REAL PROPERTY
MIDTERM EXAMINATION
SPRING 2023
March 21, 2023

YOUR STUDENT ID # (Five – 5- Digits)

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INSTRUCTIONS:

You may read the instructions that follow, and then go immediately to read and sign the Student Examination Honor Pledge. You are not to look beyond the Student Examination Honor Pledge until you are instructed to begin the exam.

If you have not downloaded this Midterm Exam from the Examsoft platform prior to the start time of the exam and are not ready to start taking the exam immediately once the professor/proctor calls for the exam to begin, you will be required to write the exam rather than type it.

YOU ARE NOT TO HAVE A CELL PHONE, OR ANY OTHER DEVICE THAT CAN TRANSMIT AND/OR RETAIN INFORMATION, ON YOUR PERSON DURING THIS EXAM. POSSESSION OF A CELL PHONE OR SUCH OTHER DEVICE SHALL BE TREATED AND DEALT WITH AS CHEATING, EVEN IF THE DEVICE IS NOT TURNED ON.

YOU MAY WEAR A JACKET WHILE TAKING THE EXAM, BUT IF YOU TAKE IT OFF YOU ARE TO IMMEDIATELY PLACE IT AT THE SIDE OR BACK OF THE ROOM. IF YOU START OFF WITHOUT A JACKET, YOU MAY PUT ONE ON WITH NOTIFICATION TO, AND PERMISSION FROM, THE PROFESSOR/PROCTOR.

IF YOU LEAVE THE CLASSROOM, YOU MUST TAKE YOUR JACKET OFF AND LEAVE IT AT THE SIDE OR BACK OF THE ROOM.

Please take ONE (1) blue book and use it for scrap. **Do not turn that blue book in**. **All your answers will go on this exam booklet if you write your exam, and on the Examsoft platform if you type your exam**.

WHETHER YOU WRITE OR TYPE, YOU ARE TO TURN THIS EXAM BOOKLET IN WHERE INSTRUCTED WHEN YOU HAVE FINISHED YOUR EXAM. IF I DO NOT HAVE YOUR EXAM BOOKLET, WITH YOUR ACCEPTANCE OF THE HONOR CODE FOLLOWING THESE INSTRUCTIONS, I WILL NOT CORRECT YOUR EXAM AND

YOU WILL RECEVE A GRADE OF “0” AS A SCORE ON YOUR FINAL EXAM, EVEN IF YOU HAVE UPLOADED AN ANSWER ON EXAMSOFT.

Please do not identify yourself in any way other than by student ID number. Please do not write any information in your exam booklet that might reveal who you are.

This is a closed-book examination; other than writing implements, you are not to have any materials on your table or at your feet. Please place all books, knapsacks, briefcases, etc. at the side or front of the room.

Please do not use your own scrap paper. You may only use the scrap blue book as scrap paper. You may also use this exam booklet for notes and scrap as long as you do not insert them into the answer spaces if you are writing (rather than typing) your exam. If you are typing on Examsoft, you may use this exam booklet for scrap as well. Even if you are writing, you may use the areas of this booklet not designated for answers for notes and scrap.

WHETHER YOU TYPE OR WRITE, THIS HARD COPY EXAM BOOKLET IS THE OFFICIAL EXAM. IF MINOR TYPOS ARE FOUND AFTER THE EXAM IS POSTED ON EXAMSOFT, CORRECTIONS WILL BE GIVEN SO THAT YOU CAN MAKE THEM ONLY ON THIS HARD COPY OF THE EXAM.

This examination consists of TWO PARTS: (1) One (1) Essay Question, and (2) Three (3) Multiple Choice Questions that require brief explanations. Below are the Instructions proceeding each of these two Parts in your exam booklet:

<u>PART ONE</u>

ONE (1) ESSAY QUESTION
Suggested Time: One-Half (1/2) Hour (30 Minutes)

Instructions: Below is one (1) essay question (<u>QUESTION 1</u>) consisting of a fact pattern and three (3) specific questions about the facts and law. You are to organize your answers under each specific question, making sure to provide the answers called for in each of the three specific questions. Like all law school essay questions, this essay question requires you to perform <u>legal analysis</u>, which is <u>applying specific relevant facts derived from the fact pattern to specific elements and rules of law we have studied to support each and every conclusion regarding the rights, duties, and liabilities of the parties</u> as requested in the two questions following the fact pattern. Bearing this in mind, you will be scored on the accuracy of your knowledge of the law, your organization of your answer, and the breadth of your answer given the issues presented by the fact pattern. Stated another way, I need you to spot all major issues, properly state the rules and elements of law, and provide proper and logical legal analysis derived from the relevant law and relevant facts.

IF YOU WRITE RATHER THAN TYPE, YOUR ANSWER MUST BE PLACED WITHIN THE 95 LINES IMMEDIATELY BELOW QUESTION 1 IN THIS EXAM BOOKLET, NOT IN A SEPARATE BLUE BOOK. I WILL NOT READ ANY ANSWERS THAT ARE NOT PROVIDED IN THIS EXAM BOOKLET. ONCE AGAIN, DO NOT PUT YOUR ANSWERS IN A SEPARATE BLUE BOOK.

PART TWO

THREE (3) MULTIPLE CHOICE QUESTIONS – PROVIDE ANSWERS & EXPLANATIONS

Suggested Time: One-Half (1/2) Hour (30 Minutes) – Ten (10) Minutes Each

Instructions: Below are three (3) multiple choice (MBE style) questions (QUESTIONS 2, 3, AND 4), each of which is followed by a space for your answer and then twenty (20) lines for your explanation of why you chose the best answer for each question and eliminated incorrect or less correct answers. Whether you type or write, begin by providing the correct letter answer (A, B, C, or D) prior to the explanation. Each question begins and ends on the same, single page, but the explanation lines will run onto a second page. Give the fullest explanations you can within the limits of time and space provided. Whether you type or write, DO NOT EXCEED 20 LINES FOR YOUR FULL ANSWER. If you write, do not double up lines within the spaces provided to give you more than 20 lines of an answer. I WILL NOT READ BEYOND 20 LINES OF YOUR ANSWER. You have more than enough space to explain within 20 lines.

You will be scored on the breadth, organization, and accuracy of your answer and explanation. Place your answer within the provided space on this exam. Just because there are 20 lines per explanation does not necessarily mean that you are expected to use all the space given; some answers require longer explanations than others.

IF YOU WRITE RATHER THAN TYPE, YOUR ANSWER MUST BE PLACED WITHIN THE 20 LINES IMMEDIATELY BELOW QUESTIONS 2, 3, AND 4 IN THIS EXAM BOOKLET, NOT IN A SEPARATE BLUE BOOK. I WILL NOT READ ANY ANSWERS THAT ARE NOT PROVIDED IN THIS EXAM BOOKLET. ONCE AGAIN, DO NOT PUT YOUR ANSWERS IN A SEPARATE BLUE BOOK.

If you are writing your exam:

Please write "WRITTEN" on the first page of your exam booklet near the top.

Please place your answers to both Part One and Part Two in the spaces provided in this exam book, I WILL NOT CORRECT OR GRADE ANYTHING YOU PUT IN YOUR SCRAP BLUE BOOK UNDER ANY CIRCUMSTANCES.

Please limit your answers to the lines provided below each question. I will not read beyond the lines provided under each question. Please note that some of the lines for your answers occasionally run on to the next page. I suggest you look at how much space I give you before beginning to write your answer to 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 when a question asks for it.

If you are typing your exam:

If you are typing your exam, please write "TYPED" on the front of this Exam Booklet. You will be required to provide your answers on Examsoft. I understand that your time clock will not begin until you start the exam on Examsoft, regardless of when I call for you to begin. **Whether you have standard time or an extra-time accommodation, *the official time for your exam shall be the time I tell you to begin your exam at the beginning of its administration*, NOT the time your Examsoft time clock says. For this reason, you MUST begin your exam *immediately* when I call for the exam to begin**; it should take no more than a minute or two for you to start your exam on Examsoft (see above) and I will provide you five extra minutes to deal with the Examsoft startup. This will be the case whether you are a standard time taker or an extra-time accommodations taker. When I call time, you are to close out your Examsoft administration and upload your exam *immediately* if you type, and you will hand in your written answers immediately if you write.

Please place your answers to both Part One and Part Two in the appropriate space provided on the Examsoft platform. Please ensure that the printed exam that I correct is in the order presented in this exam booklet and that all questions/parts are properly labelled. **I WILL NOT CORRECT OR GRADE ANYTHING YOU PUT IN YOUR SCRAP BLUE BOOK, OR IF YOU TYPE IN THIS EXAM BOOKLET, UNDER ANY CIRCUMSTANCES**.

You have ONE HOUR minutes (60 minutes) to complete this exam if you are entitled to standard time.

You have ONE AND ONE-HALF HOURS (90 minutes) to complete this exam if you are entitled to time and one-half.

You have TWO HOURS (120 minutes) to complete this exam if you are entitled to double time.

There is a bathroom book at the front of the room. Please sign out and in when you leave the room. Since any pen I put out for each bathroom book "wanders" soon after the first person writes in the book, please use your own pen or pencil to sign out and in.

You are to only turn in your exam booklet with your Student ID (not your name) and your confirmed honor code (your Student ID placed in the signature line in place of your name).

Whether you type or write, please turn in ONLY this exam booklet. You may leave when you are done and have turned in your exam booklet as long as you are quiet and courteous to your classmates who are still taking the exam. If you breach this courtesy, I will instruct you to take your seat and remain quietly until the exam is done.

GOOD LUCK!

STUDENT HONOR PLEDGE

In taking this examination, I hereby affirm, represent and acknowledge, both to the professor and the Massachusetts School of Law community, that:

1. I understand that the professor will not grade my examination, and I will suffer the consequences of not having submitted a final exam (specifically, failure of this course), if I fail to place my full student identification number in the signature space below. Placement of my student identification number below will serve as a substitute for my signature, and carry the full weight of my personal signature in making this pledge on my honor;

2. I will not give or receive any unauthorized assistance on this examination;

3. I understand that this is a closed-book examination and, with the exception of materials specifically referred to in the exam instructions, I am not permitted to use papers, personal effects, electronic devices, or any other matter that could provide unauthorized assistance in completing this examination, create any unfair advantage in completing this examination, or otherwise frustrate the honest administration of this examination as a closed-book examination, whether the same be located on my person, near me, in the exam room, or anywhere else in the building or on the grounds;

4. I have placed all electronic devices, papers, personal effects, and other matter that I brought into the room at the front, side or back of the room as instructed by the exam proctor, with all electronic devices being powered off;

5. I have not placed in bathrooms or other areas in the building or grounds any

papers, personal effects, electronic devices, or any other matter that could provide unauthorized assistance in completing this examination, create any unfair advantage in completing this examination, or otherwise frustrate the honest administration of this examination as a closed-book examination, either for my personal use or the use of anyone else;

6. I will not speak to or communicate with any other person taking this exam until its administration is completed (when *everyone* is finished and all the exam materials have been turned in). This also applies while I am waiting in line to hand in the exam or if I complete or leave the exam before others;

7. I will not identify myself in any way or frustrate the anonymous grading of this exam;

8. I will faithfully follow any additional instructions the exam proctor provides orally during the exam;

9. Other than instructions that the professor may have given out in advance, I have heard nothing about the specific contents of this examination prior to its commencement;

10. I understand and acknowledge that MSLAW's honor code requires me to report observed violations of these provisions as well as the MSLAW Honor Code.

Signed under the pains and penalty of perjury.

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FULL STUDENT ID NO.
(DO NOT PUT YOUR NAME HERE)

DO NOT TURN THE PAGE AND BEGIN UNTIL THE PROFESSOR/PROCTOR INSTRUCTS YOU TO DO SO.

<u>EXAM</u>

<u>PART ONE</u>

ONE (1) ESSAY QUESTION
Suggested Time: One-Half (1/2) Hour (30 Minutes)

Instructions: Below is one (1) essay question (<u>QUESTION 1</u>) consisting of a fact pattern and three (3) specific questions about the facts and law. You are to organize your answers under each specific question, making sure to provide the answers called for in each of the three specific questions. Like all law school essay questions, this essay question requires you to perform <u>legal analysis</u>, which is <u>applying specific relevant facts derived from the fact pattern to specific elements and rules of law we have studied to support each and every conclusion regarding the rights, duties, and liabilities of the parties</u> as requested in the two questions following the fact pattern. Bearing this in mind, you will be scored on the accuracy of your knowledge of the law, your organization of your answer, and the breadth of your answer given the issues presented by the fact pattern. Stated another way, I need you to spot all major issues, properly state the rules and elements of law, and provide proper and logical legal analysis derived from the relevant law and relevant facts.

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<u>QUESTION 1</u>

A Testator who owned a twenty-acre parcel of unimproved real estate named "Blissland" devised it as a specific bequest through a provision of her will that stated: "to my Widower for life, and then to my two children, Albert and Barbara, provided they survive my Widower." When she executed the will twenty-seven (27) years ago, the Testator was near the end of a divorce from her first husband, Primo, and was engaged to be married to Secundo, a man 20-years younger than the Testator. Albert and Barbara were, and remain, the Testator's only two children; Primo is their father. The will provided for other specific gifts of most of the rest of Testator's property – money, stock, tangible personal property, and the like – equally to Albert and Barbara. The will also had a residuary clause (i.e., a clause disposing of all the Testator's property not specifically provided for elsewhere in the will) that gifted the remainder of the Testator's estate to the Massachusetts Society for the Prevention of Cruelty to Animals ("MSPCA").

The Testator's divorce to Primo became final twenty-six (26) years ago. The Testator married Secundo twenty-five (25) years ago. The Testator died twenty-three (23) years ago, with her twenty-seven (27) year old will remaining intact and

unchanged. She was survived by Secundo, Albert, and Barbara. Albert and Barbara were the co-Personal Representatives of the Testator's estate.

Twenty-one (21) years ago, a Stranger made entry on Blissland, immediately built a home within full view from the public road that fronted the land, and has continued to reside there in the same manner as that of the neighboring properties since moving in.

Twelve (12) years ago, Secundo died. Seven (7) years ago Albert died with a will leaving his entire estate to his only child, Charlotte. Four (4) years ago, Barbara died with a will leaving her entire estate to her only child, David.

Three (3) months ago, Charlotte and David first learned that Stranger had built a home upon Blissland and had been living there for the past twenty-one (21) years. Two (2) months ago, Charlotte and David filed an ejectment action in a court of competent jurisdiction seeking to enjoin Stranger from maintaining a trespass on the land, and that they are the equal owners of Blissland. The MSPCA has been permitted to intervene in the action, and is claiming that it, rather than Charlotte, David, and Stranger, is the actual owner of Blissland because the grant to Albert and Barbara following the Widower's death had violated the Rule Against Perpetuities. The jurisdiction in which Blissland is located has a statute that states: "An action for the recovery of land shall be commenced, or an entry made thereon, only within twenty years after the right of action or of entry first accrued." The jurisdiction in which Blissland is located also applies the common law Rule Against Perpetuities without modification.

1. Please state the "state of the title" (who are the owners and what interests did they own?) upon the Testator's death. In doing so, please apply the common law Rule Against Perpetuities. Please provide your full analysis (apply the relevant facts to the elements and rules of law we have studied to support each legal conclusion you reach) in determining who owned estates and interests upon the Testator's death, and what estates and interests they owned.

2. Please fully describe how the court should rule in determining who currently owns estates and interests in Blissland, and what estates and/or interests each person owns. Please provide your full analysis (apply the relevant facts to the elements and rules of law we have studied to support each and every legal conclusion you reach) in determining who currently owns estates and interests in Blissland, and what estates and/or interests each person owns.

3. Assume for this question only, that Charlotte and David are deemed to be the owners of Blissland. Obviously, in such event, they will own as cotenants. Please state the form of cotenancy under which they would own, as well as the characteristics of the concurrent estate they would own. Once again, please provide your full analysis (apply the relevant facts to the elements and

rules of law we have studied to support each and every legal conclusion you reach) in determining the concurrent estate Charlotte and David would own.

PART TWO

THREE (3) MULTIPLE CHOICE QUESTIONS – PROVIDE ANSWERS & EXPLANATIONS
Suggested Time: One-Half (1/2) Hour (30 Minutes) – Ten (10) Minutes Each

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The questions begin on the next page.

QUESTION 2

Seven years ago, a man, his sister, and his cousin became equal owners, as tenants in common, of a house. Until a year ago, the man lived in the house alone. The sister and the cousin are longtime residents of another state.

One year ago, the man moved to an apartment and rented the house to a tenant for three years under a lease that the man and the tenant both signed. The tenant has since paid the rent each month to the man.

Recently, the sister and the cousin learned about the rental. They brought an appropriate action against the tenant to have the lease declared void and to have the tenant evicted. The tenant raised all available defenses.

What will the court likely decide?

(A) The lease is void, and the tenant is evicted.

(B) The lease is valid, and the tenant retains exclusive occupancy rights for the balance of the term.

(C) The lease is valid, but the tenant is evicted because one-third of the lease term has expired and the man had only a one-third interest to transfer.

(D) The lease is valid, and the tenant is not evicted but must share possession with the sister and the cousin.

Correct Answer: __________

Explanation:

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QUESTION 3

By written lease, an owner leased his house to a tenant for a term of three years, ending December 31 of last year, at the rent of $2,000 per month. The lease was silent regarding the tenant's ability to sublet and assign.

The tenant lived in the house for one year and paid the rent promptly. After one year, the tenant agreed to "sublease" the house to his friend for one (1) year at a rent of $2,000 per month. The friend took possession of the house and lived there for six months but, because of her unemployment, paid no rent. After six months, on June 30, the friend abandoned the house, which remained vacant for the balance of that year without any further rent having been paid.

At the end of the second year of the lease term, the tenant again took possession of the house, but paid the owner no rent. At the end of the lease term, the owner brought an appropriate action against both the tenant and his friend to recover $48,000, the last two years of unpaid rent.

In such action the owner is entitled to a judgment

(A) against the tenant individually for $48,000, and no judgment against the friend.

(B) against the tenant individually for $36,000, and against the friend individually for $12,000.

(C) against the tenant for $24,000, and against the tenant and the friend jointly and severally for $24,000.

(D) against the tenant individually for $36,000, and against the tenant and the friend jointly and severally for $12000.

Correct Answer: __________

Explanation:

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QUESTION 4

A developer and an investor had been in the real estate business for many years. Because of their long-standing relationship, the developer and the investor, neither of whom was an attorney, often dispensed with certain legal formalities when dealing with each other, thus saving the costs of lawyers' fees and other attendant expenses. The investor owned a parcel of land that the developer was interested in, and she offered to buy it from him for $50,000. The investor accepted the developer's offer, and the parties agreed on June 15 as the closing date. The developer handed the investor a check for $2,500 with "earnest money" written in the memo, and they shook hands on their deal.

A few weeks before closing, the developer called the investor and told him she had changed her mind about purchasing the land because of a sudden economic downturn in the area. The investor appeared at the developer's office on June 15 with the deed to the land in his hand. The developer refused to tender the balance due, and the investor sued the developer for specific performance.

Will the investor prevail?

(A) No, because the agreement does not comply with the Statute of Frauds and is, therefore, unenforceable.

(B) No, but the court will allow the investor to keep the $2,500 earnest money as damages.

(C) Yes, because the $2,500 payment constituted part performance of the contract.

(D) Yes, because the developer and the investor had established a course of dealing.

Correct Answer: __________

Explanation:

END OF EXAM

REAL PROPERTY
MIDTERM EXAMINATION
SPRING 2023
March 21, 2023

ANSWERS & EXPLANATIONS

Please note that these answers are aspirational; I do not expect that any one law student will hit every issue raised and argument made below. The students who score highly will make the bulk of the arguments raised below while properly stating and applying the law to the facts. It is possible that students will make additional arguments that I did not make below. If proper, such additional arguments will achieve additional points. Grades lower than the very highest grades will miss some of the arguments, not state the law properly, and/or fail to properly apply the elements of the rules of law to specific facts (legal analysis).

QUESTION 1

A Testator who owned a twenty-acre parcel of unimproved real estate named "Blissland" devised it as a specific bequest through a provision of her will that stated: "to my Widower for life, and then to my two children, Albert and Barbara, provided they survive my Widower." When she executed the will twenty-seven (27) years ago, the Testator was near the end of a divorce from her first husband, Primo, and was engaged to be married to Secundo, a man 20-years younger than the Testator. Albert and Barbara were, and remain, the Testator's only two children; Primo is their father. The will provided for other specific gifts of most of the rest of Testator's property – money, stock, tangible personal property, and the like – equally to Albert and Barbara. The will also had a residuary clause (i.e., a clause disposing of all the Testator's property not specifically provided for elsewhere in the will) that gifted the remainder of the Testator's estate to the Massachusetts Society for the Prevention of Cruelty to Animals ("MSPCA").

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Three (3) months ago, Charlotte and David first learned that Stranger had built a home upon Blissland and had been living there for the past twenty-one (21) years. Two (2) months ago, Charlotte and David filed an ejectment action in a court of competent jurisdiction seeking to enjoin Stranger from maintaining a trespass on the land, and that they are the equal owners of Blissland. The MSPCA has been permitted to intervene in the action, and is claiming that it, rather than Charlotte, David, and Stranger, is the actual owner of Blissland because the grant to Albert and Barbara following the Widower's death had violated the Rule Against Perpetuities. The jurisdiction in which Blissland is located has a statute that states: "An action for the recovery of land shall be commenced, or an entry made thereon, only within twenty years after the right of action or of entry first accrued." The jurisdiction in which Blissland is located also applies the common law Rule Against Perpetuities without modification.

1. Please state the "state of the title" (who are the owners and what interests did they own?) upon the Testator's death. In doing so, please apply the common law Rule Against Perpetuities. Please provide your full analysis (apply the relevant facts to the elements and rules of law we have studied to support each legal conclusion you reach) in determining who owned estates and interests upon the Testator's death, and what estates and interests they owned.

Preliminary State of the Title

Widower/Secundo:	***Present Life Estate***
Widower's Children/Albert & Barbara:	***Contingent Remainder***
Testator's Estate/MSPCA:	***Reversion***

The Widower (who would become Secundo on the death of the Testator, when the grant became effective) owns a present estate. It is a life estate because of the words of limitation, "for life."

The Widower's Children own the first future interest. They are grantees, so it is either a remainder or executory interest. Their possession will follow the natural termination of the prior estate – all life estates naturally terminate – rather than cutting it short, so it is a remainder. Because the grant does not take effect until the death of the Testator, we know that Albert and Children are the only children of the Testator. They are born and ascertained, but are subject to a condition precedent: they must survive Secundo to take. The condition precedent causes their remainder to be contingent rather than vested. Please note that Albert and Barbara are not subject to a condition subsequent; they are subject to a condition precedent. This is because they are not given possession with the possibility of

forfeiture; instead, they have to satisfy he condition prior to obtaining any right of possession.

Because we cannot end with a contingent remainder – possession has to go somewhere if the children don't survive the Widower – there is a reversion back in the estate of the Widower, which goes to the MSPCA under the residuary clause of the Testator's will. The MSPCA steps into the shoes of the Testator, who is a grantor. Because the Testator started with a fee simple and conveyed a life estate to the Widower, the interest back to the MSPCA follows the grant of a smaller estate; it is a reversion.

<u>Final State of the Title (after Applying RAP)</u>

Widower/Secundo:	***Present Life Estate***
Widower's Children/Albert & Barbara:	***Contingent Remainder***
Testator's Estate/MSPCA:	***Reversion***

There is only one contingent future interest that must be subjected to the rule against perpetuities: Albert's and Barbara's contingent remainder. We look for measuring lives (lives in being) at the moment the Testator died because a will does not become legally effective, and does not transfer real estate, until the death of the Testator. We cannot use the Testator as a measuring life because she is dead. We can use the Widower – Secundo – as he measuring life because the Testator is dead and we know the identity of her widower. We can also use Albert and Barbara as measuring lives because, again, the Testator is dead. Because the Testator cannot have more children after death, we know that the words "to my two children, Albert and Barbara," is a closed class whose members are lives in being at the time of the Testator's death. In fact, even if the transfer had been by deed instead of by will, Albert and Barbara would have been a closed class of lives in being because all members of the class were specifically named in the grant.

Secundo's life gives us the best chance of satisfying the rule against perpetuities – Albert and Barbara must survive him – so we'll start with his life in seeing whether Albert's and Barbara's contingent remainder is certain to vest or fail withing 21 years of Secundo's death. At the moment of Secundo's death, we will know to a certainty whether Albert or Barbara will have survived him: each will either be alive or not. Accordingly, Albert's and Barbara's contingent remainder is certain to vest or fail, at the latest, upon the death of Secundo. The contingent remainder satisfies the rule against perpetuities and the preliminary title becomes the final title.

2. Please fully describe how the court should rule in determining who <u>currently</u> owns estates and interests in Blissland, and what estates and/or interests each person owns. Please provide your full analysis (apply the relevant facts to the elements and rules of law we have studied to support each and every

legal conclusion you reach) in determining who currently owns estates and interests in Blissland, and what estates and/or interests each person owns.

Stranger's Adverse Possession

It appears that Stranger met the first four elements of adverse possession. He was in actual possession because he "built a home" and "continued to reside there in the same manner as that of the neighboring properties." Building the home "within full view of the road," and using it "in the same manner as that of the neighboring properties" shows that he was open and notorious. The Stranger was a trespasser: he intentionally went on someone else's property (Secundo's life estate) without permission. And he was exclusive because the facts do not state that Secundo or anyone under Secundo's control also used the property while the Stranger was occupying it. The only remaining question was whether the Stranger was continuous for the full 20-year statutory period.

Twenty-one years ago, when Stranger first trespassed on Blissland and started his adverse possession, Secundo owned a present life estate and Albert and Barbara owned a contingent remainder as cotenants. Only Secundo could have evicted Stranger from the property because only the owner of a present estate is empowered to eject a trespasser; the trespass is an interference with the right of possession/right to exclude, not with the future interest that is not yet possessory. So, the rule is that an adverse possessor only gets the estate of the person who could have evicted him; this is called "quantity of title." Stranger had built up a 9/20th interest in Secundo's life estate when Secundo died. Unfortunately for Stranger, Secundo's life estate died with him, and the Stranger lost his 9 years at Secundo's death.

When Secundo died, Albert's and Barbara's contingent remainder converted to a fee simple absolute: it would last potentially forever without any contingencies attached. Now, for the first time, Albert and Barbara are capable of evicting Stranger. But Stranger has to start all over against them since they could not have previously evicted him. Charlotte and David replaced Albert and Barbara through their wills when Albert and Barbara died.

What Stranger Got

Unfortunately for Stranger, he only secured 9 years against the Secondo life estate and 12 years against the Charlotte/David fee simple absolute, when he had to start over because the life estate ended. As to the Charlotte/David fee simple, this was 8 years less than the 20 years required. Charlotte and David will therefore succeed in evicting Stranger. Stranger has no interest and Charlotte and David own a fee simple absolute as cotenants.

3. Assume for this question only, that Charlotte and David are deemed to be the owners of Blissland. Obviously, in such event, they will own as cotenants.

Please state the form of cotenancy under which they would own, as well as the characteristics of the concurrent estate they would own. Once again, please provide your full analysis (apply the relevant facts to the elements and rules of law we have studied to support each and every legal conclusion you reach) in determining the concurrent estate Charlotte and David would own.

The grant to Albert and Barbara read: "and then to my two children, Albert and Barbara, provided they survive my Widower." Since they are two or more people owning the same interest in the same land at the same time, they own as cotenants. The grant does not tell us whether the Testator intended for them to own as tenants in common, joint tenants, or tenants by the entirety, so we have to rely on rules of construction to determine which cotenancy they owned. Since Albert and Barbara are siblings, they did not own as tenants by the entirety, which can only be owned by people who are legally married to each other. There was no expression of a right of survivorship. So, the rule that the tenancy in common is preferred over a joint tenancy attaches. Albert and Barbara got a tenancy in common, which has no right of survivorship. Without a right of survivorship, Albert and Barbara were free to pass their individual interests through their own wills, which each did to Charlotte and David. Charlotte and David own as tenants in common with no rights of survivorship.

QUESTION 2

Seven years ago, a man, his sister, and his cousin became equal owners, as tenants in common, of a house. Until a year ago, the man lived in the house alone. The sister and the cousin are longtime residents of another state.

One year ago, the man moved to an apartment and rented the house to a tenant for three years under a lease that the man and the tenant both signed. The tenant has since paid the rent each month to the man.

Recently, the sister and the cousin learned about the rental. They brought an appropriate action against the tenant to have the lease declared void and to have the tenant evicted. The tenant raised all available defenses.

What will the court likely decide?

(A) The lease is void, and the tenant is evicted.

(B) The lease is valid, and the tenant retains exclusive occupancy rights for the balance of the term.

(C) The lease is valid, but the tenant is evicted because one-third of the lease term has expired and the man had only a one-third interest to transfer.

(D) The lease is valid, and the tenant is not evicted but must share possession with the sister and the cousin.

***Correct Answer:* (D)**

Explanation:

All cotenancies give each of the cotenants an "undivided interest in the whole." This means that, although each owned a 1/3rd fractional share, each of the interests in the man, sister, and cousin were of <u>the whole property</u> under the same title; the undivided interest was not separated into individual ownership parts. In practical terms, the man, sister, and cousin <u>each</u> had the right to use and possess the <u>whole parcel</u>, not just some part of it. When the man leased his share to the tenant, he could only lease to the tenant his 1/3rd undivided interest in the whole ("Brooklyn Bridge Rule"). This means that the tenant, stepping into the shoes of the man, owns a 1/3rd undivided interest in the whole for the term of the lease. The tenant has no right of exclusive possession because s/he must share possession with the sister and cousin for the remainder of the lease period (to the extent the cousin and sister are interested in exercising their right of possession). Only (D) properly expresses how the undivided interest in the whole works.

<u>QUESTION 3</u>

By written lease, an owner leased his house to a tenant for a term of three years, ending December 31 of last year, at the rent of $2,000 per month. The lease was silent regarding the tenant's ability to sublet and assign.

The tenant lived in the house for one year and paid the rent promptly. After one year, the tenant agreed to "sublease" the house to his friend for one (1) year at a rent of $2,000 per month. The friend took possession of the house and lived there for six months but, because of her unemployment, paid no rent. After six months, on June 30, the friend abandoned the house, which remained vacant for the balance of that year without any further rent having been paid.

At the end of the second year of the lease term, the tenant again took possession of the house, but paid the owner no rent. At the end of the lease term, the owner brought an appropriate action against both the tenant and his friend to recover $48,000, the last two years of unpaid rent.

In such action the owner is entitled to a judgment

(A) against the tenant individually for $48,000, and no judgment against the friend.

(B) against the tenant individually for $36,000, and against the friend individually for $12,000.

(C) against the tenant for $24,000, and against the tenant and the friend jointly and severally for $24,000.

(D) against the tenant individually for $36,000, and against the tenant and the friend jointly and severally for $12,000.

Correct Answer: (A)

Explanation:

Tenants, assignees, and sublessees are liable to landlords for rent when there is <u>either</u> privity of contract or privity of title/estate between the landlord and the respective tenant, assignee, or sublessee. Privity of contract is a relationship through a contract, i.e., the plaintiff and defendant are parties to the same contract/lease. Privity of estate is a relationship represented through a direct line of possession between the parties, i.e., when one party loses possession the other party immediately and directly gains possession. This means that there is always both privity of contract and privity of title/estate between the original landlord and original tenant. And, regardless of whether there is an assignment or sublease by the tenant, there will remain privity of contract between the original landlord and tenant until the lease is finished because the landlord and tenant are parties to the same lease. Here, the tenant subleased to the friend because the agreed term for the transfer was for less than the entire remaining term of the original lease. This means there is no privity of title/estate between the landlord and friend because the friend's possession will go back to the tenant rather than directly to the landlord. But there is privity of title/estate between the landlord and the tenant. Although there is privity of contract between the owner and tenant, there is no privity of contract between the owner and the friend because they never entered into a lease with each other.

Conclusion: The owner will recover from the tenant on privity of contract <u>and</u> privity of estate. The owner will not recover against the friend because the owner and friend are in <u>neither</u> privity or contract nor privity of title/estate. A is the only answer that reflects that the friend is not liable at all in a suit by the owner.

<u>QUESTION 4</u>

A developer and an investor had been in the real estate business for many years. Because of their long-standing relationship, the developer and the investor, neither of whom was an attorney, often dispensed with certain legal formalities when dealing with each other, thus saving the costs of lawyers' fees and other attendant expenses. The investor owned a parcel of land that the developer was interested in, and she offered to buy it from him for $50,000. The investor accepted the developer's offer, and the parties

agreed on June 15 as the closing date. The developer handed the investor a check for $2,500 with “earnest money” written in the memo, and they shook hands on their deal.

A few weeks before closing, the developer called the investor and told him she had changed her mind about purchasing the land because of a sudden economic downturn in the area. The investor appeared at the developer’s office on June 15 with the deed to the land in his hand. The developer refused to tender the balance due, and the investor sued the developer for specific performance.

Will the investor prevail?

(A) No, because the agreement does not comply with the Statute of Frauds and is, therefore, unenforceable.

(B) No, but the court will allow the investor to keep the $2,500 earnest money as damages.

(C) Yes, because the $2,500 payment constituted part performance of the contract.

(D) Yes, because the developer and the investor had established a course of dealing.

Correct Answer: (A)

Explanation:

All contracts for the sale of an interest in land are required to satisfy the statute of frauds unless one of the two applicable exceptions apply. The facts could not be clearer that the developer offered to “buy” the land from the investor, thus bringing their contract within the statute of frauds. There are three elements to make a contract enforceable under the statute of frauds: (1) there must be a writing or some memorandum or memoranda thereof signed by the party to be charged that, (2) properly identifies the parties, and (3) properly describes the land. The check arguably identifies the parties and is signed by both parties. However, nothing in the facts indicate that it has described the land, so the elements are not satisfied. Nor is there any suggestion of facts placing the matter within either the unequivocal referability (the parties’ conduct indicates that the only explanation is that they must have been acting in accordance with an oral contract to sell and buy real estate) or undue hardship (the parties acted in reliance on an oral contract for the sale of real estate and manifest injustice or an undue hardship would result from a failure to enforce it) exceptions to the statute of frauds. (B) is wrong because, if the oral contract is not enforceable, the investor would not get to keep the deposit as default damages. (C) is wrong because the mere payment of a deposit does not invoke either the unequivocal referability or undue hardship exception to the statute of frauds. (D) is wrong

because there is no exception to the statute of frauds based on a "course of dealing."

REAL PROPERTY
MIDTERM EXAM
SPRING 2023

Grading Rubric

Question 1

Part A – Concurrent Estate of H & W when they purchased.

