolling" and its elements.

Go onto the next page.

33. In the space below, please apply the law of tolling to these facts.

Assume for the next two questions that the closing between the seller and buyer back in 1985 actually did occur.

34. Who would have received the proceeds from the sale of the home? (Circle one.)

THE SELLER'S SON THE SELLER'S DAUGHTER

Go onto the next page.

35. Please apply the law to the facts to support your answer to question 34.

Questions 36 through 42 are based on the following fact pattern:

A seller conveyed a lot of land to a buyer for $234,000. The deed contained the covenant of seisin and the covenant of quiet enjoyment. Four years later, the buyer sold the same lot of land to a new buyer for $278,000. One year after buying the property, the new buyer was ousted by the true owner, who had acquired a fee simple absolute title prior to the sale from the seller to the buyer.

36. Assume that the deed from the seller to the buyer was a general warranty deed, and that the deed from the buyer to the new buyer was a quitclaim deed. Although he no longer owns the property, the buyer sued the seller for a breach of the covenant of seisin. Will the buyer prevail against the seller? (Circle one.)

YES NO

Go onto the next page.

37. Please apply the law to the facts to support your answer to question 36.

38. Assume for this question that the buyer prevails against the seller on his claim for breach of the covenant of seisin. What amount of damages will the buyer recover?

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39. Assume the same type of deeds described in Question 36, but this time it is the new buyer who is suing the seller. Will the new buyer prevail against the seller on the claim of breach of the covenant of seisin? (Circle one.)

YES NO

Go onto the next page.

40. Please apply the law to the facts to support your answer to question 39.

41. Assume the same type of deeds described in Question 36, and once again it is the new buyer who is suing the seller. Will the new buyer prevail against the seller on the claim of breach of the covenant of quiet enjoyment? (Circle one.)

YES NO

42. Please apply the law to the facts to support your answer to question 41.

The following question is a single question based on a single fact pattern.

43. A home owner obtained an insurance policy by entering into an insurance contract with an insurance company. The insurance contract stated that the policy would become void if the home owner conveyed the subject real estate to a third person. Subsequently, the home owner borrowed $50,000 from a bank and granted the bank a mortgage to secure the loan. Under what circumstances would the home owner's grant of the mortgage arguably void the insurance policy? Please briefly explain.

Questions 44 through 47 are based on the following fact pattern:

An owner of real estate executed and delivered to a first buyer a deed conveying the land. The first buyer paid substantial value and believed in good faith that he was obtaining title to the land. The first buyer did not record at that time. The owner then executed and delivered a deed to a second buyer who also paid substantial value and believed in good faith that he was obtaining title to the land. The second buyer did not record at that time. Then the first buyer recorded. Then the first buyer executed and delivered to a third buyer a deed conveying the land. The third buyer paid substantial value and believed in good faith that he was obtaining title to the land.

The third buyer recorded immediately after receiving the deed. Then the second buyer recorded his deed.

44. The state in which the land was situated had a recording statute that provided:

> Every conveyance of real estate within the state hereafter made, which shall not be recorded, shall be void as against any subsequent purchaser in good faith and for a valuable consideration, of the same real estate or any portion thereof, whose conveyance shall be first duly recorded.

As between the second buyer and the third buyer, who prevails? (Circle one.)

SECOND BUYER THIRD BUYER

45. Please apply the law to the facts to support your answer to question 44.

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Go onto the next page.

46. Assume instead that the state in which the land was situated had a recording statute that provided:

> A conveyance of an estate in fee simple, fee tail or for life, or a lease for seven years, shall not be valid against any subsequent purchaser who pays valuable consideration therefor, and who accepts without notice of the prior conveyance, unless the same shall be recorded in the registry of deeds for the county or district in which the land to which it relates lies.

As between the second buyer and the third buyer, who prevails? (Circle one.)

SECOND BUYER THIRD BUYER

47. Please apply the law to the facts to support your answer to question 46.

Questions 48 and 49 are based on the following fact pattern:

An original owner of a parcel of real estate conveyed her land to a buyer and in the deed included a covenant that the parcel would only be used for residential purposes. The deed was recorded. Then, an adverse possessor obtained title from the

buyer after satisfying all applicable elements of adverse possession for the applicable statutory period. Thereafter, the adverse possessor started to use the land for other than residential purposes.

