2004
w/ans

QUESTIONS

PART ONE

DIRECTED ESSAYS

SUGGESTED TIME: ONE AND ONE-HALF HOURS (90 MINUTES)
PERCENTAGE OF EXAM POINTS: 50%

INSTRUCTIONS FOR PART ONE:

This part consists of ten (10) short fact patterns, each of which has a number of questions that follows and inquires about the law and analysis that applies to the particular fact pattern. You are to read each fact pattern carefully and answer each question that follows. On one or two occasions, there are questions that appear without a prior fact pattern. There are a total of 50 questions, and you are to answer them all.

Please place your answers in the space provided **in this exam book**, not in the blue book. Please limit your answers to the lines provided below each question. I will not read beyond the lines provided under each question. Please make each answer readable in terms of neatness and the size of your handwriting. (I will not use a magnifying glass to read your answers.) Please answer the question responsively; don't provide information not asked for in the question. For example, if the question asks "Who wins?" please state the name of the person who wins; don't state why he or she wins. Please state your reasoning only if the question asks for it.

Please work quickly but carefully through these questions. You will have enough time to answer all of the questions within the suggested time if you have adequately learned the law.

If you have not finished this Part of the exam when the suggested time is up, you should go onto the next part of the exam, and come back to finish it later.

QUESTIONS:

Questions 1 through 10 are based on the following facts:

A built in his backyard a garage that encroached by ten feet onto the property of his neighbor, B. A thought he had built the garage entirely on his own property but was mistaken. B also was unaware of the encroachment. Six years later, A sold his property to C by general warranty deed. C also was unaware that the garage encroached on B's land and used it fully as if he owned all of the land on which the garage stood.

1. Did A trespass when he built the garage on C's land? (Circle the best answer.)

YES No

2. Why or why not?

3. Assume that, when B learned of the encroachment some two years after A sold to C, B sued C for trespass. Is C liable to B for trespass? (Circle the best answer.)

YES No

4. Why or why not?

5. Assume that, instead of learning of the encroachment two years after A sold to C, B learned of the encroachment 17 years after A sold to C. When B sues C for trespass, C counterclaims for title by adverse possession. What are the five elements of adverse possession?

A.

B.

C.

D.

E..

6. Keep the same assumptions as stated in Question 5. Briefly apply each of the elements stated in your answer to Question 5 to the facts given to determine whether each is satisfied.

A.

B.

C.

D.

Put your answer to E. on the next page.

E.

7. Is C allowed to add the time that A owned the property onto his own time in making out his claim for adverse possession? (Circle the best answer.)

YES No

8. Why or why not?

9. Does the concept of "constructive adverse possession," otherwise known as "color of title," apply to the given facts? (Circle the best answer.)

YES No

10. Why or why not?

Questions 11 through 16 are based on the following facts:

Solaris conveyed Blackacre to Boxford by a general warranty deed for $400,000. Boxford did not immediately record the deed. After Solaris sold to Boxford, Caulfield obtained a civil judgment against Solaris in the amount of $100,000. Caulfield had no actual knowledge of the deed to Boxford deed when he obtained the judgment against Solaris. He did not immediately record his judgment. Then Boxford recorded his deed. Then Caulfield recorded his judgment. Then Solaris sold Blackacre to Dunedin for $375,000. Dunedin recorded his deed immediately and had no actual knowledge of the judgment to Caulfield or deed to Boxford deed when he obtained the deed from Solaris.

11. Assume that there are two pertinent statutes in the jurisdiction pertaining to this question. The first says: "any judgment properly obtained shall be treated in the same manner as any other conveyance or mortgage of real property." The second statute says: "no conveyance or mortgage of real property shall be good as against a subsequent purchaser for value and without notice unless the same be recorded." What kind of a recording statute is the second statute?

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12. Assuming that the statutes recited in Question 11 apply, in an action between Boxford and Caulfield in which Boxford claims he is not subject to Caulfield's judgment, who will win? (Circle the best answer.)

Boxford Caulfield

13. Assuming that the statutes recited in Question 11 apply, in an action between Caulfield and Dunedin in which Dunedin claims he is not subject to Caulfield's judgment, who will win? (Circle the best answer.)

Caulfield Dunedin

14. Assume for this question and the next two questions that the first statute reads the same as that stated in Question 11, but the second statute reads as follows: "no conveyance or mortgage of real property shall be good against a subsequent purchaser for value and without notice, and who first records, unless the same be recorded." What kind of a recording statute is the second statute?

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15. Assuming that the statutes recited in Question 14 apply, in an action between Boxford and Caulfield in which Boxford claims he is not subject to Caulfield's judgment, who will win? (Circle the best answer.)

Boxford Caulfield

16. Assuming that the statutes recited in Question 14 apply, in an action between Caulfield and Dunedin in which Dunedin claims he is not subject to Caulfield's judgment, who will win? (Circle the best answer.)(**Put answer on the next page.**)

Caulfield Dunedin

Questions 17 through 24 are based on the following facts:

Adam conveyed Blackacre "to Bernard for life, and then to Caleb and his heirs but if, after Bernard dies, Blackacre is ever not used as a half way home for special needs adults, then to the YMCA."

17. Immediately upon the grant, what is Bernard's interest in Blackacre?

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18. Immediately upon the grant, what is Caleb's interest in Blackacre?

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19. Immediately upon the grant, what is the YMCA's interest in Blackacre?

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19. Immediately upon the grant, what is Adam's interest in Blackacre?

---

20. Are any of the interests subject to rule against perpetuities consideration? (Circle the best answer.)

YES NO

21. Which ones, if any? (Circle **all** that apply)

Adam's Bernard's Caleb's The YMCA's

22. Assume for this question that none of the interests violated the rule against perpetuities. Ten years after the grant, Bernard died. Then Caleb entered into a purchase and sale agreement to sell Blackacre to Danza. The P & S was silent as to the quality of title B was required to deliver. At the closing, Danza refused to take title, asserting that Caleb could not deliver marketable title. Danza demanded a return of his deposit. Caleb refused to return the deposit and sued Danza for specific performance. Who will win in that lawsuit? (Circle the best answer.)

Caleb Danza

23. Assume the same facts as asserted in Question 22 except that Danza did not refuse to accept title. Instead Caleb gave Danza a general warranty deed to Blackacre that contained the covenant against encumbrances and the covenant of quiet enjoyment. Three years after Caleb delivered the deed to Danza, Danza sued Caleb asserting the sole cause of action that Caleb did not deliver marketable title. Who will win in that lawsuit? (Circle the best answer on the next page.)