ISSUE	TOTAL POINTS
- Common Law: H & W would have had a TBE b/c a conveyance to married couple that doesn't state a different estate is a TBE	2
- But, the 1976 statute altered the common law: no TBEs	2
- Rules of Construction: grant to 2 or more that expresses right of survivorship is a JT rather than TIC	2
b/c TIC has no right of survivorship	2
- Conclusion: H & W owned a joint tenancy	2

Additional Explanation/Analysis Points: 1 point each

Part B – Adverse Possession Claim (D & S v. H & W)

ISSUE	TOTAL POINTS
- Actual Possession (identify element)	2
→ construct farmhouse	2
→ built a working barn	2
→ maintained working farm	2
→ retail sales on the property	2
- Open & Notorious Possession (identify element)	
→ construct farmhouse	2
→ built a working barn	2
→ maintained working farm	2
→ sold wholesale in open marketplace	2
→ retail sales on the property	2
- Hostile Possession (identify element)	2
→ Farmer & S&D were trespassers/trespass is hostile	2

→	Trespass: intentionally going on <u>someone else's property</u> <u>w/o permission</u>	1, 1, 1
→	No need to know one is a trespasser	1
-	Exclusive Possession (identify element)	2
→	No evidence of H & W being on property for more than 20 yrs.	2
-	Continuous Possession (identify element)	2
→	Combination of Farmer and D & S met all 4 prior elements for more than 20 yrs.: they were there 22 yrs. (see tacking below)	2
-	Tacking (identify issue/describe)	2
→	Need privity of title (proper deed/will/intestate distrib.)	2
→	Farmer created privity of title through <u>will</u> to D&S	2
-	Constructive Adverse Possession (identify issue/describe)	2
→	satisfy all 5 elements – only considering how much land	2
→	defective deed or will	2
→	good faith belief in ownership	2

Conclusion: D&S own all 100 acres in FSA 2

Additional Explanation/Analysis Points: <u>1 point each</u>

<u>Part C</u> – Concurrent Estate of D&S after Adverse Possession

	ISSUE	TOTAL POINTS
-	Rules of Construction – Unnamed Concurrent Estate	2
→	Tenancy in common preferred if cotenants not married	2
→	Obviously, D&S not married to each other	2

Conclusion: D&S own as tenants in common 2

Additional Explanation/Analysis Points: <u>1 point each</u>

TOTAL POSSIBLE POINTS: 70 plus additional analysis points

<u>Question 2</u>

<u>Part A</u> – State of the title upon the grant

	ISSUE	TOTAL POINTS
-	Preliminary State of the Title (recognition of need to state)	2

→	Present Estate in Church	2
→	Fee Simple	1
	→ "and its heirs"	1
	→ Conditional ("provided")	1
	→ Upon forfeiture, possession to another grantee (Sal. Army)	1
	→ Church owns a <u>fee simple subject to executory limitation</u>	2
→	Future interest in Salvation Army	2
	→ S.A. is a grantee: remainder or executory interest	1
	→ S.A.'s interest unnaturally cuts short prior estate (a fee simple) rather than following its natural termination	1
	→ S.A. owns an <u>executory interest</u>	2
→	No other interests (either stays w/ Church or goes to S.A.)	1

- Final State of the Title (recognition of RAP issue) 2

→	Executory interest is only contingent future interest subject to RAP	1
→	There is no time limitation on the executory interest (it could run forever without vesting or failing)	1
→	S.A.'s executory interest violates RAP b/c no time limitation	1
→	Cut out executory interest and all language back to "If"	1
→	Left with: ": "to the Church and its heirs, successors, and assigns, provided that the Church will commence construction of at least one (1) building within five (5) years from the delivery of this deed, will continue said construction with diligence until the building is complete and suitable for religious use, and will thereafter and forever use and continue to use the land and all improvements constructed thereon in pursuance of the religious doctrines and teachings currently followed by the Church."	1
→	Present Estate: Church has fee simple	
	→ "and its heirs"	1
	→ Conditional ("provided")	1
	→ Upon forfeiture, possession goes back to grantor (FSD or FSSCS), not to another grantee	1
	→ Forfeiture is automatic/no action words	1
	→ Church has a <u>fee simple determinable</u>	2
→	Future Interest: Owner has a possibility of reverter	2
→	No other interests	1

Conclusion: The Church owns a fee simple determinable and the Owner owns a possibility of reverter 2

<u>Part B</u> – Marketable Title

ISSUE	TOTAL POINTS
- Marketable title (identify issue)	2
→ Definition: title reasonably free from doubtful questions of law and fact	1
→ Marketable title is implied unless expressly waived	2
→ Here, the P&S is silent – seller required to deliver	1
→ Unmarketable title created by:	
→ Encumbrances	1
→ Real estate interest in third party	1
→ Defects	
→Technical problems creating questionable chain of title	1
→ Seller owning less than a fee simple absolute creates unmarketable title	2
→ The future interest in the Owner – possibility of Reverter) is an encumbrance b/c after delivery of the Deed, there will be a real estate interest in 3rd person	1
→ Mortgage does not create unmarketable title	2
→ Although mortgage is an encumbrance b/c it is a real estate Interest,	1
→ an exception says it does not create unmarketable title if the seller pays it off with proceeds from sale and provides adequate protection to the buyer	1

Conclusion: The conditional fee simple, but not the mortgage creates unmarketable title, allowing Jacques to terminate the transaction and obtain a refund of his deposit	2

Additional Explanation/Analysis Points: 1 point each

Part C – Deed Covenants

ISSUE	TOTAL POINTS
- Marketable Title – The Merger Doctrine (identify issue)	2
→ Once deed is delivered, the buyer loses right to claim a lack of marketable title	1
→ The facts are clear that the deed was delivered to Jacques; hence, he has no right to sue the Church for a lack of marketable title	
- Deed Covenants	
→ Covenant against Encumbrances	
→ Promise that there are no encumbrances on the property	1
→ Here, breached because the future interest in Owner and undischarged mortgage are encumbrances	1
→ Covenant of Quiet Enjoyment	
→ Promise that there are no real estate interests in third parties	1

that would interfere with the exclusive right to possession
→ Doesn't seemed to be breached because, despite the future interest and mortgage, no one else is using the property. 1
→ Covenant of general warranty and covenant of further assurances
→ More remedies than substantive covenants 1
→ Promise to either correct the title problems or pay damages 1
→ Special Warrant Deed (recognize importance) 2
→ Limits the Church's liability to encumbrances and defects that it creates 1
→ The Church was a party to the deed that created the future Interest in Owner and the Church granted the mortgage 1
→ The Church is liable for breaching the covenant against Encumbrances 1
→ Remedies (recognize the issue) 1
→ Jacques will recover monetary damages up to the consideration he paid or the consideration the Church received 1
→ The real estate is valueless to Jacques b/c once he uses It for other than church purposes he will forfeit ownership 1
→ Jacques therefore will likely recover the full amount he paid to the Church 1

Conclusion: Jacques will recover for breach of covenants of title but not for breach of the Church's obligation to deliver marketable title 2

Additional Explanation/Analysis Points: 1 point each

TOTAL POSSIBLE POINTS: 73 plus additional analysis points

Question 3

Part A – Covenants Running with the Land/Common Scheme

ISSUE	TOTAL POINTS
- Common Scheme – ("negative reciprocal covenants") even if it is not directly referred to in the deed or some other instrument recorded in the Registry of Deeds.	2
→ can be inferred by the geographical relationship of the lots to each other and the pattern of conveyances.	1
→ the ultimate question is whether the developer *initially intended* to create a common development scheme?	1
→ Appurtenance: Every lot in the subdivision has a benefit and burden.	2
→The benefits and burdens are *reciprocal*. All owners in the	1

subdivision are allowed to enforce the common scheme.
→ Enforcement is subject to the equitable powers of a court. 1

- The first 20 lots were sold w/ restrictions: shows intent that restrictions applied to all lots. 2
- The purchasers of the lots can enforce the common development scheme 2

Conclusion: The group of owners will prevail in enforcing the restrictions 2

Part B – Mortgages – Priorities – Future Advances – Equitable Subrogation

ISSUE	TOTAL POINTS
- When it comes to mortgage foreclosures with more than one interest on the property, the general rule is "first in time, first in right"	2
- But there are exceptions to the general rule:	
→ Subordination agreement: an agreement by which the parties change their priorities	1
→ Recording late: a subordinate mortgagee who has no notice of a prior mortgage because it wasn't recorded will take priority over the prior mortgage	1
→ Purchase money mortgage: a mortgage granted for the purpose of providing funding to purchase the property will take priority over other mortgages, even if they were recorded first	1
- There are two additional exceptions that apply here:	
→ Future advance mortgages: if a mortgage has a clause saying that there will be future advances, the future advances will relate back to the original mortgage and take priority over intervening mortgages.	1,1
→ The Bank made advances of $2.4 million, followed by a second mortgage to the Mortgage Company of $1 million, and then future advances by the Bank of another $3 million.	1
→ The entire $5.4 the Bank advanced took priority over the $1million intervening mortgage of the Mortgage Company b/c the Bank's mortgage specifically referred to future advances.	2
→ Equitable Subrogation: a subordinate mortgagee who pays off a mortgage is entitled to step into the shoes of the mortgage it has paid off, thereby obtaining priority over what previously were senior mortgages, provided, however, that the subrogation will not materially prejudice the holders of intervening interests in the real estate.	1,1
→ Mortgage Company expected the first $6.4 million from a foreclosure to cover the Bank, before it would receive	1

funds toward the $1 million it extended.

→ $1 million of the $6.4 million was left on the Bank's Future advances — 1

→ So, there was no prejudice to the Mortgage Company up to $1 million of the $1.3 million VC mortgage. — 1

→ $1 million of the VC mortgage will take priority over The $1 million Mortgage Company mortgage, but the remaining $300,000 of the VC mortgage will be subordinate to the Mortgage Company mortgage. — 2

→ This prevents prejudice to the Mortgage Company under the equitable subrogation rules. — 1

Conclusion: Bank will be in first position up to $1 million. Then, Mortgage Company will be in second position up to $1 million. Then, the Bank will be in third position up to $300,000. — 1, 1, 1

Part C – Deficiencies – Third-Party Beneficiary Contracts

ISSUE	TOTAL POINTS
- Due-on-Sale Clause (identify/define)	2
→ Both the Bank mortgage and Mortgage Company mortgage were assignable b/c no due-on-sale clauses in either	1
- Action for breach of promissory note requires privity of contract – must be a party to the contract – for liability at common law	1
→ Original Developer was the only party to both the Bank and Mortgage Company notes; Investor was a party to neither.	1
→ Only Developer liable on notes at common law.	1
- Third-Party Beneficiary exception allows non-parties to the notes to be liable in some circumstances (identify issue)	2
→ "Assumes" vs. "subject to" distinction (identified)	1
→ "Assumes" vs. "subject to" distinction (explained)	
→ Facts make	

Conclusion: The Developer will be liable on the note for the entire deficiency. The Investor will not be liable on the note and will not be liable under a third-party beneficiary theory b/c he only took "subject to" the mortgages. — 1, 1

Additional Explanation/Analysis Points: 1 point each

TOTAL POSSIBLE POINTS: 46 plus additional analysis points

Question 4

Part A – Overburdening of an Easement

ISSUE	TOTAL POINTS
- Original easement: <u>express, appurtenant easement</u> (identify issue)	1, 1
→ Express b/c parties agreed, created a writing→	2
→ Appurtenant b/c:	
→ 2 or more parcels	1
→ Relatively close to each other	1
→ One or more benefited (dominant) parcel(s)	1
→ One or more burdened (servient) parcel(s)	1
→ Lot 2 is the dominant estate b/c it's benefitted	1
→ Lot 1 is the servient estate b/c it's burdened	1
- Overburdening of easement (identify issue)	2
→ Mere increased intensity in use of easement not an overburdening	2
→ Therefore, even if extending the easement to Lot 3 causes more traffic on the easement, that is not an overburdening	
→ However, extending an easement to benefit a dominant estate not part of the original dominant estate set by the parties IS an overburdening of the easement.	2
→ Therefore, Purchaser should prevail over sister and should receive an injunction preventing the use of the extension to benefit Lot 3.	2
- No issue of an implied easement (by implication or by necessity)	1
→ First element of both the easement by implication and easement by necessity requires that one large lot, owned by a single owner, be subdivided into 2 or more smaller lots, with 1 or more sold to a different owner who likely expected an easement to get to a public way.	1
→ Not the case here because there are no facts showing a subdivision, and no facts showing that the 3 lots were ever owned by a single owner.	1, 1
Conclusion: the Purchaser will obtain an injunction preventing the sister from extending the easement from benefitting Lot 2 to also benefit Lot 3	2

Part B – Application of the Three Recording Statutes

ISSUE	TOTAL POINTS
- 3 different mortgage statutes	
→ Notice ("pure notice") (identify type)	1
→ A subsequent BFP prevails over a prior grantee who fails to record regardless of whether the BFP records himself/	1

herself.

→ Race-Notice (identify type) 1

→ A subsequent BFP prevails over a prior grantee who fails to record ONLY IF the subsequent BFP 1st records himself/herself. 1

→ Race ("pure race") (identify type) 1

→ First to record wins. One does not have to be a BFP to be protected under a pure race statute. 1

- It doesn't matter which of the 3 recording statutes apply b/c purchaser WAS a subsequent BFP, and DID record first. 1

  → Purchaser was a BFP b/c:

  → Purchaser lacked actual, constructive, or inquiry notice of the prior mortgage to the Bank and paid substantial value (fair market value) for Lot 1 1, 1

  → The facts make clear that the purchaser recorded his deed before the Bank recorded its mortgage 1

  → Therefore, Purchaser will prevail over the Bank regardless of whether the recording statute is notice, race-notice, or race. 1

Conclusion: The Purchaser will prevail over the Bank and will not be Subject to the Bank mortgage. Moreover, the Bank will not be permitted to foreclose its mortgage. 1, 1

Part C –

ISSUE	TOTAL POINTS
- The main question here is whether the Student is an assignee or a sublessee of Sister. (identify issue)	2
→ An assignment occurs when a tenant conveys the entire interest Remaining on the lease.	1
→ A sublease occurs when a tenant conveys less than the entire interest remaining on the lease.	1
→ Here, the Student is a sublessee rather than assignee b/c she only agreed to a two-year term, when there were more than 4 years left on the lease.	1
- The landlord's ability to collect rent from a tenant, assignee of a tenant, or sublessee of a tenant requires that there be either privity of contract or privity of title (privity of estate) between the parties.	1
→ Privity of contract is a legal relationship through a contract. Those in privity of contract are parties to the same lease.	2
→ Privity of title (estate) is a legal relationship through the real estate. In the landlord-tenant context, it requires a direct transfer of possession between two parties.	2
→ There is privity of contract between Sister (landlord) and Tenant b/c they are parties to the same lease.	1

→ But there is no privity of contract between Sister (landlord) and Student b/c they are not parties to the same lease. 1

→ There also is no privity of title (estate) between Sister and Student b/c at the end of Student's 2-year term possession will go back to the Tenant rather than directly back to the Sister. 1

→ But there is privity of title (estate) between Sister and Tenant b/c at the end of the lease term, possession will flow directly from Tenant to Sister (landlord). 1

Conclusion: The Sister will recover a judgment for the 9 months' rent from the Tenant, who is in both privity of contract and privity of title (estate) with the Sister. But the Sister will recover no judgment for rent from the Student who is in neither privity of contract nor privity of title (estate) with the Sister. 1, 1 1, 1

Additional Explanation/Analysis Points: 1 point each

TOTAL POSSIBLE POINTS: 55 plus additional analysis points

TOTAL POSSIBLE EXAM POINTS: 244 plus additional analysis points

MASSACHUSETTS SCHOOL OF LAW
REAL PROPERTY
FINAL EXAMINATION
Spring 2023
May 16, 2023

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This is a closed-book examination; other than writing implements, you are not to have any materials on your table or at your feet. Please place all books, knapsacks, briefcases, etc. at the side or front of the room.

Please do not use your own scrap paper. You may only use the scrap blue book as scrap paper. You may also use this exam booklet for notes and scrap as long as you do not insert them into the answer spaces if you are writing (rather than typing) your exam. If you are typing on Examsoft, you may use this entire exam booklet for scrap as well. Even if you are writing, you may use the areas of this booklet not designated for answers for notes and scrap.

WHETHER YOU TYPE OR WRITE, THIS HARD COPY EXAM BOOKLET IS THE OFFICIAL EXAM. IF MINOR TYPOS ARE FOUND AFTER THE EXAM IS POSTED ON EXAMSOFT, CORRECTIONS WILL BE GIVEN SO THAT YOU CAN MAKE THEM ONLY ON THIS HARD COPY OF THE EXAM.

This examination consists of FOUR (4) ESSAY QUESTIONS. There are no additional parts to this exam. Below are the Instructions for the four essay questions:

FOUR (4) ESSAY QUESTIONS

Suggested Time: Forty-five (45) minutes each, standard time
Sixty-seven and one-half (67.5) minutes each, 1.5 X
Ninety (90) minutes each, 2.0 X

Total Time of Exam: Three (3) Hours, standard time
Four and one-half (4.5) hours, 1.5 X
Six (6) hours, 2.0 X

Instructions: Below are four (4) essay questions consisting of a fact pattern and one or more “call(s) of the question.” Like all law school essay examinations, this one requires you to perform legal analysis, which consists of the application of

specific facts to specific elements of law to support conclusions regarding the rights, duties, and liabilities of the parties. Bearing this in mind, you will be scored on the accuracy and breadth of your answer.

Each of the four essay questions has three (3) specific questions labelled "A," "B," and "C." You are required to answer each of those questions, in order, as the applicable question is asked. You will not be given credit for answers that are not responsive to the applicable question asked.

If you write, please place your answer within the spaces provided IN THIS EXAM BOOKLET (not in a separate blue book) below the essay question. If you type, please type your answers onto the Examsoft platform as specified.

You have the equivalent of four (4) pages of double-spaced lines in which to place your answer. This is more than enough space for a comprehensive answer.

If you write your exam, please only use one (1) provided line in this exam booklet for one (1) line of your answer; do not double up lines to get more space or do anything else that will make it difficult for me to read and correct your answers. I can only grade what I can read, and I will not do backflips to read your answers.

If you write, please take care to make your handwriting legible. I will try my best to read what you write, but I cannot grade what I cannot read.

If you type your exam, you will be required to place your answer on the Examsoft platform. I understand that your time clock will not begin until you start the exam on Examsoft, regardless of when the proctor calls for you to begin. Whether you have standard time or an extra-time accommodation, *the official time for your exam shall be the time the proctor tells you to begin your exam at the beginning of its administration*, NOT the time your Examsoft time clock says. For this reason, **you MUST begin your exam *immediately* when the proctor calls for the exam to begin**; it should take no more than a minute or two for you to start your exam on Examsoft (see above) and the proctor will provide you five extra minutes to deal with the Examsoft startup. This will be the case whether you are a standard time taker or an extra-time accommodations taker. When the proctor calls time, you are to close out your Examsoft administration and upload your exam *immediately* if you type, and you will hand in your written answers immediately if you write.

You have THREE HOURS (180 minutes) to complete this exam if you are entitled to standard time.

You have FOUR AND ONE-HALF HOURS (270 minutes) to complete this exam if you are entitled to time and one-half.

You have SIX HOURS (360 minutes) to complete this exam if you are entitled to double time.

There is a bathroom book at the front of the room. Please sign out and in when you leave the room. Since any pen put out for each bathroom book invariably "wanders" soon after the first person writes in the book, please use your own pen or pencil to sign out and in.

You are to turn in only this exam booklet, with your Student ID (not your name) on the front page and your honor code signed (your Student ID placed in the signature line in place of your name). DO NOT GIVE ME YOUR BLUEBOOK. I WILL NOT ACCEPT ANY ANSWERS FROM YOUR BLUEBOOK, WHETHER YOU TYPE OR WRITE.

Whether you type or write, please turn in ONLY this exam booklet. You may leave when you are done and have turned in your exam booklet as long as you are quiet and courteous to your classmates who are still under the stress of taking the exam. If you breach this courtesy, the proctor will instruct you to take your seat and remain quietly until the exam is done.

GOOD LUCK!

STUDENT HONOR PLEDGE

In taking this examination, I hereby affirm, represent and acknowledge, both to the professor and the Massachusetts School of Law community, that:

1. I understand that the professor will not grade my examination, and I will suffer the consequences of not having submitted a final exam (specifically, failure of this course), if I fail to place my full student identification number in the signature space below. Placement of my student identification number below will serve as a substitute for my signature, and carry the full weight of my personal signature in making this pledge on my honor;

2. I will not give or receive any unauthorized assistance on this examination;

3. I understand that this is a closed-book examination and, with the exception of materials specifically referred to in the exam instructions, I am not permitted to use papers, personal effects, electronic devices, or any other matter that could provide unauthorized assistance in completing this examination, create any unfair advantage in completing this examination, or otherwise frustrate the honest administration of this examination as a closed-book examination, whether the same be located on my person, near me, in the exam room, or anywhere else in the building or on the grounds;

4. I have placed all electronic devices, papers, personal effects, and other matter that I brought into the room at the front, side or back of the room as instructed by the exam proctor, with all electronic devices being powered off;

5. I have not placed in bathrooms or other areas in the building or grounds any papers, personal effects, electronic devices, or any other matter that could provide unauthorized assistance in completing this examination, create any unfair advantage in completing this examination, or otherwise frustrate the honest administration of this examination as a closed-book examination, either for my personal use or the use of anyone else;

6. I will not speak to or communicate with any other person taking this exam until its administration is completed (when *everyone* is finished and all the exam materials have been turned in). This also applies while I am waiting in line to hand in the exam or if I complete or leave the exam before others;

7. I will not identify myself in any way or frustrate the anonymous grading of this exam;

8. I will faithfully follow any additional instructions the exam proctor provides orally during the exam;

9. Other than instructions that the professor may have given out in advance, I have heard nothing about the specific contents of this examination prior to its commencement;

10. I understand and acknowledge that MSLAW's honor code requires me to report observed violations of these provisions as well as the MSLAW Honor Code.

Signed under the pains and penalty of perjury.

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FULL STUDENT ID NO.
(DO NOT PUT YOUR NAME HERE)

<u>DO NOT</u> TURN THE PAGE AND BEGIN UNTIL THE PROFESSOR/PROCTOR INSTRUCTS YOU TO DO SO.

FOUR (4) ESSAY QUESTIONS

Suggested Time:	**Forty-five (45) minutes each, standard time** **Sixty-seven and one-half (67.5) minutes each, 1.5 X** **Ninety (90) minutes each, 2.0 X**
Total Time of Exam:	**Three (3) Hours, standard time** **Four and one-half (4.5) hours, 1.5 X** **Six (6) hours, 2.0 X**

Instructions: Below are four (4) essay questions consisting of a fact pattern and one or more "call(s) of the question." Like all law school essay examinations, this one requires you to perform <u>legal analysis</u>, which consists of the <u>application of specific facts to specific elements of law to support conclusions regarding the rights, duties, and liabilities of the parties</u>. Bearing this in mind, you will be scored on the accuracy and breadth of your answer.

Each of the four essay questions has three (3) specific questions labelled "A," "B," and "C." You are required to answer each of those questions, in order, <u>as the applicable question is asked</u>. You will not be given credit for answers that are not responsive to the applicable question asked.

<u>QUESTION ONE</u>

In 1976, one of the states in the United States enacted a law which provided:

> Because of its propensity to discriminate against women, the tenancy by the entirety previously recognized under state law is hereby immediately declared to be void as a matter of public policy. All married persons currently owning estates of tenancy by the entirety are hereafter free to deed their current tenancy by the entirety estates to themselves either as tenants in common or as joint tenants. There shall be no registry of deeds filing fee required to convert a tenancy by the entirety estate to either a tenancy in common or joint tenancy, as provided herein. Effective immediately, until such married persons convert their estates in tenancy by the entirety to either a tenancy in common or joint tenancy, and in the continued absence of any such conversion, the estate they owned shall be deemed to be a tenancy in common. All married persons jointly taking title to real estate hereafter shall not be able to take title as tenants by the entirety; they shall take title either as tenants in common or as joint tenants. All persons jointly taking title to real estate hereafter, and who are not converting a title from a tenancy by the entirety as provided above, shall be responsible for paying the customary registry of deeds filing fees.

Twenty-six years ago, a fee simple Owner of a 100-acre rural parcel of land in the state that had enacted the law quoted above conveyed the parcel by a special warranty deed

to “Husband and Wife with rights of survivorship.” The Husband and Wife were legally married to each other at the time they accepted the deed. The Husband and Wife lived about 200 miles from the rural parcel of land they purchased; they bought the land as an investment.

Four years later, twenty-two years ago, taking note that the Husband and Wife had never visited the parcel, the Owner sold the same rural parcel to a Farmer, who paid fair market value. The Farmer immediately moved on the land with his Daughter, then age 12, and his Son, then age 10. The Farmer immediately constructed a farmhouse on the parcel within sight of the public road that fronted the land. He also built a working barn on the back acreage and prepared 50 acres of the parcel for the planting of various crops. For the time being, the Farmer left about 49 of the 100 acres unused, planning to eventually plant crops when his farming business grew. The Farmer thereafter maintained a working farm on about 51 of the 100 acres. He sold most of his crops on the wholesale market but also maintained a roadside farmstand for retail sales to the public.

Thirteen years ago, the Farmer died with a will that left all of his real estate “to my beloved daughter and son, share and share alike.” At the time, the Daughter was 21 years old, and the Son was 19 years old. The Daughter and Son continued to use the farm as the Farmer had, selling crops both wholesale and at the roadside farmstand. Just as the Farmer had, the Daughter and Son continued to leave about 49 of the 100 acres unused.

Six years ago, the Owner who had sold the same rural parcel to the Husband and Wife, and later to the farmer, died.

Last month, the Husband and Wife decided to sell the rural parcel and visited it for the first time since they had purchased it. They were shocked to find the Daughter and Son living on the parcel and maintaining a working farm on it. Last week, the Husband and Wife filed an action against the Daughter and Son, seeking to eject the Daughter and Son from the rural parcel. The Daughter and Son have counterclaimed, asserting that they are the fee simple owners of the rural parcel and that the Husband and Wife own nothing.

The state in which the rural parcel is located has a statute that provides: “An action for the recovery of land shall be commenced only within twenty years after the right of action, or the unlawful entry, first accrued.”

Please answer the following three (3) questions, under the applicable separate headings of “A,” “B,” and “C:” Please write your essay answers in narrative form, i.e., in complete sentences and paragraphs.

A. What concurrent estate did the Husband and Wife own when the Owner conveyed to them twenty-two years ago? Why? Please provide your full analysis (apply the relevant facts to the elements and rules of law we have

studied to support each legal conclusion you reach) in determining what concurrent estate the Husband and Wife own(ed).

B. Who will prevail in the lawsuit between the Husband and Wife or the Daughter and Son? Why? If the Daughter and Son prevail, how much of the 100 acres will they own? Why? Please provide your full analysis (apply the relevant facts to the elements and rules of law we have studied to support each legal conclusion you reach) in determining who will prevail and how much is owned.

C. Assume for this question only that Daughter and Son will prevail in the lawsuit and will be deemed the fee simple owners of the rural parcel. In such event, what concurrent estate do the Daughter and Son own? Why? Please provide your full analysis (apply the relevant facts to the elements and rules of law we have studied to support each legal conclusion you reach) in determining what concurrent estate the Daughter and Son own.

QUESTION TWO

An Owner of a one-acre parcel of unimproved land conveyed it to his Church for nominal consideration. There had been no purchase and sale agreement between the parties. The special warranty deed from the Owner to the Church contained the following words of grant: “to the Church and its heirs, successors, and assigns, provided that the Church will commence construction of at least one (1) building within five (5) years from the delivery of this deed, will continue said construction with diligence until the building is complete and suitable for religious use, and will thereafter and forever use and continue to use the land and all improvements constructed thereon in pursuance of the religious doctrines and teachings currently followed by the Church. If the Church fails to so use the land and all its improvements, then then the Church shall forfeit all its ownership rights and title shall immediately transfer to the Salvation Army and its heirs, successors, and assigns.” The deed also contained the covenant against encumbrances, covenant of quiet enjoyment, covenant of general warranty and covenant of further assurances.

Two months after accepting the deed from the Owner, the Church obtained a mortgage loan from a Bank to enable the Church to construct a church on the land. Immediately after obtaining the mortgage loan from the Bank, the Church began to construct a church building on the land, and diligently continued the construction until it was complete some 13 months later. The Church then immediately moved into the new building and, as soon as its move was completed, began to use it as its primary place of worship 45 days after construction had been completed.

The Church continued to use the land and all the buildings on it for the next 17 years, during which time its congregation swelled in size multiple times. After 17 years of use, however, the Church determined that the building was too small for it to properly serve its congregation and that the land was too small to support a meaningful addition to the

Church building, The Church decided to sell the current land and church building in order to purchase another parcel of land nearby which would support a much bigger church building.

Eventually a Michelin star chef named Jacques Sous-Vide entered into a proper and enforceable purchase and sale agreement with the Church to purchase the land and church building. The purchase and sale agreement was silent as to the quality of title the Church was to deliver but did require the Church to deliver a special warranty deed. Jacques planned to open a haute cuisine restaurant named "Autel de la Cuisine" ("Altar of Cuisine"). Jacques had assumed that the Church owned an unconditional fee in the land and building, and the Church neither told him nor suggested otherwise.

Please answer the following three (3) questions, under the applicable separate headings of "A," "B," and "C:"

A. Please state the "state of the title" (who are the owners and what interests did they own?) upon the Owner's delivery of the deed to the Church. In doing so, please apply the common law Rule Against Perpetuities. Please provide your full analysis (apply the relevant facts to the elements and rules of law we have studied to support each legal conclusion you reach) in determining who owned estates and interests upon the Owner's delivery of the deed to the Church, and what estates and interests they owned.

B. Assume for this question that Jacques's title search has come back and Jacques has learned about the various interests/estates in land you described directly above in Question A, as well as the outstanding mortgage to the Bank. Jacques has taken the position that both the state of the title and the outstanding mortgage are incurable title defects and has announced that he has terminated the contract and will not attend the closing. Jacques has also demanded a return of the deposit. Is Jacques correct in his position that he can terminate the transaction and obtain a full refund of his deposit? Please provide your full analysis, i.e., apply the relevant facts to the elements and rules of law we have studied to support your legal conclusion about Jacques's position.

C. Assume for this question that Jacques did not do a title exam and did not refuse to close. Instead, he accepted a special warranty deed from the Church that contained the covenant against incumbrances, covenant of quiet enjoyment, covenant of general warranty and covenant of further assurances. Two months after the closing, Jacques learned about the state of the title the Church had sold him, as well as the fact that the mortgage to the Bank remained outstanding. Jacques has sued the Church for: (1) breaching its obligation to deliver marketable title, and (2) breaching the deed covenants in its deed to Jacques. He has also sued the Owner for breaching the title covenants in the deed from the Owner to the Church. Please discuss the rights, duties, and liabilities of the parties, remembering to provide your full analysis, i.e., applying the relevant facts

to the elements and rules of law we have studied to support your legal conclusion about Jacques's position.

QUESTION THREE

A Developer who owned a large parcel of undeveloped land sought to develop it by subdividing the parcel into fifty (50) lots and building and selling each lot to residential purchasers with single-family homes built on each lot. In order to finance the project, the developer obtained a construction loan from a Bank, evidenced by a promissory note for $6.4 million and secured by a mortgage on the loan. In addition, the Developer and Bank executed a “Construction Agreement” confirming the total $6.4 million loan as provided in the note, and providing that the Bank would make present and future advances of that total to the Developer as follows: $2.4 million upon the recording of the mortgage; $1 million after the first 10 houses were completed; another $1 million after the second set of ten houses were completed, another $1 million after the third set of ten houses were completed; another $500,000 after the fourth set of ten houses were completed; and a final $500,000 after the final set of ten houses were completed. The mortgage stated that it secured a construction loan, which would consist of the original $2.4 million plus future advances up to another $4 million, for a total of $6.4 million. The mortgage did not have a due-on-sale clause. The Bank immediately recorded its mortgage and delivered the first installment of $2.4 million to the Developer.

A month after the Bank’s construction loan mortgage was recorded, the Developer borrowed another $1 million from a Mortgage Company and secured the note on that loan with a second mortgage on the parcel of land. The Mortgage Company mortgage did not contain a due-on-sale clause. The Mortgage Company immediately recorded its second mortgage.

The Developer completed and sold the first 10 houses, inserting in each deed the following restrictions:

> The Grantee, for himself and his heirs, assigns, and successors, covenants and agrees that the premises conveyed herein shall have erected thereon one (1) single-family dwelling with a living area not less than three-thousand square feet (3,000 sq. ft.), and that no other structure (other than a detached garage, normally incident to a single-family dwelling), shall be erected or maintained; and, further, that no use shall ever be made or permitted to be made other than occupancy by a single family for residential purposes only with a living area of at least three-thousand square feet (3,000 sq. ft.).

After the completion of the first 10 homes, the Bank advanced another $1 million in accordance with the Construction Agreement. Then, the Developer sold all the remaining lots of the subdivision, with their development rights to an Investor, “subject to the outstanding mortgages to the Bank and Mortgage Company.” The Investor then built

and sold another 10 homes and obtained from the Bank another $1 million in accordance with the Construction Agreement. The deeds to the second set of 10 homes contained the same restrictions regarding single-family use and minimum living area as the deeds to the first set of 10 homes sold.

Then the housing market crashed, and the Investor struggled to sell more homes. The Investor lowered the price of the lots and instructed his real estate broker to market the remaining 30 lots for sale without homes on them and to advertise that the remaining lots would not be subject to any restrictive covenants. The Investor was able to sell ten more lots, Lots 21 through 30, without any deed restrictions and received the third advance, $1 million, from the Bank.

Despite having received the latest payout from the Bank, the Investor was still struggling financially. Just as the Bank and Mortgage Company were about to declare defaults on each of their mortgages, a Venture Capitalist agreed to refinance the Bank's mortgage. In doing so, the investor paid off the entire $1 million balance of the Bank's mortgage and took a mortgage from the Investor in the amount of $1.3 million. In addition to paying off the Bank's mortgage, the Venture Capitalist's additional $300,000 cash to the Investor permitted him to reinstate the Mortgage Company mortgage to good standing. Eventually, however, the Investor again became unable to make his mortgage payments and defaulted on both the Venture Capitalist's and Mortgage Company mortgages. Both the Venture Capitalist and Mortgage Company commenced foreclosure proceedings.

Recently, the Purchaser of Lot 21 obtained a building permit from the local building inspector allowing the Purchaser to construct a two-family home on Lot 21, with each unit having only 1,200 square feet of living area. A group of owners who had purchased some of the first 20 lots (which were subject to the 3,000 square-foot, single family homes on the lots) would like to prevent the Purchaser from building the two-family home.

Please answer the following three (3) questions, under the applicable separate headings of "A," "B," and "C."

A. The group of owners who purchased subject to the restrictive covenants have filed a legal action against the Purchaser, seeking a preliminary and permanent injunction to prevent her from building the two-family home for which she obtained the building permit. Who will prevail in that lawsuit? Why? Please provide your full analysis (apply the relevant facts to the elements and rules of law we have studied to support each legal conclusion you reach) in determining who will prevail.

B. After the Venture Capitalist and Mortgage Company commenced their respective foreclosure proceedings against the Investor, the Venture Capitalist commenced a separate action against the Mortgage Company seeking a declaratory judgment that the Venture Capitalist was entitled to first priority and should be able to take the first $1.3 million from the foreclosures before the Mortgage

Company could take any of the $1 million it was owed. The Mortgage Company counterclaimed for a declaratory judgment, asserting that it was entitled to take its $1 million from the foreclosures before the Venture Capitalist could take any of the $1.3 million he was owed. Who will prevail in that action" Why? Please provide your full analysis (apply the relevant facts to the elements and rules of law we have studied to support each legal conclusion you reach) in determining who will prevail.

C. Regardless of whether the Venture Capitalist or the Mortgage Company was deemed to be in first position in the lawsuit between them, assume that the mortgagee deemed to be in second position was left with a $473,000 deficiency after the foreclosure sale. That mortgagee has brought a breach of contract action on the note to recover a judgment for that deficiency against both the Developer and Investor. Will that mortgagee obtain judgments against the Developer, Investor, or both? Which of them and why? Please provide your full analysis (apply the relevant facts to the elements and rules of law we have studied to support each legal conclusion you reach) in determining who will be liable for the deficiency.

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QUESTION FOUR

A Brother owned a one-acre parcel of land known as Lot 1, which fronted the north side of Park Street, a public street. The Brother's Sister owned the one-acre parcel north of the Brother's parcel, which was known as Lot 2. The Sister's land was landlocked. North of the Sister's Lot 2 was the Neighbor's Lot 3, also a one-acre lot. North of the Neighbor's Lot 3 was Central Street, another public street. The Neighbor's only means of ingress and egress to Lot 3 was from Central Street, which Lot 3 fronted on its south side.

Because the Sister's parcel was landlocked, for nominal consideration the Brother granted her a twenty-foot wide easement along the eastern boundary of Lot 1 from Park Street to the Sister's Lot 2. This allowed the Sister to traverse the easement on the Brother's land by automobile to gain ingress and egress for Lot 2 from Park Street. The Sister immediately recorded the document creating the easement. The Sister also immediately caused the easement over her Brother's land to be paved.

Two years after granting his Sister the easement, the Brother borrowed $125,000 from a Bank, which the Bank secured with a mortgage on Lot 1. The attorney representing the Bank neglected to record the mortgage at that time.

One year after the Brother granted the mortgage to the Bank, the Neighbor sold Lot 3 to the Sister. The Sister then leased Lot 3 to a Tenant for a term of five years. The lease was in writing and satisfied the Statute of Frauds. The lease was silent regarding the Tenant's ability to assign or sublease.

Six months later, the Brother sold Lot 1 to a Purchaser for fair market value. The Purchaser, who had no actual knowledge that the Brother had previously granted a mortgage to the Bank, immediately recorded the deed. The Brother stopped making monthly mortgage payments to the Bank as soon as he sold Lot 1 to the Purchaser. Because he was unaware of the mortgage to the Bank, the Purchaser also did not make any mortgage payments to the Bank.

Six months after the Brother sold Lot 1 to the Purchaser, the Sister's Tenant on Lot 3 learned that he was being transferred to a work site 800 miles away for a two-year stint.

At about the same time that the Tenant learned he was being transferred, the Bank recorded the mortgage given by the Brother, secured by an interest in Lot 1.

Shortly thereafter, without consulting the Sister, the Tenant entered into a two-year lease for Lot 3 with a Student who needed a place to live for two years while she finished up her PhD. The Student made all rent payments to the Sister for the first year of the two-year lease with the Tenant, but then decided that she was no longer interested in her field of study. She abandoned Lot 3, moved back home, and stopped paying any rent to the Sister. After going three months without receiving any rent, the Sister sent letters to both the Tenant and the Student informing them that they had defaulted in their rent obligations and that she would be pursuing an eviction. The letters also informed the Tenant and Student that the Sister would attempt to mitigate her damages by seeking a new tenant for Lot 3 but would hold Tenant and Student responsible for any losses that she sustained. The Sister properly evicted the Tenant and Student, but it took six months to find another tenant. The Sister would end up losing a total of nine months of rent before being able to find another tenant.

Shortly after the Sister was able to secure a new tenant, the City in which the three lots were situated converted Central Street into a "greenway' that was accessible only by pedestrians. This caused Lot 3 to become landlocked in terms of vehicular access. To arrange for the new tenant to be able to drive to a public road, the Sister caused the pavement on the easement over Lot 1 to be extended along the eastern boundary of Lot 2, and into Lot 3. The new tenant leasing Lot 3 now gained access to Lot 3 by driving across the easement over Lot 1 and across the newly paved area along the eastern boundary of Lot 2.

Please answer the following three (3) questions, under the applicable separate headings of "A," "B," and "C."

A. The Purchaser of Lot 1 has brought an action against the Sister seeking an injunction to prevent the use of the Lot 1 easement to gain access to Lot 3. Who will prevail in that action" Why? Please provide your full analysis (apply the relevant facts to the elements and rules of law we have studied to support each legal conclusion you reach) in determining who will prevail.

B. It has been quite some time since the Bank has been paid on its mortgage. The Bank recently commenced foreclosure proceedings. The Purchaser has brought an action seeking a declaratory judgment that he is not subject to the Bank's mortgage. The purchaser also seeks an injunction to prevent the Bank from continuing with the foreclosure it has commenced. Who will prevail in the action between the Purchaser and the Bank? Why? Please provide your full analysis (apply the relevant facts to the elements and rules of law we have studied to support each legal conclusion you reach) in determining who will prevail.

C. The Sister has filed an action seeking judgments against both the Tenant and Student for the nine months of rent that was never paid. Will the Sister prevail against both, or either, the Tenant and/or the Student? Why? Please provide your full analysis (apply the relevant facts to the elements and rules of law we have studied to support each legal conclusion you reach) in determining who will prevail.

END OF EXAM

REAL PROPERTY LAW
FINAL EXAMINATION
Spring 2022
May 9, 2022

YOUR STUDENT ID # (Five – 5- Digits)

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INSTRUCTIONS:

You may read the instructions that follow, and then go immediately to read and sign the Student Examination Honor Pledge. You are not to look beyond the Student Examination Honor Pledge until you are instructed to begin the exam.

If you have not downloaded this Midterm Exam from the Examsoft platform prior to the start time of the exam, and are not ready to start taking the exam immediately once the professor/proctor calls for the exam to begin, you will be required to write the exam rather than type it.

YOU ARE NOT TO HAVE A CELL PHONE, OR ANY OTHER DEVICE THAT CAN TRANSMIT AND/OR RETAIN INFORMATION, ON YOUR PERSON DURING THIS EXAM. POSSESSION OF A CELL PHONE OR SUCH OTHER DEVICE SHALL BE TREATED, AND DEALT WITH, AS CHEATING.

YOU MAY WEAR A JACKET WHILE TAKING THE EXAM, BUT IF YOU TAKE IT OFF YOU ARE TO IMMEDIATELY PLACE IT AT THE SIDE OR BACK OF THE ROOM. IF YOU START OFF WITHOUT A JACKET, YOU MAY PUT ONE ON WITH INSTRUCTION FROM THE PROFESSOR/PROCTOR.

IF YOU LEAVE THE CLASSROOM, YOU MUST TAKE YOUR JACKET OFF AND LEAVE IT AT THE SIDE OR BACK OF THE ROOM.

Please take ONE (1) blue book and use it for scrap. <u>Do not turn that blue book in</u>. All your answers will go on this exam booklet if you write your exam, and on the Examsoft platform if you type your exam.