48. Will the original owner prevail against the adverse possessor on a claim for breach of the covenant if she seeks monetary damages? (Circle one.)

YES NO

Please apply the law to the facts to support your answer to this question.

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49. Will the original owner prevail against the adverse possessor on a claim for breach of the covenant if she seeks an injunction preventing the adverse possessor from making the non-residential use? (Circle one.)

YES NO

Please apply the law to the facts to support your answer to this question.

The following question is a single question based on a single fact pattern.

50. An owner of real estate conveys the property by deed "to my only nephew for life, and then to my nephew's first-born son for life, and finally to the children of my nephew's first-born son who survive my nephew's first-born son, whenever they may be born." At the time of the grant, the nephew had no children. What was the state of the title immediately after the owner's conveyance? (Give fully developed interests such as "vested remainder subject to complete divestment." Partial answers, such as "vested remainder," or "future interest," are incorrect.) NOTE: If a party owns no interest, answer: "none."

The Nephew: _____

The First-Born Son: _____

The Children of the First-Born Son: _____

End of Part One

Part Two - Suggested Time: ½ Hour

One month ago Sally inherited House from her grandfather. House was on a two acre oceanfront parcel of land which included three hundred feet of a small beach that was under water at high tide.The only land access to House was through a parcel of land currently owned by Alex. One hundred years ago, the former owner of Alex's parcel sold the former owner of Sally's parcel the right to have a driveway to House from the town highway for use by "horses, buggies, carriages and foot traffic." For the last fifty years Sally's grandfather, as well as his guests, have driven their cars on the driveway on a regular basis to reach House. Sally owns a gardening store and thus drives a large pickup truck. Three weeks ago Sally received a letter from Alex telling Sally that she could not drive her pickup truck, or indeed any motor vehicle, on the portion of the House's driveway that was on his land. At the same time Alex placed a locked gate across the driveway at a location where the driveway was on his land. In response, Sally erected on a portion of her land a ten foot tall fence that partially blocked the view of the ocean from Alex's house.

What are the rights of Alex and Sally?

Part Three - Suggested Time: ½ Hour

Abigail, who owned Blackacre in fee simple, conveyed it: "fifty percent to Bertha and Caleb, husband and wife, as tenants by the entirety, and fifty percent to Dan and Ed with rights of survivorship." At the time of the grant, Bertha and Caleb were legally married to each other. Dan and Ed were not married to each other.

Then, Ed transferred "my entire right title and interest" to Fred. Then, Bertha, unhappy with Caleb's philandering, transferred "my entire right title and interest" to Gary. Then, Dan died with a will leaving "all my real estate, including Blackacre, to my daughter, Henna." And finally, Caleb made a gift of "my entire right, title and interest to my one true love, Ingrid."

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

END OF EXAM

PROPERTY FINAL 2009
ANSWERS TO PART ONE

1. 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; or physically controlling it in a trap, net, fence, etc, Also, if the wild animal escapes, and regains its natural liberty, the previous owner's ownership ceases.

2. Neither Idaho nor people fishing in Idaho, have any claim to ownership of the subject fish, which are wild animals, until, it, she or he deprives the specific fish of its natural liberty. Since the fish never reached Idaho, neither Idaho nor the people fishing in Idaho, have any chance to deprive the fish of their natural liberty and thus become owners. Accordingly, neither Idaho nor the people fishing in Idaho have any ownership rights in the subject fish.

3. Intentionally going onto someone else's property without permission. The requisite intent is merely to go where you intend to go; one does not have to intend to be a trespasser.

4. The protester clearly intended to go into the doctor's office, as exhibited by his actions taken to prevent an abortion (or alt least he thought so). The protester was on someone else's property; the doctor's office was hot his. None of the facts indicated the doctor invited him in or gave him permission to be there. Indeed, the quick arrival of the police indicates the opposite.

5. NECESSITY/EMERGENCY

6. (1) the trespasser must be faced with a clear and imminent danger, not one that is debatable or speculative; (2) the trespasser must reasonably expect that this or her action will be effective as the direct cause of abating the danger; (3) there is no legal alternative that will be effective in abating the danger; (4) the legislature has not passed a law specifically precluding the defense.