Caleb Danza

24. Assume the same facts asserted in Question 23, except that, instead of suing for failure to deliver marketable title, Danza sued Caleb for breaching the covenant against encumbrances. Who will win in that lawsuit? (Circle the best answer.)

Caleb Danza

Questions 25 through 28 are based on the following facts:

Oliver conveyed Blackacre to Harold and Wilma, "husband and wife, as tenants by the entirety." At the time of the grant, Harold and Wilma were legally married.

25. What concurrent estate did Harold and Wilma own at the time of the grant?

_____

26. Five years after the grant Harold and Wilma got divorced, but continued to own Blackacre together. What concurrent estate did Harold and Wilma own after the divorce?

_____

27. Two years after the divorce, Harold sold his interest in Blackacre to Abigail. After that sale please state all those who own any interest in Blackacre, along with the type of concurrent estate, if any, they own, and the percentage/fractional interest each person owns:

Owner(s):

_____

_____

Concurrent Estate(s):

_____

_____

Percentage/Fractional Interests:

_____

_____

Question 28 is on the next page.

28. Three years after Harold's sale to Abigail, Harold and Wilma got remarried. Without any further transactions between and of the parties, after the remarriage please state all those who own any interest in Blackacre, along with the type of concurrent estate, if any, they own, and the percentage/fractional interest each person owns:

Owner(s):

_____

_____

Concurrent Estate(s):

_____

_____

Percentage/Fractional Interests:

_____

_____

Questions 29 through 35 are based on the following facts:

Olivia conveyed Blackacre to Hermes and Winona, "husband and wife, as tenants by the entirety." At the time of the grant, Hermes and Winona were legally married. Ten years after the grant, Winona conveyed all her "right title and interest" to Alonzo by general warranty deed, which contained the covenant of seisin, covenant of the right to convey, covenant against encumbrances and the covenant of quiet enjoyment.

29. What estate did Alonzo own after the sale from Winona to Alonzo?

_____

30. Which, if any, of the covenants for title did Winona breach upon the sale of Blackacre to Alonzo? (Circle any or all of the appropriate covenants.)

covenant of seisin covenant of the right to convey covenant against encumbrances

31. As to each of the covenants listed in the facts preceding Question 29, please explain why each was or was not breached:

covenant of seisin:

_____

_____

_____

_____

The rest of the question is on the next page.

covenant of the right to convey:

covenant against encumbrances:

32. Three years after Winona conveyed to Alonzo, Alonzo conveyed his interest in Blackacre to Bennett by special warranty deed, which contained the covenant against encumbrances and covenant of quiet enjoyment. After the sale to Bennett, state all those who own any interest in Blackacre, along with the type of concurrent estate, if any, they own, and the percentage/fractional interest each person owns:

Owner(s):

Concurrent Estate(s):

Percentage/Fractional Interests:

Question 33 is on the next page.

33. Please explain the significance of Alonzo's special warranty deed to Bennett.

34. Which, if any, of the covenants for title did Winona breach upon the sale of Blackacre to Alonzo? (Circle any or all of the appropriate covenants.)

covenant against encumbrances covenant of quiet enjoyment

35. As to each of the covenants listed in Question 32, please explain why each was or was not breached:

covenant against encumbrances:

covenant of quiet enjoyment

Questions 36 and 37 are based on the following facts:

Oscar, the owner of Blackacre, a 20 acre parcel of land with a house on it, gave Bank a $325,000 mortgage on it in 1999. In 2003 Oscar entered into a written purchase and sale agreement with Bronson in which Oscar agreed to sell Blackacre to Bronson for $679,000. The purchase and sale agreement required Oscar to deliver "a good, clear record title," but said nothing about marketable title. The purchase and sale agreement did not mention the mortgage to Bank, and Oscar and Bronson never discussed that mortgage.

36. Bronson discovered the mortgage and demanded that Oscar discharge it. Oscar refused to do so under any circumstances. In refusing to take care of the outstanding mortgage, which, if any, of the following covenants did Oscar breach? (Circle **all** that apply)

covenant to deliver good record title covenant to deliver marketable title

37. Assume the same facts as those stated **before** Question 36. Further assume that the facts stated **in** Question 36 did not occur. Shortly before the closing on Blackacre, Bronson discovered the outstanding mortgage. He also discovered another property that he liked much better than Blackacre. In an effort to get out of the deal, and knowing that Oscar did not have much cash or savings on hand, Bronson told Oscar that Oscar was required to discharge the mortgage prior to delivery of the deed and receipt of the purchase price. Oscar said he needed the proceeds from the closing and would allow Bronson to appoint an escrow agent to take the proceeds from the closing, and use them to secure a mortgage discharge of the Bank mortgage right after the closing. Bronson refused to agree to this. At the closing, Bronson refused to accept the deed without first obtaining a discharge. Oscar wants to keep the deposit. Bronson purchased another property and has sued Oscar for a return of the full deposit. Who will win in that lawsuit? (Circle the best answer.)

Oscar Bronson

Questions 38 through 43 are based on the following facts:

In 1999 Alice conveyed Blackacre to Beppo for $250,000. Alice gave a general warranty deed with the covenant of quiet enjoyment and covenant against encumbrances. In 2000, Beppo placed an easement on the property in favor of Eddie, and never disclosed it. In 2001 Beppo conveyed Blackacre to Colson for $300,000. Beppo gave Colson a special warranty deed with the covenant of quiet enjoyment and covenant against encumbrances. In 2003 Colson conveyed to Danielle for $250,000. Colson gave Danielle a multistate quitclaim deed. After Colson conveyed to Danielle, Eddie began to use the easement. Danielle now wants to sue someone for breach of the covenant against quiet enjoyment and the covenant against encumbrances. Assume that the easement is so extensive that the value of Blackacre is rendered worthless and that there are no statute of limitations problems. Also assume that the state in which Blackacre is located is a so-called "consideration received" jurisdiction.

38. In a suit by Danielle against Colson for breach of deed covenants, who wins? (circle the best answer)

Colson Danielle

How much $$, if any? $_____

Question 39 is on the next page.