WHETHER YOU WRITE OR TYPE, YOU ARE TO TURN THIS EXAM BOOKLET IN WHERE INSTRUCTED WHEN YOU HAVE FINISHED YOUR EXAM. IF I DO NOT HAVE YOUR EXAM BOOKLET, WITH YOUR ACCEPTANCE OF THE HONOR CODE FOLLOWING THESE INSTRUCTIONS, I WILL NOT CORRECT YOUR EXAM AND

YOU WILL RECEVE A GRADE OF “0” AS A SCORE ON YOU FINAL EXAM, EVEN IF YOU HAVE UPLOADED AN ANSWER ON EXAMSOFT.

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This examination consists of TWO PARTS: (1) Twelve (12) Multiple Choice Questions – Provide Answers & Explanations, and (2) Two (2) Essay Questions. Below are the Instructions proceeding each of these two Parts in your exam booklet:

PART ONE

TWELVE (12) MULTIPLE CHOICE QUESTIONS – PROVIDE ANSWERS & EXPLANATIONS

Suggested Time: Two Hours (120 Minutes)

Instructions: Below are twelve (12) multiple choice questions, each of which is followed by a space for your answer and twenty (20) lines for your explanation of why you chose the best answer for each question and eliminated incorrect or less correct answers. Whether you type or write, begin by providing the correct letter answer prior to the explanation. Each question is designed to begin and end on the same, single page, but the explanation lines will run onto a second page. Give the fullest explanations you can within the limits of time and space provided. Whether you type or write, DO NOT EXCEED 20 LINES FOR YOUR FULL ANSWER. If you write, do not double up lines within the spaces provided to give you more than 20 lines of an answer. I WILL NOT READ BEYOND 20 LINES OF YOUR ANSWER.

You will be scored on the breadth and accuracy of your answer and explanation. Place your answer within the provided space on this exam. Just because there

are 20 lines per explanation does not necessarily mean that you are expected to use all the space given; some answers require longer explanations than others.

PART TWO

TWO (2) ESSAY QUESTION
Suggested Time: One Hour (60 Minutes) – 30 Minutes Apiece

Instructions: Below are two (2) essay questions (Questions 13 and 14 on) consisting of a fact pattern and a "call of the question." Like all law school essay questions, this one requires you to perform legal analysis, which is applying specific facts to specific elements of law to support conclusions regarding the 41rights, duties, and liabilities of the parties. Bearing this in mind, you will be scored on the accuracy and breadth of your answer.

Please place your answer within the spaces provided IN THIS EXAM BOOKLET (not in a separate blue book) below the essay question. You have the equivalent of four (4) pages of double-spaced lines in which to place your answer. This is more than enough space for a comprehensive answer. If you write your exam, please only use one (1) provided line in this exam booklet for one (1) line of your answer; do not double up lines to get more space or do anything else that will make it difficult for me to read and correct your answers. I can only grade what I can read and I will not do backflips to read your answers.

If you are writing your exam:

Please write "WRITTEN" on the first page of your exam booklet near the top.

Please place your answers to both Part One and Part Two in the spaces provided in this exam book, I WILL NOT CORRECT OR GRADE ANYTHING YOU PUT IN YOUR SCRAP BLUE BOOK UNDER ANY CIRCUMSTANCES.

Please limit your answers to the lines provided below each question. I will not read beyond the lines provided under each question. Please note that some of the lines for your answers occasionally run on to the next page. I suggest you look at how much space I give you before beginning to write your answer to 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 when a question asks for it.

If you are typing your exam:

If you are typing your exam, you will be required to do so on Examsoft. I understand that your time clock will not begin until you start the exam on Examsoft, regardless of when I call for you to begin. Whether you have standard time or an extra-time accommodation, *the official time for your exam shall be the time I tell you to begin your exam at the beginning of its administration*, NOT the time your Examsoft time clock says. For this reason, you will begin your exam *immediately* when I call for the exam to begin; it should take no more than a minute or two for you to start your exam on Examsoft (see above) and I will provide you five extra minutes to deal with the Examsoft startup. This will be the case whether you are a standard time taker or an extra-time accommodations taker. When I call time, you are to close out your Examsoft administration and upload your exam *immediately* if you type, and you will hand in your written answers immediately if you write.

Please place your answers to both Part One and Part Two in the appropriate space provided on the Examsoft platform. Please ensure that the printed exam that I correct is in the order presented in this exam booklet and that all questions/parts are properly labelled. **I WILL NOT CORRECT OR GRADE ANYTHING YOU PUT IN YOUR SCRAP BLUE BOOK, OR IF YOU TYPE IN THIS EXAM BOOKLET, UNDER ANY CIRCUMSTANCES**.

You have THREE HOURS AND FIVE minutes (185 minutes) to complete this exam if you are entitled to standard time.

You have FOUR HOURS AND THIRTY-FIVE minutes (275 minutes) to complete this exam if you are entitled to time and one-half.

You have SIX HOURS AND FIVE minutes (365 minutes) to complete this exam if you are entitled to double time.

There is a bathroom book at the front of the room. Please sign out and in when you leave the room. Since the pen I put out for each bathroom book “wanders” soon after the first person writes in the book, please use your own pen or pencil to sign out and in.

You are to only turn in your exam booklet with your Student ID (not your name) and your confirmed honor code (your Student ID placed in the signature line in place of your name).

Whether you type or write, please turn in ONLY this exam booklet. You may leave when you are done and have turned in your exam booklet as long as you are quiet and courteous to your classmates who are still taking the exam. If you breach this courtesy, I will instruct you to take your seat and remain quietly until the exam is done.

GOOD LUCK!

STUDENT HONOR PLEDGE

In taking this examination, I hereby affirm, represent and acknowledge, both to the professor and the Massachusetts School of Law community, that:

1. I understand that the professor will not grade my examination, and I will suffer the consequences of not having submitted a final exam (specifically, failure of this course), if I fail to place my full student identification number in the signature space below. Placement of my student identification number below will serve as a substitute for my signature, and carry the full weight of my personal signature in making this pledge on my honor;

2. I will not give or receive any unauthorized assistance on this examination;

3. I understand that this is a closed-book examination and, with the exception of materials specifically referred to in the exam instructions, I am not permitted to use papers, personal effects, electronic devices, or any other matter that could provide unauthorized assistance in completing this examination, create any unfair advantage in completing this examination, or otherwise frustrate the honest administration of this examination as a closed-book examination, whether the same be located on my person, near me, in the exam room, or anywhere else in the building or on the grounds;

4. I have placed all electronic devices, papers, personal effects, and other matter that I brought into the room at the front, side or back of the room as instructed by the exam proctor, with all electronic devices being powered off;

5. I have not placed in bathrooms or other areas in the building or grounds any papers, personal effects, electronic devices, or any other matter that could provide unauthorized assistance in completing this examination, create any unfair advantage in completing this examination, or otherwise frustrate the honest administration of this examination as a closed-book examination, either for my personal use or the use of anyone else;

6. I will not speak to or communicate with any other person taking this exam until its administration is completed (when *everyone* is finished and all the exam materials have been turned in). This also applies while I am waiting in line to hand in the exam or if I complete or leave the exam before others;

7. I will not identify myself in any way or frustrate the anonymous grading of this exam;

8. I will faithfully follow any additional instructions the exam proctor provides orally

during the exam;

9. Other than instructions that the professor may have given out in advance, I have heard nothing about the specific contents of this examination prior to its commencement;

10. I understand and acknowledge that MSLAW's honor code requires me to report observed violations of these provisions as well as the MSLAW Honor Code.

Signed under the pains and penalty of perjury.

____
FULL STUDENT ID NO.
(DO NOT PUT YOUR NAME HERE)

DO NOT TURN THE PAGE AND BEGIN UNTIL THE PROFESSOR/PROCTOR INSTRUCTS YOU TO DO SO.

PART ONE

TWELVE (12) MULTIPLE CHOICE QUESTIONS – PROVIDE ANSWERS & EXPLANATIONS

Suggested Time: Two Hours (120 Minutes)

> *Instructions: Below are twelve (12) multiple choice questions, each of which is followed by a space for your answer and twenty (20) lines for your explanation of why you chose the best answer for each question and eliminated incorrect or less correct answers. Whether you type or write, begin by providing the correct letter answer prior to the explanation. Each question is designed to begin and end on the same, single page, but the explanation lines will run onto a second page. Give the fullest explanations you can within the limits of time and space provided. Whether you type or write, DO NOT EXCEED 20 LINES FOR YOUR FULL ANSWER. If you write, do not double up lines within the spaces provided to give you more than 20 lines of an answer. I WILL NOT READ BEYOND 20 LINES OF YOUR ANSWER.*
>
> *You will be scored on the breadth and accuracy of your answer and explanation. Place your answer within the provided space on this exam. Just because there are 20 lines per explanation does not necessarily mean that you are expected to use all the space given; some answers require longer explanations than others.*

QUESTIONS

1. A husband and wife acquired land as common law joint tenants with a right of survivorship. One year later, without his wife's knowledge, the husband executed a will devising the land to his best friend. The husband subsequently died.

Is the wife now the sole owner of the land?

(A) No, because a joint tenant has the unilateral right to end a joint tenancy without the consent of the other joint tenant.

(B) No, because the wife's interest in the husband's undivided 50% ownership in the land adeemed.

(C) Yes, because of the doctrine of after-acquired title.

(D) Yes, because the devise to the friend by will did not sever the joint tenancy.

Answer: __________

Explanation:

2. A man obtained a bank loan secured by a mortgage on an office building that he owned. After several years, the man conveyed the office building to a woman, who took title "subject to" the mortgage. The deed to the woman was not recorded.

The woman took immediate possession of the building and made the mortgage payments for several years. Subsequently, the woman stopped making payments on the mortgage loan, and the bank eventually commenced foreclosure proceedings in which the man and the woman were both named parties. At the foreclosure sale, a third party purchased the building for less than the outstanding balance on the mortgage loan. The bank then sought to collect the deficiency from the woman.

Is the bank entitled to collect the deficiency from the woman?

(A) No, because the woman did not record the deed from the man.

(B) No, because the woman is not personally liable on the loan.

(C) Yes, because the woman took immediate possession of the building when she bought it from the man.

(D) Yes, because the woman was a party to the foreclosure proceeding.

Answer: __________

Explanation:

3. Last year, a buyer and a seller entered into a valid contract for the sale of a parcel of real property. The contract contained no contingencies. The seller was killed in a car accident before the parcel was conveyed, but the closing eventually took place with the conveyance by a deed from the personal representative of the seller's estate.

The personal representative of the seller's estate wants to distribute the proceeds of the real property sale. The seller's will was executed many years ago and was duly admitted to probate. Paragraph 5 of his will leaves all of the seller's real property to his son, and Paragraph 6 leaves the residue of the estate to the seller's daughter. No other provisions of the will are pertinent to the question regarding to whom the proceeds of the sale should be distributed.

What will determine who receives the proceeds?

(A) Whether Paragraph 5 refers specifically to the parcel of real property that was sold or simply to "all of my real property."

(B) Whether the sale was completed in accordance with a court order.

(C) Whether the jurisdiction follows the doctrine of equitable conversion.

(D) Whether the closing date originally specified in the contract was a date before or after the seller's death.

Answer: ___________

Explanation:

4. A Developer of a large plot of land wants to create a residential subdivision on the land, with a private road he intends to construct running through it. Developer wishes to assure that: (1) the owner of each residential lot will have a right to use the private road, (2) that the right cannot be taken away, and (3) that successors in title in each lot will continue to have the right to use the private road.

The best device to accomplish these objectives is:

(A) a conveyance of joint fee simple interests in cotenancy in the private road.

(B) an appurtenant easement.

(C) an easement in gross.

(D) negative reciprocal covenants.

Answer: __________

Explanation:

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Go to the next page for the next question.

5. Owner conveyed an uninhabited tract of land to Buyer by a general warranty deed for fair market value. Buyer did not record her deed. A month later, after learning that Buyer had failed to record her deed, Owner granted a $10,000 mortgage to Bank, which immediately recorded its mortgage. Two days later, Owner, by general warranty deed, conveyed the land to Niece "for love and affection." Niece neither did a title search prior to the transfer nor knew of the sale to Buyer or mortgage to Bank; she immediately recorded her deed. Afterwards, Buyer recorded her deed. Last week, Niece sold the land by a general warranty deed to Investor who recorded immediately.

The jurisdiction in which the land is located has a statute stating: "No conveyance or mortgage of real property shall be good against subsequent purchasers for value and without notice unless the same be recorded according to law."

Buyer has filed a lawsuit against Investor seeking a declaration that she, and not Investor, owns the land.

If Investor prevails, it will be because

(A) Buyer's prior recorded deed is deemed to be outside the chain of title.

(B) Investor's grantor, Niece, recorded before Buyer.

(C) As between two warranty deeds, the later one controls.

(D) Investor's immediate recording precluded all other claims under the applicable recording statute.

Answer: __________

Explanation:

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Go to the next page for the next question.

6. Desiring to help his only child, Father delivered to Son a quitclaim deed for no consideration. Son thanked Father, accepted the deed, and put it in his safe deposit box. He did not record the deed. A year later, after enduring financial difficulties, Father asked Son to destroy the deed so he could mortgage the land. Son immediately retrieved the deed from the safe deposit box and, before three witnesses, tore up the deed. A week later, before Father had secured mortgage financing on the land, Father and Son were both instantly killed in an automobile accident. Father's wife (the son's stepmother) has claimed title to the land under Father's will, and Son's wife and children have claimed title to the land under Son's will.

In an action to determine the title to the land, the court should find for:

(A) Son's estate owned the land because destruction of the deed was insufficient to cause title to pass back to Father.

(B) Son's estate owned the land because the facts make clear that, despite Father's will, Father obviously intended for Son to own the land eventually.

(C) Father's estate because title had reverted to him when Son destroyed the deed.

(D) Father's estate because Son destroyed the deed before three witnesses, in compliance with the Statute of Wills.

Answer: __________

Explanation:

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Go to the next page for the next question.

7. A landlord leased a building to a tenant for a 10-year term. Two years after the term began, the tenant subleased the building to a sublessee for a 5-year term. Under the terms of the sublease, the sublessee agreed to make monthly rent payments to the tenant.

Although the sublessee made timely rent payments to the tenant, the tenant did not forward four of those payments to the landlord. The tenant has left the jurisdiction and cannot be found. The landlord has sued the sublessee for the unpaid rent. There is no applicable statute.

If the court rules that the sublessee is not liable to the landlord for the unpaid rent, what will be the most likely reason?

(A) A sublessee is responsible to the landlord only as a surety for unpaid rent owed by the tenant.

(B) The sublease constitutes a novation of the original lease.

(C) The sublessee is not in privity of estate or contract with the landlord.

(D) The sublessee's rent payments to the tenant fully discharged the sublessee's obligation to pay rent to the landlord.

Answer: __________

Explanation:

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8. A grantor executed an instrument in the proper form of a warranty deed purporting to convey a tract of land to his church. The granting clause of the instrument ran to the church "and its successors forever, so long as the premises are used for church purposes." The church took possession of the land and used it as its site of worship for many years. Subsequently, the church wanted to relocate and entered into a valid written contract to sell the land to a buyer for a substantial price. The buyer wanted to use the land as a site for business activities and objected to the church's title. The contract contained no provision relating to the quality of title the church was bound to convey. There is no applicable statute. When the buyer refused to close, the church sued the buyer for specific performance and properly joined the grantor as a party.

Is the church likely to prevail?

(A) No, because the grantor's interest prevents the church's title from being marketable.

(B) No, because the quoted provision is a valid restrictive covenant.

(C) Yes, because a charitable trust to support religion will attach to the proceeds of the sale.

(D) Yes, because the grantor cannot derogate from his warranty to the church.

Answer: __________

Explanation:

9. In order to finance the purchase of a single-family residence, Buyer signed a promissory note and granted a purchase money mortgage to Bank, which was duly recorded and did not contain a due-on-sale clause. Five years later, Buyer leased the residence to Tenant for a term of five years. The written lease contained a clause stating: “the tenancy created hereunder shall be subordinate to any mortgage hereafter granted to an institutional lender.” A year after that, Buyer borrowed more money from a recognized and reputable Mortgage Company in the form of a home equity line, which was duly recorded. Shortly thereafter, Creditor obtained a judgment against Buyer and recorded the judgment in the registry of deeds. A statute in the jurisdiction where the residence was located provides that a recorded judgment is the equivalent of any other recorded encumbrance on all real estate owned by the debtor in the recording district. Buyer recently defaulted on the equity credit line, and the Mortgage Company has commenced appropriate foreclosure proceedings. A purchaser at the foreclosure will purchase subject to:

(A) The purchase money mortgage and the lease.

(B) The purchase money mortgage and creditor’s judgment.

(C) The purchase money mortgage only.

(D) The purchase money mortgage, lease and creditor’s judgment.

Answer: __________

Explanation:

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Go to the next page for the next question.

10. A creditor received a valid judgment against a debtor and promptly and properly filed the judgment in the county. Two years later, the debtor purchased land in the county and promptly and properly recorded the warranty deed to it. Subsequently, the debtor borrowed $30,000 from his aunt, signing a promissory note for that amount, which note was secured by a mortgage on the land. The mortgage was promptly and properly recorded. The aunt failed to make a title search before making the loan. The debtor made no payment to the creditor and defaulted on the mortgage loan from his aunt.

A valid judicial foreclosure proceeding was held, in which the creditor, the aunt, and the debtor were named parties. A dispute arose as to which lien has priority. A statute of the jurisdiction provides: "Any judgment properly filed shall, for 10 years from filing, be deemed a lien on the real property in the same manner as if it had been properly recorded in the applicable Registry of Deeds, and the enforceability thereof shall be determined in accordance with the laws of recording of this state." A second statute of the jurisdiction provides: "No unrecorded conveyance or mortgage of real property shall be good against subsequent purchasers for value without notice, who shall first record."

As between the aunt and creditor, who will prevail?

(A) The aunt because a judgment lien is subordinate to a mortgage lien.

(B) The aunt because she is a mortgagee under a purchase money mortgage.

(C) The creditor because its judgment was filed first.

(D) The creditor because the aunt had a duty to make a title search of the property.

Answer: __________

Explanation:

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Go to the next page for the next question.

11. An Owner who owned a lot of land just north of Main Street, a public road (the southern lot), employed a driveway on her property to gain access to and from Main Street. Neighbor owned a lot just north of, and contiguous to Owner's land, which bordered Elm Street on its northernmost boundary (the northern lot). Neighbor used a driveway in his land to gain access to and from Elm Street. The northern lot provided no other access to any public road other than Elm Street.

Last year, City converted Elm Street into a "greenway," blocking access onto Elm Street from lots on its southern border, including the northern lot. The northern lot became landlocked. Neighbor brought an action against Owner of the southern lot in an attempt to gain access to Main Street, the only public road in the area. In that case, the court should

(A) determine that the owner of the northern lot has established an easement by necessity over the southern lot in order to gain access to Main Street.

(B) determine that the owner of the northern lot has established an easement by implication over the southern lot in order to gain access to Main Street.

(C) determine that the owner of the northern lot has established an easement by prescription over the southern lot in order to gain access to Main Street.

(D) determine that the owner of the northern lot has not established easement rights over the southern lot in order to gain access to Main Street.

Answer: __________

Explanation:

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Go to the next page for the next question.

12. Owner of a tract of land executed and delivered a deed by which he conveyed the tract "to Cousin and his heirs as long as it is used exclusively for residential purposes, but if it is used for other than residential purposes, to Charity." Cousin immediately entered into possession and used the premises for residential purposes. Five years later, however, Cousin converted the tract into a retail florist shop and began selling flowers to the general public. Charity has brought an action against Cousin claiming that Cousin has forfeited the right to possess, and that Charity now owns in fee simple absolute. Owner has intervened in the suit, asserting that Cousin has forfeited the right to possess, but that he now owns the parcel in fee simple absolute.

In that action,

(A) Cousin will prevail against both Charity and Owner because Charity's interest was extinguished for violating the rule against perpetuities.

(B) Cousin will prevail against both Charity and Owner because Charity owned a vested remainder subject to complete divestment, which is not subject to the rule against perpetuities.

(C) Owner will prevail against both Charity and Cousin because Charity's interest was extinguished for violating the rule against perpetuities and Cousin has breached the condition of a fee simple determinable.

(D) Charity will prevail against both Cousin and Owner because Charity's interest did not violate the rule against perpetuities.

Answer: __________

Explanation:

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PART TWO

TWO (2) ESSAY QUESTION
Suggested Time: One Hour (60 Minutes) – 30 Minutes Apiece

> *Instructions: Below are two (2) essay questions (Questions 13 and 14 on) consisting of a fact pattern and a "call of the question." Like all law school essay questions, this one requires you to perform legal analysis, which is applying specific facts to specific elements of law to support conclusions regarding the 41rights, duties, and liabilities of the parties. Bearing this in mind, you will be scored on the accuracy and breadth of your answer.*

Please place your answer within the spaces provided IN THIS EXAM BOOKLET (not in a separate blue book) below the essay question. You have the equivalent of four (4) pages of double-spaced lines in which to place your answer. This is more than enough space for a comprehensive answer. If you write your exam, please only use one (1) provided line in this exam booklet for one (1) line of your answer; do not double up lines to get more space or do anything else that will make it difficult for me to read and correct your answers. I can only grade what I can read and I will not do backflips to read your answers.

Q. 13 – First Essay Question

Seventeen years ago, a property owner granted a sewer-line easement to a private sewer company on the owner's three-acre, unoccupied tract of land. The easement allowed the company to build, maintain, and use an underground sewer line in a designated area of the owner's three-acre tract. The easement was promptly and properly recorded.

Fifteen years ago, a man unknown to the owner, and having no title or other interest in the owner's three-acre tract, entered the tract, built a cabin, and planted a vegetable garden. The garden was directly over the sewer line constructed pursuant to the recorded easement the owner had granted to the sewer company two years earlier. The cabin and garden occupied half an acre of the three-acre tract. The man moved into the cabin immediately after its completion and remained in continuous, open, and exclusive possession of the cabin and garden until his death eight years ago. However, he did not use the remaining two and one-half acres of the three-acre tract in any way.

When the man died eight years ago, his sister – the man's only heir – filed his duly executed will with the appropriate probate court and opened an estate for her deceased brother. The will bequeathed to his sister "all real property in which I have or may have an interest at the time of my death." The man's sister took possession of the cabin and garden immediately after the man's death and remained in exclusive and continuous possession of them for one year, but she, too, did not use the remaining two and one-half acres of the tract.

Seven years ago, the man's sister executed and delivered to a buyer a general warranty deed stating that it conveyed the entire three-acre tract to the buyer. The deed contained all six covenants of title and made no mention of the easement the man had granted the sewer company ten years earlier. The buyer had never caused a title search to be conducted of the three-acre parcel. Since this transaction, the buyer has continuously occupied the cabin and garden but has not used the remaining two and one-half acres.

The state in which the property is located has a statute providing that "any action to recover the possession of real property must be brought within 10 years after the cause of action accrues."

Last month, the property owner sued the buyer to recover possession of the three-acre tract. The buyer responded with appropriate counterclaims against the owner and was allowed to join the sister and sewer company to make claims against those parties. Please address the following issues:

1. Did the buyer acquire title to the three-acre tract or any portion of it? Support your conclusions with relevant facts and applicable law.

2. Assume for this issue only that the buyer did not acquire title to the entire three-acre tract. Will the buyer recover damages from the sister who sold him the three-acre tract? Support your conclusions with relevant facts and applicable law.

3. Assume for this issue only that the buyer did acquire title to the entire three-acre tract, including the portion above the sewer-line easement. Will the buyer prevail in seeking to compel the sewer company to remove the sewer line under the garden? Support your conclusions with relevant facts and applicable law.

Q. 14 – Second Essay Question

Eighty years ago, Owner, the owner of a vacant parcel of land (“the parcel”), conveyed the parcel to a local school district (the “School”) “if School uses the parcel only to teach children aged 5 to 13.” Shortly after acquiring title to the parcel, School erected a classroom building on the parcel and began teaching children aged 5 to 13 in that building.

Seventy years ago, Owner died and left his entire estate to his Daughter. School continued to use the classroom building to teach its students aged 5 to 13 until three years ago when, due to increasing enrollments, School built a new classroom building three miles from the parcel and converted the classroom building on the parcel into administrative offices.

The building on the parcel is now exclusively occupied by administrative offices, and all School students aged 5 to 13 are taught in the new classroom building three miles away. During her life, Daughter did not object to School’s altered use of the parcel.

Two years ago Daughter died and devised her entire estate to her “Husband for life, with the remainder to my surviving children.” Daughter was survived by Husband and two children, Ann and Bill.

One year ago, Bill died. Bill’s entire estate passed to his wife, Mary. One month ago, Husband, the life tenant under Daughter’s will, died. Husband was survived by Ann and by Bill’s widow, Mary.

Relevant statutes of the state in which the parcel is located provide:

1. “Actions to recover the possession of real property shall be brought within 10 years after the cause of action accrues.”

2. “All future interests are alienable, devisable, and descendible to the extent they do not expire as a result of the holder’s death.”

3. “Conditions and limitations in a deed shall not be construed as covenants.”

There are no other relevant statutes.

What interests, if any, do School, Ann, and Mary have in the parcel? Support your conclusions with relevant facts and applicable law.

END OF EXAM

REAL PROPERTY LAW
FINAL EXAMINATION
Spring 2022
May 9, 2022

ANSWERS & EXPLANATIONS

PART ONE

TWELVE (12) MULTIPLE CHOICE QUESTIONS

1. A husband and wife acquired land as common law joint tenants with a right of survivorship. One year later, without his wife's knowledge, the husband executed a will devising the land to his best friend. The husband subsequently died.

Is the wife now the sole owner of the land?

(A) No, because a joint tenant has the unilateral right to end a joint tenancy without the consent of the other joint tenant.

(B) No, because the wife's interest in the husband's undivided 50% ownership in the land adeemed.

(C) Yes, because of the doctrine of after-acquired title.

(D) Yes, because the devise to the friend by will did not sever the joint tenancy.

Answer: ***D***

Explanation:

A common law joint tenancy has a right of survivorship and 4 unities: time, title, interest, and possession. If one of the cotenants conveys his/her interest to another, it destroys the unity of time and unity of title because the new cotenant would not have taken title at the same time and through the same deed as the remaining cotenant. Whenever there are fewer than 4 unities, the only possible cotenancy is a tenancy in common. Accordingly, if the will constituted a conveyance to the friend, it would sever the joint tenancy and create a tenancy in common. However, the will did not sever the joint tenancy for two reasons: (1) a will does not incur any legal effect until the testator dies, and (2) once the testator dies, only the property s/he owned at the moment of death passes through it. Thus, the husband's execution of the will could not sever the joint tenancy

because the will had no legal effect at that time. Nor could the death of the husband sever the joint tenancy because, at that moment, the right of survivorship triggered and took the husband's interest out of his estate, leaving the wife as sole owner by operation of law. Nothing passed to the friend through the will. D is the only answer properly reflecting how the law operates.

2. A man obtained a bank loan secured by a mortgage on an office building that he owned. After several years, the man conveyed the office building to a woman, who took title "subject to" the mortgage. The deed to the woman was not recorded.

The woman took immediate possession of the building and made the mortgage payments for several years. Subsequently, the woman stopped making payments on the mortgage loan, and the bank eventually commenced foreclosure proceedings in which the man and the woman were both named parties. At the foreclosure sale, a third party purchased the building for less than the outstanding balance on the mortgage loan. The bank then sought to collect the deficiency from the woman.

Is the bank entitled to collect the deficiency from the woman?

(A) No, because the woman did not record the deed from the man.

(B) No, because the woman is not personally liable on the loan.

(C) Yes, because the woman took immediate possession of the building when she bought it from the man.

(D) Yes, because the woman was a party to the foreclosure proceeding.

Answer: ***B***

Explanation:

The bank's foreclosure of the mortgage destroyed the mortgage, leaving only the bank's promissory note as a vehicle for collecting the deficiency. The promissory note is a contract, which means that it is enforced under contract law rather than real estate law. The woman is not liable under common law contract law for one simple reason: one cannot bring a breach of contract/promissory note action against a defendant who is not in privity of contract with the plaintiff. The woman is not liable to the bank in common law contract because she was not a party to the promissory note. This leaves only the question of whether the man and woman created a third-party beneficiary for the benefit of the bank. The answer to this question comes down to answering another simple question: did the woman agree to "assume" the mortgage obligation – in which event she and the man would have created a third-party beneficiary contract for the benefit of the bank – or did the woman agree to take only "subject to" the mortgage obligation – in which event there was no third-party beneficiary contract to benefit the bank and

the woman would not be liable. The facts clearly indicate the later and the woman is not liable to the bank under third-party beneficiary law. A is incorrect because recording only creates notice; it does not create liability. C and D are also not proper bases of liability and thus are incorrect.

3. Last year, a buyer and a seller entered into a valid contract for the sale of a parcel of real property. The contract contained no contingencies. The seller was killed in a car accident before the parcel was conveyed, but the closing eventually took place with the conveyance by a deed from the personal representative of the seller's estate.

The personal representative of the seller's estate wants to distribute the proceeds of the real property sale. The seller's will was executed many years ago and was duly admitted to probate. Paragraph 5 of his will leaves all of the seller's real property to his son, and Paragraph 6 leaves the residue of the estate to the seller's daughter. No other provisions of the will are pertinent to the question regarding to whom the proceeds of the sale should be distributed.

What will determine who receives the proceeds?

(A) Whether Paragraph 5 refers specifically to the parcel of real property that was sold or simply to "all of my real property."

(B) Whether the sale was completed in accordance with a court order.

(C) Whether the jurisdiction follows the doctrine of equitable conversion.

(D) Whether the closing date originally specified in the contract was a date before or after the seller's death.

Answer: ***C***

Explanation:

In jurisdictions that follow the common law doctrine of equitable conversion, the execution of a purchase and sale agreement/contract for the sale of real estate (the "P & S") causes an equitable conversion by which the buyer obtains "equitable title," which is treated as <u>real property</u>, and the seller retains "legal title," which is treated as <u>personal property</u>. Under the law of equitable conversion, if the buyer dies after the P & S is executed but before the deed is delivered, the buyer's "equitable title" passes as <u>real property</u> under the buyer's will. But if the seller dies instead, the seller's "legal title" will pass through his or her will as <u>personal property</u>. Although this question does not inquire, because the seller died, his or her "legal title" will pass through the will as personal property to the daughter through the residuary clause. What you do need to know is that C is the only answer that identifies "equitable conversion" as the issue

that governs the outcome. (A), (B), and (D) refer to different issues that are not relevant, and are thus incorrect.

4. A Developer of a large plot of land wants to create a residential subdivision on the land, with a private road he intends to construct running through it. Developer wishes to assure that: (1) the owner of each residential lot will have a right to use the private road, (2) that the right cannot be taken away, and (3) that successors in title in each lot will continue to have the right to use the private road.

The best device to accomplish these objectives is:

(A) a conveyance of joint fee simple interests in cotenancy in the private road.

(B) an appurtenant easement.

(C) an easement in gross.

(D) negative reciprocal covenants.

Answer: ***B***

Explanation:

An appurtenant easement is a nonpossessory estate that most commonly allows travel over a portion of land and provides for benefitted and burdened estates and remains attached to the real estate after each owner sells his/her fee simple interest. It is the best answer given the goals the developer seeks. (A) is incorrect because we learned that a cotenancy/concurrent estate is subject to partition (other than a tenancy by the entirety), and the decision of any one property owner to obtain a partition would this defeat all of the developer's enumerated goals because: fee simple ownership after partition would allow the owners to exclude others from using the road, the right of use would be taken away, and successors in interest would not have the right to use the private road. (D) is incorrect because we didn't do covenants running with the land and I would not test you on it. Also, covenants are mainly employed to restrict the type of use of land, not to <u>allow</u> certain uses. (C) is incorrect because an easement in gross would not stay attached to the land and therefore would not allow successors in title the right to use the road; an easement in gross is a personal easement rather than one attached to the land.

5. Owner conveyed an uninhabited tract of land to Buyer by a general warranty deed for fair market value. Buyer did not record her deed. A month later, after learning that Buyer had failed to record her deed, Owner granted a $10,000 mortgage to Bank, which immediately recorded its mortgage. Two days later, Owner, by general warranty deed, conveyed the land to Niece "for love and affection." Niece neither did a title search prior to the transfer nor knew of the sale to Buyer or mortgage to Bank; she

immediately recorded her deed. Afterwards, Buyer recorded her deed. Last week, Niece sold the land by a general warranty deed to Investor who recorded immediately.

The jurisdiction in which the land is located has a statute stating: “No conveyance or mortgage of real property shall be good against subsequent purchasers for value and without notice unless the same be recorded according to law."

Buyer has filed a lawsuit against Investor seeking a declaration that she, and not Investor, owns the land.

If Investor prevails, it will be because

(A) Buyer’s prior recorded deed is deemed to be outside the chain of title.

(B) Investor’s grantor, Niece, recorded before Buyer.

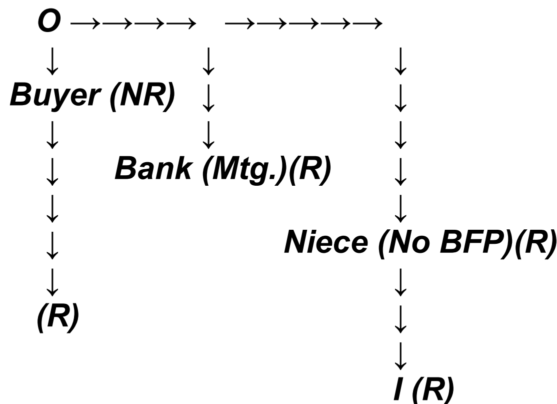
(C) As between two warranty deeds, the later one controls.

(D) Investor’s immediate recording precluded all other claims under the applicable recording statute.

Answer: ***A***

Explanation:

Although not relevant to the outcome of the action between Buyer and Investor, the recording statute is a pure notice statute. This is because it has so-called BFP language (“for value and without notice”) and there is no stated requirement that a subsequent BFP must “first record” in order to be protected. Below is my diagram:



When doing his/her title examination, the Investor will run Niece in the grantee index and see that her grantor was Owner. Then Investor will turn around and run Owner in the grantor index from the time s/he became the owner until the Investor sees the deed to Niece. The only thing Investor will see is the grant of mortgage

to the Bank (which the question doesn't ask about). The Investor will not see the deed from Owner to Buyer because the Investor will stop running the Owner in the grantor index as soon as s/he sees the deed into the Niece, and the dumb Buyer didn't record his/her deed until after the deed into the Niece. The Buyer's deed is recorded outside the chain of title and will not be discovered in a title search. (B) is wrong because recording only give notice; it has nothing to do with ownership. (D) is wrong for the same reason. (C) is gibberish; there is no such rule.

6. Desiring to help his only child, Father delivered to Son a quitclaim deed for no consideration. Son thanked Father, accepted the deed, and put it in his safe deposit box. He did not record the deed. A year later, after enduring financial difficulties, Father asked Son to destroy the deed so he could mortgage the land. Son immediately retrieved the deed from the safe deposit box and, before three witnesses, tore up the deed. A week later, before Father had secured mortgage financing on the land, Father and Son were both instantly killed in an automobile accident. Father's wife (the son's stepmother) has claimed title to the land under Father's will, and Son's wife and children have claimed title to the land under Son's will.

In an action to determine the title to the land, the court should find for:

(A) Son's estate owned the land because destruction of the deed was insufficient to cause title to pass back to Father.

(B) Son's estate owned the land because the facts make clear that, despite Father's will, Father obviously intended for Son to own the land eventually.

(C) Father's estate because title had reverted to him when Son destroyed the deed.

(D) Father's estate because Son destroyed the deed before three witnesses, in compliance with the Statute of Wills.

Answer: ***A***

Explanation:

Because none of the answers ask you to assume that the Father did not initially transfer the real estate to the Son, we do not have to analyze where there was proper intent, acceptance and delivery for the transfer from Father to Son. We must assume that the Son was the owner at least until he tore up the deed. Inter vivos transfers of real estate are accomplished only through a deed and there are four requirements for a deed to be valid: (1) identify the grantor and grantee, (2) properly describe the real estate transferred, (3) include "granting language," and (4) be signed by the grantor. Tearing up a previous deed accomplishes none of these requirements. Accordingly, the Son never transferred the real estate back

to the Father and owned it at the time of his death. The Son's wife and children will prevail and {A) is the best answer.

7. A landlord leased a building to a tenant for a 10-year term. Two years after the term began, the tenant subleased the building to a sublessee for a 5-year term. Under the terms of the sublease, the sublessee agreed to make monthly rent payments to the tenant.

Although the sublessee made timely rent payments to the tenant, the tenant did not forward four of those payments to the landlord. The tenant has left the jurisdiction and cannot be found. The landlord has sued the sublessee for the unpaid rent. There is no applicable statute.

If the court rules that the sublessee is not liable to the landlord for the unpaid rent, what will be the most likely reason?

(A) A sublessee is responsible to the landlord only as a surety for unpaid rent owed by the tenant.

(B) The sublease constitutes a novation of the original lease.

(C) The sublessee is not in privity of estate or contract with the landlord.

(D) The sublessee's rent payments to the tenant fully discharged the sublessee's obligation to pay rent to the landlord.

Answer: ***C***

Explanation:

A tenant, assignee, or sublessee is liable for rent to a landlord only if the tenant, sublessee, or assignee is in privity of contract <u>or</u> privity of title/estate with the landlord. Privity of contract requires that the landlord and party s/he is suing for rent must be parties to the same lease/tenancy. Here, landlord and sublessee are not parties to the same lease/tenancy, so there is no privity of contract. Privity of title/estate requires that there be a <u>direct</u> line of possession between the landlord and the person from whom s/he is seeking rent at the end of the tenancy. Here, when the sublessee's term is done, his/her possession is going directly to the tenant, <u>not directly to the landlord</u>, so there is no privity of title/estate. The landlord therefore cannot recover rent from the sublessee for the reasons stated in (C). None of the other answers properly deal with "the privities" and are not the best answers.

8. A grantor executed an instrument in the proper form of a warranty deed purporting to convey a tract of land to his church. The granting clause of the instrument ran to the church "and its successors forever, so long as the premises are used for church

purposes." The church took possession of the land and used it as its site of worship for many years. Subsequently, the church wanted to relocate and entered into a valid written contract to sell the land to a buyer for a substantial price. The buyer wanted to use the land as a site for business activities and objected to the church's title. The contract contained no provision relating to the quality of title the church was bound to convey. There is no applicable statute. When the buyer refused to close, the church sued the buyer for specific performance and properly joined the grantor as a party.

Is the church likely to prevail?

(A) No, because the grantor's interest prevents the church's title from being marketable.

(B) No, because the quoted provision is a valid restrictive covenant.

(C) Yes, because a charitable trust to support religion will attach to the proceeds of the sale.