7. The protestor's defense of necessity will not succeed. First, there was no clear and imminent danger that an illegal partial-birth abortion was about to be performed; as the facts indicate, they are rarely done at the end of a pregnancy and the woman was only having a normal physical exam. In fact, this is an example why uninformed citizens should not be permitted to perform vigilante law enforcement. There certainly was a legal alternative; the protestor could have called the police, who were only minutes away. Also, the legislature has passed a law specifically precluding the defense; it states that protestors must keep at least 50 foot buffer zone from the entrance to doctors' offices. The protestor clearly violated the statute.

8. Bailment

9. I'll accept either: a bailment that <u>benefits the bailor</u> or a <u>mutual-benefit</u> bailment.

10. Benefits Bailor: the bailee is liable only for gross negligence or wanton or willful conduct. Mutual Benefit: The bailee must act as a reasonably-prudent person would act in the circumstances.

11. In all cases under the modern rule, the bailee must act as a reasonably prudent person would act in the circumstances.

12. Even if we apply the higher duty – the reasonably-prudent person standard – a reasonably-prudent person cannot have been expected to exercise any degree of care over an object of personal property that he or she didn't even know existed. The facts indicate that the coat check clerk neither saw the fur piece nor knew it existed. In addition, the facts don't suggest how the fur piece was lost, a matter vitally-important in determining negligence.

13. Sister: Fee Simple Subject To An Executory Limitation

    Brother: Executory Interest

    Widower: Nothing

14. Sister: Fee Simple Determinable

    Brother: Nothing

    Charity: Possibility of Reverter

15. The permanent or lasting destruction or substantial physical damage of real estate.

16. When the perpetrator of waste does so by intentional act, e.g., ripping a radiator out of a wall or razing a building.

17. The perpetrator's waste essentially occurs by way of neglect or negligence, e.g., failing to tend to significant leaks, failing to patch a hold to protect the house from the elements.

18. NO

19. There are two reasons: (1) the brother owns no interest to protect because his executory interest was eliminated by the rule against perpetuities; and (2) Even though it was a conditional fee (FSD), the sister owned a fee simple, and all fee simple owners have the power to commit waste.

20. NO

21. Even though it was a conditional fee (FSD), the sister owned a fee simple, and all fee simple owners have the power to commit waste.

22. Trespasser

23. The trespasser was living in the home; so he clearly intended to be there. The facts indicate that the trespasser was not an owner, so it was someone else's property. Nothing in the facts suggests that anyone gave him permission to be there. The trespasser meets all three elements of trespass.

24. Trespasser/Adverse Possessor

25. The niece was living there, so she clearly intended to be there. It does not matter that she believed she had a right to be there; the requisite intent does not require one to intend to be a trespasser. The niece was not an owner; thus it was someone else's property. The niece did not have permission from seller's estate to be there.

26. NO

27. The doctrine of relativity of title recognizes that one trespasser can have greater rights in real estate than another trespasser. Under the "priority of occupancy" theory, the first trespasser to arrive has greater rights. Niece occupied the property before the stranger, and thus prevails.

28. NO

29. The elements of actual and continuous do not require that trespassers never leave the property. Their occupation will be deemed sufficient if they use as a normal owner would use the property. Normal owners go on two-week vacations. Niece's trip to the Galapagos Islands will not disrupt her adverse possession.

30. Tacking allows successive adverse possessors to add their time together (or tack) to achieve the continuous element (usually 20 years) of adverse possession. To tack, there must be privity of title/estate which is manifested by a deed, will, intestate distribution or other legally-recognized method of transferring real estate.

31. Niece can add her 6 years (1995-2001) to the Buyer's 10 years (1985- 1995) because the will from Buyer to Niece constituted privity of title. The young couple can add their 8 years (2001-2009) to the Niece's time because the deed between Niece and the young couple also constituted privity of title. Buyer's time, Niece's time and young couple's time add up to 24 years (1985-2009), well above the 20 year statute of limitations.

32. The statute of limitations should not run against someone who has a disability preventing him or her from commencing an ejectment action against an adverse possessor. Such disabilities include: incompetence, minority and jail (sometimes). A disabled owner will receive 10 years after the disability is removed to eject a trespasser, but in no case less than 20 years after the trespass began. For tolling to occur, the disability must be in place when the adverse possession begins.