39. Briefly explain the reasoning of your answer to Question 38.

40. In a suit by Danielle against Beppo for breach of deed covenants, who wins(circle the best answer)

Beppo Danielle

How much $$, if any? $_____

41. Briefly explain the reasoning of your answer to Question 38. (Please put your answer on the next page.)

42. In a suit by Danielle against Alice for breach of deed covenants, who wins? (circle one.)

Alice Danielle

How much $$, if any? $_____

43. Briefly explain the reasoning of your answer to Question 38.

44. In the space provided below the following metes and bounds, courses and distances description, please draw the proper shape of Blackacre, keeping the accompanying compass rose in mind:

> Beginning at Main Street, running north by the land now or formerly of Samuel E. Smith one hundred and 00/100 (100.00') feet; thence bearing and running northeast by the land of said Smith fifty-four and 00/00 (54.00') feet; thence turning and running southeast by the land of said Smith fifty-four and 00/00 (54.00') feet to the boundary of the land now or formerly of Jeremiah H. Jones; thence bearing and running true south by the land of said Jones one hundred and 00/100 (100.00') feet; thence turning and running true west along said Main Street fifty (50.00') feet to the point of beginning.

N

MAIN STREET

Questions 45 through 49 are based on the following facts:

Abraham owned in fee simple absolute Blackacre, a 20 acre parcel of wooded land with a large steel frame building used as a dealership to sell heavy excavation equipment. In 1991, Abraham signed a promissory note and gave a mortgage on Blackacre to the Thirty-Seventh National Bank in the amount of $450,000. There was no "due on sale" clause in either the mortgage or promissory note. In 1994, Abraham signed another promissory note and gave another mortgage on Blackacre, this time to the Second Street Bank, in the amount of $125,000. There was no "due on sale" clause in either the mortgage or promissory note. In 1996, Abraham leased Blackacre to Tolland for a term of 30 years. In the lease was a provision that "the lessee hereby agrees that this lease agreement shall be subordinate to any and all mortgages the landlord grants on Blackacre to institutional lenders."

In 2001, Abraham sold Blackacre to Barbara "subject to the to Tolland and the mortgages to the Thirty-Seventh National Bank and Second Street Bank, which the grantee assumes and agrees to pay." In order to finance the acquisition of Blackacre, Barbara signed a promissory note and gave a mortgage to the Twelfth Bank of Nighttime in the amount of $215,000. As the same time, the Twelfth Bank of Nighttime gave Barbara an equity credit line of $50,000, and Barbara gave the Twelfth Bank of Nighttime a mortgage to secure the credit line. When the Twelfth Bank of Nighttime's attorney recorded his client's mortgage and equity credit line mortgage, he accidentally recorded the equity credit line first.

Immediately after Barbara closed on Blackacre, the Twelfth Bank of Nighttime sold "the paper" on the equity credit line to the First National Bank of Justice. By 2003 Barbara was in deep financial difficulty and unable to pay any of her mortgages.

45. Assume for this question that the Twelfth Bank of Nighttime is foreclosing on Blackacre. Please circle below **all** of the real estate interests the purchaser at foreclosure will take subject to:

First National Bank of Justice Second Street Bank

Thirty-Seventh National Bank Lease to Tolland

46. Assume for this question that the Second Street Bank is foreclosing on Blackacre. Please circle below **all** of the real estate interests the purchaser at foreclosure will take subject to:

First National Bank of Justice Twelfth Bank of Nighttime

Thirty-Seventh National Bank Lease to Tolland

47. Assume for this question that the Second Street Bank has foreclosed on Blackacre and is left with a $75,000 deficiency after foreclosure. Please circle below **all** persons against whom Second Street Bank can obtain a judgment on the deficiency. (Please circle your answer on the next page.)

Abraham Barbara Tolland

48. On what legal theory, if any, can the Second Street Bank obtain its deficiency judgment against Abraham?

_____

_____

_____

_____

49. On what legal theory, if any, can the Second Street Bank obtain its deficiency judgment against Barbara?

_____

_____

_____

50. Aardvark owned a bag of cement. He asked Beagle to watch it for him. While Beagle was driving with the bag of cement, it fell off his truck and Chameleon found it. Chameleon put the bag of cement on the back of his truck and went into Starbucks to purchase a grande dark roast. While Chameleon was in the store, Dingo came along and stole the bag of cement from the back of Chameleon's truck. Chameleon recovered the bag of cement from Dingo. Beagle has discovered the Chameleon has the bag of cement and wants it back. Who will win a lawsuit between Beagle and Chameleon in which title to the bag of cement is contested? (circle the best answer.)

Beagle Chameleon

PART TWO

ESSAY QUESTION

SUGGESTED TIME: FORTY-FIVE (45) MINUTES
PERCENTAGE OF EXAM POINTS: 25%

INSTRUCTIONS FOR PART TWO:

This part consists of one (1) substantial essay question. Please put your answer in a blue book entitled "Part Two," and not into this examination booklet. Please limit your answer to five (5) single-spaced bluebook pages.

QUESTION:

In 1962 Othello conveyed Blackacre by deed "to Agatha for life, then to Agatha's widower for his life, and then to Agatha's children in equal shares provided they survive Agatha's widower." At the time, Othello was 79 years old, and Agatha, who was Othello's granddaughter, was 12 years old with no children.

In 1964 Othello died with a will leaving his entire estate to the United Way. The will said nothing specifically about Blackacre. Agatha was Othello's only heir at law.

In 1972 Agatha married Bennie. In 1974 Agatha and Bennie had a child, Candace. They would have no other children. Agatha and Bennie chose not to live on Blackacre.

In 1975, Danson began trespassing on Blackacre. He built a home on the property, landscaped the entire lot, and fenced in the entire lot. Danson lived on Blackacre until 1980, when he sold "all my right, title and interest in Blackacre" to Edmund by deed. Edmund has continued to live in the home, and has kept up the landscaping, to this day.

In 1985, in order to satisfy a gambling debt, Bennie sold to Frances "all my right, title and interest in Blackacre" for $100,000.

In 1996 Candace married Gifford. Immediately after their honeymoon, Candace conveyed "all my right, title and interest in Blackacre to Candace and Gifford." In 2001 Candace and Gifford got divorced. The final divorce judgment said nothing about Blackacre.

In 2002 Agatha and Bennie died in an automobile accident. Bennie had a will that left everything he owned to Agatha if she survived him, and if not, to Candace. Agatha had a will that left everything to the United Way.