(D) Yes, because the grantor cannot derogate from his warranty to the church.

Answer: ***A***

Explanation:

The seller's obligation under a purchase and sale agreement (P & S) to deliver a marketable title arises when either: (1) the P & S expressly requires the seller to deliver a marketable title, or (2) the P & S is silent and the obligation arises impliedly, by operation of law. The latter is the case here; the seller is required to deliver a marketable title. An encumbrance creates <u>un</u>marketable title. An encumbrance is a real estate interest in a third person. Here, the church owned a determinable fee; more specifically, a fee simple determinable. Whenever one owns an estate other than a fee simple absolute, there will always be a future interest following it. A future interest is a real estate interest in a third person and creates an <u>un</u>marketable title. Because the church does not have marketable title to provide to the buyer – there is an outstanding possibility of reverter – the buyer had the right to refuse to accept title and the church will not prevail, thus eliminating (C) and (D) as correct answers. (B) is incorrect because the facts establish a defeasible fee in the church, not a covenant running with the land.

9. In order to finance the purchase of a single-family residence, Buyer signed a promissory note and granted a purchase money mortgage to Bank, which was duly recorded and did not contain a due-on-sale clause. Five years later, Buyer leased the residence to Tenant for a term of five years. The written lease contained a clause stating: “the tenancy created hereunder shall be subordinate to any mortgage hereafter granted to an institutional lender.” A year after that, Buyer borrowed more money from a

recognized and reputable Mortgage Company in the form of a home equity line, which was duly recorded. Shortly thereafter, Creditor obtained a judgment against Buyer and recorded the judgment in the registry of deeds. A statute in the jurisdiction where the residence was located provides that a recorded judgment is the equivalent of any other recorded encumbrance on all real estate owned by the debtor in the recording district. Buyer recently defaulted on the equity credit line, and the Mortgage Company has commenced appropriate foreclosure proceedings. A purchaser at the foreclosure will purchase subject to:

(A) The purchase money mortgage and the lease.

(B) The purchase money mortgage and creditor's judgment.

(C) The purchase money mortgage only.

(D) The purchase money mortgage, lease, and creditor's judgment.

Answer: ***C***

Explanation:

The rule of mortgage priorities is "first in time, first in right." Stated another way, "junior" (newer) encumbrances must yield to "senior" (older) encumbrances. Upon a foreclosure, liens that are junior to that of the foreclosing entity get wiped out. The initial order of priority under this rule was: (1) purchase money mortgage to Bank, (2) lease to Tenant, (3) mortgage to Mortgage Company, and (4) Creditor's judgment. There are, however three exceptions to the rule of first in time, first in right: (1) a subordination agreement changing the order of priority, (2) an encumbrance is recorded late, and (3) a purchase money mortgage. The purchase money mortgage rule does not apply because the purchase money mortgage held by the Bank is already in first position and does not need an exception. The only exception that does apply is the subordination agreement the Tenant gave, switching its priority with the Mortgage Company. The revised order of priority is (1) Bank's purchase money mortgage, (2) Mortgage Company's mortgage, (3) Tenant's lease, and (4) Creditor's judgment. The Mortgage Company is foreclosing; its mortgage (bee sting rule) and all junior encumbrances – Tenant's lease and Creditor's judgment – are junior and get wiped out at foreclosure. The only encumbrance a purchaser at foreclosure takes subject to is the Bank's purchase money mortgage. (C) reflects this and none of the other answers do.

10. A creditor received a valid judgment against a debtor and promptly and properly filed the judgment in the county. Two years later, the debtor purchased land in the county and promptly and properly recorded the warranty deed to it. Subsequently, the debtor borrowed $30,000 from his aunt, signing a promissory note for that amount, which note was secured by a mortgage on the land. The mortgage was promptly and

properly recorded. The aunt failed to make a title search before making the loan. The debtor made no payment to the creditor and defaulted on the mortgage loan from his aunt.

A valid judicial foreclosure proceeding was held, in which the creditor, the aunt, and the debtor were named parties. A dispute arose as to which lien has priority. A statute of the jurisdiction provides: "Any judgment properly filed shall, for 10 years from filing, be deemed a lien on the real property in the same manner as if it had been properly recorded in the applicable Registry of Deeds, and the enforceability thereof shall be determined in accordance with the laws of recording of this state." A second statute of the jurisdiction provides: "No unrecorded conveyance or mortgage of real property shall be good against subsequent purchasers for value without notice, who shall first record."

As between the aunt and creditor, who will prevail?

(A) The aunt because a judgment lien is subordinate to a mortgage lien.

(B) The aunt because she is a mortgagee under a purchase money mortgage.

(C) The creditor because its judgment was filed first.

(D) The creditor because the aunt had a duty to make a title search of the property.

Answer: ***C***

Explanation:

The relevant recording statute is a race-notice statute because it (1) has BFP language – "for value without notice" – and (2) it states that a subsequent purchaser must "first record" to be protected. The statute regarding the filing of judgments essentially makes the Creditor a protected party provided s/he properly files the judgment. The facts are clear that the Creditor filed first and that the Aunt could have found the Creditor's judgment if she had done a proper title search. The aunt just had "constructive notice" – the proper filing or recording of an encumbrance puts all parties on constructive notice of its existence whether they do a title search or not – and therefore is not protected by the plain terms of the race-notice recording statute. Because the Creditor filed/recorded first and the Aunt had notice of the judgment, (C) is the best answer. (D) is wrong because the Aunt's failure to do a title search is irrelevant; the issue is that she recorded second and had notice of the Creditor's interest. (A) and (B) are wrong because this question is clearly about recording rather than mortgages.

11. An Owner who owned a lot of land just north of Main Street, a public road (the southern lot), employed a driveway on her property to gain access to and from Main Street. Neighbor owned a lot just north of, and contiguous to Owner's land, which

bordered Elm Street on its northernmost boundary (the northern lot). Neighbor used a driveway in his land to gain access to and from Elm Street. The northern lot provided no other access to any public road other than Elm Street.

Last year, City converted Elm Street into a "greenway," blocking access onto Elm Street from lots on its southern border, including the northern lot. The northern lot became landlocked. Neighbor brought an action against Owner of the southern lot in an attempt to gain access to Main Street, the only public road in the area. In that case, the court should

(A) determine that the owner of the northern lot has established an easement by necessity over the southern lot in order to gain access to Main Street.

(B) determine that the owner of the northern lot has established an easement by implication over the southern lot in order to gain access to Main Street.

(C) determine that the owner of the northern lot has established an easement by prescription over the southern lot in order to gain access to Main Street.

(D) determine that the owner of the northern lot has not established easement rights over the southern lot in order to gain access to Main Street.

Answer: ***D***

Explanation:

Nothing in the facts supports any claim of an <u>express easement</u> between the Neighbor and Owner. Accordingly, the only possible claim the Neighbor has is that the facts require the imposition of an <u>implied easement</u>. There are two implied easements: (1) the easement by implication, and (2) the easement by necessity. The easement by implication has five elements: (1) one large lot owned by a single owner which is subsequently subdivided into two or more smaller lots, owned by different owners after the subdivision, (2) a quasi-easement – a road, trail, waterway, or some other means of travel that would eventually service the lots created by the subdivision, (3) a quasi-dominant estate, (4) a quasi-servient estate, and (5) a reasonable necessity – it would be unduly expensive or inconvenient to access a public road through means other than an implied easement. The easement by necessity has two elements: (1) one large lot owned by a single owner which is subsequently subdivided into two or more smaller lots, owned by different owners after the subdivision (this is the same as the first element of an easement by implication), and (2) strict or absolute necessity – the lot in issue must literally be landlocked. Since there are no facts presented that there was once a single large lot owned by a single owner which was subsequently subdivided into two or more smaller lots, owned by different

owners after the subdivision, there is no easement by implication or easement by necessity. (C) is the only answer recognizing the failure of this element.

12. Owner of a tract of land executed and delivered a deed by which he conveyed the tract "to Cousin and his heirs as long as it is used exclusively for residential purposes, but if it is used for other than residential purposes, to Charity." Cousin immediately entered into possession and used the premises for residential purposes. Five years later, however, Cousin converted the tract into a retail florist shop and began selling flowers to the general public. Charity has brought an action against Cousin claiming that Cousin has forfeited the right to possess, and that Charity now owns in fee simple absolute. Owner has intervened in the suit, asserting that Cousin has forfeited the right to possess, but that he now owns the parcel in fee simple absolute.

In that action,

(A) Cousin will prevail against both Charity and Owner because Charity's interest was extinguished for violating the rule against perpetuities.

(B) Cousin will prevail against both Charity and Owner because Charity owned a vested remainder subject to complete divestment, which is not subject to the rule against perpetuities.

(C) Owner will prevail against both Charity and Cousin because Charity's interest was extinguished for violating the rule against perpetuities and Cousin has breached the condition of a fee simple determinable.

(D) Charity will prevail against both Cousin and Owner because Charity's interest did not violate the rule against perpetuities.

Answer: ***C***

Explanation:

Preliminary title: Cousin has a present estate. It's a fee simple ("and his heirs" are words of limitation for a fee simple). It is conditional ("as long as/but if") so it's not a fee simple absolute. Upon forfeiture, possession goes to Charity, another grantee, so it's a fee simple subject to executory limitation. Charity has a future interest and is a grantee: a remainder or executory interest. Charity cuts short the prior estate and owns an executory interest.

Final title: We need to subject Charity's executory interest, a contingent future interest to RAP. Because it's an executory interest without a time limitation, it violates RAP and must be cut out. We cut out all the way back to and including "but if" because that is the place where the grant first makes sense after cutting: "to Cousin and his heirs as long as it is used exclusively for residential purposes~~,~~

~~but if it is used for other than residential purposes, to Charity~~." Cousin owns a fee simple determinable (a conditional fee simple that forfeits automatically back to the grantor). Owner, the grantor, owns a possibility of reverter (the future interest owned by a grantor that follows a fee simple determinable).

Once Cousin breached the condition, s/he forfeited possession back to the Owner. Charity gets nothing because it was cut out by RAP. (C) is the only answer that properly reflects this.

PART TWO

TWO (2) ESSAY QUESTIONS

Q. 13 – First Essay Question

Seventeen years ago, a property owner granted a sewer-line easement to a private sewer company on the owner's three-acre, unoccupied tract of land. The easement allowed the company to build, maintain, and use an underground sewer line in a designated area of the owner's three-acre tract. The easement was promptly and properly recorded.

Fifteen years ago, a man unknown to the owner, and having no title or other interest in the owner's three-acre tract, entered the tract, built a cabin, and planted a vegetable garden. The garden was directly over the sewer line constructed pursuant to the recorded easement the owner had granted to the sewer company two years earlier. The cabin and garden occupied half an acre of the three-acre tract. The man moved into the cabin immediately after its completion and remained in continuous, open, and exclusive possession of the cabin and garden until his death eight years ago. However, he did not use the remaining two and one-half acres of the three-acre tract in any way.

When the man died eight years ago, his sister – the man's only heir – filed his duly executed will with the appropriate probate court and opened an estate for her deceased brother. The will bequeathed to his sister "all real property in which I have or may have an interest at the time of my death." The man's sister took possession of the cabin and garden immediately after the man's death and remained in exclusive and continuous possession of them for one year, but she, too, did not use the remaining two and one-half acres of the tract.

Seven years ago, the man's sister executed and delivered to a buyer a general warranty deed stating that it conveyed the entire three-acre tract to the buyer. The deed contained all six covenants of title and made no mention of the easement the man had granted the sewer company ten years earlier. The buyer had never caused a title search to be conducted of the three-acre parcel. Since this transaction, the buyer has continuously occupied the cabin and garden but has not used the remaining two and one-half acres.

The state in which the property is located has a statute providing that "any action to recover the possession of real property must be brought within 10 years after the cause of action accrues."

Last month, the property owner sued the buyer to recover possession of the three-acre tract. The buyer responded with appropriate counterclaims against the owner and was allowed to join the sister and sewer company to make claims against those parties. Please address the following issues:

1. Did the buyer acquire title to the three-acre tract or any portion of it? Support your conclusions with relevant facts and applicable law.

2. Assume for this issue only that the buyer did not acquire title to the entire three-acre tract. Will the buyer recover damages from the sister who sold him the three-acre tract? Support your conclusions with relevant facts and applicable law.

3. Assume for this issue only that the buyer did acquire title to the entire three-acre tract, including the portion above the sewer-line easement. Will the buyer prevail in seeking to compel the sewer company to remove the sewer line under the garden? Support your conclusions with relevant facts and applicable law.

NOTE TO STUDENTS: With just a few edits, this question is an actual MEE that test takers are expected to complete in 30 minutes. I find this to be a tall order in such a short time, given the number and breadth of issues you are asked to address. Consequently, the model answer below is an aspirational answer that the most knowledgeable, sophisticated student would have difficulty completing within the time given. The goal is to hit as many of these issues in a cogent manner as possible, understanding that no answer will approach perfection.

1. The first issue presented is that of adverse possession. Adverse possession is essentially a statute of limitations (SOL) attached to the common law tort of trespass; the record owner of the real estate must eject the trespasser from the land before the statute of limitations runs lest s/he lose the right to do so. Adverse possession statutes range in time from 5 to 20 years, with 20 being the most common. The statute cited in the facts imposes a 10-year statute of limitations.

There are five elements a claimant must prove to sustain a cause of action for ownership under adverse possession. (1) Actual. The trespasser must actually occupy the property, or place another on the property under his or her claim, e.g., a tenant as a normal property owner of that property would. Along with the element of actual possession comes the notion that the trespasser will obtain only the land that s/he actually possesses. (2) Open & notorious. In adverse possession claims the statute of limitations will run as long as the trespasser's possession is so visible and apparent that it puts the community (including the legal owner) on notice that someone is on the property and exercising ownership

rights. (3) <u>Hostile</u>. The hostility requirement is satisfied if the person maintaining the adverse possession is infringing upon the possessory rights of the record owner. All trespassers maintain an affront to the record owner's right to exclude, and thus are hostile. Thus, under the majority rule, any trespass satisfies this element. (4) <u>Exclusive</u>. The key here is that the adverse possessor cannot share possession with the record owner. If the record owner maintains possession over the same tract of land as the trespasser, this element won't be met as to the portion they mutually possess. (5) <u>Continuous</u>. This element merely requires that all four of the other elements be met for the full statutory period, between 5 and 21 years depending on the jurisdiction. The instant all five elements are met, the record owner ceases to be the owner and the trespasser becomes the owner.

We can make quick work of the elements of open and notorious possession, hostile possession, and exclusive possession. The man, his sister, and the buyer performed acts that owners of residential real estate customarily perform, which acts constitute strong evidence of visible, open, and notorious use: he build a cabin on the property; he, his sister, and the buyer all moved into the cabin and used it as their primary residence; the man built a vegetable garden on the property; and the man, his sister, and the buyer all used the vegetable garden. The facts give no indication that any of this use was done in a secretive or clandestine manner. It appears more likely than not that the man satisfied the requirement of open and notorious possession. The man, sister, and buyer also satisfied the requirement of hostile possession. The facts tell is that, when the man first entered the property, he had "no title or other interest in the owner's three-acre tract." The man was a trespasser because he "intentionally went on someone else's land without permission." Although the sister and buyer might have believed they were on the land rightfully, they had no title and thus "intentionally went on someone else's land without permission." Because all trespasses are an affront to the right to exclude, the man, sister, and buyer possessed hostilely as to the owner. The easiest element to satisfy is exclusive possession. Because the facts make no mention of the owner even coming on the property for a short period of time, the man, sister, and buyer all possessed exclusively.

The elements of continuous and actual have been satisfied, but only after explaining a relatively slight wrinkle with each. First, continuous: None of the adverse possessors alone possessed for the requisite 10 years required for continuous possession; the man possessed for 7 years, the sister for 1 year, and the buyer for 7 years. The doctrine of tacking, however, allows the man, sister, and buyer to combine their time together as if they were one continuous possessor provided each possession is tied to the previous one through "privity of title." To establish privity of title, each adverse possessor (other than the original adverse possessor) must have attained possession through a deed, will or intestate distribution, all of which are recognized methods of transferring property. Because the sister started possession through the man's will – a recognized method of transfer – and the buyer started possession through the

sister's deed – another method of transfer creating privity of title– tacking occurred and bound the three possessions together as if they were one, continuous 15-year adverse possession. The element of continuous was therefore satisfied 10 years after the man began possessing, which was after 1 year of the buyer's possession.

The facts make clear that the man, sister, and buyer were all in actual possession of the property throughout the 10-year adverse possession period. The only question is how much land the buyer obtained when he ultimately met all five elements of adverse possession. The general rule is that the adverse possessor obtains title to only that real estate which s/he actually possessed; here, that would be only the one-half acre that included the cabin, garden, and sewer easement. The only way the buyer would obtain title to the entire 3 acres of land was if s/he had satisfied the elements of "constructive adverse possession." Under constructive adverse possession, an adverse possessor more land that that actually possessed if: (1) the adverse possessor first meets all five elements of adverse possession, (2) the adverse possessor received a defective deed or will describing more land that was actually possessed, and (3) the adverse possessor had a good faith belief s/he owned all of the property described in the deed. When all three of these elements are met, the adverse possessor gets the entire parcel described in the defective deed or will, not just the acreage s/he actually possessed. Although the man and sister did not receive a claim through a defective deed or will, the general warranty deed from the sister to the buyer was defective because the sister did not have a ripened title to give to the buyer. Although it would be helpful to have some additional facts on the point, nothing in the facts suggest that the buyer operated in anything other than good faith. (Please note that, although the buyer's failure to do a title search may indicate he was sloppy or negligent, such is not the equivalent of bad faith.) It appears more likely than not that the man did purchase in good faith and did meet the elements of constructive adverse possession. Therefore, the buyer would have obtained title by adverse possession to all that was described in the deed – the entire three acres – rather than the mere one-half acre he actually possessed.

In summary, the buyer now has title to the entire three-acre parcel by adverse possession and the owner retains no ownership at all.

2. The issue presented in the second question is whether the buyer has causes of action against the sister for breach of the covenants of title contained in the deed that the sister gave to the buyer. The facts say that the sister gave the buyer a general warranty deed that "contained all six covenants of title." The six covenants of title are: (1) the covenant of seisin, which is the seller's promise that s/he actually owns the property being sold; (2) the covenant of the right to convey, which is the seller's promise that s/he has the right to convey the property to the buyer; (3) the covenant against encumbrances, which is the seller's promise that there are no encumbrances (interests in third persons) in the property being sold; (4) the covenant of quiet enjoyment, which is the seller's

promise that there are no existing real estate interests in the property being sold that will interfere with the buyer's right to exclude others from the property; (5) the covenant of general warranty, which is the seller's promise to defend against those who breach peaceful possession because of superior title, and to compensate the grantee for losses sustained because of superior title in others; this covenant provides a remedy for breach of the covenant of quiet enjoyment; and (6) the covenant of further assurances, which is the seller's promise to do whatever is necessary to remove the problem at his own expense – e.g., remove the encumbrances – and to assume all the costs and attorneys' fees necessary to clear the title.

Because the sister and buyer have a direct grantor-grantee relationship, we do not need to consider whether any breached covenants of title "run with the land" to cause them to be actionable against remote grantees. All 6 of the covenants are in play.

There are two problems that give rise to claims for breach of the covenants of title: (1) the fact that sister had no fee simple title to give buyer when she delivered the deed to the buyer, and (2) the fact that the buyer got title with an easement attached and which would allow the sewer company to dig up the garden to maintain the easement. We can dispense with the first very quickly. Although the sister lacked a full fee simple title to convey when she delivered the deed, and therefore likely breached the covenant of seisin and the covenant of the right to convey, the buyer obtained full fee simple title through adverse possession just a year after the deed delivered and before the owner actually sued over title. Other than the attorneys' fees and costs that the buyer will recover under the covenant of further assurances, there are no damages. Nor can the buyer prevail on a claim that the sister breached her obligation to deliver marketable title because the buyer accepted the deed and all claims for marketable title die with the delivery and acceptance of the deed.

The only claim with teeth, therefore, is on the claim that s/he has suffered damages because there is an undisclosed easement on the property which diminishes the value of the land. Moreover, the sewer company's digging up of the garden to maintain the sewer line will cause monetary damage to the buyer. An easement is an interest in land and thus an encumbrance. Accordingly, the existence of an easement is a breach of the sister's covenant against encumbrances, for which she will be liable to the buyer. As to the covenant against encumbrances, the mere existence of an easement – an encumbrance – causes a breach. There is, however, no breach of the covenant of quiet enjoyment at this time because the covenant of quiet enjoyment cannot be breached until there is an actual interference with the buyer's right of possession. The mere existence of an unused easement cannot breach the covenant against encumbrances. Because the facts do not state that the sewer company has ever come upon buyer's land to maintain it, there are no facts that there has been an actual deprivation of the buyer's right to exclude, although, this can occur in the

future. An interesting argument would be that there is an interference on a daily basis because sewage is constantly running through the sewer line and the fact that the buyer cannot prevent it constitutes an actual interference with his/her subsurface possessory rights in the property. Were a court to accept this argument, there would be a current breach of the covenant of quiet enjoyment.

In terms of damages, they appear to be fairly low. An underground sewer pipe interferes with daily life hardly at all. It would not be until the sewer company actually digs up the garden and other parts of the property that there would be some form of hard interference; it is entirely possible that this could never happen, or if it did, would be decades if not a century out. The buyer would need to engage an expert on real estate appraisals to establish the actual diminution in value of the property, but it would be relatively minimal.

3. The final question involves easements. An easement is a nonpossessory interest in real estate. The sewer company clearly has an affirmative express easement. It is express because the owner and sewer company expressly agreed to its terms rather than having a court impose the easement on the parties as occurs with an implied easement. It is affirmative rather than negative because the express terms of the easement allow the sewer company to perform positive, affirmative actions on the land – here, installing and maintaining a sewer line – rather than preventing or restricting positive, affirmative action on the land. Because the facts are a bit murky, it is more difficult to discern whether the easement is an appurtenant one or an easement in gross. An appurtenant easement requires two or more parcels of land relatively near each other, at least one of which is benefitted (the dominant estate) and at least one of which is burdened (the servient estate). An asement in gross is an easement personal to a person or legal entity. There is no dominant estate that is benefitted; instead, the person or entity is benefitted. The fact do not make clear whether the sewer easement is only for the use of the subject real estate, which would cause it to be an easement in gross (no other benefitted estate), or whether the easement crosses over the subject real estate from a different parcel to another different parcel, causing the subject parcel to serve as a servient estate for the benefit of other parcels (an appurtenant easement). I believe the scant facts we have support an appurtenant easement because the buyer would not be challenging its right to exist if it was of benefit to him/her.

An appurtenant easement would create a servient estate remaining on the subject real estate for at least as long as it was owned by the owner and others in privity of title with the owner. The vehicles of transfer establishing privity of title are: a deed, a will, and intestate distribution. Therefore, if the owner had delivered title to the man through a deed, the man had delivered title to the sister through a will, and the sister had delivered title to the buyer through a deed, all of the players would be in privity of title and the easement would continue to burden the subject property. In that case, the buyer would not be able to compel the sewer company to remove the sewer line.

Unfortunately for the sewer company, however, the buyer did not obtain title through the deed the sister gave him because the sister did not have a good fee simple title to give. Instead, the buyer achieved title through adverse possession (see above). Adverse possession does not occur within a chain of title and does not maintain privity of title between prior owners. Instead, adverse possession <u>breaks the chain of title</u> and establishes a new one. Thus, the buyer has become the first link in a new chain of title that s/he has created, and the easement now sits in a different chain of title that has been broken/ended by the man's-sister's-buyer's title acquired by adverse possession. This means that the sewer company is unable to enforce its easement rights against the buyer because easements may only be enforced within the same chain of title.

In summary, the buyer will prevail in his/her quest to force the sewer company to remove the sewer line from the subject real estate.

<u>Q. 14 – Second Essay Question</u>

Eighty years ago, Owner, the owner of a vacant parcel of land ("the parcel"), conveyed the parcel to a local school district (the "School") "if School uses the parcel only to teach children aged 5 to 13." Shortly after acquiring title to the parcel, School erected a classroom building on the parcel and began teaching children aged 5 to 13 in that building.

Seventy years ago, Owner died and left his entire estate to his Daughter. School continued to use the classroom building to teach its students aged 5 to 13 until three years ago when, due to increasing enrollments, School built a new classroom building three miles from the parcel and converted the classroom building on the parcel into administrative offices.

The building on the parcel is now exclusively occupied by administrative offices, and all School students aged 5 to 13 are taught in the new classroom building three miles away. During her life, Daughter did not object to School's altered use of the parcel.

Two years ago Daughter died and devised her entire estate to her "Husband for life, with the remainder to my surviving children." Daughter was survived by Husband and two children, Ann and Bill.

One year ago, Bill died. Bill's entire estate passed to his wife, Mary. One month ago, Husband, the life tenant under Daughter's will, died. Husband was survived by Ann and by Bill's widow, Mary.

Relevant statutes of the state in which the parcel is located provide:

1. "Actions to recover the possession of real property shall be brought within 10 years after the cause of action accrues."

2. “All future interests are alienable, devisable, and descendible to the extent they do not expire as a result of the holder’s death.”

3. “Conditions and limitations in a deed shall not be construed as covenants.”

There are no other relevant statutes.

What interests, if any, do School, Ann, and Mary have in the parcel? Support your conclusions with relevant facts and applicable law.

NOTE TO STUDENTS: With just a few edits, this question is also an actual MEE that test takers are expected to complete in 30 minutes. Although this question involves estates in land, it is not a difficult estates in land problem and I find this to be “more doable” in 30 minutes than the prior MEE question. Once again, the goal is to hit as many of these issues in a cogent manner as possible, understanding that no answer will approach perfection.

This fact pattern involves issues of estates in land, concurrent estates, and the laws pertaining to devise and descent upon the death of real estate owners.

The first task is to determine what real estate interests the Owner created 80 years ago through his/her conveyance to the School. Then, we can trace the changes in ownership as owners of those interests died, and as uses of the real estate changed.

We can assume that the Owner had a fee simple absolute because the facts do not tell us otherwise. The presumption is that a grantor gives everything s/he owns unless a lesser estate is expressly granted. Clearly, the Owner has granted the School a conditional estate (“if School uses the parcel only to teach children aged 5 to 13”), so it is some other fee simple than a fee simple absolute. Because the Owner did not expressly state that possession was to go to a grantee upon the School’s breach of the condition, the possession returns to the grantor upon forfeiture. This excludes the fee simple subject to executory limitation, which requires possession upon forfeiture to go to another grantee. We choose the fee simple determinable over the fee simple subject to a condition subsequent because there are no “action words” requiring the grantor to take action to cause the forfeiture; it happens automatically. Because we cannot end with a fee simple determinable (we have to get back to a fee simple absolute, the “forever estate”), we must find a future interest owned by the grantor. The only future interest owned by a grantor that immediately follows a fee simple determinable is a possibility of reverter. Accordingly, the School owns a fee simple determinable and the Owner (the grantor) owns a possibility of reverter.

We do not need to consider the rule against perpetuities because it is a statute of limitations for contingent future interests. The only future interested

created by the grant, a possibility of reverter is a vested future interest rather than a contingent one. Indeed, the only two contingent future interests are the executory interest and the contingent remainder.

Now we need to track how these interests are affected as people die and the property is used differently. For quite some time, the School used its fee simple determine properly: "to teach children aged 5 to 13." Ten years after making the grant, however, the Owner died and ceased owning the possibility of reverter. Upon the Owner's death, ownership of the possibility or reverter descended to his Daughter.

The status quo persevered until three years ago, when the School build a new building for classrooms three miles away and rededicated the subject real estate to use as administrative offices. I believe it is a close call whether the change in use constitutes a breach of the Owner's condition such as would cause the School to forfeit ownership of the building. There is no doubt that "teaching" and "administration" are qualitatively different activities. On the other hand, schools cannot operate, and teaching cannot occur, without the performance of supportive administration. It is indisputable that administration occurred alongside teaching when the teaching of 5 to 13 year-olds was occurring at the subject property. But it is also indisputable that, beginning three years ago, teaching stopped altogether at the subject building. Whether the use of the building for administration in support of teaching constitutes a breach of the condition will likely come down to an examination of the Owner's intent: was his main goal to provide a place where teaching literally had to occur, or was his main goal to enable the School to be able to achieve the teaching of 5 to 13 year-olds? Given the vagueness of the condition, this will likely be decided on parol evidence.

If a forfeiture occurred, it happened automatically three years ago because a fee simple determinable forfeits automatically. The Daughter did not have to take action to cause the forfeiture and her failure to object was inconsequential. If there was a forfeiture, her possibility of reverter converted to the present estate of fee simple absolute the moment the forfeiture occurred. If, on the other hand, there was no forfeiture, the Daughter still owned the possibility of reverter. If Daughter still owned a possibility of reverter, the School still owned a fee simple determinable. If, however, Daughter owned a fee simple absolute, the School owned nothing and had become a trespasser (rightful possession of someone else's property). In either case, we need to continue to track the deaths of relevant parties to determine who owns what today.

When the Daughter died a year later, depending on whether the finder of fact concludes there was or was not a forfeiture, she passed either a possibility of reverter or a fee simple absolute to her husband for life, with a remainder to her children, Ann and Bill. Ann and Bill owned their remainder as cotenants because they each owned the same interest in the same property at the same time.

Because the facts do not say that Daughter's devise created either a joint tenancy (siblings could not have owned a tenancy by the entirety), they owned as tenants in common. Tenancies in common have no right of survivorship, so upon death either Ann or Bill could pass her/his interest through a will or intestate distribution.

The form of concurrent estate became of import when Bill died just a year after his mother died. Because the tenancy in common has no right of survivorship, his wife, Mary, ascended to co-owner as a tenant in common of a remainder with her sister-in-law, Ann, on either a fee simple absolute or a possibility of reverter (again, depending on whether a finder of fact does or does not determine that the School had forfeited).

Finally, a year after that (a year ago) Daughter's Husband died thus ending his present life estate in either what had been the Daughter's fee simple absolute or possibility of reverter. As a result, Ann and Mary now own a present fee simple absolute or possibility of reverter in the subject property, depending on whether there was a forfeiture. The School either owns nothing (if there was a forfeiture) or a fee simple determinable (if there was not a forfeiture).

In working toward a conclusion, there is one more issue to address. If the School did indeed forfeit three years ago when it altered the use of the subject property, it immediately became a trespasser and arguably commenced an adverse possession. The only element we need consider is "continuous" because the local statute requires 10 years of continuous possession meeting all the other elements. Since only three years have passed, there is no valid argument that the School has obtained a fee simple absolute interest by adverse possession.

Ann and Mary own either a fee simple absolute if there was a forfeiture or a possibility of reverter if there was not. The School owns either nothing if there was a forfeiture or a fee simple determinable if there was not.

END OF EXAM

REAL PROPERTY LAW
FINAL EXAMINATION
Spring 2022
March 22nd & 24th, 2022

YOUR STUDENT ID # (Five – 5- Digits)

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INSTRUCTIONS:

You may read the instructions that follow, and then go immediately to read and sign the Student Examination Honor Pledge. You are not to look beyond the Student Examination Honor Pledge until you are instructed to begin the exam.

If you have not downloaded this Midterm Exam from the Examsoft platform prior to the start time of the exam, and are not ready to start taking the exam immediately once the professor/proctor calls for the exam to begin, you will be required to write the exam rather than type it.

YOU ARE NOT TO HAVE A CELL PHONE, OR ANY OTHER DEVICE THAT CAN TRANSMIT AND/OR RETAIN INFORMATION, ON YOUR PERSON DURING THIS EXAM. POSSESSION OF A CELL PHONE OR SUCH OTHER DEVICE SHALL BE TREATED, AND DEALT WITH, AS CHEATING.

YOU MAY WEAR A JACKET WHILE TAKING THE EXAM, BUT IF YOU TAKE IT OFF YOU ARE TO IMMEDIATELY PLACE IT AT THE SIDE OR BACK OF THE ROOM. IF YOU START OFF WITHOUT A JACKET, YOU MAY PUT ONE ON WITH INSTRUCTION FROM THE PROFESSOR/PROCTOR.

IF YOU LEAVE THE CLASSROOM, YOU MUST TAKE YOUR JACKET OFF AND LEAVE IT AT THE SIDE OR BACK OF THE ROOM.

Please take ONE (1) blue book and use it for scrap. <u>Do not turn that blue book in</u>. All your answers will go on this exam booklet if you write your exam, and on the Examsoft platform if you type your exam.

Please do not identify yourself in any way other than by student ID number. Please do not write any information in your exam booklet that might reveal who you are.

This is a closed-book examination; other than writing implements, you are not to have any materials on your table or at your feet. Please place all books, knapsacks, briefcases, etc. at the side or front of the room.

Please do not use your own scrap paper. You may only use the scrap blue book as scrap paper. You may also use this exam booklet for notes and scrap as long as you do not insert them into the answer spaces if you are writing (rather than typing) your exam. If you are typing on Examsoft, you may use this exam booklet for scrap as well.

This examination consists of TWO PARTS: (1) Ten Multiple Choice Questions – Provide Answers & Explanations, and (2) One Essay Question. Below are the Instructions proceeding each of these two Parts in your exam booklet:

PART ONE

TEN MULTIPLE CHOICE QUESTIONS – PROVIDE ANSWERS & EXPLANATIONS
Suggested Time: One Hour (60 Minutes)

Instructions: Below are ten (10) multiple choice questions, each of which is followed by a space for your answer and twenty (20) lines for your explanation of why you chose the best answer for each question and eliminated incorrect or less correct answers. Each question is designed to begin and end on the same, single page, but the explanation lines will run onto a second page. Give the fullest explanations you can within the limits of time and space provided. You will be scored on the breadth and accuracy of your answer and explanation. Place your answer within the provided space on this exam. Just because there are 20 lines per explanation does not necessarily mean that you are expected to use all the space given; some answers require longer explanations than others.

PART TWO

ONE (1) ESSAY QUESTION
Suggested Time: One-Half Hour (30 Minutes)

Instructions: Below is one (1) essay question (Question 11) consisting of a fact pattern and a "call of the question." Like all law school essay questions, this one requires you to perform legal analysis, which is applying specific facts to specific elements of law to support conclusions regarding the rights, duties, and liabilities of the parties. Bearing this in mind, you will be scored on the accuracy and breadth of your answer.

Please place your answer within the spaces provided IN THIS EXAM BOOKLET (not in a separate blue book) below the essay question. You have the equivalent of four (4) pages of double-spaced lines in which to place your answer.

If you are writing your exam:

Please place your answers to <u>both</u> Part One and Part Two in the spaces provided in this exam book, **I WILL NOT CORRECT OR GRADE ANYTHING YOU PUT IN YOUR SCRAP BLUE BOOK UNDER ANY CIRCUMSTANCES**.

Please limit your answers to the lines provided below each question. I will not read beyond the lines provided under each question. Please note that some of the lines for your answers occasionally run on to the next page. I suggest you look at how much space I give you before beginning to write your answer to 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 when a question asks for it.

<u>If you are typing your exam</u>:

Please place your answers to <u>both</u> Part One and Part Two in the appropriate space provided on the Examsoft platform. Please ensure that the printed exam that I correct is in the order presented in this exam booklet and that all questions/parts are properly labelled. **I WILL NOT CORRECT OR GRADE ANYTHING YOU PUT IN YOUR SCRAP BLUE BOOK UNDER ANY CIRCUMSTANCES**.

You have one hour and thirty minutes (90 minutes) to complete this exam if you are entitled to standard time.

You have two hours and fifteen minutes (135 minutes) to complete this exam if you are entitled to time and one-half.

You have three hours (180 minutes) to complete this exam if you are entitled to double time.

There is a bathroom book at the front of the room. Please sign out and in when you leave the room. Since the pen I put out for each bathroom book "wanders" soon after the first person writes in the book, please use your own pen or pencil to sign out and in.

You are to only turn in your exam booklet with your Student ID (not your name) and your confirmed honor code (your Student ID placed in the signature line in place of your name).

Whether you type or write, please turn in ONLY this exam booklet. You may leave when you are done and have turned in your exam booklet as long as you are quiet and courteous to your classmates who are still taking the exam. If you

breach this courtesy, I will instruct you to take your seat and remain quietly until the exam is done.

GOOD LUCK!

STUDENT HONOR PLEDGE

In taking this examination, I hereby affirm, represent and acknowledge, both to the professor and the Massachusetts School of Law community, that:

1. I understand that the professor will not grade my examination, and I will suffer the consequences of not having submitted a final exam (specifically, failure of this course), if I fail to place my full student identification number in the signature space below. Placement of my student identification number below will serve as a substitute for my signature, and carry the full weight of my personal signature in making this pledge on my honor;

2. I will not give or receive any unauthorized assistance on this examination;

3. I understand that this is a closed-book examination and, with the exception of materials specifically referred to in the exam instructions, I am not permitted to use papers, personal effects, electronic devices, or any other matter that could provide unauthorized assistance in completing this examination, create any unfair advantage in completing this examination, or otherwise frustrate the honest administration of this examination as a closed-book examination, whether the same be located on my person, near me, in the exam room, or anywhere else in the building or on the grounds;

4. I have placed all electronic devices, papers, personal effects, and other matter that I brought into the room at the front, side or back of the room as instructed by the exam proctor, with all electronic devices being powered off;

5. I have not placed in bathrooms or other areas in the building or grounds any papers, personal effects, electronic devices, or any other matter that could provide unauthorized assistance in completing this examination, create any unfair advantage in completing this examination, or otherwise frustrate the honest administration of this examination as a closed-book examination, either for my personal use or the use of anyone else;

6. I will not speak to or communicate with any other person taking this exam until its administration is completed (when *everyone* is finished and all the exam materials have been turned in). This also applies while I am waiting in line to hand in the exam or if I complete or leave the exam before others;

7. I will not identify myself in any way or frustrate the anonymous grading of this

exam;

8. I will faithfully follow any additional instructions the exam proctor provides orally during the exam;

9. Other than instructions that the professor may have given out in advance, I have heard nothing about the specific contents of this examination prior to its commencement;

10. I understand and acknowledge that MSLAW's honor code requires me to report observed violations of these provisions as well as the MSLAW Honor Code.

Signed under the pains and penalty of perjury.

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FULL STUDENT ID NO.
(DO NOT PUT YOUR NAME HERE)

<u>DO NOT</u> TURN THE PAGE AND BEGIN UNTIL THE PROFESSOR/PROCTOR INSTRUCTS YOU TO DO SO.