33. When Buyer's adverse possession began Seller's heir (daughter) was only 15. Thus, she had a disability that would toll the adverse possession statute of limitations until she turned 18 (1985-1988). When she turned 18, the statute of limitations began to run. Tolling does not any effect here because, even accounting

for daughter's minority, more than 20 years passed between 1988 and 2009. The adverse possessors had plenty of cushion to avoid tolling problems.

34. THE SELLER'S SON

35. When the P & S was signed, equitable conversion occurred; the Seller's title was deemed personal property and the Buyer's title was deemed real estate. At Seller's death, his interest in the real estate would thus pass as personal property. Seller's will left all personal property to the son who therefore would receive the purchase price, if paid.

36. YES

37. The covenants for title do not require that you continue to own; they operate more like contract covenants. Also, if New Buyer had sued Buyer, no one would dispute that Buyer would have a third-party complaint against Seller although Buyer no longer owned the property. Seller clearly breached the +covenant of seisin because he didn't own the property when he sold it to Buyer. A general warranty deed does not limit this, and we are well within the six-year statute of limitations.

38. $0

39. NO

40. Although the seller clearly breached the covenant of seisin, it is a present covenant that does not run with the land. It is only enforceable by direct grantees – here, Buyer – and is not enforceable by a remote grantee – here, New Buyer.

41. YES

42. The true owner ousted New Buyer and thus interfered with New Buyer's right of possession, which the covenant of quiet enjoyment protects. Unlike the covenant of seisin, the covenant of quiet enjoyment is a future covenant; this means that it runs with the land and is enforceable by a remote grantee such as New Buyer. And, once again, New Buyer is well within the six-year statute of limitations and the general warranty deed from Seller to Buyer does not limit Seller's liability.

43. The insurance company could argue that, if the state in which the subject property was located was a so-called "title theory" of mortgages state, the home owner's grant of a mortgage to the bank constituted a conveyance of title to a third person. Technically, that is exactly what happens in a title theory state, and homeowners who grant mortgages might unwittingly void their homeowner' insurance policies.

44. THIRD BUYER

45. Third Buyer prevails for two reasons: First, the applicable recording statute is a race-notice statute where a subsequent BFP prevails over a prior grantee who fails to record only if the subsequent BFP records first. Third Buyer is subsequent to Second Buyer. Third Buyer is a BFP because he took without any notice of the

conveyance to Second Buyer and paid substantial value. And the facts are clear that Third Buyer recorded first. Second, Second Buyer never put his deed in the chain of title because he never recorded. Third Buyer will be unable to find the deed in a title search and will prevail.

46. THIRD BUYER

47. This is a pure notice statute, in which a subsequent BFP prevails over a prior grantee who fails to record even if the subsequent BFP fails to record himself. Third Buyer is a purchaser subsequent to Second Buyer. He is a BFP because the facts indicate he paid substantial value and took without notice of the sale to Second Buyer. The instant the deed was delivered to Third Buyer, he prevailed over Second Buyer, who had not recorded.

48. NO

Owner is seeking to enforce a covenant running at law (monetary damages). Owner must have intended the covenant to run with the land; its recording indicates that this is the case. Such a covenant must touch and concern the land; this element is satisfied if the covenant is a use restriction, which this covenant clearly is (only for residential purposes). Finally, there must be privity of title (a relationship between the litigating parties through the land). Since an adverse possession is deemed to break the chain of title and establish a new one, there is no privity of title between Owner and Adverse Possessor.

49. YES

This time, Owner is attempting to enforce the covenant in equity (by injunction). The first two elements are the same as for a covenant running at law and, as explained in the last answer, have been satisfied. The third element is different: it is notice instead of privity of title. Notice includes constructive notice, which is recording at the registry of deeds. Since the deed with the covenant was recorded within the chain of title, Adverse Possessor could have found it in a title search and he had notice of it (although he wasn't in privity of title with Owner). Owner has met all three elements for a covenant running in equity and will prevail.

50.

Nephew:	Life Estate
First-Born Son:	Contingent Remainder
Children of First Born Son:	Nothing (violates RAP)