In 2003 Candace married Gustav. They had no children. Early in 2004 Candace died with a will leaving her entire estate to Gustav.

Please discuss the interests and rights of the parties.

PART THREE

ESSAY QUESTION

SUGGESTED TIME: FORTY-FIVE (45) MINUTES
PERCENTAGE OF EXAM POINTS: 25%

INSTRUCTIONS FOR PART THREE:

This part consists of two (2) shorter essay questions. Please put your answers in a blue book entitled "Part Three," and not into this examination booklet. Please limit your answer to each essay questions to three (3) single-spaced bluebook pages.

QUESTIONS:

A. In 1999, Able left Greenacre by will "to Bannister and his heirs, but if Greenacre is not used solely for farming purposes to Casey and her heirs." Able had used Greenacre as a coal mine. Bannister continued to use the property as a coal mine immediately upon moving onto Greenacre. Bannister made $1,000,000 from his coal mining operations.

1. What is the state of the title after the above-stated grant? Please explain why you choose each estate or interest.

2. Will Bannister be liable to Casey for waste? Please explain your answer.

B. Please consider the following two scenarios, which present different results. Please state the legal justification for the difference between the two situations.

1. Oscar was in the business of capturing wild animals for display. He invested time and money in this activity, and he considered it his livelihood. Oscar captured a sea lion in the Pacific Ocean, its natural habitat, and took it to New York where it escaped. Sea lions are not normally found in the Atlantic Ocean. Billy Tyne, a fisherman, captured the sea lion and has kept it as a pet. Oscar has discovered that

Billy has the sea lion and has demanded its return. A court rules that Billy Tyne, the finder, gets to keep the sea lion.

2. Barnum runs a circus and keeps elephants for use in the circus. While the circus was in New York City, one of Barnum's elephants escaped and was captured by Bailey. Barnum has discovered that Bailey has the elephant and wants him back. A court rules that Barnum gets the elephant back.

END OF EXAM

HAVE A HAPPY HOLIDAY!

Property Final Exam
2004
Peter M. Malaguti

Answers to Part I

1. **YES**

2. Trespass is **intentionally going onto someone else's land without their permission**. The intent required is to "go where you are going," even if you are not aware you are trespassing. **A intended to build where he built.**

3. **YES**

4. **C is maintaining and using the garage** on someone else's property. Every time B goes in the garage he is trespassing.

5. **A. Open and Notorious**
   B. Exclusive
   C. Hostile
   D. Actual
   E. Continuous

6. A. The garage is there for everyone to see, and A and C appear to be using it like the **average homeowner** would.

   B. There are no facts suggesting that B was also using the garage.

   C. A and C are both **trespassers** while they are using and maintaining the garage.

   D. A and C **physically used** the garage.

   E. 17 years plus 6 years is 23 years; this **exceeds the 20 year period.**

7. **YES**

8. They can **tack** because there is **privity of title (explain).**

9. **NO**

10. **No faulty deed or will.**

11. **Notice**

12. **Caulfield**

13. **Caulfield**
14. **Race Notice**

15. **Boxford**

16. **Caulfield**

17. **Life Estate**

18. **Vested Remainder Subject to Complete Divestment**

19. **None**

20. **None**

21. **YMCA's**

22. **Danza**

23. **Caleb**

24. **Caleb**

25. **Tenants by the Entirety**

26. **Tenants in Common**

27. **Owners:** **Abigail, Wilma**
    Estate: **Tenants in Common**
    % Interest: **50% each**

28. **Owners:** **Abigail, Wilma**
    Estate: **Tenants in Common**
    % Interest: **50% each**

29. **None**

30. **Covenant of the Right to Convey**

31. Seisin: Winona **did own an interest** in Blackacre
Right to Convey: **T by E** gave W no right to convey
Against Encumbrances: There were **no** encumbrances

32. **Owners:** **Hermes**
Winona

Estate: **Tenants by the Entirety**

% Interest: **50% each**

33. Alonzo would protect Bennett in regard to violations of covenants **only** if the problems that caused the violations were created **when Alonzo owned the property**.

34. **Circle neither.**

35. Against Encumbrances: There were **no** encumbrances
Covenant of Quiet Enjoyment: No interference with **possession**

36. Circle **both** covenant to deliver good **record title** and covenant to deliver **marketable title**

37. **Oscar**

38. **Colson -- $0**

39. **Quitclaim Deed; no covenants**

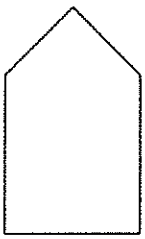
40. **Danielle -- $250,000**

41. Beppo gave a **special warranty deed** and **he created** the problem; he is liable. The covenant of quiet enjoyment, a future covenant, **runs with the land**.

42. **Alice -- $0**

43. Problem created **after Alice owned**, not before or during her ownership.

44.



45. **Second Street Bank**
37th National Bank

46. **37th National Bank**

47. **Abraham and Barbara**

48. **Privity of Contract**

49. **Third-Party Beneficiary Contract**

50. **Beagle**

whether Beeson's frames were on his own property. Not once did Beeson ever assume or believe that the frames were not on his own property.

Question 1 is on the next page.

1. Given the facts described above, as well as a proper application of the law, honey bees are (circle only one answer below):

ANIMALS ANIMUS REVERTENDI

ANIMALS FARAE NATURAE

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

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.

3. In the space below, please make your best argument that Beeson does not own the bees flying in and out of the moveable traps sitting near the tree on Ulee's land.

Because bees are and always will be considered wild animals, the capture doctrine applies to Beeson and Ulee. Under the capture doctrine, neither Beeson nor Ulee, nor anyone else for that matter, could own the bees without depriving them of their natural liberty. And, despite the fact that Beeson provided the moveable frame hives in which the bees lived, and that the bees always returned to the hives after completing their work afield, they remained free to come and go as they pleased without intrusion into their natural liberty. In addition, the rationale soli doctrine likely applies to Beeson. While he is free to capture wild animals, or the honey they produce, he is not free to trespass on someone else's land in order to do it. Beeson does not own the bees in question.

4. In the space below, please make your best argument that Beeson does own the bees flying in and out of the moveable traps sitting near the tree on Ulee's land.