PART ONE

TEN MULTIPLE CHOICE QUESTIONS – PROVIDE ANSWERS & EXPLANATIONS
Suggested Time: One Hour (60 Minutes)

Instructions: Below are ten (10) multiple choice questions, each of which is followed by a space for your answer and twenty (20) lines for your explanation of why you chose the best answer for each question and eliminated incorrect or less correct answers. Each question is designed to begin and end on the same, single page, but the explanation lines will run onto a second page. Give the fullest explanations you can within the limits of time and space provided. You will be scored on the breadth and accuracy of your answer and explanation. Place your answer within the provided space on this exam. Just because there are 20 lines per explanation does not necessarily mean that you are expected to use all the space given; some answers require longer explanations than others.

QUESTIONS

Q.1 A jogger was jogging along the public streets of the town where she lives. As she passed a residential property, she heard a distinct howling sound. She looked and saw that a "labradoodle" dog was caught in a spring trap that had been set in the yard. The trapping of animals in spring traps is illegal in the state where the jogger was jogging. Incensed that the property owner had broken the law and was inflicting pain upon the poor dog, the jogger jogged into the yard, released the dog from the trap, and brought it to a local vet for treatment. When the jogger arrived home, she found a summons and complaint on her door stoop charging her with common law civil trespass.

The jogger's best argument against the charge is:

A. She is not a trespasser because her primary intent was to rescue the dog; to the extent she intended to trespass, it was only incidental to her primary intent.

B. She is not a trespasser because the homeowner's abuse of the dog constituted constructive permission for her to enter the yard to abate the cruelty.

C. She is not a trespasser because her jogging activities placed her in hot pursuit of the abused dog.

D. She is not a trespasser because she acted to rescue an animal facing serious injury or death and public policy requires an exception to the normal rules of trespass when such emergencies occur.

Answer: __________

Explanation:

Go to the next page for the next question.

Q.2 A traveler on an airplane got up to use the rest room while the plane was in flight. In the lavatory she found a package next to the toilet, under a counter in the very narrow open-faced cabinet (4” wide and 18” high). The package contained a stamp collection that appeared to be worth a considerable amount of money. The traveler showed the package to one of the flight attendants, who said the airline would attempt to find the true owner. The flight attendant gave the traveler a written receipt for the package. The true owner never returned.

Who has the most rights to the package?

A. The airline because the property was mislaid and the flight attendant was acting in the scope of his employment.

B. The flight attendant because the property was lost and should therefore go to the employee of the owner of the airplane who first comes into possession, under the priority of occupation doctrine.

C. The traveler because the property was lost.

D. The traveler because the property was treasure trove.

Answer: __________

Explanation:

Go to the next page for the next question.

Q.3 In 1984, a stranger moved onto a parcel of land owned by the record owner, started living there, and remained there until the present date. In 1996, the record owner of the parcel of land was involved in an automobile accident and, as a result of his injuries, went into a coma. The owner eventually died in 2009 without having ever recovered consciousness. The owner's sole heir had no disability or incapacity at owner's death.

Assuming that the stranger met all elements of adverse possession throughout his occupation of the land, he has, or will, obtain(ed) title by adverse possession:

A. In 2004 because the only disabilities the law recognizes to be sufficient to toll the running of the statute of limitations in adverse possession cases are insanity (lacking the capacity to understand the very nature of property ownership or that one is capable of ejecting a trespasser) and minority (being under the age of 18).

B. In 2004 because the tolling rule does not apply in this case.

C. In 2019 because the owner's death removed his disability and his heir had only 10 years to eject the stranger.

D. In 2016 because the owner had 20 years after the disability was removed to eject the stranger.

Answer: __________

Explanation:

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Go to the next page for the next question.

Q.4 In 1986, an Owner of a parcel of land with improvements on it conveyed to "Life Tenant for her natural life." The life estate was followed by a remainder in a Third Person. In 1989, while the Life Tenant was living elsewhere, a Stranger moved onto the land and started living there. The Stranger has remained on the land until the present date, meeting all requirements of adverse possession. The Life Tenant died in 2006.

The result of these facts is that:

A. The Stranger became the owner of the entire estate in 2009, since either the Life Tenant or the Third Person owner could have ejected the stranger.

B. The Stranger obtained a life estate, but no more, upon the death of the Life Tenant in 2006.

C. If he continues to possess the real estate and meet all the elements of adverse possession, the Stranger will get title to the Third Person's estate in 2026.

D. The Stranger got title to the Third Person's estate in 2016, ten years after the Life Tenant's death.

Answer: __________

Explanation:

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Go to the next page for the next question.

Q.5 In a proper claim of constructive adverse possession:

A. An adverse possessor who received a defective deed and believed in good faith that s/he got good title, and who satisfies all five elements of adverse possession, obtains title to all real estate owned by the record owner in the same city or town rather than what s/he actually possessed.

B. An adverse possessor shortens the statutory period to ten (10) years rather than the normal amount provided under the applicable state statute.

C. An adverse possessor obtains ownership under a “constructive” rather than “actual” possession of the real estate in questions.

D. An adverse possessor who received a defective deed and believed in good faith that s/he got good title, and who satisfies all five elements of adverse possession, obtains title to the entire parcel described in the deed rather than what s/he actually possessed.

Answer: __________

Explanation:

Go to the next page for the next question.

Q.6 Landowner orally gave Neighbor permission to share the use of the private road on Landowner's land for more convenient access to Neighbor's land. After Neighbor had used the road on a daily basis for six years, Landowner conveyed his land to Grantee, who immediately notified Neighbor not to use the road. Neighbor sued Grantee seeking a declaration that he had a right to continue to use the road.

Who is likely to prevail?

A. Grantee, because Neighbor has not been in possession long enough to satisfy any possible statute of limitations for adverse possession.

B. Grantee, because Neighbor had been granted a mere license that the grantee could terminate at any time.

C. Neighbor, because his six-year use estopped Grantee from terminating Neighbor's use of the road.

D. Neighbor, because his use of the road was open and notorious, and otherwise met all other elements for adverse possession, when Grantee purchased the land.

Answer: __________

Explanation:

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Q.7 An Owner of a farmland plot of land improved by a farmhouse and barn, conveyed the property "to my Niece and her heirs," but reserved in himself a life estate. The consideration stated on the deed was "for love and affection for my only living relative." At the time of the Owner's deed to his Niece, the fair market value of the improved farmland parcel was $690,000. After delivering the deed, the owner continued to live on the property. As he aged, the Owner became less capable of maintaining the farm, the farmhouse, and the barn. He refused to hire anyone to help with maintenance and refused all offers of free help in that regard. After 10 years of neglect, the farmhouse was barely habitable, the barn was in danger of collapse, and almost half the land became untillable.

Recently, the Owner's niece arranged for a appraisal of the improved farmland parcel and found that its value had dropped to $490,000 as a result of neglect of the land, farmhouse, and barn. The Niece then brought an action for waste against the Owner and sought both monetary damages and an injunction to prevent continuing waste.

The most likely result of that action will be:

A. The Niece will prevail and obtain both the injunction and monetary damages of $200,000.

B. The Niece will prevail and obtain an injunction but will recover no monetary damages.

C. The Owner will prevail because he has taken no affirmative action to commit waste.

D. The Owner will prevail because he owned a fee simple interest and thus was entitled to commit waste.

Answer: __________

Explanation:

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Go to the next page for the next question.

Q.8 A woman conveyed her farm "to my daughter for life, then to my grandchildren and their heirs provided that each such grandchild must survive my daughter." At the time of delivery of the deed, the woman had only one child, her daughter, and her daughter had two children, ages 12 and 9.

At the time of the conveyance, the interest in the grandchildren was:

A. an absolutely vested remainder.

B. a vested remainder subject to partial divestment.

C. an invalid contingent remainder.

D. a valid contingent remainder.

Answer: ___________

Explanation:

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Go to the next page for the next question.

Q.9 An Owner of a tract of land executed and delivered a deed by which he conveyed the tract "to Cousin and his heirs as long as it is used exclusively for residential purposes, but if it is ever used for other than residential purposes, to Charity." The Cousin immediately entered into possession and used the premises for residential purposes. Five years later, however, Cousin converted the tract into a retail florist shop and began selling flowers to the general public.

The Charity has brought an action against the Cousin claiming that Cousin has forfeited the right to possess, and that the Charity now owns in fee simple absolute. The Owner has intervened in the suit, asserting that the Cousin has forfeited the right to possess, but that he now owns the parcel in fee simple absolute.

In that action,

A. The Cousin will prevail against both the Charity and the Owner because the Charity's interest was extinguished for violating the rule against perpetuities.

B. The Cousin will prevail against both the Charity and the Owner because the Charity owned a vested remainder subject to complete divestment, which is not subject to the rule against perpetuities.

C. The Owner will prevail against both the Charity and the Cousin because the Charity's interest was extinguished for violating the rule against perpetuities and the Cousin has breached the condition of a fee simple determinable.

D. The Charity will prevail against both the Cousin and the Owner because Charity's interest did not violate the rule against perpetuities.

Answer: __________

Explanation:

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Go to the next page for the next question.

Q.10. Widower owned a farm in fee simple absolute. By deed, he conveyed the farm "to my beloved aunt for life, then to my children for their lives, and then to such of my grandchildren who shall reach the age of 21, whenever they may be born." When Widower delivered the deed to the aunt, he had two children and no grandchildren.

The conveyance to Widower's grandchildren will be

A. invalid because the devise creates an unreasonable restraint on alienation.

B. invalid because Widower and his aunt are the only possible the measuring lives.

C. valid because Widower's grandchildren can serve as their own measuring lives.

D. valid because Widower's children can serve as measuring lives.

Answer: __________

Explanation:

END OF PART ONE

PART TWO

ONE (1) ESSAY QUESTION
Suggested Time: One-Half Hour (30 Minutes)

Instructions: Below is one (1) essay question (Question 11) consisting of a fact pattern and a "call of the question." Like all law school essay questions, this one requires you to perform legal analysis, which is applying specific facts to specific elements of law to support conclusions regarding the rights, duties, and liabilities of the parties. Bearing this in mind, you will be scored on the accuracy and breadth of your answer.

Please place your answer within the spaces provided IN THIS EXAM BOOKLET (not in a separate blue book) below the essay question. You have the equivalent of four (4) pages of double-spaced lines in which to place your answer.

QUESTION

Q.11 In 1995, an Owner of a one-acre parcel of land supporting a single-family residence ("the residence") in an area of town that had changed from mostly residential uses to retail uses over the past decade, gifted it by deed to "my Daughter and her heirs, but if the land is used for commercial, industrial, or retail purposes during her lifetime, to my Nephew and his heirs." The Daughter immediately moved into the residence with her Husband and two children and continued its residential use.

In 1996, the Daughter was involved in a serious automobile accident that caused her to suffer brain injuries so severe that she became unable to manage any aspects of her

personal or professional life. Her Husband obtained a proper guardianship of her person and immediately institutionalized her in a facility in another state, which state had been the Husband's original home. The Husband and the couple's children moved to the other state to be near the Daughter and return to the place the Husband considered to be his home. The residence was left vacant and the Daughter, Husband, and their children would never again occupy it or visit it.

In 1997, a Stranger moved into the vacant residence and began adversely possessing it. He continued to use the residence for residential purposes, meeting all elements of adverse possession. The state in which the residence was located had a statute saying: "An action for the recovery of land shall be commenced only within twenty years after the right of action first accrued, or within twenty years after the demandant or the person making the entry, or those under whom they claim, have been possessed of the premises." In all other respects, the common law rules pertaining to adverse possession in multistate law applied in the state.

As time went by, the area in which the residence was located became even less residential and more retail in character. In 2018, the Stranger, an accomplished chef by trade, moved to a different home and opened a high-end French restaurant named *l'Intrus* in the residence. At that point, the Stranger ceased using the residence for any residential purpose and dedicated the entire use to running the restaurant.

In 2020, the Daughter died and all of her property passed to her Husband under a will she had executed prior to her automobile accident. In 2021, the Nephew, who lived in another state and had not been to residence since the Owner delivered the deed in 1995, read an advertisement for *l'Intrus* and noticed that the stated address was the same as that described in the Owner's 1995 deed.

Recently, the Nephew brought a legal action in an appropriate court, seeking a declaration that he is the owner of the residence, and an order of ejectment of the Stranger from the residence. The Husband and Owner learned of the suit and have been permitted to intervene under the state's Rules of Civil Procedure. The Husband and Owner also seek to eject the Stranger and each claims that he, rather than the Nephew, is the owner of the residence. The Stranger has counterclaimed, asserting that he had become the owner by adverse possession.

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

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END OF EXAM

REAL PROPERTY LAW
MIDTERM EXAMINATION
Spring 2022
March 22nd & 24th, 2022

ANSWERS & EXPLANATIONS

PART ONE

TEN (10) MULTIPLE CHOICE QUESTIONS
PROVIDE BOTH ANSWERS & EXPLANATIONS
Suggested Time: One Hour (60 Minutes) – Six (6) Minutes Per Question

Instructions: Below are ten (10) multiple choice questions, each of which is followed by a space for your answer (A, B, C, or D) and twenty (20) lines for your explanation of why you chose the best answer for each question and eliminated incorrect or less correct answers. I will scored your answer to each question on the accuracy and breadth of your answer and explanation.

QUESTIONS

Q.1 A jogger was jogging along the public streets of the town where she lives. As she passed a residential property, she heard a distinct howling sound. She looked and saw that a "labradoodle" dog was caught in a spring trap that had been set in the yard. The trapping of animals in spring traps is illegal in the state where the jogger was jogging. Incensed that the property owner had broken the law and was inflicting pain upon the poor dog, the jogger jogged into the yard, released the dog from the trap, and brought it to a local vet for treatment. When the jogger arrived home, she found a summons and complaint on her door stoop charging her with common law civil trespass.

The jogger's best argument against the charge is:

A. She is not a trespasser because her primary intent was to rescue the dog; to the extent she intended to trespass, it was only incidental to her primary intent.

B. She is not a trespasser because the homeowner's abuse of the dog constituted constructive permission for her to enter the yard to abate the cruelty.

C. She is not a trespasser because her jogging activities placed her in hot pursuit of the abused dog.

D. She is not a trespasser because she acted to rescue an animal facing serious

injury or death and public policy requires an exception to the normal rules of trespass when such emergencies occur.

The best answer is D. A is not correct because the requisite intent for trespass is merely the intent to "go where one is going." The jogger clearly had the intent to enter the property and it doesn't matter that she was focused on rescuing the dog. B is not correct because: (1) the answer is gibberish, and (2) there is no such thing as "constructive permission" in trespass cases. C is not correct because the hot pursuit doctrine applies only when one is attempting to retrieve his or her own property. Nothing here suggests that the jogger owned the dog. Although it is an open question as to whether the necessity defense applies to preserving the health or life of an animal, as opposed to a person, the call of the question asks for the jogger's "best argument," and D is by far the best argument of the four presented. Even if ultimately not a winning argument, one could fairly argue that it would make sense from a policy perspective for the necessity defense to be so extended.

Q.2 A traveler on an airplane got up to use the rest room while the plane was in flight. In the lavatory she found a package next to the toilet, under a counter in the very narrow open-faced cabinet (4" wide and 18" high). The package contained a stamp collection that appeared to be worth a considerable amount of money. The traveler showed the package to one of the flight attendants, who said the airline would attempt to find the true owner. The flight attendant gave the traveler a written receipt for the package. The true owner never returned.

Who has the most rights to the package?

A. The airline because the property was mislaid and the flight attendant was acting in the scope of his employment.

B. The flight attendant because the property was lost and should therefore go to the employee of the owner of the airplane who first comes into possession, under the priority of occupation doctrine.

C. The traveler because the property was lost.

D. The traveler because the property was treasure trove.

The best answer is "A." Given the location of the package – under a counter, in a very small space, and leaning up – it is highly unlikely that it was lost. Instead, it was mislaid. Therefore, "B" and "C" cannot be correct. In addition, "B" is wrong because there is no rule that the employee gets it over the owner of the airline. "D" is also incorrect because treasure trove requires evidence suggesting that the package was there so long that one can infer the placer of it is dead and not coming back. There is no such evidence here.

Q.3 In 1984, a stranger moved onto a parcel of land owned by the record owner, started living there, and remained there until the present date. In 1996, the record owner of the parcel of land was involved in an automobile accident and, as a result of his injuries, went into a coma. The owner eventually died in 2009 without having ever recovered consciousness. The owner's sole heir had no disability or incapacity at owner's death. Assuming that the stranger met all elements of adverse possession throughout his occupation of the land, he has, or will, obtain title by adverse possession:

A. In 2004 because the only disabilities the law recognizes to be sufficient to toll the running of the statute of limitations in adverse possession cases are insanity (lacking the capacity to understand the very nature of property ownership or that one is capable of ejecting a trespasser) and minority (being under the age of 18).

B. In 2004 because the tolling rule does not apply in this case.

C. In 2019 because the owner's death removed his disability and his heir had only 10 years to eject the stranger.

D. In 2016 because the owner had 20 years after the disability was removed to eject the stranger.

The best answer is "B." Tolling will not apply because the adverse possession began prior to the coma. "A" is wrong because a medical condition that causes a person not to be able to eject a trespasser will allow the use of tolling. In addition, some states even allow confinement to prison to toll statutes of limitations. "C" is wrong because tolling does not apply in the first instance. "D" is wrong because it misstates the 20 year/10 year methodology that tolling employs.

Q.4 In 1986, an Owner of a parcel of land with improvements on it conveyed to "Life Tenant for her natural life." The life estate was followed by a remainder in a Third Person. In 1989, while the Life Tenant was living elsewhere, a Stranger moved onto the land and started living there. The Stranger has remained on the land until the present date, meeting all requirements of adverse possession. The Life Tenant died in 2006.

The result of these facts is that:

A. The Stranger became the owner of the entire estate in 2009, since either the Life Tenant or the Third Person owner could have ejected the stranger.

B. The Stranger obtained a life estate, but no more, upon the death of the Life Tenant in 2006.

C. If he continues to possess the real estate and meet all the elements of adverse possession, the Stranger will get title to the Third Person's estate in 2026.

D. The Stranger got title to the Third Person's estate in 2016, ten years after the Life Tenant's death.

The best answer is C. This is a quality of title question; the adverse possessor gets only the title of the person who could have ejected him. When the adverse possession began, only the life tenant had the power to eject the stranger. But the owner of the life estate died in 2006, three years before the stranger had obtained the life estate by adverse possession. The stranger had to "start over" with his adverse possession upon the life tenant's death in 2006, because this was when the owner of the remainder first had the right to eject him for trespass. Adding 20 years to 2006 brings us to 2026. A is incorrect because the remainder owner had no right to eject before the life tenant's death. B is incorrect because the life estate ended upon the life tenant's death. D is incorrect because the 10-year rule is only applicable in the event of a disability, and the facts here reveal no disability.

Q.5 In a proper claim of constructive adverse possession:

A. An adverse possessor who received a defective deed and believed in good faith that s/he got good title, and who satisfies all five elements of adverse possession, obtains title to all real estate owned by the record owner in the same city or town rather than what s/he actually possessed.

B. An adverse possessor shortens the statutory period to ten (10) years rather than the normal amount provided under the applicable state statute.

C. An adverse possessor obtains ownership under a "constructive" rather than "actual" possession of the real estate in questions.

D. An adverse possessor who received a defective deed and believed in good faith that s/he got good title, and who satisfies all five elements of adverse possession, obtains title to the entire parcel described in the deed rather than what s/he actually possessed.

The best answer is "D." If someone commences an adverse possession under a defective deed or will that s/he believes in good faith conveyed the property at issue, constructive adverse possession will allow the adverse possessor to "boost" the acreage from what s/he actually possessed to that described in the defective deed or will. One can only employ constructive adverse possession if s/he has first met all five elements of adverse possession. The only answer that approximates the rule of law is "D." If you read "A" closely, you will see that it incorrectly would give the adverse possessor title to all real estate owned by the

record owner in the entire city or town in which the property is located, even that not described in the defective deed to the adverse possessor. Lawyers must develop the ability to read closely and carefully because outcomes can turn on a single word.

Q.6 Landowner orally gave Neighbor permission to share the use of the private road on Landowner's land for more convenient access to Neighbor's land. After Neighbor had used the road on a daily basis for six years, Landowner conveyed his land to Grantee, who immediately notified Neighbor not to use the road. Neighbor sued Grantee seeking a declaration that he had a right to continue to use the road.

Who is likely to prevail?

A. Grantee, because Neighbor has not been in possession long enough to satisfy any possible statute of limitations for adverse possession.

B. Grantee, because Neighbor had been granted a mere license that the grantee could terminate at any time.

C. Neighbor, because his six-year use estopped Grantee from terminating Neighbor's use of the road.

D. Neighbor, because his use of the road was open and notorious, and otherwise met all other elements for adverse possession, when Grantee purchased the land.

The best answer is <u>B</u>. You had a quiz question quite similar to this one earlier in the semester. Adverse possession requires five elements: (1) actual, (2) open and notorious, (3) hostile, (4) exclusive, and (5) continuous. The agreement reached between Landowner and Neighbor was a license agreement, which is a contract allowing occupancy rather than an interest in real estate. Most importantly, a contract requires mutual assent, which creates permission. Permission kills any claim of hostility. Without hostility, there is no valid claim for adverse possession. For these reasons, C and D are clearly wrong. The problem with B is that, while most states may well have statutes of limitations exceeding 6 years, it is possible that there is a jurisdiction with a statute of limitations of less than 6 years. For this reason, B is a better answer than A.

Q.7 An Owner of a farmland plot of land improved by a farmhouse and barn, conveyed the property "to my Niece and her heirs," but reserved in himself a life estate. The consideration stated on the deed was "for love and affection for my only living relative." At the time of the Owner's deed to his Niece, the fair market value of the improved farmland parcel was $690,000. After delivering the deed, the owner continued to live on the property. As he aged, the Owner became less capable of maintaining the farm, the farmhouse, and the barn. He refused to hire

anyone to help with maintenance and refused all offers of free help in that regard. After 10 years of neglect, the farmhouse was barely habitable, the barn was in danger of collapse, and almost half the land became untillable.

Recently, the Owner's niece arranged for a appraisal of the improved farmland parcel and found that its value had dropped to $490,000 as a result of neglect of the land, farmhouse, and barn. The Nice then brought an action for waste against the Owner and sought both monetary damages and an injunction to prevent continuing waste.

The most likely result of that action will be:

A. The Niece will prevail and obtain both the injunction and monetary damages of $200,000.

B. The Niece will prevail and obtain an injunction but will recover no monetary damages.

C. The Owner will prevail because he has taken no affirmative action to commit waste.

D. The Owner will prevail because he owned a fee simple interest and thus was entitled to commit waste.

A is the best answer. The Niece is entitled to both the injunction and the diminution in value of $200,000. B is wrong because those prevailing in waste cases are entitled to BOTH the remedy of an injunction and monetary damages. C is incorrect because, in addition to "voluntary waste" – which is intentional waste by affirmative action – one may also be liable for "permissive waste" – which is waste by negligence. The Owner was clearly negligent in maintaining the farmland, farmhouse, and barn. D is incorrect because, although the Owner once owned a fee simple, his deed to the Niece converted his present estate to a life estate, and life estate owners are liable for waste.

Q.8 A woman conveyed her farm "to my daughter for life, then to my grandchildren and their heirs provided that each such grandchild must survive my daughter." At the time of delivery of the deed, the woman had only one child, her daughter, and her daughter had two children, ages 12 and 9. At the time of the conveyance, the interest in the grandchildren was:

A. an absolutely vested remainder.

B. a vested remainder subject to partial divestment.

C. an invalid contingent remainder.

D. a valid contingent remainder.

The best answer is <u>D</u>. The daughter has a present estate, and the grandchildren have future interests. The daughter's present estate is a life estate ("for life"). The grandchildren are grantees and take at the natural termination of the prior estate – a life estate – so they have remainders. Preliminary state of the title: life estate in the daughter, contingent remainder in the grandchildren, and reversion in the woman. We have to apply RAP to the contingent remainder. We can use the woman (alive b/c she conveyed by deed) and daughter (named in deed) as measuring lives but cannot use the grandchildren because the daughter is still alive and capable of having additional children. Using the daughter as the measuring life will satisfy RAP. If the children's contingent remainder vests because they survive the daughter, we will know instantly upon the daughter's death. If the grandchildren fail to survive the daughter, we will know that the contingent remainder fails while the daughter is still alive. The grandchildren's contingent remainders are certain to vest or fail upon the death of the daughter at the latest. D is a better answer than C. We know A and B are incorrect just by doing the preliminary title.

Q.9 An Owner of a tract of land executed and delivered a deed by which he conveyed the tract "to Cousin and his heirs as long as it is used exclusively for residential purposes, but if it is ever used for other than residential purposes, to Charity." The Cousin immediately entered into possession and used the premises for residential purposes. Five years later, however, Cousin converted the tract into a retail florist shop and began selling flowers to the general public.

The Charity has brought an action against the Cousin claiming that Cousin has forfeited the right to possess, and that the Charity now owns in fee simple absolute. The Owner has intervened in the suit, asserting that the Cousin has forfeited the right to possess, but that he now owns the parcel in fee simple absolute.

In that action,

A. The Cousin will prevail against both the Charity and the Owner because the Charity's interest was extinguished for violating the rule against perpetuities.

B. The Cousin will prevail against both the Charity and the Owner because the Charity owned a vested remainder subject to complete divestment, which is not subject to the rule against perpetuities.

C. The Owner will prevail against both the Charity and the Cousin because the Charity's interest was extinguished for violating the rule against perpetuities and the Cousin has breached the condition of a fee simple determinable.

D. The Charity will prevail against both the Cousin and the Owner because Charity's interest did not violate the rule against perpetuities.

The best answer is C. First, the preliminary state of the title: The Cousin owns the present estate and the Charity owns the future interest. The Cousin owns a fee simple ("and his heirs") that is conditional ("as long as" and "but if"). Upon forfeiture, possession goes to another grantee, so it is a fee simple subject to executory limitation. The Charity is a grantee who follows a fee simple, so its interest cuts short the prior estate and is an executory interest. We must subject the executory interest to RAP. Because it's an executory interest subject to no time limitation, the Charity's interest violates RAP and must be cut out. We also must cut out the "but if" language and all that follows, which looks like this: to Cousin and his heirs as long as it is used exclusively for residential purposes~~, but if it is ever used for other than residential purposes, to Charity~~. The final state of the title is fee simple determinable in the Cousin (conditional fee simple that forfeits automatically) and a possibility of reverter in the Owner. Because the Cousin has breached the condition of the fee simple determinable, possession automatically reverted to the Owner through his possibility of reverter and he now owns a fee simple absolute. Neither the Cousin nor the Charity own anything. All answer but C are incorrect.

Q.10. Widower owned a farm in fee simple absolute. By deed, he conveyed the farm "to my beloved aunt for life, then to my children for their lives, and then to such of my grandchildren who shall reach the age of 21, whenever they may be born." When Widower delivered the deed to the aunt, he had two children and no grandchildren.

The conveyance to Widower's grandchildren will be

A. invalid because the devise creates an unreasonable restraint on alienation.

B. invalid because Widower and his aunt are the only possible the measuring lives.

C. valid because Widower's grandchildren can serve as their own measuring lives.

D. valid because Widower's children can serve as measuring lives

The best answer is B. The preliminary title: The aunt has a present estate. The children and grandchildren have future interests. The aunt's present estate is a life estate ("for life"). The children are grantees and take at the natural termination of the prior estate (a life estate), so they have remainders. The two living children are born, ascertained and not subject to a condition precedent, so they have

vested remainders. Their vested remainders are subject to open because the Widower is alive and can have more children; furthermore, the remainder is not subject to a condition. The Widower's unborn children have contingent remainders. The grandchildren are grantees and take at natural termination of the prior estate, which will be the children's life estate after it converts from a future interest to a present estate. Even if any of the grandchildren had been born, which was not the case, all grandchildren are subject to a condition precedent – reaching the age of 21 – so they have contingent remainders.

The grandchildren's contingent remainders are subject to RAP. We cannot use the grandchildren as the measuring life because none are born and, even if some had been born, the children are still alive and the born grandchildren would comprise an open class. The same is true for the children (the Widower is alive and can have more children). We can only use the Widower and aunt as measuring lives, and either could die the day after the grant. In such case, because the children could have more children, it is possible that more than 21 years would pass after the death of the Widower or aunt. The grandchildren's interest violates RAP and is cut out.

PART TWO

ONE (1) ESSAY QUESTION

Suggested Time: One-Half Hour (30 Minutes)

Q.11 In 1995, an Owner of a one-acre parcel of land supporting a single-family residence ("the residence") in an area of town that had changed from mostly residential uses to retail uses over the past decade, gifted it by deed to "my Daughter and her heirs, but if the land is used for commercial, industrial, or retail purposes during her lifetime, to my Nephew and his heirs." The Daughter immediately moved into the residence with her Husband and two children and continued its residential use.

In 1996, the Daughter was involved in a serious automobile accident that caused her to suffer brain injuries so severe that she became unable to manage any aspects of her personal or professional life. Her Husband obtained a proper guardianship of her person and immediately institutionalized her in a facility in another state, which state had been the Husband's original home. The Husband and the couple's children moved to the other state to be near the Daughter and return to a place the Husband considered to be his home. The residence was left vacant and the Daughter, Husband, and their children would never again occupy it or visit it.

In 1997, a Stranger moved into the vacant residence and began adversely possessing it. He continued to use the residence for residential purposes, meeting all elements of adverse possession for the state in which the residence was located. The state in which the residence was located had a statute saying: "An action for the recovery of land shall be commenced only within twenty years after the right of action, or entry, first accrued, or within twenty years after the demandant or the person making the entry, or those

under whom they claim, have been possessed of the premises." In all other respects, the common law rules pertaining to adverse possession applied in the state.

As time went by, the area in which the residence was located became even less residential and more retail in character. In 2018, the Stranger, an accomplished chef by trade, moved to a different home and opened a high-end French restaurant named "l'Intrus" in the residence. At that point, the Stranger ceased using the residence for any residential purpose.

In 2020, the Daughter died and all of her property passed to her Husband under a will she had executed prior to her automobile accident. In 2021, the Nephew, who lived in another state and had not been to residence since the Owner delivered the deed in 1995, read an advertisement for l'Intrus and noticed that the stated address was the same as that described in the Owner's 1995 deed.

Recently, the Nephew brought a legal action in an appropriate court, seeking a declaration that he is the owner of the residence, and an order of ejectment from the residence against the Stranger. The Husband and Owner learned of the suit and have been permitted to intervene under the state's Rules of Civil Procedure. They also seek to eject the Stranger and each claims that he, not the Nephew, is the owner of the residence. The Stranger has counterclaimed, asserting that he had become the owner by adverse possession.

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

Model Answer:

1. **The Owner's Grant.**

The Owner gave the Daughter a present estate because she does not have to wait for a prior present estate to end; she gets immediate possession. There are three categories of present estates: the fees simple, the life estate, and the various nonfreehold estates (landlord-tenant relationships). Daughter has a fee simple because "and her heirs" are words of limitation that mean no more than "in fee simple" at common law, which still applies despite the more common usage of the "modern presumption" we discussed in class. Daughter's fee simple is conditional because of the words of condition: "but if." So, it is not a fee simple absolute, the only unconditional fee simple. The three conditional fees simple are the fee simple determinable, the fee simple subject to a condition subsequent, and the fee simple subject to an executory limitation. Of the three, the first two occur only when possession goes back to the grantor upon forfeiture for breach of condition. Only the last – the fee simple subject to an executory limitation – will have the possession go to another grantee upon forfeiture. Here, upon forfeiture, Daughter's possession will pass to the Nephew, a grantee. The Daughter therefore owns a fee simple subject to an executory limitation.

The Nephew owns a future interest because he must wait for the Daughter's present estate to end before he gets possession. There are five future interests. The first three – reversion, possibility of reverter, and right of entry for condition broken – are owned by grantors, not grantees. Since Nephew is a grantee, he does not own one of those. He owns either a remainder or executory interest; again, these are the only two future interests a grantee can own. The Nephew's future interest follows a fee simple and fees dimple never naturally terminate. So, the Nephew's future interest cuts short the prior estate rather than naturally terminating it. The Nephew owns an executory interest. The "preliminary title" is that the Daughter has a fee simple subject to an executory limitation and the Nephew has an executory interest.

Now, on to the examination of the executory interest – the only "contingent" future interest – for compliance with the rule against perpetuities. This executory interest has a time limitation attached that requires it to vest or fail within the Daughter lifetime: "during her lifetime." Since the Daughter was a "life in being" when the deed was delivered, her executory interest satisfies the rule against perpetuities and the preliminary title becomes our final title: fee simple subject to an executory limitation in the Daughter and an executory interest in the Nephew.

2. The Breach of Condition of the Fee Simple Subject to Executory Limitation.

Another peek at the condition attached to the Daughter's fee simple subject to executory limitation is in order to understand how it applied in relation to the circumstances that followed the Owner's grant: "but if the land is used for commercial, industrial, or retail purposes during her lifetime, to my Nephew and his heirs." The daughter complied with this condition prior to her accident in 1997. Even after the Stranger trespassed in 1997, he continued to comply with the condition until 2018, so there still was no breach and no forfeiture up until that point. In 2018, however, the Stranger caused a breach in condition by using the residence for "commercial, industrial, or retail purposes." (Please note that the condition does not require the Daughter *herself* to be the one who breached the condition and caused a forfeiture; the language of the condition is focused on the use itself, not the perpetrator of the use or the intent motivating the use.) The daughter thus forfeited her ownership and possession in 2018, at which point the Nephew's executory interest converted to a present estate (fee simple absolute with no condition).

The Husband got nothing through the Daughter's will because she had forfeited her ownership rights in the residence prior to her death. (Only property one owns at death may be devised through a will.) The Owner also got nothing after the 2018 forfeiture because, at the moment of forfeit, the Nephew's executory interest metamorphosed into a present fee simple absolute with no attached conditions; the so-called "forever" present estate we discussed in class. As of 2018, therefore, the Nephew was the sole record owner of the residence and

it became the Nephew's responsibility to deal with the Stranger's continuing accumulation of adverse possession rights.

3. Tolling and the Stranger's Claim for Adverse Possession

Adverse possession is essentially a statute of limitations (SOL) attached to the common law tort of trespass; the record owner of the real estate must eject the trespasser from the land before the statute of limitations runs lest s/he lose the right to do so. Adverse possession statutes range in time from 5 to 20 years, with 20 being the most common. The statute cited in the facts imposes a 20-year statute of limitations.

Since it is unfair to run SOLs against persons who are incapable of filing an ejectment action timely because they are burdened by some form of disability, many areas of the law, including that of adverse possession, "toll" (or stop) the running of the SOL during the disability to assure fairness to the record property owner. In a jurisdiction where the SOL for adverse possession is 20 years, the common law provides that the record owner of the real estate will have 10 years after the disability is removed to bring the ejectment action against the trespasser, provided that the10-year add-on cannot be used to shorten the SOL (which is set up to protect, not harm, the disabled owner). The other rule pertaining to tolling of import here is the rather unfair rule that the disability must have already occurred *prior to* the trespasser's commencement of the adverse possession.

The facts set up a proper use of tolling on behalf of the Daughter, at least initially. First, her disability began in 1996, one year before the Stranger started his adverse possession, so the SOL was already tolled when the Stranger began trespassing on the residence. But the Daughter's disability was removed in 2018 when the condition was breached and she no longer owned the residence (and no longer retained the right to eject the Stranger). At this point, the Nephew became the owner of the residence by the Daughter's forfeiture and thus incurred the responsibility of ejecting the Stranger. He would have 10 years to do so: until 2028, which obviously is a date six years beyond the lawsuit brought under these facts. (Note: even if one were to mistakenly assert that tolling ended at the Daughter's death in 2020 rather than upon her forfeiture in 2018, thus extending the 10-year period to 2030 rather than 2028, this would have no effect on the ultimate result given that neither date was reached prior to the lawsuit at issue.)

As applied to these facts, the only legitimate conclusion to be derived from the law of adverse possession and the effect of tolling, is that the Stranger has failed to meet the "continuous" element and will not obtain any title via adverse possession. The claim for ejectment (specifically, that of the Nephew) will succeed and the Stranger will be ousted from the residence.

4. Conclusion – Final Determination of the Rights, Duties and Liabilities of the

Nephew, Husband, Stranger and Owner.

In summary, the "rights, duties, and liabilities" of the parties are as follows:

Stranger:	**Gets no interest in the residence because his adverse possession claim failed to satisfy the "continuous" element. The Court should issue a judgement of ejectment against him.**
Husband:	**Gets no interest in the residence because, by the time of Daughter's death, she had no interest left to pass through her will to her Husband.**
Owner:	**Gets no interest in the residence because, as described above in Section 2 of this Exam Answer, his own grant left him with no interest in the residence.**
Nephew:	**The Nephew ends up with a fee simple absolute subject to no claims of any of the other parties.**

END OF EXAM

Instructions: *This exam only has one part, which consists of fifty (50) short answer questions. Some questions ask a simple question requiring only a one or two-word answer. Other questions ask for legal definitions or ask you to state and describe legal elements. These questions obviously require longer answers. Some questions provide factual scenarios and require you to perform legal analysis. Obviously, these questions are the longest. Some of the questions have one or two subparts. The exam is comprehensive; it covers some of every topic we considered during the semester.*

You willl have ample time to answer all the questions if you have adequately learned and studied the rules of law and legal analysis we have applied in class. Use your time effectively. Don't hurry but work steadily and as quickly as you can without sacrificing your accuracy. If a question seems too difficult, go on to the next one and try to come back later if you have time.

1. Please state the "finder's rule," a/k/a "the rule of finds" that applies to lost property?

2. Please state how the outcome of the finder's rule differs from the rule pertaining to one who finds "misplaced or mislaid" property rather than lost property.

3. Please state the legal definition of trespass.

4. Please state who has the burden of proof in regard an adverse possession claim, the record owner or the person/trespasser who is claiming to be the owner by adverse possession and follow up by explaining the legal justification for your answer.

5. Please state and describe the five (5) elements of adverse possession as we learned them in class.

6. A Trespasser started to occupy property owned by an Owner in fee simple absolute, meeting all the elements of adverse possession. Fifteen years later, the Owner died leaving the property by will to her Son. At the time of the Owner's death, her son was 14 years old. Six years after Owner's death, the Trespasser brought an action against Son seeking a declaratory judgment that the Trespasser has obtained Son's title by adverse possession. The jurisdiction in which the property was located had a 20-year statute of limitations for the acquisition of title by adverse possession.

In the space provided below,

A. Please describe the "tolling rule" as it applies to adverse possession cases.

B. Please explain why the Son will lose that action and the Trespasser will be declared owner of a fee simple absolute title in the property.

7. A deceased Testator devised his land "to my Son for his life and then to my Daughter and her heirs." The Son got a life estate, and the Daughter got a remainder that would convert to a fee simple absolute upon the Son's death.

One month after the Testator died, a Trespasser began trespassing on the land, meeting all elements of adverse possession and continued to so possess for 23 years. Then the Son died, and the Trespasser continued to possess, still meeting all elements of adverse possession, for another 11 years, when the Daughter brought an ejectment action against the trespasser.