COMMENT: There are a number of policy arguments you can make, and I'll keep an open mind to anything reasonable and rational. Something like this will work:

The capture doctrine is not good policy for the 21st century and should be abolished. Here, a seasoned beekeeper did what the industry standard called for, developed a reasonable expectation of profit from his craft, created a productive bee colony, contributed to the economy, and contributed to the environment (cross-pollination by bees is essential to many crops); yet it denied the benefit of his hard work. Our laws should recognize hear work and industriousness. Businesspersons who in good faith pursue their crafts should be protected by the laws.

5. Please state the definition of trespass.

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.

6. Please apply the facts to the elements of trespass to determine whether Beeson was a trespasser when he erected his frames.

Although Beeson thought he was on his own land, he formed the requisite intent to trespass because, despite his mistake, he went to where he intended to be. The requisite intent is not to be a trespasser; it is the "intent to go where you are going." The place where beeson went was someone else's property because the facts make clear that the land belonged to Ulee rather than Beeson. The only element in question was whether Beeson had Ulee's permission to be on Ulee's land. The facts are clear that Ulee knew that Beeson was present in the spot where he was beekeeping, and even encouraged his activities. While Ulee seemed not to know that Beeson was on his land, he made no objection to his presence. It appears that Beeson had permission to be where he was. On the other hand, one might be able to assert that one cannot grant permission to use land if one does not know s/he has the right to grant such permission. This leads me to conclude that Ulee has not given permission, and that Beeson is a trespasser. Of course, permission is something that can be withdrawn, and it will be interesting to see whether Ulee does so upon discovering that Beeson is on his land.

7. Despite the fact that none of the exceptions to trespass we discussed this semester seem to apply to the facts, please make your best argument that Beeson should not be considered a trespasser.

COMMENT: Obviously, I'll accept any variation of a well-reasoned answer. Something like that below will work:

One of the main policies about land ownership and occupancy in common law jurisdictions is that land should be put to productive use whenever possible, and contribute to the overall economy. Previously, the land that Beeson now occupies was unproductive and added little to the economy. Now, Beeson seems to be putting the land to its best use and is creating a commodity that will be placed in the marketplace; this will have a positive impact on the economy. In addition, we should encourage investment by entrepreneurs. Beeson has invested time and property (his frames) into the enterprise, and has added to the economy. It would send a discouraging message to investors to strip Beeson of his investment. Additionally, and from an entirely different perspective, Beeson's recent beekeeping endeavors has contributed significantly to his dignity and self-esteem. Sometimes human dignity is more important than abstract property rights. To strip Beeson of his new-found dignity may be to allow him to retreat back into a state where he was ready to commit suicide. Sometimes the law should "have a heart."

Assume for the remaining questions related to this fact pattern that Beeson carried on his beekeeping activities on Ulee's land as described for 11 years, and that Ulee continued to offer

Beeson advice and further continued not to realize that Beeson was on his land rather than Beeson's. After 11 years, Beeson died and left his real estate to his daughter, Helga, who continued the beekeeping activities. For another 10 years, Ulee continued to support Helga as he had supported her father.

8. Please state the five (5) elements of adverse possession.

i. *Open & Notorious*
ii. *Hostile*
iii. *Exclusive*
iv. *Actual*
v. *Continuous*

9. In the space provided below, please define and describe each of the elements you just listed above.

i. *Open & Notorious: Holding one's self out to the community as the actual owner of the land. This includes doing things on the land that normal owners of such land do, e.g. paying taxes, mowing the lawn, doing home improvements. Some say that open & notorious requires the adverse possessor to "fly the flag of ownership." The open & notorious element is usually fairly easy to satisfy as long as the adverse possessor is not attempting to hide his/her possession.*

ii. *Hostile: Interfering with the owner's right to exclusive possession is hostile possession of the land. By far, the most common form of hostile possession is trespassing; a trespass is always an affront to the owner's right to exclude. A non-trespasser, i.e., a co-tenant, is never hostile unless s/he makes it abundantly clear that s/he is occupying adversely or in defiance of the other owner(s)' rights.*

iii. *Exclusive: Non-use by the owner during the entire statutory period. To satisfy this element, the owner must essentially allow (even if s/he lacks knowledge) the adverse possessor to continue in possession, meeting all the other elements of adverse possession, for the entire statutory period. Interference by another and later adverse possessor will not break up the exclusivity element, although it may cause the first adverse possessor to lost some rights to the later trespasser if s/he does not act to evict.*

iv. *Actual: Physical presence on the adversely-possessed property. This does not require the adverse possessor to occupy the land, without leaving, for the entire statutory period. Instead, it requires the adverse possessor to be actually present in the same was a normal owner would be present on the property. Thus, the adverse possessor can go to work, shop and take vacations, as normal owners do.*

v. *Continuous: Quite simply, meet all of the other four adverse possession elements for the full statutory period, which most- commonly is 20 years.*

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

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. While blood relations between putative tackers often cause the parties to create privity by way of will or intestate distribution, mere blood relation without such is not enough to allow tacking.

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

The facts say that Beeson "left" his real estate to his daughter, Helga. I am unsure whether this was by will or by intestate distribution. If it was by will, the next question is whether Beeson named specific real estate, which presumably would not specifically name land he did not own, or whether the will merely said something like "all my real estate." A general grant of real estate would include land on which he was establishing a claim by adverse possession. I'll assume that Beeson left "all" his real estate either by will or intestate distribution. In such case, Helga will be able to "tack Beeson's 11 years onto her own 10 years because either a will or intestate distribution creates the formal real estate transfer needed to create privity of title. It also looks like tacking will allow Helga to satisfy the "continuous" element of adverse possession because most states have a 20 year period.

12. In the space below, please apply the elements of adverse possession – as stated and described in your answers to Questions 8 and 9 – to the facts to determine whether Beeson and Helga obtained title to the property by adverse possession.

Open & Notorious: This element is satisfied. Together, Beeson and Helga have been suing that land in issue as many property owners in Wewahitchka, Florida do: as an active beekeeping enterprise. Nothing in the facts suggests that they are attempting to hide their use of the land; to the contrary, they speak continuously with Ulee, who knows that they are there.

Actual: This element is satisfied. Beeson and Helga were physically present on the land on an ongoing basis.

Exclusive: This is satisfied. While Ulee, the actual owner, may have visited Beeson and Helga on the land they were occupying, nothing in the facts demonstrates that he interfered with their operation or acted in a way to thwart their possession.

Continuous: This is satisfied as long as the next element to be discussed is satisfied. As mentioned above, through tacking, Beeson and Helga have added together 21 years, which exceeds the normal 20 period of adverse possession.

Hostile: This seems to be the only element that presents any difficulty. Ulee has not objected to their presence and might be said to have given his permission. But, to ask a rhetorical question, how can one grant permission to be on one's land when one does not know it is his/her land? I therefore believe that, lacking such permission, Beeson and Helga were trespassers and thus satisfied the requirement of hostility.

Questions 13 through 18 are based on the following fact pattern:

Thirty years ago, Penelope Pious conveyed land by warranty deed the Holy Schmoly Evangelical Church "so long as the Church erects a church building within a year and maintains the land as its principal place of religious practice, but if not to the International Society of Apiculturists (ISA)."

13. What is the state of the title without applying the rule against perpetuities?

Holy Schmoly Evangelical Church (HSEC) owns a fee simple subject to executory limitation and the International Society of Apiculturists (ISA) owns an executory interest.

14. What is the state of the title, applying the rule against perpetuities?

HSEC owns a fee simple determinable and Penelope Pious owns a possibility of reverter. ISA, having been cut out because of the RAP violation, owns nothing.

15. In the space below, please describe how you applied the rule against perpetuities.

COMMENT: There are two acceptable ways to do this: (1) use the shortcut we learned in class or (2) do the full analysis. I'll do both:

(1) ISA owns an executory interest, which is subject to the rule against perpetuities (RAP). We learned that all executory interests violate RAP unless they are marked by a specific time limitation, e.g., "within 30 years thereafter," or "within the life of X." Essentially there are two conditions attached to the grant, one of which is marked by a time limitation, and the other of which is not. Since both conditions must be satisfied and one of them could take "forever" to fulfill, we must proceed as if there is no time limitation. Therefore, the executory interest owned by ISA is not marked by any time limitation and automatically violates RAP. The only remaining task is to decide how to cut it out. We learned that one must cut out the language stating the interest itself, plus all additional language attached to it until, cutting out as few words as possible, the grant makes sense. Here, all of the following language must be cut out: "but if not to the International Society of Apiculturists (ISA)." This leaves us with the following grant: "to the Holy Schmoly Evangelical Church "so long as the Church erects a church building within a year and maintains the land as its principal place of religious practice." And, the appropriate estates and interests implicated by that grant are fee simple determinable in HSEC, possibility of reverter in Penelope Pious.

(2) ISA owns an executory interest, which is subject to the rule against perpetuities (RAP). Because the grant was by deed, we need to find measuring lives who were "lives in being" at the time of the delivery of the deed. Here, the only person involved (the measuring life must be a human being) was Penelope. We cannot use HSEC or ISA because neither is a person. Essentially there are two conditions attached to the grant, one of which is marked by a time limitation, and the other of which is not. Since both conditions must be satisfied and one of them could take "forever" to fulfill, we must proceed as if there is no time limitation. Concentrating on the condition about maintaining the church as the HSEC's principal place of religious practice, we must ask whether it is possible for the HSEC to violate that condition more than 21 years after Penelope's death. The answer, of course, is "yes;" HSEC could use the land as its principal church for centuries before deciding to leave. So, this interest violates RAP. The only remaining task is to decide how to cut it out.

We learned that one must cut out the language stating the interest itself, plus all additional language attached to it until, cutting out as few words as possible, the grant makes sense. Here, all of the following language must be cut out: "but if not to the International Society of Apiculturists (ISA)." This leaves us with the following grant: "to the Holy Schmoly Evangelical Church "so long as the Church erects a church building within a year and maintains the land as its principal place of religious practice." And, the appropriate estates and interests implicated by that grant are fee simple determinable in HSEC, possibility of reverter in Penelope Pious.

The Church built a house of worship within a year, and continuously used the land as its principal religious site. Five years ago, Penelope died with a will that left all of her property, both real and personal, to the Society for the Prevention of Cruelty to Law Students (SPCLS). At her death, Penelope had only one heir: her son, Paul.

A year ago, the Church, in need of larger facilities, moved to another location and recently leased the land to a business that is converting the church building to a restaurant. Paul has brought an action seeking a declaratory judgment that the Church has forfeited ownership of the land, and that he is the owner in fee simple absolute. The ISA and SPCLS have sought to intervene in the case, each asserting that it rather than Paul is the proper plaintiff. The Church has raised all appropriate defenses against all parties.

16. Who is the proper plaintiff in the law suit? (Circle only one answer.)

PAUL ISA *SPCLS*

17. Given the facts as stated, and applicable law, who is most likely to win that law suit? (Circle only one answer.)

PAUL ISA *SPCLS* THE CHURCH

18. In the space provided below, please explain the reasoning you employed to reach your answers to Questions 16 and 17,

The SPCLS obtained ownership of Penelope's possibility of reverter through Penelope's will. That possibility of reverter ripened into a fee simple absolute when the HSEC breach the condition of the fee simple determinable and forfeited ownership. SPCLS now is the proper owner in fee simple absolute.

Although Paul would have inherited through intestate distribution if Penelope had died without a will, Penelope did have a will and chose to devise her real estate to the SPCLS rather than Paul.

The HSEC has breached the condition of the fee simple determinable and has forfeited ownership.

The ISA had been cut out of the initial grant because its executory interest violated RAP.

Questions 19 through 27 are based on the following fact pattern:

Al, who traveled frequently on business trips was due to return home in about a week. He had been yearning to purchase a Luxman stereo system for quite some time, and now had the money to do so. Al's plan was to order the system from an online company that specialized in high end stereo equipment. The only method of delivery was by UPS. Al called his neighbor and friend, Ben, and asked if he would be willing to have the Luxman system delivered to his house for safekeeping. Ben said he would be willing to receive and hold the system for Al, and Al accordingly made arrangements for the system to be delivered to Ben's house. The UPS delivery person arrived at Ben's house when he was at work and left a slip instructing Ben to pick up the package at its nearby distribution facility. And so Ben picked up the Luxman stereo system the next day.

19. When Ben took possession of the Luxman stereo system, what was his general legal relationship with Al?

A bailee of personal property

20. State the specific type of that relationship between Ben and Al at common law?

A bailment that benefitted the bailor

21. What was the standard of care that Ben owed to Al under the specific type of that relationship you identified in your answer to the preceding question?

Ben owed a low duty of care: only the duty to refrain from engaging in gross negligence or wanton or willful conduct.