The jurisdiction in which the property was located had a 20-year statute of limitations for the acquisition of title by adverse possession. In the space provided below,

A. Please state what estate/real estate interest, if any, the Trespasser owns at the time of the ejectment action by the Daughter.

B. Please explain the legal reasoning for your answer to Part A directly above.

8. Andrew sells a parcel of land to Beth, who later sells to Candide, who later grants a mortgage to Debra. Then Ethyl takes all appropriate actions to complete an adverse possession and take title to the parcel as a result of the adverse possession. Debra hasn't been paid on the mortgage and has brought a procedurally appropriate foreclosure action. Ethyl now claims in a legal action that Debra cannot foreclose her mortgage.

In the space provided below,

A. Please state whether Ethyl will prevail or not prevail in her attempt to stop the mortgage foreclosure.

B. Please explain the legal reasoning for your answer to Part A directly above.

9. Functionally, what is the difference between a present estate and a future interest?

10. How long does a fee simple last for?

11. Please name the four (4) nonfreehold estates.

12. In the eyes of the law, which estate is larger, the fee simple absolute or the fee simple determinable?

13. Please state and describe the five (5) powers or rights held by the owner of a fee simple estate.

14. Please state the difference between "voluntary waste" and "involuntary/ permissive waste."

15. Please state the "ameliorating waste" doctrine.

16. Please state both the common law rule and modern rule used to determine that a fee simple has been created.

17. Please state the methodology one employs in determining a present estate is a fee simple, and then distinguishing between the four (4) different fees simple.

18. A Testator, who owned a parcel of land in fee simple absolute, devised the parcel through his will as follows: “to my Wife for her life and then to my Son and my Daughter and their heirs.” The Testator’s Wife was his Son’s and Daughter’s stepmother; the children did not get along well with their stepmother.

At the time of the Testator’s death, the parcel was subject to an outstanding mortgage in the amount of $100,000. In the space provided below, please explain who is

responsible to pay the mortgage (both its principal and interest payments) upon the death of the Testator.

19. Please state the methodology one employs in determining that a future interest is an <u>executory interest.</u>

20. Please explain how one distinguishes between the <u>condition precedent</u> and <u>condition subsequent</u>.

21. Oswald granted by deed, “to Alice for life, and then to Bart and his heirs as long as the property is used for church purposes, but if it is not to Carlene and her heirs.”

A. Applying the rule against perpetuities, what is the state of the title immediately after Oswald delivered the deed?

B. Please explain the legal reasoning for your answer to Part A directly above.

22. Applying the rule against perpetuities, what is the state of the title immediately after the following grant is created: “Abraham conveyed “to Boursin for life, and then to his widow for life, and then to the children of Boursin provided they survive his widow.” At the time of the conveyance, Boursin was 30 years old and married to Wanda and had two children, Duckworth and Evan.

23. Applying the rule against perpetuities, what is the state of the title immediately after the following grant is created: An owner of a two-acre parcel of land with a home upon it, conveyed it by deed "to Adele and her heirs, but if Buster becomes a father within 30 years of the date of this grant, thus extending the family name, to Buster and his heirs."

24. Please list which one or more of the concurrent estates has the right of survivorship.

25. Please list which one or more of the concurrent estates is severable.

26. A Man and Woman owned a parcel of land with a single-family home on it as joint tenants. Five years ago, Woman made a will that left all her real estate to her Daughter from a prior relationship. One month ago, Woman died. Man claims he is the sole owner of the parcel of land and Daughter claims that she owns a one-half interest in the parcel as a co-tenant with Man.

A. Who is correct, Man or Daughter?

B. Please explain the legal reasoning for your answer to Part A directly above.

27. Please state and describe the five "unities" that might exist in regard to the concurrent estates.

28. Please list all the unities that <u>must</u> be present for a cotenancy to be a joint tenancy.

29. Please describe the "unequivocal referability" exception to the statute of frauds.

30. Please describe the "undue hardship" exception to the statute of frauds.

31. Please describe the two ways by which a purchase and sale agreement may create the seller's obligation to deliver a marketable title.

32. A Seller and Buyer entered into an enforceable purchase and sale agreement in regard to a parcel of land, which set a closing date for May 1st. The agreement expressly required Seller to deliver a marketable title. The closing occurred as scheduled, and Seller delivered to Buyer a quitclaim deed. A week after the closing Buyer learned that Seller had placed a mortgage on the land that he had failed to discharge or reveal.

The Buyer has sued Seller upon a claim of breach of the Seller's duty to deliver a marketable title.

A. Who will prevail, Buyer or Seller?

B. Please explain the legal reasoning for your answer to Part A directly above.

33. Seller and Buyer entered into an enforceable purchase and sale agreement in which Seller agreed to sell a parcel of land with improvements to Buyer for $500,000. The agreement was silent about the seller's obligation to deliver marketable title. Prior to the closing, Buyer learned that Seller had granted a mortgage to a bank on the parcel. The payoff of the mortgage was $100,000. Buyer demanded that Seller come to the closing with a proper discharge executed by the bank that had made the mortgage loan. Seller responded that he intended to discharge the mortgage with the proceeds received from the closing and offered to put the proceeds of the sale into escrow until the mortgage was discharged. Buyer declined the offer and refused to close because Seller could not discharge the outstanding mortgage prior to delivering the deed.

Seller has sued the Buyer for specific performance, asserting that Buyer was required to accept his offer.

A. Who will prevail, Buyer or Seller?

B. Please explain the legal reasoning for your answer to Part A directly above.

34. Seller and Buyer entered into an enforceable purchase and sale agreement that was silent in regard to the quality of title that seller was to deliver. Nor did the purchase and sale agreement address the type of estate that Seller was required to deliver: fee simple absolute, etc. Buyer assumed that the deed he was to receive at closing would deliver a fee simple absolute, but the title exam came back showing that Seller only owned a life estate.

Seller has taken the position that Buyer is required to accept whatever title he has and has sued Buyer for specific performance because Buyer has provided notice that he is not purchasing the subject property.

A. Who will prevail, Buyer or Seller?

B. Please explain the legal reasoning for your answer to Part A directly above.

35. A seller who owned a single-family house on a beautiful ocean-front lot entered into a written, enforceable contract to sell the house to a buyer. The contract was silent as to the quality of title that the seller was to give. It also was silent on the topic of property damage prior to the closing. A week before the scheduled closing, a hurricane hit the area and the ocean-front house washed out to sea. The seller's homeowner's insurance policy did not cover damage by water and/or flooding.

The buyer refused to close, and the seller has brought an action for specific performance.

A. Who will prevail, Buyer or Seller?

B. Please explain the legal reasoning for your answer to Part A directly above.

36. Please provide the legal description of a "fixture."

37. Please describe the rule that applies to so-called "trade fixtures" in commercial landlord-tenant relationships.

38. What is the “equity of redemption/right of redemption?”

39. An Owner of real estate in fee simple absolute leased the real estate to a Tenant for a term of five years. Then the Owner granted a mortgage to a Bank to secure a loan. Later, the Owner granted a second mortgage to a Mortgage Company to secure another loan. Thereafter, the Owner fell into financial difficulties and was unable to pay the mortgages. The Bank foreclosed on its mortgage and an Investor purchased at the foreclosure sale.

A. Which, if any, of the mentioned real estate interests will the Investor take subject to?

B. Please explain the legal reasoning for your answer to Part A directly above.

40. Brother and Sister owned an improved parcel of land as joint tenants. Without Brother’s knowledge, Sister borrowed money from an individual and secured it with a mortgage on her interest in the joint tenancy. The mortgage was properly recorded.

One year later, Sister paid off the mortgage loan and properly recorded a discharge of the mortgage she had given to secure it. She never told Brother about the mortgage.

Two years after paying off the loan, Sister was died suddenly. Sister’s will left all her real estate to the American Red Cross (ARC).

Brother claims he owns the property solely by right of survivorship. The ARC claims to have inherited Sister’s one-half undivided interest through her will and has brought an action against Brother seeking a declaratory judgment that it is the owner of a one-half undivided interest in the parcel. Brother has defended by asserting that he is the sole owner of the parcel under the right of survivorship.

A. Who prevails in a jurisdiction that follows the “title theory” or mortgages?

B. Who prevails in a jurisdiction that follows the “lien theory” or mortgages?

C. Please explain your legal reasoning for your answers to Part A and Part B directly above.

41. Several years ago, a Man purchased a parcel of land, financing a large part of the purchase price by a loan from a Bank that was secured by a mortgage. The Man made the installment payments on the mortgage regularly until last year when the Man sold the property subject to the mortgage to a Woman. The Man and Woman expressly agreed that the Woman would “assume” the Man's mortgage obligation to the Bank.

The Woman took possession of the parcel and made several mortgage payments, which the Bank accepted, but soon fell well behind with the mortgage payments. The

Bank foreclosed and has been left with a substantial deficiency, which it seeks to recover in an action against both the Man and the Woman.

A. Yes or no, will the Bank prevail against the Man?

B. Yes or no, will the Bank prevail against the Woman?

C. Please explain your legal reasoning for your answers to Part A and Part B directly above.

42. Please state the four (4) elements required to make a deed procedurally a valid instrument.

43. A Seller conveyed a parcel of land to a Buyer. The Seller's special warranty deed contained the covenant against encumbrances and the covenant of quiet enjoyment. Then, the Buyer conveyed the land to a Developer. Upon taking possession, the Developer learned that the Seller had placed an easement on the property and had never disclosed it. The owner of the easement has just started using it. The Developer has sued both the Buyer and Seller for breaching both the covenant against encumbrances and the covenant of quiet enjoyment.

A. Yes or no, will the Developer prevail against the Buyer on either of the covenants?

B. Yes or no, will the Developer prevail against the Seller on either of the covenants?

C. Please explain your legal reasoning for your answers to Part A and Part B directly above.

44. A legally married Husband and Wife owned a parcel of land as tenants by the entirety. Without husband's knowledge, Wife borrowed $50,000 from an Investor and granted her a mortgage on the parcel to secure the loan. The Investor promptly

recorded the mortgage. In the state in which the parcel of land was located, grants of mortgages provide the mortgagee with general warranty covenants; the grant of a mortgage is considered the same as a conveyance by general warranty deed. Rather than make the monthly mortgage payments to the Investor, the Wife sued the Husband for divorce. In the divorce settlement, the Husband transferred his interest in the parcel of land to the Wife by a proper deed, which was delivered and recorded. Wife thus became the sole owner of the parcel.

Wife has not made a mortgage payment for the last 8 months and the Investor has commenced foreclosure proceedings. It is the Wife's position that the Investor cannot foreclose because the Wife owned as tenants by the entirety when she delivered the mortgage and lacked the ability to grant the mortgage to the Investor without the Husband's participation. Wife claims that the investor has no mortgage to foreclose.

A. Yes or no, is the Wife correct in asserting that the Investor cannot foreclose the mortgage?

B. Please explain the legal reasoning for your answer to Part A directly above.

45. A Seller sold a parcel of land to a Buyer. The Buyer did not initially record. After discovering that Buyer did not record, Seller sole the same parcel to a Purchaser. The Purchaser did not initially record. One month after accepting the deed, the Purchaser got around to recording his deed. Two weeks after that, the Buyer recorded her deed.

The jurisdiction in which the parcel is located has a recording statute that states:

> No conveyance of an interest in real estate, or a mortgage secured by an interest in real estate, shall be valid against a subsequent interest in real estate, or a mortgage secured by an interest in real estate, established by or for a purchaser or mortgagee who pays value therefor, unless said prior conveyance or mortgage be recorded, or unless such subsequent purchaser or mortgagee otherwise has notice of said prior real estate interest or mortgage.

A. What type of recording statute is the above-quoted law, pure notice, race-notice, or pure race?

B. Who will prevail in a legal action asserting ultimate ownership of the parcel, Buyer or Purchaser?

C. Please explain your legal reasoning for your answers to Part A and Part B directly above.

46. A Seller sold a parcel of land to a Buyer. The Buyer did not initially record. After discovering that Buyer did not record, Seller sole the same parcel to a Purchaser. The Purchaser did not initially record. One month after accepting the deed, the Purchaser got around to recording his deed. Two weeks after that, the Buyer recorded her deed.

The jurisdiction in which the parcel is located has a recording statute that states:

> No prior interest in real estate of any type shall be valid against a subsequent real estate interest that a subsequent grantee purports to attach to said real estate if the subsequent grantee pays value, lacks notice of the prior interest, and first records the subsequent real estate interest, unless said prior real estate interest be properly recorded.

A. What type of recording statute is the above-quoted law, pure notice, race-notice, or pure race?

B. Who will prevail in a legal action asserting ultimate ownership of the parcel, Buyer or Purchaser?

C. Please explain your legal reasoning for your answers to Part A and Part B directly above.

47. An Owner owned a lot of land whose southern boundary was contiguous to the northern boundary of Main Street, a public road (the southern lot). The Owner employed a driveway on her property to gain access to and from Main Street. A Neighbor owned a lot just north of, and contiguous to, Owner's land. The Neighbor's lot bordered Elm Street on its northernmost boundary (the northern lot). The Neighbor used a driveway on his land to gain access to and from Elm Street. The northern lot provided no other access to any public road other than Elm Street.

Last year, the City in which the northern and southern lots were located converted Elm Street into a “greenway,” blocking access onto Elm Street from lots on its southern border, including the northern lot owned by Neighbor. The northern lot became land-locked and Neighbor had no means of ingress and egress to and from the northern lot.

Neighbor recently brought an action against Owner in an attempt to gain access via the southern lot to Main Street, the only public road in the area.

A. Who will prevail in that action, Neighbor or Owner?

B. Please explain the legal reasoning for your answer to Part A directly above.

48. An Owner of a lumber yard granted a written easement to a Utility, giving Utility the right to construct an underground gas line across the lumber yard in order to serve other properties in the area. Utility installed the gas line as allowed by the easement. For 25 years, neither Owner nor Utility made any repairs or maintained the line. Lack of maintenance eventually caused the gas line to rupture, release gas and start a fire on Owner’s property, which devastated the lumber yard.

A. Yes or no, is the Utility liable to the Owner for damage done to the lumber yard?

B. Please explain the legal reasoning for your answer to Part A directly above.

49. A businesswoman owned two adjoining tracts of land, one that was improved with a commercial rental building and another that was vacant and abutted a river. Twenty years ago, the businesswoman conveyed the vacant tract to a grantee by a warranty deed. The deed contained a covenant by the grantee as owner of the vacant tract that neither he nor his heirs or assigns would make any improvements on the tract "other than for the purpose of use as a single-family residence." The grantee promptly and properly recorded the deed.

Last year, the businesswoman conveyed the improved tract to a businessman. A month later, the grantee died, devising all of his property, including the vacant land, to his cousin.

Six weeks ago, the cousin began construction of a building on the vacant tract that was to be used for the purpose of a retail pizza parlor.

The businessman objected and sued to enjoin construction of the building.

A. Who will prevail in that action, the businessman or cousin?

B. Please explain the legal reasoning for your answer to Part A directly above.

50. Several farmers in a drought-ridden state jointly decided to sell their land to a developer, negotiating a good price and extracting a promise from the developer to build only upscale ranch-style homes on lots no smaller than ten acres each. After the sale was consummated, the developer proceeded to develop and sell large homes on the lots, including in each deed a restrictive covenant by which the grantee promised to build houses of a certain size and not to subdivide his or her parcel.

Before the developer had completed constructing homes on all of the lots, his son offered to purchase the last five ten-acre lots unimproved. The developer sold the last lots to the son subject to the same restrictive covenant as was contained in the other deeds. The son immediately resold the lots to his father's construction company. His deed did not contain the restrictive covenant. The construction company then sought and obtained a zoning change and construction permit for the development of 200 condominiums on small lots to be subdivided from the original five lots.

A homeowner who was one of the first purchasers of a home from the developer, brought an action against the construction company to prevent the subdivision as a violation of the restrictive covenant.

A. Who is likely to prevail in that action, the homeowner or construction company?

B. Please explain the legal reasoning for your answer to Part A directly above.

END OF EXAM

<u>2021 PROPERTY FINAL EXAM – ANSWERS & EXPLANATIONS</u>

1. Please state the "finder's rule," a/k/a "the rule of finds" that applies to lost property?

> ***"The finder of [lost property] has such a property as will enable him to keep it against all but the rightful owner."***

2. Please state how the outcome of the finder's rule differs from the rule pertaining to one who finds "misplaced or mislaid" property rather than lost property.

Rather than the finder of mislaid property holding title against all but the true owner, <u>the person in rightful possession of the real estate on which the mislaid property is found will obtain title</u> against all but the true owner (even if someone other than the real estate owner finds the item on the real estate).

3. Please state the legal definition of trespass.

Intentionally going on someone else's property without permission.

4. Please state who has the burden of proof in regard an adverse possession claim, the record owner or the person/trespasser who is claiming to be the owner by adverse possession and follow up by explaining the legal justification for your answer.

The person claiming to be the owner by adverse possession. (This is because adverse possession is essentially a claim that the statute of limitations for trespass has lapsed. The statute of limitations is an "affirmative defense" under Rule 8(c) of the Rules of Civil Procedure. The person asserting an affirmative defense always carries the burden of proof: here the person asserting adverse possession.}

5. Please state and describe the five (5) elements of adverse possession as we learned them in class.

- ***i. Open & Notorious: Holding yourself 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.***

6. A Trespasser started to occupy property owned by an Owner in fee simple absolute, meeting all the elements of adverse possession. Fifteen years later, the Owner died leaving the property by will to her Son. At the time of the Owner's death, her son was 14 years old. Six years after Owner's death, the Trespasser brought an action against Son seeking a declaratory judgment that the Trespasser has obtained Son's title by adverse possession. The jurisdiction in which the property was located had a 20-year statute of limitations for the acquisition of title by adverse possession.

In the space provided below,

A. Please describe the "tolling rule" as it applies to adverse possession cases.

B. Please explain why the Son will lose that action and the Trespasser will be declared owner of a fee simple absolute title in the property.

A. If a trespasser begins an adverse possession against a owner who is disabled, and the disability prevents her/him from ejecting the trespasser – disabilities include being under the age of 18, lacking the mental capacity to file a trespass action because of a physical or psychological reason, or confinement to a penal institution (in some states, but not all states), the running of the statute of limitations will be <u>tolled</u>, i.e., stopped and prevented from running.

B. ***Tolling only occurs if one of the aforementioned disabilities existed prior to the commencement of the adverse possession. Here, Son did not become the owner of the property until after the adverse possession had already begun and he can't use tolling to prevent the running of the statute of limitations***.

7. A deceased Testator devised his land "to my Son for his life and then to my Daughter and her heirs." The Son got a life estate, and the Daughter got a remainder that would convert to a fee simple absolute upon the Son's death.

One month after the Testator died, a Trespasser began trespassing on the land, meeting all elements of adverse possession and continued to so possess for 23 years. Then the Son died, and the Trespasser continued to possess, still meeting all elements of adverse possession, for another 11 years, when the Daughter brought an ejectment action against the trespasser.

The jurisdiction in which the property was located had a 20-year statute of limitations for the acquisition of title by adverse possession. In the space provided below,

A. Please state what estate/real estate interest, if any, the Trespasser owns at the time of the ejectment action by the Daughter.

B. Please explain the legal reasoning for your answer to Part A directly above.

A. The Trespasser owns no estate. Alternative answer: 11/20ths of an adverse possession claim against Daughter's fee simple absolute.

B. Under the doctrine of "quantity of title," an adverse possessor obtains only the estate of the person who could have ejected him or her. Here, while Son was alive and possessed the present estate, he was the only one who could have ejected Trespasser while Son was still alive. Trespasser obtained Son's life estate, measured by Son's life, 20 years after the Trespasser began trespassing. When Son died, the Trespasser's life estate died with him and Trespasser had nothing but an adverse possession stake in the land. Daughter became owner of the present estate of fee simple absolute upon the Son's death and obtained the right to eject the Trespasser. Trespasser now had to adversely possess for 20 years after Son's death to obtain Daughter's fee simple absolute. Trespasser didn't make it because Daughter brought the action to eject him 11 years after the Son died.

8. Andrew sells a parcel of land to Beth, who later sells to Candide, who later grants a mortgage to Debra. Then Ethyl takes all appropriate actions to complete an adverse possession and take title to the parcel as a result of the adverse possession. Debra hasn't been paid on the mortgage and has brought a procedurally appropriate

foreclosure action. Ethyl now claims in a legal action that Debra cannot foreclose her mortgage.

In the space provided below,

A. Please state whether Ethyl will prevail or not prevail in her attempt to stop the mortgage foreclosure.

B. Please explain the legal reasoning for your answer to Part A directly above.

A. Ethyl will prevail.

B. This is a "quality of title" issue. A adverse possession breaks the chain of title and starts a new one. Debra and her mortgage were in the old chain of title and Debra cannot enforce her mortgage outsides the chain of title in which it exists. Ethyl therefore took her title by adverse possession free from the mortgage encumbrance. Debra can no longer foreclose the mortgage.

9. Functionally, what is the difference between a present estate and a future interest?

A present estate entitles its owner to the right of immediate possession. The owner of a future interest is required to wait until a present estate ends in order to enjoy the right of immediate possession.

10. How long does a fee simple last for?

Potentially forever.

11. Please name the four (4) nonfreehold estates.

- ***Estate for a term (estate for years)***
- ***Periodic tenancy***
- ***Tenancy at will***
- ***Tenancy at sufferance***

12. In the eyes of the law, which estate is larger, the fee simple absolute or the fee simple determinable?

Neither. In the eyes of the law all fees simple are considered to be equal.

13. Please state and describe the five (5) powers or rights held by the owner of a fee simple estate.

- ***Use: the right to physical occupancy of the land***

- ***Abuse/Waste: the right to commit waste. Waste is lasting or permanent destruction of real estate or improvements attached to real estate. Only the owner of a fee simple may commit waste on her/his land.***

- ***Exclusive Possession: The right to control who gets to come on the land, even if the decision to exclude is irrational.***

- ***Reap the Fruits: the right to plant and harvest crops or otherwise take profits from the real estate.***

- ***Convey in Two Ways: the right to convey, devise, or otherwise alienate the property either while the owner is alive (through a deed) or upon death (through a will or intestate descent).***

14. Please state the difference between "voluntary waste" and "involuntary/ permissive waste."

Voluntary waste is intentional waste, e.g., putting a fist through drywall or intentionally ripping up pavement. Involuntary waste is waste by negligence; the owner fails to perform normal maintenance or upkeep, which causes permanent damage to the real estate.

15. Please state the "ameliorating waste" doctrine.

Conduct otherwise considered waste is exempted if it actually increases the value or utility of the real estate.

16. Please state both the common law rule and modern rule used to determine that a fee simple has been created.

- ***Common Law Rule: the grantor must use the words, "and his heirs," "and her heirs," or "and their heirs."***

- ***Modern Rule: We presume that, unless the grantor expressly states otherwise, s/he has conveyed everything s/he owned. Thus, if a person who owns a fee simple absolute conveys "to Buyer," the Buyer gets a fee simple absolute despite the lack of the words, "and her heirs."***

17. Please state the methodology one employs in determining a present estate is a fee simple, and then distinguishing between the four (4) different fees simple.

1. ***Who has the present estate?***

2. ***Is the present a fee simple, life estate or non-freehold estate? Assuming it's a fee simple ("and her heirs" or no time limitation):***

3. ***Is it conditional or unconditional? (If unconditional, it's a fee simple absolute and you're done. If conditional, continue.)***

4. ***Upon breach of the condition and forfeiture, does possession go back to the grantor or over to another grantee? (If it goes over to another grantee, it's a fee simple subject to executory limitation and you're done. If it goes back to the grantor, continue.)***

5. ***Does the forfeiture happen automatically (by operation of law) or are there "action words" requiring the grantor to take action to cause the forfeiture? If automatic, it's a fee simple determinable; if action is required, it's a fee simple subject to condition subsequent.***

18. A Testator, who owned a parcel of land in fee simple absolute, devised the parcel through his will as follows: "to my Wife for her life and then to my Son and my Daughter and their heirs." The Testator's Wife was his Son's and Daughter's stepmother; the children did not get along well with their stepmother.

At the time of the Testator's death, the parcel was subject to an outstanding mortgage in the amount of $100,000. In the space provided below, please explain who is responsible to pay the mortgage (both its principal and interest payments) upon the death of the Testator.

The rule is that the owner of the present estate is responsible for the interest portion of the mortgage payments and the owner of the future interest is responsible for the principal portion of the mortgage payments. Therefore, Wife must make the interest payments on the mortgage and Son and Daughter must make the principal payments.

19. Please state the methodology one employs in determining that a future interest is an executory interest.

1. ***Is the future interest owned by a grantor or grantee? If it's owned by a grantee:***

2. ***Eliminate reversion, possibility of reverter, and right of entry for condition broken. It's either a remainder or an executory interest. If it's owned by a grantee:***

3. ***Does the future interest follow the natural termination of the prior estate or unnaturally cut short the prior estate? If it unnaturally cuts short the prior estate, it's an executory interest and you're done.***

20. Please explain how one distinguishes between the condition precedent and condition subsequent.

A condition precedent requires the owner of the remainder to satisfy the condition PRIOR to taking possession of the premises. A condition subsequent initially allows the owner of the remainder to take possession of the premises but threatens forfeiture if s/he doesn't fulfill the condition at issue.

21. Oswald granted by deed, "to Alice for life, and then to Bart and his heirs as long as the property is used for church purposes, but if it is not to Carlene and her heirs."

A. Applying the rule against perpetuities, what is the state of the title immediately after Oswald delivered the deed?

B. Please explain the legal reasoning for your answer to Part A directly above.

> ***A. Alice has a life estate. Bart has a vested remainder subject to complete divestment. Oswald has a possibility of reverter.***
>
> **B.** ***The preliminary state of the title was: Life estate in Alice; vested remainder subject to complete divestment in Bart; executory interest in Carlene. Applying RAP, Carlene's executory interest gets cut out because it violated RAP (one might have to wait hundreds of years to see whether it will vest or fail). Bart's vested remainder subject to complete divestment will become a fee simple determinable when it becomes a present estate. The "but if it is not" will be cut out along with Carlene's executory interest." You are left with: "to Alice for life, and then to Bart and his heirs as long as the property is used for church purposes~~, but if it is not to Carlene and her heirs~~." That leaves the state of title set forth above in Part A.***

22. Applying the rule against perpetuities, what is the state of the title immediately after the following grant is created: "Abraham conveyed "to Boursin for life, and then to his widow for life, and then to the children of Boursin provided they survive his widow." At the time of the conveyance, Boursin was 30 years old and married to Wanda and had two children, Duckworth and Evan.

Life estate in Boursin; contingent remainder in B's widow; indefeasibly vested reversion in Abraham, the grantor.

We can't use the widow as a life in being because we aren't sure it's going to be Wilma; it could be someone who was not born at the time of the grant. The children's contingent remainders violate RAP because, using Abraham or Boursin as measuring lives, each could die tomorrow and we might have to wait for more than 21 years to see if Boursin's children outlive Boursin's widow.

23. Applying the rule against perpetuities, what is the state of the title immediately after the following grant is created: An owner of a two-acre parcel of land with a home upon it, conveyed it by deed "to Adele and her heirs, but if Buster becomes a father

within 30 years of the date of this grant, thus extending the family name, to Buster and his heirs."

Fee simple subject to executory limitation in Adele; executory interest in Buster.

This satisfies the rule against perpetuities. We use Buster as the measuring life because Buster has the greatest say as to whether the condition – Buster becoming a father within 30 years – is satisfied. If Buster satisfies the condition, Buster must necessarily be alive to become a father. Therefore, it will vest during the lifetime of the measuring life, if it vests. If the executory interest fails, it is certain to fail either 30 years after the grant, at which point Buster will be alive, or at the instant of Buster's death because Buster will not be able to become a father after his death. Buster's executory interest is thus certain to vest or fail, at the latest, at the death of Buster.

24. Please list which one or more of the concurrent estates has the right of survivorship.

- ***Joint tenancy***
- ***Tenancy by the entirety***

25. Please list which one or more of the concurrent estates is severable.

- ***Tenancy in common***
- ***Joint tenancy***

26. A Man and Woman owned a parcel of land with a single-family home on it as joint tenants. Five years ago, Woman made a will that left all her real estate to her Daughter from a prior relationship. One month ago, Woman died. Man claims he is the sole owner of the parcel of land and Daughter claims that she owns a one-half interest in the parcel as a co-tenant with Man.

A. Who is correct, Man or Daughter?

B. Please explain the legal reasoning for your answer to Part A directly above.

> ***A. Man is correct.***
>
> ***B. A will does not become effective until the death of the testator. Thus, the Woman's will could not have severed the joint tenancy and its right of survivorship. Also, a will only passes property that the testator owns upon death. Woman had nothing to pass through her will because her death triggered the right of survivorship, which left Man as the sole owner of the parcel of land.***

27. Please state and describe the five "unities" that might exist in regard to the concurrent estates.

- **Time:** **all cotenants must take their interests at the same time.**
- **Title:** **all cotenants must take through the same instrument.**
- **Interest:** **all cotenants must take the same interest, e.g., a fee simple, life estate.**
- **Possession:** **all cotenants have the simultaneous right of possession and possess on behalf of each other.**
- **Person (Marriage):** **common law legal fiction holding that, upon marriage, the spouses become "one person." This prevents one of the cotenants from being able to "sever" tenancy by the entirety.**

28. Please list all the unities that <u>must</u> be present for a cotenancy to be a joint tenancy.

Unities of time, title, interest, and possession

29. Please describe the "unequivocal referability" exception to the statute of frauds.

There is only one possible explanation for the parties' performance: the existence of an oral contract.

30. Please describe the "undue hardship" exception to the statute of frauds.

The nonbreaching party has undertaken acts of performance are done in reliance on an oral contract, and manifest injustice or undue hardship would result if the contract were not enforced.

31. Please describe the two ways by which a purchase and sale agreement may create the seller's obligation to deliver a marketable title.

Expressly: ***the purchase and sale agreement provides express words requiring the seller to deliver a good marketable title.***

Impliedly: ***in the absence of an express requirement the law will presume that the seller is required to deliver a good marketable title unless the purchase and sale agreement expressly waives the requirement.***

32. A Seller and Buyer entered into an enforceable purchase and sale agreement in regard to a parcel of land, which set a closing date for May 1st. The agreement expressly required Seller to deliver a marketable title. The closing occurred as scheduled, and Seller delivered to Buyer a quitclaim deed. A week after the closing Buyer learned that Seller had placed a mortgage on the land that he had failed to discharge or reveal.

The Buyer has sued Seller upon a claim of breach of the Seller's duty to deliver a marketable title.

A. Who will prevail, Buyer or Seller?

B. Please explain the legal reasoning for your answer to Part A directly above.

A. Seller will prevail.

B. Under the "merger doctrine," the seller's obligation to deliver marketable or record title ends when the deed is delivered. At that point, the P & S dies, and the Seller is relieved of all obligations that the P & S does not expressly designate to survive delivery of the deed. It therefore is too late for Buyer to bring his action against Seller for breach of the obligation to deliver a marketable title.

33. Seller and Buyer entered into an enforceable purchase and sale agreement in which Seller agreed to sell a parcel of land with improvements to Buyer for $500,000. The agreement was silent about the seller's obligation to deliver marketable title. Prior to the closing, Buyer learned that Seller had granted a mortgage to a bank on the parcel. The payoff of the mortgage was $100,000. Buyer demanded that Seller come to the closing with a proper discharge executed by the bank that had made the mortgage loan. Seller responded that he intended to discharge the mortgage with the proceeds received from the closing and offered to put the proceeds of the sale into escrow until the mortgage was discharged. Buyer declined the offer and refused to close because Seller could not discharge the outstanding mortgage prior to delivering the deed.

Seller has sued the Buyer for specific performance, asserting that Buyer was required to accept his offer.

A. Who will prevail, Buyer or Seller?

B. Please explain the legal reasoning for your answer to Part A directly above.

A. Seller will prevail.

B. Unless a purchase and sale agreement expressly provides otherwise, a Seller is legally entitled to use the proceeds from the closing to discharge any outstanding encumbrances as long as the seller takes adequate steps

to protect the Buyer's interests in so doing. An escrow agreement is sufficient as long as there is sufficient equity in the property to cover the mortgage. Here, the Seller has taken adequate steps to protect Buyer's interest and therefore had the right to use the proceeds from the sale to discharge the mortgage.

34. Seller and Buyer entered into an enforceable purchase and sale agreement that was silent in regard to the quality of title that seller was to deliver. Nor did the purchase and sale agreement address the type of estate that Seller was required to deliver: fee simple absolute, etc. Buyer assumed that the deed he was to receive at closing would deliver a fee simple absolute, but the title exam came back showing that Seller only owned a life estate.

Seller has taken the position that Buyer is required to accept whatever title he has and has sued Buyer for specific performance because Buyer has provided notice that he is not purchasing the subject property.

A. Who will prevail, Buyer or Seller?

B. Please explain the legal reasoning for your answer to Part A directly above.

A. Buyer will prevail.

B. First, because the P & S is silent, the law imposes upon the Seller the obligation to deliver a marketable title; the fact of silence about title means there is no express waiver of Seller's implied obligation to deliver a marketable title. Second, unless the Seller's obligation to deliver a marketable title expressly waived, which it was not, a seller under an obligation to deliver marketable title must deliver a fee simple absolute; anything less than a fee simple absolute constitutes unmarketable title. Seller cannot deliver a fee simple absolute because he only owns a life estate. Buyer will prevail.

35. A seller who owned a single-family house on a beautiful ocean-front lot entered into a written, enforceable contract to sell the house to a buyer. The contract was silent as to the quality of title that the seller was to give. It also was silent on the topic of property damage prior to the closing. A week before the scheduled closing, a hurricane hit the area and the ocean-front house washed out to sea. The seller's homeowner's insurance policy did not cover damage by water and/or flooding.

The buyer refused to close, and the seller has brought an action for specific performance.

A. Who will prevail, Buyer or Seller?

B. Please explain the legal reasoning for your answer to Part A directly above.

A. The Seller will prevail.

B. As soon as the P&S is signed, "equitable conversion" occurs, and the risk of loss transfers from seller to buyer. The Buyer had incurred responsibility for the entire risk of loss due to damage or destruction and is required to purchase without any deduction from the purchase price.

36. Please provide the legal description of a "fixture."

A fixture is chattel (personal property) that has been affixed to real property, and thus is deemed by the law to have become real property.

37. Please describe the rule that applies to so-called "trade fixtures" in commercial landlord-tenant relationships.

At the end of a tenancy, a tenant is permitted to remove property it has attached to the premises for the purposes of carrying out its trade or business if: (a) the property can be removed without substantial damage, or (b) the tenant fully repairs any damage s/he causes by removing the property, or (c) the tenant fully reimburses the landlord for the cost of repairing any damage caused by the removal of the trade fixtures.

38. What is the "equity of redemption/right of redemption?"

The equity of redemption, sometimes called the right of redemption, is the right of the mortgagor to pay off the mortgage in order to prevent it from being foreclosed. The equity of redemption exists right up until the moment of foreclosure (i.e., the drop of the gavel), at which point the equity of redemption is foreclosed; the mortgagor no longer has a right to pay it off and "redeem" the mortgage.

39. An Owner of real estate in fee simple absolute leased the real estate to a Tenant for a term of five years. Then the Owner granted a mortgage to a Bank to secure a loan. Later, the Owner granted a second mortgage to a Mortgage Company to secure another loan. Thereafter, the Owner fell into financial difficulties and was unable to pay the mortgages. The Bank foreclosed on its mortgage and an Investor purchased at the foreclosure sale.

A. Which, if any, of the mentioned real estate interests will the Investor take subject to?

B. Please explain the legal reasoning for your answer to Part A directly above.

A. The lease to the Tenant.

B. The rule of priorities is "first in time, first in right." The Tenant has the greatest priority. A mortgage that is foreclosed – here, the Bank mortgage – is wiped out by the foreclosure, and all subordinate interests – the junior interests – are also terminated. This wipes out the Bank mortgage and Mortgage Company mortgage.

40. Brother and Sister owned an improved parcel of land as joint tenants. Without Brother's knowledge, Sister borrowed money from an individual and secured it with a mortgage on her interest in the joint tenancy. The mortgage was properly recorded.

One year later, Sister paid off the mortgage loan and properly recorded a discharge of the mortgage she had given to secure it. She never told Brother about the mortgage.

Two years after paying off the loan, Sister was died suddenly. Sister's will left all her real estate to the American Red Cross (ARC).

Brother claims he owns the property solely by right of survivorship. The ARC claims to have inherited Sister's one-half undivided interest through her will and has brought an action against Brother seeking a declaratory judgment that it is the owner of a one-half undivided interest in the parcel. Brother has defended by asserting that he is the sole owner of the parcel under the right of survivorship.

A. Who prevails in a jurisdiction that follows the "title theory" or mortgages?

B. Who prevails in a jurisdiction that follows the "lien theory" or mortgages?

C. Please explain your legal reasoning for your answers to Part A and Part B directly above.

A. ARC

B. Brother

C. Under the "title theory" of mortgages, the grant of a mortgage is considered a conveyance of title that severs a cotenancy. Severance of the cotenancy between Brother and Sister turn it into a tenancy in common and destroy the right of survivorship that had been present with the joint tenancy. Without the right of survivorship, the ARC will own a one-half undivided interest in the parcel.

But under the "lien theory" of mortgages, the grant of a mortgage is not a conveyance of title and does not sever the joint tenancy. The right of survivorship will survive the grant of the mortgage and Brother will be the sole owner.

41. Several years ago, a Man purchased a parcel of land, financing a large part of the purchase price by a loan from a Bank that was secured by a mortgage. The Man made the installment payments on the mortgage regularly until last year when the Man sold the property subject to the mortgage to a Woman. The Man and Woman expressly agreed that the Woman would "assume" the Man's mortgage obligation to the Bank.

The Woman took possession of the parcel and made several mortgage payments, which the Bank accepted, but soon fell well behind with the mortgage payments. The Bank foreclosed and has been left with a substantial deficiency, which it seeks to recover in an action against both the Man and the Woman.

A. Yes or no, will the Bank prevail against the Man?

B. Yes or no, will the Bank prevail against the Woman?

C. Please explain your legal reasoning for your answers to Part A and Part B directly above.

A. Yes, the Bank will prevail against the Man.

B. Yes, the Bank will prevail against the Woman.

C. The Bank will prevail against the Man because he is in privity of contract with the Bank on the note and because contract law holds the Man personally liable to the bank on the note, whether he has assigned the obligation to another or not.

The Bank will prevail against the Woman, but not under privity of contract on the note. This is because the Woman was not a party to the note and never agreed to pay it. But the woman agree to "assume" the mortgage to the Bank when she purchased the land, and the law holds that this is enough for her to become liable to the bank under the third-party beneficiary contract doctrine.