22. What is the standard of care that Ben owed Al under the modern rule?

Ordinary negligence

After picking up the stereo system from the distribution center, Ben walked out to the parking lot to get to his car. He put the package on the roof of the car while he fumbled through his coat pockets to find the car keys. Ben dropped the keys as he pulled them out of his pocket. As he bent down to get the keys, Callie, who had been watching Ben leave the distribution center, saw his opportunity, grabbed the package, and dashed off before Ben could reach it.

Out of breath and tired of running, Callie stopped at Mollie's Pub to quaff a cold beer. Upon entering the establishment, Callie placed the package on top of the bar and made his order. Six or seven quaffs later, Callie settled his tab and left the pub, entirely forgetting about the package he had brought in.

23. What kind of property was the package as Callie walked out of the pub? (Circle only one.)

LOST PROPERTY *MISLAID PROPERTY*

ABANDONED PROPERTY EMBEDDED PROPERTY

TREASURE TROVE PROPERTY FOUND FOR AN EMPLOYER

24. In the space provided below, please apply the facts to the law to explain the reasoning for your last answer.

Mislaid property: The possessor purposely places it somewhere, but forgets about it and leaves without it. That is what happened here: Callie placed the stereo system on the bar, forgot about it, and walked away.

Lost property: The possessor does not purposely place it somewhere. Instead, s/he loses possession without realizing it. An example would be placing an object in one's pocket and having it fall out because there is a hole in the pocket. Here, the stereo system was not lost because Callie purposely placed it on the bar.

Abandoned property: To abandon property one must intentionally leave it behind while simultaneously possessing the intent not to return to retrieve it. Since the facts say that Callie entirely forgot about the stereo system, he could not have formed the intent to abandon it.

Embedded property: The property is embedded in the earth for a long period of time and essentially becomes part of the land. A bar is not the earth, and the stereo was embedded in nothing.

Treasure trove: Valuable property such as money or jewels are hidden or secreted away for safekeeping and enough time has passed to form a conclusion that the owner is never coming back. Since there is nothing secret or safe about placing property atop a bar, the stereo could not have been treasure trove.

Property found for an employer: Property found during the scope of one's employment is found for the employer rather than himself/herself. Because Callie was a thief working for no one but himself this doctrine cannot apply.

Mollie, the pub owner and chief bartender, placed the package in a safe but visible spot behind the bar hoping that its true owner would return to claim it. An hour later, Ben, who had been searching for the package, came into Mollie's establishment and told Mollie about his travails. Mollie pointed out the package and asked him if that was it.

25. The facts being as described, at that point was Mollie legally required to return the package to Ben? (Circle only one.)

YES NO

26. In the space provided below, please apply the facts to the law to justify your conclusion.

Mollie, the finder of mislaid property, was only obligated to return it to a rightful possessor who had mislaid it, or to some other person with greater rights than the mislayer. Because Ben, as a bailee, and Mollie, as a finder of mislaid property, both had rights to the stereo system, we need to decide which of them had greater rights. Application of the "priority of occupation" doctrine, would give Ben greater rights to the stereo system because he had gained rightful possession of it before Mollie had. Mollie must return the stereo system to Ben, who has greater rights.

27. Please place the four people mentioned in the facts into the proper order of rights in the package, with the person having the most rights being listed below in space number "**i**" and the person with the least rights being listed below in space number "**iv**."

i. *Al, the true owner.*

ii. *Ben, the bailee, and highest possessor under the doctrine of priority of occupation.*

iii. *Mollie, the finder of mislaid property.*

iv. *Callie, the thief with no rights to the property.*

Questions 28 through 32 are based on the following fact pattern:

On March 1, 2003, Lou, as landlord, leased Millacre to Tim, as tenant, by written lease for a term of 10 years. The lease was for commercial use, and the rent was $3,500 a month. The lease was silent on the question whether Tim could assign or sublease Millacre.

Tim occupied Millacre from March 1, 2003 to February 28, 2005, and paid all his rent when it became due. As of March 1, 2005, Tim "assigned all [his] right, title and interest in Millacre" to Tammy.

28. Based on these facts, did Tim have the authority to "assigne[] all [his] right, title and interest" to Tammy? (Circle only one.)

YES NO

29. In the space provided below, please apply the facts to the law to justify your conclusion.

Unless a lease contains an anti-assignment or anti-sublease provision, a tenant is free to assign or sublease at will. The facts expressly state that the lease between Lou and Tim "was silent on the question whether Tim could assign or sublease." Accordingly, Tim was free to assign or sublease.

Tammy moved in immediately and made rental payments to Lou as required under the original lease until, as of March 1, 2007, Tammy "assigned all [her] right, title and interest to Tony for a term of

five (5) years." Tony immediately moved in and began to pay the rent called for in the lease until January 1, 2008, when he stopped paying any rent at all.

In March 2008, Lou brought a breach of lease action against both Tammy and Tony to collect outstanding rent.

30. Absent any valid defenses, Lou should recover a judgment for the outstanding rent against:

YOU MAY CIRCLE ONE OR BOTH OF THE ANSWERS BELOW.

TAMMY *TONY*

Just to be clear, both names are circled.

For the next set of questions, assume that Tony did pay all rent required by the original lease, and that Lou did not sue him and Tammy as of that time. As of September 1, 2010, Tony "assigned all [his] right, title and interest in Millacre" to Toliver. Toliver never paid any rent, and rent is now due and owing for the months of September 2010, October 2010 and November 2010.

31. Lou desires to bring a contract action to collect the $10,500 he is owed in back rent. Absent any valid defenses, Lou should recover a judgment for the outstanding rent against:

YOU MAY CIRCLE ANY, SOME OR ALL OF THE ANSWERS BELOW.

TAMMY TONY TOLIVER

32. In the space provided below, please fully explain why each person is or is not liable under Lou's law suit.

TAMMY: *Tammy remained in privity of estate with Lou because at the end of Tony's (now Toliver's sublease the right of possession is coming back to Tammy and will remain there until the end of the lease in 2013, at which time the right of possession will cede to Lou, the landlord.*

TONY: *Tony was never in privity of contract with Lou because they were not parties to the same lease. Tony also is not in privity of estate with Lou because, when his sublease is done, the right of possession will cede to Tammy, who will have a year left on the lease. There is no direct line of possession between Tony and Lou. Without either privity of contract or privity of estate, Tony is not liable.*

TOLIVER: *Toliver was never in privity of contract with Lou because they were not parties to the same lease. Toliver also is not in privity of estate with Lou because, when his sublease is done, the right of possession will cede to Tammy, who will have a year left on the lease. There is no direct line of possession between*

Toliver and Lou. Without either privity of contract or privity of estate, Toliver is not liable.