42. Please state the four (4) elements required to make a deed procedurally a valid instrument.

A deed must:

1. ***Properly identify the grantor and grantee;***

2. ***Sufficiently describe the land;***

3. ***Contain "granting" language, i.e., language showing an intent to transfer title; and***

4. Be signed by the grantor.

43. A Seller conveyed a parcel of land to a Buyer. The Seller's special warranty deed contained the covenant against encumbrances and the covenant of quiet enjoyment. Then, the Buyer conveyed the land to a Developer. Upon taking possession, the Developer learned that the Seller had placed an easement on the property and had never disclosed it. The owner of the easement has just started using it. The Developer has sued both the Buyer and Seller for breaching both the covenant against encumbrances and the covenant of quiet enjoyment.

A. Yes or no, will the Developer prevail against the Buyer on either of the covenants?

B. Yes or no, will the Developer prevail against the Seller on either of the covenants?

C. Please explain your legal reasoning for your answers to Part A and Part B directly above.

A. No, the Developer will not prevail against the Buyer.

B. Yes, the Developer will prevail against the Seller but only on the quiet of covenant enjoyment, which runs with the land and is enforceable by remote grantees.

C. Developer loses to Buyer because Buyer gave Developer a special warranty deed, which limits liability to problems created by Buyer himself. The easement was created by Buyer's predecessor, Seller, so Buyer is not liable under the special warranty deed. The Seller is liable to the Buyer on the covenant of quiet enjoyment but not on the covenant against encumbrances. Seller created the easement, so the special warranty deed does not insulate him from liability. The covenant of quiet enjoyment runs with the land, so it is enforceable by Developer, a remote grantee. But the covenant against encumbrances is a present covenant and does not run with the land, so it is not enforceable by Developer, a remote grantee.

44. A legally married Husband and Wife owned a parcel of land as tenants by the entirety. Without husband's knowledge, Wife borrowed $50,000 from an Investor and granted her a mortgage on the parcel to secure the loan. The Investor promptly recorded the mortgage. In the state in which the parcel of land was located, grants of mortgages provide the mortgagee with general warranty covenants; the grant of a mortgage is considered the same as a conveyance by general warranty deed. Rather than make the monthly mortgage payments to the Investor, the Wife sued the Husband for divorce. In the divorce settlement, the Husband transferred his interest in the parcel

of land to the Wife by a proper deed, which was delivered and recorded. Wife thus became the sole owner of the parcel.

Wife has not made a mortgage payment for the last 8 months and the Investor has commenced foreclosure proceedings. It is the Wife's position that the Investor cannot foreclose because the Wife owned as tenants by the entirety when she delivered the mortgage and lacked the ability to grant the mortgage to the Investor without the Husband's participation. Wife claims that the investor has no mortgage to foreclose.

A. Yes or no, is the Wife correct in asserting that the Investor cannot foreclose the mortgage?

B. Please explain the legal reasoning for your answer to Part A directly above.

   A. No, the Wife is not correct; the Investor can foreclose.

   B. Wife is correct that she had no power to grant a mortgage to Investor without the Husband's participation and that, as an initial matter, the Investor received no mortgage interest. What the Wife fails to account for, however, is the estoppel by deed doctrine. The estoppel by deed doctrine will apply when: (a) a grantor purports to convey a title s/he does not own, (b) by a general warranty deed, and (3) later acquires the title s/he was lacking at the time of the conveyance. In such circumstances, the grantor will be estopped from asserting that s/he lacked title at the time of the conveyance and the grantee shall be deemed to have acquired the title by the delivered deed. The fact pattern makes clear that each of these elements was satisfied and the Wife will be estopped from claiming that she did not have power to grant the mortgage to Investor.

45. A Seller sold a parcel of land to a Buyer. The Buyer did not initially record. After discovering that Buyer did not record, Seller sole the same parcel to a Purchaser. The Purchaser did not initially record. One month after accepting the deed, the Purchaser got around to recording his deed. Two weeks after that, the Buyer recorded her deed.

The jurisdiction in which the parcel is located has a recording statute that states:

> No conveyance of an interest in real estate, or a mortgage secured by an interest in real estate, shall be valid against a subsequent interest in real estate, or a mortgage secured by an interest in real estate, established by or for a purchaser or mortgagee who pays value therefor, unless said prior conveyance or mortgage be recorded, or unless such subsequent purchaser or mortgagee otherwise has notice of said prior real estate interest or mortgage.

A. What type of recording statute is the above-quoted law, pure notice, race-notice, or pure race?

B. Who will prevail in a legal action asserting ultimate ownership of the parcel, Buyer or Purchaser?

C. Please explain your legal reasoning for your answers to Part A and Part B directly above.

A. Pure Notice.

B. Purchaser.

C. The statute is a pure notice statute because (1) there is BFP language: "pays value therefor," and "unless such subsequent purchaser or mortgagee otherwise has <u>notice</u> of said prior real estate interest or mortgage." (Emphasis added.) Buyer is the first grantee and Purchaser is the second/subsequent grantee; a notice statute looks to protect the subsequent grantee and punish the first grantee who fails to record. Because the recording statute is a pure notice statute, Purchaser, the subsequent grantee, does not have to record to be protected; the moment Seller delivers the deed to him he won.

46. A Seller sold a parcel of land to a Buyer. The Buyer did not initially record. After discovering that Buyer did not record, Seller sole the same parcel to a Purchaser. The Purchaser did not initially record. One month after accepting the deed, the Purchaser got around to recording his deed. Two weeks after that, the Buyer recorded her deed.

The jurisdiction in which the parcel is located has a recording statute that states:

> No prior interest in real estate of any type shall be valid against a subsequent real estate interest that a subsequent grantee purports to attach to said real estate if the subsequent grantee pays value, lacks notice of the prior interest, and first records the subsequent real estate interest, unless said prior real estate interest be properly recorded.

A. What type of recording statute is the above-quoted law, pure notice, race-notice, or pure race?

B. Who will prevail in a legal action asserting ultimate ownership of the parcel, Buyer or Purchaser?

C. Please explain your legal reasoning for your answers to Part A and Part B directly above.

A. Race-Notice.

B. ***Purchaser.***

C. ***The statute is a race notice statute because (1) there is BFP language: "pays value," and "lacks notice." Buyer is the first grantee and Purchaser is the second/subsequent grantee; a notice statute looks to protect the subsequent grantee and punish the first grantee who fails to record. Because the recording statute is a race notice statute, Purchaser, the subsequent grantee, must record before the prior grantee does in order to be protected. Here, the Purchaser did first record and prevails over Buyer, who did not record until after the Purchaser did.***

47. An Owner owned a lot of land whose southern boundary was contiguous to the northern boundary of Main Street, a public road (the southern lot). The Owner employed a driveway on her property to gain access to and from Main Street. A Neighbor owned a lot just north of, and contiguous to, Owner's land. The Neighbor's lot bordered Elm Street on its northernmost boundary (the northern lot). The Neighbor used a driveway on his land to gain access to and from Elm Street. The northern lot provided no other access to any public road other than Elm Street.

Last year, the City in which the northern and southern lots were located converted Elm Street into a "greenway," blocking access onto Elm Street from lots on its southern border, including the northern lot owned by Neighbor. The northern lot became land-locked and Neighbor had no means of ingress and egress to and from the northern lot.

Neighbor recently brought an action against Owner in an attempt to gain access via the southern lot to Main Street, the only public road in the area.

A. Who will prevail in that action, Neighbor or Owner?

B. Please explain the legal reasoning for your answer to Part A directly above.

A. ***Owner will prevail.***

B. ***Neighbor is attempting to create an easement by implication or an easement by necessity. The easement by necessity requires: (1) one person owning a larger lot, which s/he subdivides into two or more smaller lots and sells one of them to another; (2) a quasi-easement; (3) a quasi-dominant estate; (4) a quasi-servient estate; and (5) a reasonable necessity. An easement by necessity requires: (1) (1) one person owning a larger lot, which s/he subdivides into two or more smaller lots and sells one of them to another; and (2) a strict (or absolute) necessity.***

The facts do not state that the southern and northern lots were ever owned by one person and subsequently subdivided into two smaller lots. Accordingly, the first element was absent for both the easement by

implication or easement by necessity and Neighbor will lose in attempting to get a court to declare that either exists.

48. An Owner of a lumber yard granted a written easement to a Utility, giving Utility the right to construct an underground gas line across the lumber yard in order to serve other properties in the area. Utility installed the electrical line as allowed by the easement. For 25 years, neither Owner nor Utility made any repairs or maintained the line. Lack of maintenance eventually caused the gas line to rupture release gas and start a fire on Owner's property, which devastated the lumber yard.

A. Yes or no, is the Utility liable to the Owner for damage done to the lumber yard?

B. Please explain the legal reasoning for your answer to Part A directly above.

A. Yes, the Utility is liable.

B. The owner of the dominate maintains the duty of care to maintain and repair easements which benefit the dominate estate. The standard of care is negligence: the Utility must exercise the amount of care and caution that an ordinary person would use in the same situation. An excellent argument exists that the Utility's malfeasance in ignoring the easement and failing to maintain and repair it constituted a breach of this reasonable person standard.

49. A businesswoman owned two adjoining tracts of land, one that was improved with a commercial rental building and another that was vacant and abutted a river. Twenty years ago, the businesswoman conveyed the vacant tract to a grantee by a warranty deed. The deed contained a covenant by the grantee as owner of the vacant tract that neither he nor his heirs or assigns would make any improvements on the tract "other than for the purpose of use as a single-family residence." The grantee promptly and properly recorded the deed.

Last year, the businesswoman conveyed the improved tract to a businessman. A month later, the grantee died, devising all of his property, including the vacant land, to his cousin.

Six weeks ago, the cousin began construction of a building on the vacant tract that was to be used for the purpose of a retail pizza parlor.

The businessman objected and sued to enjoin construction of the building.

A. Who will prevail in that action, the businessman or cousin?

B. Please explain the legal reasoning for your answer to Part A directly above.

A. The businessman.

B. ***The businesswoman and the grantee created a valid equitable servitude. The promise was in a writing—the deed—that satisfied the statute of frauds. The covenant was recorded, showing that the businesswoman intended that it run with the land. The express words also showed an intent that the promise would be binding on the grantee's heirs and assigns. The promise restricting the use of the vacant land touched and concerned the land, placing a burden on the vacant tract and giving a benefit to the improved tract. The cousin had constructive notice of the equitable servitude and is bound by it because nothing has occurred that would terminate the equitable servitude.***

50. Several farmers in a drought-ridden state jointly decided to sell their land to a developer, negotiating a good price and extracting a promise from the developer to build only upscale ranch-style homes on lots no smaller than ten acres each. After the sale was consummated, the developer proceeded to develop and sell large homes on the lots, including in each deed a restrictive covenant by which the grantee promised to build houses of a certain size and not to subdivide his or her parcel.

Before the developer had completed constructing homes on all of the lots, his son offered to purchase the last five ten-acre lots unimproved. The developer sold the last lots to the son subject to the same restrictive covenant as was contained in the other deeds. The son immediately resold the lots to his father's construction company. His deed did not contain the restrictive covenant. The construction company then sought and obtained a zoning change and construction permit for the development of 200 condominiums on small lots to be subdivided from the original five lots.

A homeowner who was one of the first purchasers of a home from the developer, brought an action against the construction company to prevent the subdivision as a violation of the restrictive covenant.

A. Who is likely to prevail in that action, the homeowner or construction company?

B. Please explain the legal reasoning for your answer to Part A directly above.

A. ***The homeowner.***

B. ***This was a question I presented in the last class with an answer. The finder of fact is likely to find that the pattern of placing restrictive covenants in the prior deeds created a common development scheme and the recording of those deeds placed the common development scheme in the chain of title and, therefore, bound subsequent grantees. The farmers thus created a uniform development scheme which can be enforced by any of the owners of property within the scheme. Homeowner was an owner of property within the scheme.***

PROPERTY
FINAL EXAMINATION
Peter M. Malaguti
Fall 2020

YOUR STUDENT ID # (Five – 5- Digits)

____

INSTRUCTIONS:

This is a closed book exam. You may use a notepad or scrap paper but are not allowed to use notes or other materials that would infringe the integrity of this being a closed book exam. An Honor Code follows that you must accept to take this exam.

You must take this exam on TWEN and submit it between Monday, May 11, 2020 at 4 p.m. and Tuesday, May 12, 2020 at 4 p.m. You will have 3 and 1/2 hours for "Standard Time" takers, 5 hours and 15 minutes for "1.5 X" takers, and 7 hours for "Double Time" takers. Once you get past the honor code and open the exam, a time and date stamp will note your starting time. Another time and date stamp will enter when you upload it to TWEN. The time and date stamps must show that you have completed your exam within the time allotted depending on whether you are a "Standard," "1.5 X," or "Double Time" taker.

You may choose to type your answers in on this exam booklet, right after the questions. If you choose to do this, please embolden your answers so I can easily distinguish them from the questions.

You may choose to type your answers on a separate Word document. If you choose this method, please ensure that you maintain the proper numbering sequence so I can determine which questions you are answering.

You may choose to write your answers, scan them, and then upload the answers to TWEN. If you do so, please ensure that all pages are scanned in proper order and that you maintain the proper numbering sequence. Please also ensure that your scanned answers are readable.

Regardless of how you choose to answer, please begin by placing your Student ID at the beginning of your answers. Please do not identify yourself in any way other than by student identification number. Please do not write any information in this exam booklet that might reveal who you are. Revealing your identification is a breach of the honor code.

Please use multistate law.

This examination consists of three (3) parts:

<ins>Part One</ins> is the “Short Answer” section. The suggested time is two (2) hours for standard time, three (3) hours for 1.5 X time, and four (4) hours for double time. <ins>Part Two</ins>, the “Essay” section,

has one (1) essay question. The suggested time is 30 minutes (1/2 hour) for standard time, 45 minutes (3/4 hour) for 1.5 X time, and one (1) hour for double time. Part Three, the “Multiple Choice” section has five (5) multiple choice questions. The suggested time is 30 minutes (1/2 hour) for standard time, 45 minutes (3/4 hour) for 1.5 X time, and one (1) hour for double time. Part Three, the “Multiple Choice” section has five (5) multiple choice questions. You will note that, although the suggested time for standard time takers is a total of three hours, I have given and additional half hour to account for downloading and uploading time and the like.

Here are the instructions for each part. These will each be repeated at the beginning of each part.

PART ONE – SHORT ANSWER SECTION
Suggested Time: Two Hours (120 Minutes) for Standard Time

Instructions: *Below are 40 numbered questions that mostly provide short scenarios followed by short answer questions. Many of the numbered questions have subparts. Most of the questions require answers of just one word, or only a few words. When I am seeking longer answers, I will tell you the limit of number of typed lines you may write: one line, two lines, or three lines. Do not exceed the number of lines I state, even if by just a little bit. You have plenty of space to give the type of answers I am looking for.*

You willl have ample time to answer all the questions if you have adequately learned and studied the rules of law and legal analysis we have applied in class. Use your time effectively. Don’t hurry but work steadily and as quickly as you can without sacrificing your accuracy. If a question seems too difficult, go on to the next one and try to come back later if you have time.

PART TWO – ONE ESSAY QUESTION
Suggested Time: One-Half Hour (30 Minutes) for Standard Time

Instructions: *The essay is fairly short fact pattern. Read the fact situation very carefully and do not assume facts that are not given in the question. Do not assume that each question covers only a single area of the law; some of the questions may cover more than one of the areas you are responsible for knowing.*

Demonstrate your ability to reason and analyze. Each of your answers should show an understanding of the facts, a recognition of the issues included, a knowledge of the applicable principles of law, and the reasoning by which you arrive at your conclusions. The value of your answer depends not as much upon your conclusions as upon the presence and quality of the elements mentioned above.

Clarity and conciseness are important but make your answer complete. Do not volunteer irrelevant or immaterial information.

PART THREE – “MBE” STYLE MULTIPLE CHOICE QUESTIONS WITH EXPLANATIONS
Suggested Time: One-Half Hour (30 Minutes) for Standard Time

Instructions: Below are five (5) multiple-choice questions. You are to designate only one answer for each, which should be the “best” answer.

For the purposes of security, the exam answers of all students will be checked against each other to ensure that students are not sharing answers completed remotely. Evidence of the discovery of shared answers will be forwarded to the administration for appropriate discipline.

When you have finished your exam, please upload it through TWEN. You must upload within the time you have to take the exam depending whether you are a standard, 1.5 X, or double time taker.

If, and only if, you believe that your upload to TWEN did not work you are to IMMEDIATELY email your answers to Professor Harayda at harayda@mslaw.edu. This should be done within the time limit of the exam. I will not accept submissions emailed to Professor Harayda well after your time has expired. Again, please email to Professor Harayda only if you have good reason to believe that it did not go through properly.

The Student Honor Pledge is immediately below.

Good luck!

STUDENT HONOR PLEDGE

In taking this examination, I hereby affirm, represent and acknowledge, both to the professor and the Massachusetts School of Law community that:

1. I will not give or receive any unauthorized assistance on this examination to or from any other student, professor, attorney, or any other third person;

2. I understand that this is a closed-book examination. I am allowed to use a notepad or loose paper during the exam for the purpose of making outlines, jotting down ideas, diagramming fact patterns, or otherwise as is customarily examination “scrap.” I affirm that the notepad or loose paper will be blank when the exam begins. I affirm that, in addition to this “scrap” and the examination booklet itself, I am not permitted to use papers, personal effects, electronic devices, or any other matter that could provide unauthorized assistance in completing this examination, create any unfair advantage, or otherwise frustrate the honest administration of this examination as a closed-book examination;

3. Except for the device on which I am taking this exam, the exam booklet itself, and the “scrap” as described above, I have placed all other electronic devices, papers, personal effects, and other matter outside of my reach and beyond my control for the duration of the exam;

4. Realizing that some of my colleagues with exam conflicts may not be taking the exam at the same time that I am, I will not speak to or communicate with any other person taking this exam until the entire exam period for the Spring 2020 semester is completed at the end of the day on May 22, 2020;

5. I will not identify myself in any way or frustrate the anonymous grading of this exam;
6. I will faithfully follow any additional instructions the professor has provided right up to the time I begin the exam;
7. Other than instructions that the professor may have given out in advance, I have heard nothing about the specific contents of this examination prior to the moment of agreeing to this Honor Code;
8. I understand and acknowledge that MSLAW's honor code requires me to report evidence of violations of these provisions, as well as violations of the general MSLAW Honor Code, by any other student.

Signed under the pains and penalties of perjury.

The exam begins on the next page.

PART ONE – SHORT ANSWER SECTION
Suggested Time: Two Hours (120 Minutes)

Instructions: *Below are 40 numbered questions that mostly provide short scenarios followed by short answer questions. Many of the numbered questions have subparts. Most of the questions require answers of just one word, or only a few words. When I am seeking longer answers, I will tell you the limit of number of typed lines you may write: one line, two lines, or three lines. Do not exceed the number of lines I state, even if by just a little bit. You have plenty of space to give the type of answers I am looking for.*

You will have ample time to answer all the questions if you have adequately learned and studied the rules of law and legal analysis we have applied in class. Use your time effectively. Don't hurry but work steadily and as quickly as you can without sacrificing your accuracy. If a question seems too difficult, go on to the next one and try to come back later if you have time.

QUESTIONS

1. One winter's eve, Adam planned to meet Julia for dinner at their favorite restaurant. Adam pulled his automobile to the front of the restaurant and handed his keys to a valet, who charged him $20 for the valet parking service and gave Adam a claim ticket. Adam then walked into the restaurant.

   What was the legal relationship between Adam and the valet after Adam gave the valet control of his automobile?

2. After entering the restaurant, Adam went to the coat check station and handed his winter coat to the coat check clerk for checking. The coat check clerk gave Adam a claim check. There was no charge for the coat check service.

   What was the legal relationship between Adam and the coat check clerk/restaurant after Adam handed his winter jacket to the coat check clerk?

3. After handing over his coat, Adam walked to the table reserved for him. Julia was already there. Adam placed the claim check on the table, where it remained while Adam and Julia had dinner. After dinner, both Adam and Julia went to the restroom to wash up, leaving the claim check on the table. A man picked up the claim check, presented it at the coat check station, and walked off with Adam's winter coat. Adam has sued the coat check clerk/restaurant for the value of the coat.

A. At common law, what was the standard of care that the coat check clerk/restaurant owed Adam for delivering Adam's coat to the wrong person.

B. Under modern law, what is the standard of care that the coat check clerk/restaurant owed Adam for delivering Adam's coat to the wrong person.

4. After learning that his coat had been misdelivered, Adam went outside to pick up his automobile from the parking valet. When the valet arrived with the car, Adam observed that it have been involved in a crash; part of the front end was caved in as if the car had hit a telephone pole. Adam has sued the valet service for the damage.

   A. At common law, what was the standard of care that the parking valet service owed Adam in regard to the care of his automobile.

   B. Under the modern law, what is the standard of care that the parking valet service owed Adam in regard to the care of his automobile.

5. One night, Shana and Alice were playing slot machines next to each other at a casino. When Shana left her slot machine to use the restroom, Alice took Shana's TITO out of the slot machine that Shana had been playing and put it into her purse. TITOs are cards with a memory that are loaded with the user's initial deposit and then keep track of the amounts added to or deducted from the account, depending on whether the user wins or loses. On this evening, Shana was winning; she had nearly $10,000 on the TITO. When Alice returned, she saw that her TITO was not in the machine and reported this to casino authorities. Eventually, the casino's surveillance cameras revealed that Alice had taken Shana's TITO and Alice was charged with larceny.

   Alice has defended by claiming that, when she took it, the status of the TITO was such that she could not be deemed a thief.

   Please consider the following statuses of personal property and state which ONE provides her BEST defense to the larceny charge. Was the property: lost / mislaid / abandoned / treasure trove / embedded:

6. Assume that Alice did steal Shana's TITO but did not get caught. As Alice was going up to her hotel room for the night, she reached into her purse to get the room key. Although Alice did not notice, Shana's TITO fell out of the purse and onto the floor of the hotel corridor. Later on, Tim, another hotel guest, noticed the TITO on the floor, picked it up and walked away. Alice

quickly discovered that Tim had the TITO in question and has demanded it back.

A. True or false, Tim is legally required to return the TITO to Alice?

B. In no more than one (1) typed line, please state the legal reason for your conclusion in answering Question 6.A.

7. Assume that Shana has learned that Alice and Tim are suing each other over ownership to the TITO and has intervened in the suit.

A. As between Tim, Alice and Shana, who has greatest rights to the TITO?

B. In no more than one (1) typed line, please state the legal reason for your conclusion in answering Question 7.A.

8. Alfonse entered a parcel of land, thinking it was his own, and established a 20' by 20' garden, visible for all to see. But it was not Alfonse's garden; it was Jacob's garden. Alfonse maintained the garden for well over the applicable statute of limitations for adverse possession.

A. Yes or No, did Alfonse satisfy the "hostility" element of adverse possession?

B. In no more than three (3) typed lines, please state the legal reason for your conclusion in answering Question 8.A.

9. Abraham commenced adversely possessing Ulysses' land in 1989. At the time, Ulysses was legally insane. Ulysses died in 2015; Mary, his great niece and sole heir, inherited Ulysses' land. At the time, Mary was only 11.

What is the last year in which Mary may bring an action to eject Abraham from his adverse possession if Abraham continues to possess adversely?

10. Wilma and Betty were sisters. They owned a parcel of land together as tenants in common. At first, they lived together in the house on the land. Eventually, Betty got a job in Europe, where she lived for over 25 years. During that time period, Wilma paid all the taxes, insurance, maintenance and upkeep costs of the land. Wilma also made some major improvements on the real estate. Finally, Wilma possessed the parcel openly for all to see. While in Europe, Betty made no financial or other contributions toward upkeep or improvements of the land. Not once did Betty come back to stay on the land during the time she was employed in Europe.

Betty has just retired and wants to move back to the property. Wilma has filed an action seeking a declaratory judgment that Betty cannot move back to the land because Wilma has acquired title against her by adverse possession. Without assuming any facts not stated in the fact pattern, if Betty prevails in that action, it will be because which of the five (5) elements of adverse possession is missing?

11. Forty (40) years ago, Atreus died, leaving by will an improved residential parcel of land "to Agamemnon for life, and then to Electra and her heirs." Twenty-five (25) years ago, Clytemnestra began possessing the parcel, meeting all elements of adverse possession. Five years ago, Clytemnestra obtained title by adverse possession. Agamemnon has just died.

    A. While Agamemnon was still alive, did Electra have the legal authority to bring an ejection action against Clytemnestra? (Answer "Yes" or "No".)

    B. What specific estate in land did Clytemnestra obtain title to?

    C. What is the legal status of Clytemnestra upon the death of Agamemnon?

12. O conveyed a parcel of land "to A and her heirs." After O delivered the deed:

    A. What specific estate did A own?

    B. What specific estate did A's heirs own?

13. O conveyed a parcel of land "to A and her heirs as long as the property is not used for commercial purposes." After O delivered the deed:

    A. What specific estate did A own?

    B. Yes or no, did anyone own a future interest?

    C. If so, who owned a future interest?

    D. If so, what specific future interest did s/he own?

14. O conveyed a parcel of land "to A and her heirs but if the property is used for nonresidential purposes, O may reenter and repossess." After O delivered the deed:

    A. What specific estate did A own?

    B. What specific estate did O own?

15. O conveyed a parcel of land “to A and her heirs but if the property is not used for residential purposes during A’s lifetime, to B and his heirs. After O delivered the deed:

    A. What specific estate did A own?

    B. What specific estate did B own?

    C. What specific estate did O own?

16. O conveyed a parcel of land “to A for life and then to B and his heirs.” After O delivered the deed:

    A. What specific estate did A own?

    B. What specific estate did B own?

    C. What specific estate did O own?

17. O conveyed a parcel of land “to A for 10 years, and then to B for 10 years, and then to C and her heirs.” After O delivered the deed:

    A. What specific estate did A own?

    B. What specific estate did B own?

    C. What specific estate did C own?

    D. What specific estate did O own?

18. O conveyed a parcel of land “to A for life and then to B and her heirs provided that B has passed the Massachusetts bar exam. After O delivered the deed:

    A. What specific estate did A own?

    B. What specific estate did B own?

    C. What specific estate did O own?

19. O conveyed a parcel of land “to A for life and then to the children of B.” At the time of the grant, B was alive and had one child: D. After O delivered the deed:

A. What specific estate did A own?

B. What specific estate did B own?

C. What specific estate did D own?

D. What specific estate did O own?

20. Please mark "Yes" for each of the following contingent future interests that violate the rule against perpetuities and "No" for each that does not. Please do not provide any explanations:

A. "To A and his heirs, but if the property is not used for church purposes to B and her heirs." Does B's interest violate the rule against perpetuities?

B. "To A and his heirs, but if the property is not used for church purposes during A's lifetime to B and her heirs." Does B's interest violate the rule against perpetuities?

C. "To A for 99 years, and then to B and her heirs." At the time of the grant, both A and B are 40-years old. Does B's interest violate the rule against perpetuities?

D. Widower owned a farm in fee simple absolute. By will, he devised the farm "to my beloved aunt for life, then to my children for their lives, and then to such of my grandchildren who shall reach the age of 21, whenever they may be born." When Widower died, he had two children and five grandchildren, all of whom were under the age of 21, and his surviving aunt. Does the interest in Widower's grandchildren violate the rule against perpetuities?

E. Widower owned a farm in fee simple absolute. By deed, he conveyed the farm "to my beloved aunt for life, then to my children for their lives, and then to such of my grandchildren who shall reach the age of 21, whenever they may be born." When Widower died, he had two children and five grandchildren, all of whom were under the age of 21, and his surviving aunt. Does the interest in Widower's grandchildren violate the rule against perpetuities?

21. Please state the specific concurrent estate the cotenants own in each of the following grants. Please do not provide any explanations:

A. O conveys by deed "to A and B with rights of survivorship." A and B are siblings.

B. O conveys by deed "to A and B as joint tenants."

C. O conveys by deed "to A and B jointly."

D. O conveys by deed "to A and B."

E. O conveys by deed "to A and B as tenants by the entirety." At the time of the grant, A and B were engaged and due to marry each other the following week.

F. O conveyed by deed "to A and B as tenants by the entirety." At the time of the grant, A and B were engaged and due to marry each other the following week. One week later, A and B indeed got married. "True" or "False," upon their marriage they owned the property as tenants by the entirety.

G. O conveys by deed "to A and B as tenants in common." At the time of the grant A and B were legally married to each other.

22. A and B owned a parcel of land as joint tenants. Without informing B, A borrowed money from a bank and granted a mortgage on the parcel of land to secure it. The bank believed that A was the sole owner of the parcel and that the mortgage was secured by the entire ownership of the parcel. The state in which the parcel was located followed the so-called "lien theory" of mortgages. One year later, A died. The bank recently demanded that B pay off the outstanding balance of the mortgage and has threatened to commence foreclosure proceedings if B does not.

    A. "Yes" or "No," is the bank legally entitled to foreclose the mortgage?

    B. In no more than three (3) typed sentences, please explain why the bank is or is not entitled to foreclose the mortgage.

23. O conveyed a parcel of land "to A, B, C, and D as joint tenants with rights of survivorship."

    A. What fractional share does each of the cotenants – A, B, C, and D – own?

    B. One year later, A sold his interest to E. Immediately after the sale, please state the specific concurrent estates between the specific cotenants, as well as their fractional shares.

C. One year after that, C died. At her death, C had a will that left her real estate to her daughter. Immediately after C's death, please state the specific concurrent estates between the specific cotenants, as well as their fractional shares.

D. One year after that, D died. Immediately after D's death, please state the specific concurrent estates between the specific cotenants, as well as their fractional shares.

24. Please state which non-freehold estate (landlord-tenant relationship) each of the following situations creates. Please be as specific as possible. Please do not provide any explanations for your answers:

A. T needed a place to stay for only 15 days. On March 27th he met with L and inspected an apartment L owned. The two agreed that T would lease the apartment from April 1st until April 15th. L and T did not memorialize their agreement in writing.

B. L and T agreed that T would rent an apartment from L from April 1st until either party gives written notice terminating the tenancy. T did not show up on April 1st and never took occupancy of the apartment.

C. L and T agreed that T would rent an apartment from L from April 1st until either party gives written notice terminating the tenancy. This time, T did show up on April 1st and did take occupancy of the apartment.

D. L and T agreed that T would rent an apartment from L from January 1st to December 31st at a rent of "$24,000, payable in twelve (12) monthly installments of $2,000 on or before the first day of each month. T did not leave on December 31st when the tenancy ended. Ten days after the tenancy ended, T gave L a check for $2,000, which L endorsed and deposited. What tenancy, if any, did the parties have when L endorsed and deposited the check?

25. L and T entered into a 10-year written enforceable lease for commercial space. The lease states that T cannot assign or sublease the tenancy without the express written permission of L. In each of the following situations, please assume that L is bringing a breach of lease action for failure to pay rent:

A. One year after the execution of the lease, T_1 asked for permission to assign the tenancy to T_2 and landlord agreed in writing. T_2 then took over occupancy. At some point T_2 fell behind in rent.

i. Would T_1 be liable to L for the rent that T_2 had failed to pay? ("Yes" or "No")

ii. In no more than one (1) typed line, give the legal justification for the answer you stated immediately above.

iii. Would T_2 be liable to L for the rent T_2 had failed to pay? ("Yes" or "No")

iv. In no more than one (1) typed line, give the legal justification for the answer you stated immediately above.

B. T_2 eventually paid the back rent. Two years into the lease T_2 assigned to T_3 without notifying L or obtaining her permission.

i. Was T_2 legally justified to assign to T_3 without L's permission? ("Yes" or "No")

ii. In no more than one (1) typed line, give the legal justification for the answer you stated immediately above.

C. Shortly after T_2 assigned to T_3, T_3 fell behind in the rent.

i. Would T_1 still be liable to L for the rent that T_3 had failed to pay? ("Yes" or "No")

ii. In no more than one (1) typed line, give the legal justification for the answer you stated immediately above.

iii. Would T_2 be liable to L for the rent T_3 had failed to pay? ("Yes" or "No")

iv. In no more than one (1) typed line, give the legal justification for the answer you stated immediately above.

v. Would T_3 be liable to L for the rent T_3 had failed to pay? ("Yes" or "No")

vi. In no more than one (1) typed line, give the legal justification for the answer you stated immediately above.

D. T_3 eventually paid the back rent. One year after the assignment from T_2 to T_3, T_3 subleased to T_4 for a term of one year. Shortly thereafter, T_4 stopped paying rent.

i. Would T_1 still be liable to L for the rent that T_4 had failed to pay? ("Yes" or "No")

ii. In no more than one (1) typed line, give the legal justification for the answer you stated immediately above.

iii. Would T_2 be liable to L for the rent T_4 had failed to pay? ("Yes" or "No")

iv. In no more than one (1) typed line, give the legal justification for the answer you stated immediately above.

v. Would T_3 be liable to L for the rent T_3 had failed to pay? ("Yes" or "No")

vi. In no more than one (1) typed line, give the legal justification for the answer you stated immediately above.

v. Would T_4 be liable to L for the rent T_4 had failed to pay? ("Yes" or "No")

vi. In no more than one (1) typed line, give the legal justification for the answer you stated immediately above.

26. A seller and buyer entered into a written enforceable purchase and sales agreement regarding a particular parcel of real estate that was silent about the quality of title the seller was obligated to deliver. In addition to these facts, each of the subparts below will ask you to make specific factual assumptions that only apply to the specific subpart you are considering, and not to the subparts you are not considering at the moment.

A. The buyer's title examination report has revealed that there is an outstanding mortgage in the amount of $125,000 encumbering the parcel of land.

i. Assume that seller has taken the position that he does not have to arrange to discharge the mortgage because the purchase and sale agreement did not require him to deliver a good "record" title. "Yes" or "No," is the seller correct that he is not legally obligated to deliver the buyer a good "record" title?

ii. Assume that seller has taken the position that he does not have to arrange to discharge the mortgage because the purchase and sale agreement did not require him to deliver "marketable" title. "Yes" or "No," is the seller correct that he is not legally obligated to deliver the buyer "marketable" title?

iii. Regardless of your answer above, assume for this question that the seller is obligated to deliver a marketable title. "Yes" or "No," will the undischarged mortgage create unmarketable title?

B. For this question, please assume that the purchase and sale agreement was silent as to the specific type of estate the seller was to deliver to the buyer. Also assume that the purchase and sale agreement expressly required the seller to deliver a marketable title to the buyer. Finally, assume that the buyer's title examination report disclosed two things: (1) there were no outstanding mortgages or other encumbrances, and (2) that the seller only owned a fee simple subject to a condition subsequent. The buyer had assumed she was receiving a fee simple absolute and would like to back out of the transaction. She has demanded a return of her deposit. The seller has taken the position that he has no duty to deliver a fee simple absolute because the purchase and sale agreement did not require him to do so. He insists that he will keep the buyer's deposit if she refuses to pay the full purchase price and accept delivery of a deed. "Yes" or "No," is the seller correct that he is not legally obligated to deliver a fee simple absolute to the buyer?

C. For this question, please assume that the purchase and sale agreement expressly required the seller to deliver marketable title. Also assume three additional things: (1) although the buyer's attorney represented to the buyer that he did a title search and that the title was clean, the buyer's attorney actually had not done a title search, (2) when the seller delivered a deed to the buyer at the closing, the buyer was unaware that there was an outstanding mortgage of record in the amount of $125,000, and (3) when the buyer found out about the mortgage two weeks after the closing, she brought an action against the seller for breach of his duty to deliver a marketable title. "Yes" or "No," will the buyer prevail in her action.

27. On October 13th, a seller and buyer entered into an enforceable written purchase and sale agreement regarding a particular parcel of real estate with a residence built upon it. The purchase and sales agreement was silent about the quality of title the seller was obligated to deliver. The agreement called for a closing date of November 30th. The agreed purchase price was $625,000.

The buyer paid a deposit of $125,000 and applied for a purchase money mortgage for the remainder of the purchase price.

On November 20th, during a bad storm a lightning bolt struck the residence and burned it to the ground. The buyer asked for a return of his deposit. The seller responded by stating that the buyer was required to pay the entire purchase price of $625,000 on November 30th and that, if the buyer did not attend the closing and pay the full price, the seller would keep the deposit as damages for breach of the purchase and sale agreement.

A. Yes" or "No," will the seller be legally entitled to keep the deposit as damages if the buyer does not attend the closing on November 30th, accept the deed, and pay the full purchase price?

B. In no more than three typed lines, please provide the legal justification for your answer directly above.

28. A seller delivered a deed to a buyer that intended to convey title to a parcel of land with a home on it located at 323 Murdock Road, Wausau, Marathon County, Wisconsin. The deed stated the full and proper name of the seller, full and proper name of the buyer, and was signed by the seller and notarized. The deed stated that the seller "hereby grants" the parcel to the buyer "with warranty covenants." The deed described the property as "323 Murdock Road, Marathon County, Wisconsin."

    A. Yes" or "No," did the deed from seller to buyer convey a proper title to the buyer?

    B. In no more than three typed lines, please provide the legal justification for your answer directly above.

29. A grantor drafted a deed that stated that conveyed title to a parcel of real estate to a grantee. It was meant to be a gift. The grantor signed the deed and had it notarized. The deed was proper in form, but the grantor could not deliver the deed to the grantee directly because the grantee was serving in the Peace Corps in the Ukraine. The grantor asked her attorney to record the deed in the appropriate Registry of Deeds, which the attorney did.

    Shortly thereafter, the grantor died. The grantor's estate now claims that the grantor owned the property at his death and that it passed to his heirs through intestate distribution. The grantee claims that the deed properly transferred title to him.

A. Assuming no additional facts, who will prevail, the grantor's estate or the grantee?

B. In no more than three typed lines, please provide the legal justification for your answer directly above.

30. Which of the following deeds grants the greatest protection to a grantee: the special warranty deed, the general warranty deed, or the quitclaim deed?

31. An owner of a parcel of land in fee simple absolute granted an easement on the property to a neighbor that allowed the neighbor a 100' wide easement to drive commercial vehicles over his land. The owner did not mind the fact that the neighbor allowed large semi-unit trucks to drive over the land. Some time later, the owner sold the parcel to a buyer for $325,000. The deed was a special warranty deed and contained the covenant against encumbrances and covenant of quiet enjoyment.

    The buyer was a "flipper" who never moved onto the property. Instead, he quickly sold it to an investor. Although the developer intended to develop the property for commercial use, he ended up lacking the financial ability to do so. The buyer then sold the land to a developer by a special warranty deed. The deed contained the covenant against encumbrances and the covenant of quiet enjoyment.