Questions 33 through 37 are based on the following fact pattern:

Tammy leased a two-bedroom apartment from Larry under a written lease that: (1) identified the parties, (2) described the land by its proper address and apartment number, (3) stated the proper term, which began on January 1, 2009 and ended at midnight on December 31, 2009, and (4) was signed by both parties. The lease made no provisions for any extension after December 31, 2009. As the end of the lease term approached, neither Tammy nor Larry notified the other of their intentions regarding a new lease term or extension of the current lease. At the end of the lease term on December 31, 2009, Tammy remained in the apartment. On January 1, 2010, Tammy mailed to Larry a rent check in the same amount as her payments for each of the previous twelve months. It is now January 4, 2010 and Larry has not deposited or cashed the check.

33. What kind of a tenancy existed at the inception of the tenancy between Larry and Tammy?

Estate for years / Term of years / Estate for a term

34. In the space provided below, please apply the facts to the law to justify your answer to the previous question.

The lease had a term that appears to have been fixed in advance, included a definite beginning date and ending date (1/1/09-12/31/09) and satisfied the statute of frauds because it was: (1) memorialized in a written document that (2) identified the parties, (3) properly described the land, (4) stated the proper term of the lease, and (5) was signed by the party to be charged – here, both parties.

35. What kind of a tenancy existed between Larry and Tammy on January 4, 2010 as Larry was contemplating what to do with Tammy's rent check?

Tenancy at sufferance

36. What will be the effect of a decision by Larry to endorse and deposit the check he received from Tammy in January 2010?

He will convert the tenancy at sufferance into a periodic tenancy (multistate law) or a tenancy at will (Massachusetts law).

37. In the space provided below, please apply the facts to the law to justify your answer to the previous question.

Tenants at sufferance do not pay rent and are not recognized as proper tenants by their landlords. The payment and acceptance of rent, however, demonstrates that the landlord has accepted the tenant at sufferance as a proper tenant. In Massachusetts this will be a tenancy at will because there is no writing to satisfy the statute of frauds required for a periodic tenancy or estate for years. In multistate law it will be a periodic tenancy; periodic tenancies are not required to be in writing in multistate law.

Questions 38 through 40 are based on the following fact pattern:

Tom Buchanan owned West Egg, a vacant lot, in fee simple absolute. In 1995, he conveyed West Egg by quitclaim deed to Myrtle Wilson, his secret mistress, in consideration of "love and affection." Neither Buchanan nor Myrtle told anyone of the conveyance.

In 2006, Buchanan sold West Egg to Nick Carraway for $525,000 by a special warranty deed that included the covenant of seisin, the covenant of quiet enjoyment, and the covenant of further assurances. Carraway was unaware of Buchanan's prior deed to Myrtle Wilson.

In 2007, Carraway sold West Egg to Jay Gatsby by a special warranty deed that included the covenant of seisin, the covenant of quiet enjoyment, and the covenant of further assurances. Gatsby also was unaware of Buchanan's prior deed to Myrtle Wilson.

In 2009, Buchanan and Myrtle ended their love affair and Myrtle brought a successful ejectment action against Gatsby that forced him to have to move off of West Egg. In turn, Gatsby has sued Carraway and Buchanan for breaching their deed covenants.

38. In his law suit, Gatsby will:

YOU MAY CIRCLE ONE ANSWER BELOW.

PREVAIL AGAINST CARRAWAY ONLY

PREVAIL AGAINST BUCHANAN ONLY

PREVAIL AGAINST BOTH CARRAWAY AND BUCHANAN

PREVAIL AGAINST NEITHER CARRAWAY OR BUCHANAN

39. The deed covenant upon which Gatsby will prevail as to each is:

YOU MAY CIRCLE ONE, SOME OR ALL OF THE ANSWERS BELOW AS TO EACH DEFENDANT.

AGAINST CARRAWAY:

COVENANT OF SEISIN

COVENANT OF QUIET ENJOYMENT

NO COVENANTS

AGAINST BUCHANAN:

COVENANT OF SEISIN ***COVENANT OF QUIET ENJOYMENT***

NO COVENANTS

40. In the space provided below, please apply the facts to the law to justify your answer to the previous two questions.

Although Carraway gave Gatsby the covenant of seisin and covenant of quiet enjoyment, and both seem to have been breached, Carraway also gave a special warranty deed. This means that Carraway will honor the above-mentioned covenants only if the problems associated with them were created while he owned the property. Buchanan created the problem of his lack of ownership, which subsequently led to the displacement of Gatsby, when he sold property to Carraway that he did not own. Since the lack of ownership issue was created on Buchanan's watch, rather than Carraway's watch, Carraway is not liable on his special warranty deed.

Buchanan's special warranty deed will not protect him because he created the problem that ultimately led to Gatsby's ejection. However, he will not be liable on the covenant of seisin because it is a "present covenant" that does not "run with the land." This means that the only person who can enforce the covenant of seisin is the direct grantee – here, Carraway; Gatsby, a remote grantee, cannot enforce a present covenant such as the covenant of seisin. On the other hand, the covenant of quiet enjoyment is a "future covenant" that does "run with the land;" it is enforceable by remote grantees such as Gatsby as long as the action is brought within the statute of limitations. The statute of limitations on the covenant of quiet enjoyment started to run when the interference with Gatsby's peaceful possession first occurred, and it will expire 6 years later. Since the interference was in 2009 and Gatsby brought his action against Buchanan in 2010, Gatsby is well within the statute of limitations and will recover against Buchanan.

Questions 39 through 41 are based on the following fact pattern:

Albert borrowed money from the JP South Bank and executed a promissory note for the amount secured by a mortgage on his residence. Several years later, Albert sold his residence to Bertram. As provided by the contract of sale, the deed to Bertram provided that Bertram agreed "to assume the existing mortgage debt to the JP South Bank." Subsequently, Bertram defaulted on the mortgage loan to the JP South Bank, and the JP South Bank initiated appropriate foreclosure proceedings. The foreclosure sale resulted in a deficiency and the JP South Bank has sued both Albert and Bertram for the deficiency.