    The developer learned of the easement and was unable to develop the property because it rendered its value nearly worthless. The developer has sued both the owner and developer for breach of deed covenants. Neither claim is past the statute of limitations.

    A. "Yes" or No," will the developer prevail against the buyer?

    B. In no more than three typed lines, please provide the legal justification for your answer directly above.

    C. "Yes" or No," will the developer prevail against the owner?

    D. In no more than three typed lines, please provide the legal justification for your answer directly above.

32. An owner of real estate delivered a deed to a buyer of a parcel of land "to husband and wife, as tenants by the entirely." The husband and wife were legally married to each other. The husband delivered a deed to a buyer that purported to transfer the entire title of the parcel to a buyer, but the deed did not bear the wife's signature.

When the wife discovered what the husband had done, she filed for divorce. The divorce court awarded all of the property owned by the couple to the wife, except for the parcel of land that the husband had purportedly conveyed to the buyer. It awarded that parcel to the husband.

The husband has brought an action to eject the buyer, claiming that the husband did not own the parcel when he sold it to the buyer.

A. Who will prevail in that lawsuit, the husband or buyer?

B. In no more than three typed lines, please provide the legal justification for your answer directly above.

33. An owner of real estate conveyed a fee simple absolute to a buyer for $375,000, its fair market value. The buyer did not immediately record. Then, the owner conveyed the same real estate to an investor for $380,000, its fair market value, who did not immediately record. The investor had no notice of the prior transaction between owner and buyer. Then the investor recorded. Then the buyer recorded.

    A. As between buyer and investor, who will prevail in a pure notice jurisdiction?

    B. In no more than three typed lines, please provide the legal justification for your answer directly above.

    C. As between buyer and investor, who will prevail in a race-notice jurisdiction?

    D. In no more than three typed lines, please provide the legal justification for your answer directly above.

    E. As between buyer and investor, who will prevail in a pure race jurisdiction?

    F. In no more than three typed lines, please provide the legal justification for your answer directly above.

34. Please state the two (2) requirements of being a bona fide purchaser.

35. In less than three typed lines apiece, please state and describe the three (3) types of “notice” required to be a bona fide purchaser.

36. An owner of real estate purchases land and grants a mortgage to a bank in the amount of $375,000. A year later, the owner grants another mortgage to a mortgage company in the amount of $125,000. A year after that, the owner granted a mortgage to an investor in the amount of $50.000. The owner thereafter defaulted on all three mortgages.

    A. If the bank forecloses, which of the stated mortgages will the purchaser at foreclosure take subject to?

    B. If the mortgage company forecloses, which of the stated mortgages will the purchaser take subject to?

    C. If the investor forecloses, which of the stated mortgages will the purchaser at foreclosure take subject to?

37. An owner of real estate borrowed $325,000 from a bank. The owner signed a note and granted the bank a mortgage in that amount to secure the obligation to pay it back. Two years later, the owner sold the real estate to a buyer. One year after that, the buyer ceased paying the mortgage. The bank foreclosed but after the foreclosure auction was left with a $50,000 deficiency on the loan. The bank has sued both the owner and buyer.

    A. "Yes" or "No," will the bank prevail against the owner?

    B. In no more than three typed lines, please provide the legal justification for your answer directly above.

    C. When the owner sold to the buyer, the buyer agreed to "assume" the mortgage given to the bank. "Yes" or "No," under these circumstances, will the bank prevail against the buyer?

    D. In no more than three typed lines, please provide the legal justification for your answer directly above.

    E. This time assume that when the owner sold to the buyer, the buyer agreed to take title "subject to" the mortgage given to the bank. "Yes" or "No," under these circumstances, will the bank prevail against the buyer?

    F. In no more than three typed lines, please provide the legal justification for your answer directly above.

38. A, who owns Lot 1, granted to B, the owner of adjoining Lot 2, the right to use a paved path across Lot 1 to allow access between a public road and Lot 2. The grant of easement was recorded at the appropriate Registry of Deeds. A

year later B sold Lot 2 to C. The deed said nothing about the easement. One year after that, A sold Lot 1 to D. That deed also said nothing about the easement. D has taken the position that C may not use the paved path to provide access between the public road and Lot 2 because there was no mention of an easement in either party's deed.

39. A owned Lot 1, which fronted Main Street, a public way, on its southern boundary. Directly north of Lot 1 was Lot 2, owned by B. Lots 1 and 2 shared a common boundary. Lot 2's northern boundary fronted Elm Street, also a public way. A got to and from Lot 1 by Main Street and B got to and from Lot 2 by Elm Street.

    Eventually, the city turned Elm Street into a "greenway" on which only foot traffic was allowed. With lots owned by neighbors both to the east and west of Lot 2, B was therefore no longer able to access Lot 2 by automobile.

    B asked A for permission to drive over Lot 1 to access Lot 2 by Main Street, but A refused. B has sued A, seeking that the court establish an easement for the benefit of Lot 2 over Lot 1.

    A. In that suit, who will prevail, A or B?

    B. In no more than three typed lines, please provide the legal justification for your answer directly above.

40. An owner of a parcel of real estate sold it to a buyer. The deed from seller to buyer stated: "by accepting this deed, the buyer hereby acknowledges that neither he nor his heirs and assigns shall make no use of the property other than as a single-family residence." The deed was properly recorded.

    Shortly after the transfer from owner to buyer, an adverse possessor came onto the land, meeting each and every requirement of adverse possession for the requisite time period. After the adverse possessor's title ripened, the adverse possessor built a retail building on the parcel and opened a boutique shop. The owner has sued the adverse possessor for breaching the use restriction in the deed. The owner seeks two remedies: monetary damages and an injunction to prevent the non-residential use.

    A. Who will prevail in regard to the claim for monetary damages, the owner or adverse possessor?

    B. In no more than three typed lines, please provide the legal justification for your answer directly above.

C. Who will prevail in regard to the demand for an injunction, the owner or adverse possessor?

D. In no more than three typed lines, please provide the legal justification for your answer directly above.

END OF PART ONE

PART TWO – ONE ESSAY QUESTION
Suggested Time: One-Half Hour (30 Minutes) for Standard Time

Instructions: *The essay is fairly short fact pattern. Read the fact situation very carefully and do not assume facts that are not given in the question. Do not assume that each question covers only a single area of the law; some of the questions may cover more than one of the areas you are responsible for knowing.*

Demonstrate your ability to reason and analyze. Each of your answers should show an understanding of the facts, a recognition of the issues included, a knowledge of the applicable principles of law, and the reasoning by which you arrive at your conclusions. The value of your answer depends not as much upon your conclusions as upon the presence and quality of the elements mentioned above.

Clarity and conciseness are important but make your answer complete. Do not volunteer irrelevant or immaterial information.

Ollie owned a parcel of land that was known to have mineable oil beneath its surface. Five years ago, Ollie handed his sister, Becky, a deed to the parcel, naming Ollie as the grantor, and one of Ollie's trusted employees, Art, as the grantee. Ollie said to Becky, "I want Art to get this land, but not until I die. Will you see that he gets the deed when I die? Becky agreed and took the deed.

A couple of months later, Ollie learned that Art had been embezzling from him. He immediately discharged Art. Shortly thereafter, in front of several employees, Ollie called out Bill, one of the employees, and said, "I am now giving the parcel to you. It'll be in my safe and you have the combination. Just wait until I die to go get it." Ollie showed Bill the deed, which named Ollie as grantor and Bill as grantee.

A month later, Ollie fired Bill for gross incompetence. Bill, however, surreptitiously removed the deed from Ollie's safe before leaving.

Art learned about the deed that Ollie had given to Becky to hold. Ollie snuck into Becky's house one day while she was at work and took the deed naming him as grantee.

Six months later, Ollie announced to all his employees that he had revoked the deeds to Art and Bill. He announced that he planned to retire.

Shortly thereafter, Ollie sold the parcel of land to Carol for $10 million. Carol promptly recorded the deed.

Ollie died on February 22nd. Bill recorded his deed on February 23rd. Art recorded his deed on February 24th.

On March 13th, in order to purchase equipment to begin mining for oil, Carol borrowed $1 million from the Big Rig Mortgage Company. Big Rig immediately recorded the mortgage that Carol gave securing the loan.

The state in which the parcel of land is located has a recording statute that says: "Unless the same be recorded according to law, no conveyance or mortgage of real property shall be good against subsequent purchasers who pay value and take without notice of a prior transaction."

Big Rig has brought an action for declaratory relief to determine the respective rights of it, Art, Bill, and Carol. What are the rights of the parties? Discuss.

END OF PART TWO

PART THREE – "MBE" STYLE MULTIPLE CHOICE QUESTIONS WITH EXPLANATIONS

Suggested Time: One-Half Hour (30 Minutes) for Standard Time

***Instructions**: Below are five (5) multiple-choice questions. You are to designate only one answer for each, which should be the "best" answer.*

Question 1 is on the next page.

1. A landowner executed and delivered a promissory note and a mortgage securing the note to a mortgage company, which was named as payee in the note and as mortgagee in the mortgage. The note included a statement that the indebtedness evidenced by the note was "subject to the terms of a contract between the maker and the payee of the note executed on the same day" and that the note

was "secured by a mortgage of even date." The mortgage was promptly and properly recorded.

Subsequently, the mortgage company sold the landowner's note and mortgage to a bank and delivered to the bank a written assignment of the note and mortgage. The assignment was promptly and properly recorded. The mortgage company retained possession of both the note and the mortgage in order to act as collecting agent. Later, being short of funds, the mortgage company sold the note and mortgage to an investor at a substantial discount. The mortgage company executed a written assignment of the note and mortgage to the investor and delivered to him the note, the mortgage, and the assignment. The investor paid value for the assignment without actual knowledge of the prior assignment to the bank and promptly and properly recorded his assignment. The principal of the note was not then due, and there had been no default in payment of either interest or principal.

If the issue of ownership of the landowner's note and mortgage is subsequently raised in an appropriate action by the bank to foreclose, the court should hold that

(A) the investor owns both the note and the mortgage.

(B) the bank owns both the note and the mortgage.

(C) the investor owns the note and the bank owns the mortgage.

(D) the bank owns the note and the investor owns the mortgage.

Question 2 is on the next page.

2. During her teenage years, a niece had often been told by her elderly aunt that when she died, she would leave the niece her beach house. Fifteen years later, the aunt was still the record title owner of the property and remained in good health. The niece grew impatient and decided to sell the property. She conveyed title to the beach house by a warranty deed to a doctor for $150,000. The doctor did not conduct a title search and recorded the deed immediately.

Five years later, the aunt died and devised the beach house to the niece.

The niece is now contesting the doctor's title and claiming ownership of the beach house. The doctor has filed a counterclaim asserting that he has title.

Which party has title to the property?

A. The doctor, because of the doctrine of estoppel by deed.

B. The doctor, because he was a subsequent bona fide purchaser.

C. The niece, because estoppel by deed does not apply to a warranty deed.

D. The niece, because a title search would have revealed that the aunt was the record title owner.

Question 3 is on the next page.

3. A brother and sister owned a parcel as joint tenants, upon which was situated a two family house. The brother lived in one of the two apartments and rented the other apartment to a tenant. The brother got in a fight with the tenant and injured him. The tenant obtained and properly filed a judgment for $10,000 against the brother.

The statute in the jurisdiction reads: Any judgment properly filed shall, for ten

years from filing, be a lien on the real property then owned or subsequently acquired by any person against whom the judgment is rendered.

The sister, who lived in a distant city, knew nothing of the tenant's judgment. Before the tenant took any further action, the brother died. The common-law joint tenancy is unmodified by statute. The sister then learned the facts and brought an appropriate action against the tenant to quiet title to the land.

The court should hold that the tenant has

(A) a lien against the whole of the property, because he was a tenant of both the brother and the sister at the time of the judgment.

(B) a lien against the brother's undivided one-half interest in the land, because his judgment was filed prior to the brother's death.

(C) no lien, because the sister had no actual notice of the tenant's judgment until after the brother's death.

(D) no lien, because the brother's death terminated the interest to which the tenant's lien attached.

Question 4 is on the next page.

4. A landowner and her neighbor owned large adjoining properties. The boundary line between the properties was never clearly marked. Twenty-five years ago, the landowner dug a water well on a section of the property that she thought was hers, but in fact was on the neighbor’s land. The landowner has continued to use the water and to maintain the well on a regular basis ever since.

The neighbor was adjudicated mentally incompetent 15 years ago. He died recently, and his executor has filed suit to eject the landowner and quiet title. The

jurisdiction's statute of limitations for adverse possession is 20 years.

With respect to the land on which the water well was dug, which of the following is correct?

A. The landowner has acquired title by adverse possession.

B. The landowner cannot claim title as an adverse possessor because she did not enter with hostile intent.

C. The landowner cannot acquire title because the neighbor was adjudicated incompetent.

D. The landowner has an implied easement in the land.

Question 5 is on the next page.

5. A developer owned five adjoining rectangular lots, numbered 1 through 5 inclusive, all fronting on Main Street. All of the lots are in a zone limited to one- and two-family residences under the zoning ordinance. Two years ago, the developer conveyed Lots 1, 3, and 5. None of the three deeds contained any restrictions. Each of the new owners built a one-family residence.

One year ago, the developer conveyed Lot 2 to a doctor. The deed provided that both Lots 2 and 4 would be used only for one-family residential purposes and the

restrictions would be binding on the doctor's and the developer's respective heirs and assigns. The deed was promptly and properly recorded. The doctor built a one-family residence on Lot 2.

Last month, the developer conveyed Lot 4 to a woman who operated a pharmacy. The deed contained no restrictions. The deed from the developer to the doctor was in the title report examined by the pharmacist's lawyer. The pharmacist obtained a building pe1mit and commenced construction of a two-family residence on Lot 4.

The doctor, joined by the owners of Lots 1, 3, and 5, brought an appropriate action against the pharmacist to enjoin the proposed use of Lot 4, or, alternatively, damages caused by the pharmacist's breach of covenant.

Which is the most appropriate statement concerning the outcome of this action?

(A) All plaintiffs should be awarded their requested judgment for injunction because there was a common development scheme, but award of damages should be denied to all.

(B) The doctor should be awarded appropriate remedy, but recovery by the other plaintiffs is doubtful.

(C) Injunction should be denied, but damages should be awarded to all plaintiffs, measured by diminution of market value, if any, suffered as a result of the proximity of the pharmacist's two-family residence.

(D) All plaintiffs should be denied any recovery or relief because the zoning preempts any private scheme of covenants.

END OF EXAM

PROPERTY
FINAL EXAMINATION
Peter M. Malaguti
Fall 2020

YOUR STUDENT ID # (Five – 5- Digits)

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INSTRUCTIONS:

This is a closed book exam. You may use a notepad or scrap paper but are not allowed to use notes or other materials that would infringe the integrity of this being a closed book exam. An Honor Code follows that you must accept to take this exam.

You must take this exam on TWEN and submit it between Monday, May 11, 2020 at 4 p.m. and Tuesday, May 12, 2020 at 4 p.m. You will have 3 and 1/2 hours for "Standard Time" takers, 5 hours and 15 minutes for "1.5 X" takers, and 7 hours for "Double Time" takers. Once you get past the honor code and open the exam, a time and date stamp will note your starting time. Another time and date stamp will enter when you upload it to TWEN. The time and date stamps must show that you have completed your exam within the time allotted depending on whether you are a "Standard," "1.5 X," or "Double Time" taker.

You may choose to type your answers in on this exam booklet, right after the questions. If you choose to do this, please embolden your answers so I can easily distinguish them from the questions.

You may choose to type your answers on a separate Word document. If you choose this method, please ensure that you maintain the proper numbering sequence so I can determine which questions you are answering.

You may choose to write your answers, scan them, and then upload the answers to TWEN. If you do so, please ensure that all pages are scanned in proper order and that you maintain the proper numbering sequence. Please also ensure that your scanned answers are readable.

Regardless of how you choose to answer, please begin by placing your Student ID at the beginning of your answers. Please do not identify yourself in any way other than by student identification number. Please do not write any information in this exam booklet that might reveal who you are. Revealing your identification is a breach of the honor code.

Please use multistate law.

This examination consists of three (3) parts:

Part One is the “Short Answer” section. The suggested time is two (2) hours for standard time, three (3) hours for 1.5 X time, and four (4) hours for double time. Part Two, the “Essay” section,

has one (1) essay question. The suggested time is 30 minutes (1/2 hour) for standard time, 45 minutes (3/4 hour) for 1.5 X time, and one (1) hour for double time. Part Three, the "Multiple Choice" section has five (5) multiple choice questions. The suggested time is 30 minutes (1/2 hour) for standard time, 45 minutes (3/4 hour) for 1.5 X time, and one (1) hour for double time. Part Three, the "Multiple Choice" section has five (5) multiple choice questions. You will note that, although the suggested time for standard time takers is a total of three hours, I have given and additional half hour to account for downloading and uploading time and the like.

Here are the instructions for each part. These will each be repeated at the beginning of each part.

PART ONE – SHORT ANSWER SECTION
Suggested Time: Two Hours (120 Minutes) for Standard Time

Instructions: *Below are 40 numbered questions that mostly provide short scenarios followed by short answer questions. Many of the numbered questions have subparts. Most of the questions require answers of just one word, or only a few words. When I am seeking longer answers, I will tell you the limit of number of typed lines you may write: one line, two lines, or three lines. Do not exceed the number of lines I state, even if by just a little bit. You have plenty of space to give the type of answers I am looking for.*

You willl have ample time to answer all the questions if you have adequately learned and studied the rules of law and legal analysis we have applied in class. Use your time effectively. Don't hurry but work steadily and as quickly as you can without sacrificing your accuracy. If a question seems too difficult, go on to the next one and try to come back later if you have time.

PART TWO – ONE ESSAY QUESTION
Suggested Time: One-Half Hour (30 Minutes) for Standard Time

Instructions: *The essay is fairly short fact pattern. Read the fact situation very carefully and do not assume facts that are not given in the question. Do not assume that each question covers only a single area of the law; some of the questions may cover more than one of the areas you are responsible for knowing.*

Demonstrate your ability to reason and analyze. Each of your answers should show an understanding of the facts, a recognition of the issues included, a knowledge of the applicable principles of law, and the reasoning by which you arrive at your conclusions. The value of your answer depends not as much upon your conclusions as upon the presence and quality of the elements mentioned above.

Clarity and conciseness are important but make your answer complete. Do not volunteer irrelevant or immaterial information.

PART THREE – "MBE" STYLE MULTIPLE CHOICE QUESTIONS WITH EXPLANATIONS
Suggested Time: One-Half Hour (30 Minutes) for Standard Time

Instructions: Below are five (5) multiple-choice questions. You are to designate only one answer for each, which should be the "best" answer.

For the purposes of security, the exam answers of all students will be checked against each other to ensure that students are not sharing answers completed remotely. Evidence of the discovery of shared answers will be forwarded to the administration for appropriate discipline.

When you have finished your exam, please upload it through TWEN. You must upload within the time you have to take the exam depending whether you are a standard, 1.5 X, or double time taker.

If, and only if, you believe that your upload to TWEN did not work you are to IMMEDIATELY email your answers to Professor Harayda at harayda@mslaw.edu. This should be done within the time limit of the exam. I will not accept submissions emailed to Professor Harayda well after your time has expired. Again, please email to Professor Harayda only if you have good reason to believe that it did not go through properly.

The Student Honor Pledge is immediately below.

Good luck!

STUDENT HONOR PLEDGE

In taking this examination, I hereby affirm, represent and acknowledge, both to the professor and the Massachusetts School of Law community that:

1. I will not give or receive any unauthorized assistance on this examination to or from any other student, professor, attorney, or any other third person;

2. I understand that this is a closed-book examination. I am allowed to use a notepad or loose paper during the exam for the purpose of making outlines, jotting down ideas, diagramming fact patterns, or otherwise as is customarily examination "scrap." I affirm that the notepad or loose paper will be blank when the exam begins. I affirm that, in addition to this "scrap" and the examination booklet itself, I am not permitted to use papers, personal effects, electronic devices, or any other matter that could provide unauthorized assistance in completing this examination, create any unfair advantage, or otherwise frustrate the honest administration of this examination as a closed-book examination;

3. Except for the device on which I am taking this exam, the exam booklet itself, and the "scrap" as described above, I have placed all other electronic devices, papers, personal effects, and other matter outside of my reach and beyond my control for the duration of the exam;

4. Realizing that some of my colleagues with exam conflicts may not be taking the exam at the same time that I am, I will not speak to or communicate with any other person taking this exam until the entire exam period for the Spring 2020 semester is completed at the end of the day on May 22, 2020;

5. I will not identify myself in any way or frustrate the anonymous grading of this exam;
6. I will faithfully follow any additional instructions the professor has provided right up to the time I begin the exam;
7. Other than instructions that the professor may have given out in advance, I have heard nothing about the specific contents of this examination prior to the moment of agreeing to this Honor Code;
8. I understand and acknowledge that MSLAW's honor code requires me to report evidence of violations of these provisions, as well as violations of the general MSLAW Honor Code, by any other student.

Signed under the pains and penalties of perjury.

The exam begins on the next page.

PART ONE – SHORT ANSWER SECTION
Suggested Time: Two Hours (120 Minutes)

Instructions: *Below are 40 numbered questions that mostly provide short scenarios followed by short answer questions. Many of the numbered questions have subparts. Most of the questions require answers of just one word, or only a few words. When I am seeking longer answers, I will tell you the limit of number of typed lines you may write: one line, two lines, or three lines. Do not exceed the number of lines I state, even if by just a little bit. You have plenty of space to give the type of answers I am looking for.*

You will have ample time to answer all the questions if you have adequately learned and studied the rules of law and legal analysis we have applied in class. Use your time effectively. Don't hurry but work steadily and as quickly as you can without sacrificing your accuracy. If a question seems too difficult, go on to the next one and try to come back later if you have time.

QUESTIONS

1. One winter's eve, Adam planned to meet Julia for dinner at their favorite restaurant. Adam pulled his automobile to the front of the restaurant and handed his keys to a valet, who charged him $20 for the valet parking service and gave Adam a claim ticket. Adam then walked into the restaurant.

   What was the legal relationship between Adam and the valet after Adam gave the valet control of his automobile?

   Bailment (Mutual Benefit)

2. After entering the restaurant, Adam went to the coat check station and handed his winter coat to the coat check clerk for checking. The coat check clerk gave Adam a claim check. There was no charge for the coat check service.

   What was the legal relationship between Adam and the coat check clerk/restaurant after Adam handed his winter jacket to the coat check clerk?

   Bailment (Mutual Benefit or One that Benefits the Bailor)

3. After handing over his coat, Adam walked to the table reserved for him. Julia was already there. Adam placed the claim check on the table, where it remained while Adam and Julia had dinner. After dinner, both Adam and Julia went to the restroom to wash up, leaving the claim check on the table. A man picked up the claim check, presented it at the coat check station, and

walked off with Adam's winter coat. Adam has sued the coat check clerk/restaurant for the value of the coat.

A. At common law, what was the standard of care that the coat check clerk/restaurant owed Adam for delivering Adam's coat to the wrong person.

Strict liability (misdelivery rule)

B. Under modern law, what is the standard of care that the coat check clerk/restaurant owed Adam for delivering Adam's coat to the wrong person.

Ordinary negligence (which applies in all cases)

4. After learning that his coat had been misdelivered, Adam went outside to pick up his automobile from the parking valet. When the valet arrived with the car, Adam observed that it have been involved in a crash; part of the front end was caved in as if the car had hit a telephone pole. Adam has sued the valet service for the damage.

A. At common law, what was the standard of care that the parking valet service owed Adam in regard to the care of his automobile.

Ordinary negligence (this was a mutual benefit bailment)

B. Under the modern law, what is the standard of care that the parking valet service owed Adam in regard to the care of his automobile.

Ordinary negligence (which now applies in all cases)

5. One night, Shana and Alice were playing slot machines next to each other at a casino. When Shana left her slot machine to use the restroom, Alice took Shana's TITO out of the slot machine that Shana had been playing and put it into her purse. TITOs are cards with a memory that are loaded with the user's initial deposit and then keep track of the amounts added to or deducted from the account, depending on whether the user wins or loses. On this evening, Shana was winning; she had nearly $10,000 on the TITO. When Alice returned, she saw that her TITO was not in the machine and reported this to casino authorities. Eventually, the casino's surveillance cameras revealed that Alice had taken Shana's TITO and Alice was charged with larceny.

Alice has defended by claiming that, when she took it, the status of the TITO was such that she could not be deemed a thief.

Please consider the following statuses of personal property and state which ONE provides her BEST defense to the larceny charge. Was the property: lost / mislaid / abandoned / treasure trove / embedded:

Abandoned. If the TITO were lost or mislaid, Alice would have had to return it to the true owner, Shana. There is no argument that the TITO was treasure trove because not enough time had passed since it was placed in the slot machine. Embedded requires placing it within real estate; a slot maching is not real estate. If Alice had abandoned the TITO, here ownership interest would have ceased and the person finding the abandoned property would have had property rights to it

6. Assume that Alice did steal Shana's TITO but did not get caught. As Alice was going up to her hotel room for the night, she reached into her purse to get the room key. Although Alice did not notice, Shana's TITO fell out of the purse and onto the floor of the hotel corridor. Later on, Tim, another hotel guest, noticed the TITO on the floor, picked it up and walked away. Alice quickly discovered that Tim had the TITO in question and has demanded it back.

   A. True or false, Tim is legally required to return the TITO to Alice?

      False.

   B. In no more than one (1) typed line, please state the legal reason for your conclusion in answering Question 6.A.

      A finder of property has greater rights to it than a thief.

7. Assume that Shana has learned that Alice and Tim are suing each other over ownership to the TITO and has intervened in the suit.

   A. As between Tim, Alice and Shana, who has greatest rights to the TITO?

      Shana.

   B. In no more than one (1) typed line, please state the legal reason for your conclusion in answering Question 7.A.

      If found, the true owner of property has more rights than anyone else.

8. Alfonse entered a parcel of land, thinking it was his own, and established a 20’ by 20’ garden, visible for all to see. But it was not Alfonse’s garden; it was Jacob’s garden. Alfonse maintained the garden for well over the applicable statute of limitations for adverse possession.

   A. Yes or No, did Alfonse satisfy the “hostility” element of adverse possession?

      Yes.

   B. In no more than three (3) typed lines, please state the legal reason for your conclusion in answering Question 8.A.

      One merely needs to be a trespasser to satisfy “hostitily,” even if one doesn’t intend to be a trespasser. Alfonse was a trespasser because he went on someone else’s land without permission.

9. Abraham commenced adversely possessing Ulysses’ land in 1989. At the time, Ulysses was legally insane. Ulysses died in 2015; Mary, his great niece and sole heir, inherited Ulysses’ land. At the time, Mary was only 11.

   What is the last year in which Mary may bring an action to eject Abraham from his adverse possession if Abraham continues to possess adversely?

   2025. Abraham’s statute of limitations was tolled until at least 2015 because Ulysses was legally insane. When Ulysses died in 2015, his disability was removed. However, Mary, a minor, also had a disability. Unfortunately for her, we can’t count her disability because she didn’t own the land when Abraham’s adverse possession began in 1989. Only impediments already in existence when the adverse possession begins count in tolling the statute of limitations. We did one almost exactly like this fact pattern in class.

10. Wilma and Betty were sisters. They owned a parcel of land together as tenants in common. At first, they lived together in the house on the land. Eventually, Betty got a job in Europe, where she lived for over 25 years. During that time period, Wilma paid all the taxes, insurance, maintenance and upkeep costs of the land. Wilma also made some major improvements on the real estate. Finally, Wilma possessed the parcel openly for all to see. While in Europe, Betty made no financial or other contributions toward upkeep or improvements of the land. Not once did Betty come back to stay on the land during the time she was employed in Europe.

Betty has just retired and wants to move back to the property. Wilma has filed an action seeking a declaratory judgment that Betty cannot move back to the land because Wilma has acquired title against her by adverse possession. Without assuming any facts not stated in the fact pattern, if Betty prevails in that action, it will be because which of the five (5) elements of adverse possession is missing?

Hostile. All cotenants, including Wilma, have the right to possess the property they own as cotenants. Accordingly, Wilma was not hostile because she wasn't a trespasser. Although a cotenant may satisfy the hostile element by an actual ouster or unequivocal declaration of hostile possession, nothing in the facts suggested that this happened.

11. Forty (40) years ago, Atreus died, leaving by will an improved residential parcel of land "to Agamemnon for life, and then to Electra and her heirs." Twenty-five (25) years ago, Clytemnestra began possessing the parcel, meeting all elements of adverse possession. Five years ago, Clytemnestra obtained title by adverse possession. Agamemnon has just died.

    A. While Agamemnon was still alive, did Electra have the legal authority to bring an ejection action against Clytemnestra? (Answer "Yes" or "No".)

       No. Only one with the right to possess has the authority to eject a trespasser. Electra owned a future interest, without the right of possession, and thus was not legally authorized to eject Clytemnestra.

    B. What specific estate in land did Clytemnestra obtain title to?
       Life estate. An adverse possessor obtains only the title of the person who could have ejected her.

    C. What is the legal status of Clytemnestra upon the death of Agamemnon?

       Trespasser. She got Agamemnon's life estate, which ended upon Agamemnon's death. Then she had to start over against Electra. She is on someone else's property without permission, and thus a trespasser.

12. O conveyed a parcel of land "to A and her heirs." After O delivered the deed:

    A. What specific estate did A own?

       Fee Simple Absolute

B. What specific estate did A's heirs own?

None. "And her heirs" are words of limitation, not words of purchase.

13. O conveyed a parcel of land "to A and her heirs as long as the property is not used for commercial purposes." After O delivered the deed:

A. What specific estate did A own?

Fee Simple Determinable.

B. Yes or no, did anyone own a future interest?

Yes

C. If so, who owned a future interest?

O

D. If so, what specific future interest did s/he own?

Possibility of Reverter

14. O conveyed a parcel of land "to A and her heirs but if the property is used for nonresidential purposes, O may reenter and repossess." After O delivered the deed:

A. What specific estate did A own?

Fee Simple Subject to Condition Subsequent

B. What specific estate did O own?

Right of Entry for Condition Broken

15. O conveyed a parcel of land "to A and her heirs but if the property is not used for residential purposes during A's lifetime, to B and his heirs. After O delivered the deed:

A. What specific estate did A own?

Fee Simple Subject to an Executory Limitation

B. What specific estate did B own?

Executory Interest

C. What specific estate did O own?

None. Possession will never go back to O.

16. O conveyed a parcel of land "to A for life and then to B and his heirs." After O delivered the deed:

A. What specific estate did A own?

Life Estate

B. What specific estate did B own?

Absolutely Vested Remainder

C. What specific estate did O own?

None. There is no possibility of possession going back to O under the grant.

17. O conveyed a parcel of land "to A for 10 years, and then to B for 10 years, and then to C and her heirs." After O delivered the deed:

A. What specific estate did A own?

Estate for a term (non-freehold estate)

B. What specific estate did B own?

Absolutely vested remainder (to become an estate for a term when it becomes a present estate)

C. What specific estate did C own?

Absolutely vested remainder (to become a fee simple absolute when it becomes a present estate)

D. What specific estate did O own?

None. Possession will never come back to O.

18. O conveyed a parcel of land "to A for life and then to B and her heirs provided that B has passed the Massachusetts bar exam. After O delivered the deed:

    A. What specific estate did A own?

    Life estate

    B. What specific estate did B own?

    Contingent remainder. It's a future interest. B is a grantee who takes at the natural termination of the prior estate. Although B is born and ascertained s/he is subject to a condition precedent.

    C. What specific estate did O own?

    Reversion (subject to divestment). It is possible that B may not pass the bar exam by the time A dies and possession has to go somewhere. It will go to O by reversion. The reversion is subject to divestment because it will divest if B does pass the bar exam prior to A's death.

19. O conveyed a parcel of land "to A for life and then to the children of B." At the time of the grant, B was alive and had one child: D. After O delivered the deed:

    A. What specific estate did A own?

    Life estate

    B. What specific estate did B own?

    None. It is his children who own an interest.

    C. What specific estate did D own?

    Vested remainder subject to open (partial divestment). D is a grantee who takes at the natural termination of the prior estate. D is born, ascertained and not subject to any conditions, so his remainder is vested. It is not absolutely vested because D is a member of an open class; her parent, B, is alive and capable of having more children.

    D. What specific estate did O own?

None. Because D's remainder is vested, possession is never coming back to O; even if D dies, her future interest will pass by will or intestate distribution.

20. Please mark "Yes" for each of the following contingent future interests that violate the rule against perpetuities and "No" for each that does not. Please do not provide any explanations:

A. "To A and his heirs, but if the property is not used for church purposes to B and her heirs." Does B's interest violate the rule against perpetuities?

Yes. It is possible that the condition will not be breached until decades – even hundreds of years – after the deaths of A and B.

B. "To A and his heirs, but if the property is not used for church purposes during A's lifetime to B and her heirs." Does B's interest violate the rule against perpetuities?

No. The condition was limited to be breached or not during A's lifetime. It is therefore certain to vest or fail, at the latest, upon A's death. A is a life in being and can serve as a measuring life. So B's interest does not violate the rule against perpetuities.

C. "To A for 99 years, and then to B and her heirs." At the time of the grant, both A and B are 40-years old. Does B's interest violate the rule against perpetuities?

No. B has an absolutely vested remainder, which is not subject to the rule against perpetuities. B has a remainder because he is a grantee and will take possession at the natural termination of the prior estate. B is born, ascertained, and not subject to any condition, let alone a condition precedent. B's remainder is vested.

D. Widower owned a farm in fee simple absolute. By will, he devised the farm "to my beloved aunt for life, then to my children for their lives, and then to such of my grandchildren who shall reach the age of 21, whenever they may be born." When Widower died, he had two children and five grandchildren, all of whom were under the age of 21, and his surviving aunt. Does the interest in Widower's grandchildren violate the rule against perpetuities?

No. Because this transfer was by will, the Widower is dead and incapable of having additional children. We thus know that all of his children are lives and being. Because the children can be used

as measuring lives, we know to a certainty that the very latest one of Widower's grandchildren can turn 21 is 21 years after the death of his or her parent (who is the child of the Widower). This satisfies the rule against perpetuities.

E. Widower owned a farm in fee simple absolute. By deed, he conveyed the farm "to my beloved aunt for life, then to my children for their lives, and then to such of my grandchildren who shall reach the age of 21, whenever they may be born." When Widower died, he had two children and five grandchildren, all of whom were under the age of 21, and his surviving aunt. Does the interest in Widower's grandchildren violate the rule against perpetuities?

Yes. The difference is that the transfer is by deed, which means that Widower is alive. Because he is alive, he is capable of having additional children. Therefore, none of his children can serve as measuring lives. We are stuck with the Widower and his aunt. Both could die tomorrow. The widower's children could have children after the death of the widower and the aunt, which means it would take more than 21 years after their deaths for the grandchildren to reach age 21.

21. Please state the specific concurrent estate the cotenants own in each of the following grants. Please do not provide any explanations:

A. O conveys by deed "to A and B with rights of survivorship." A and B are siblings.

Joint tenancy. The words, "rights of survivorship" excludes a tenancy in common. The fact that A and B are siblings excludes a tenancy by the entirety.

B. O conveys by deed "to A and B as joint tenants."

Joint tenancy. The words are clear and explicit: A and B were to take "as joint tenants."

C. O conveys by deed "to A and B jointly."

Tenancy in common. In multistate law, the word "jointly" by itself does not create a joint tenancy; it creates a tenancy in common.

D. O conveys by deed "to A and B."

Tenancy in common. A deed to two or more people that does not specify a particular tenancy or does not specify whether there is or is not a right to survivorship creates a tenancy in common, the preferred cotenancy.

E. O conveys by deed "to A and B as tenants by the entirety." At the time of the grant, A and B were engaged and due to marry each other the following week.

Joint tenancy. The operative time is the delivery of the deed. At that point, only a legally married couple may own as tenants by the entirety. When people attempt to take as tenants by the entirety but cannot because that are not married to each other, the cotenancy defaults to a joint tenancy, only other cotenancy with a right of survivorship.

F. O conveyed by deed "to A and B as tenants by the entirety." At the time of the grant, A and B were engaged and due to marry each other the following week. One week later, A and B indeed got married. "True" or "False," upon their marriage they owned the property as tenants by the entirety.

False. Again, the operative time is when the deed is delivered. A and B were not married. Their subsequent marriage does not magically transform their joint tenancy into a tenancy by the entirety. To obtain a tenancy by the entirety, after their marriage A and B would have to convey to a straw who would then convey back to them as tenants by the entirety.

G. O conveys by deed "to A and B as tenants in common." At the time of the grant A and B were legally married to each other.

Tenancy in common. Married people are not required to own as tenants by the entirety. Here the grant is unambiguous: it created a tenancy in common.

22. A and B owned a parcel of land as joint tenants. Without informing B, A borrowed money from a bank and granted a mortgage on the parcel of land to secure it. The bank believed that A was the sole owner of the parcel and that the mortgage was secured by the entire ownership of the parcel. The state in which the parcel was located followed the so-called "lien theory" of mortgages. One year later, A died. The bank recently demanded that B pay off the outstanding balance of the mortgage and has threatened to commence foreclosure proceedings if B does not.

A. "Yes" or "No," is the bank legally entitled to foreclose the mortgage?

No.

B. In no more than three (3) typed sentences, please explain why the bank is or is not entitled to foreclose the mortgage.

A's interest does not "pass" to B as it would with a will. Instead, upon the death of a cotenant, the surviving cotenant(s) continue to own "free of the interest" of the dying cotenant. The mortgage died with A.

23. O conveyed a parcel of land "to A, B, C, and D as joint tenants with rights of survivorship."

A. What fractional share does each of the cotenants – A, B, C, and D – own?

1/4 or 25%

B. One year later, A sold his interest to E. Immediately after the sale, please state the specific concurrent estates between the specific cotenants, as well as their fractional shares.

B, C, D and E each own 1/4 or 25%. B, C, and D still own joint tenancies as between themselves, but not as to E; they own as tenants in common as to E. (No more privity of time and title.):
(B $\underline{^{JT}}$ ***C*** $\underline{^{JT}}$ ***D)*** $\underline{^{TIC}}$ ***E***

C. One year after that, C died. At her death, C had a will that left her real estate to her daughter. Immediately after C's death, please state the specific concurrent estates between the specific cotenants, as well as their fractional shares.

B and D own as joint tenants between themselves but not as to E, with whom they own as tenants in common. Together B and D own 3/4 or 75%; 37.5 each. E continues to own a 1/4 (25%) fractional share: (B $\underline{^{JT}}$ ***D)*** $\underline{^{TIC}}$ ***E.***

D. One year after that, D died. Immediately after D's death, please state the specific concurrent estates between the specific cotenants, as well as their fractional shares.

B and E own as tenants in common, with B having a 3/4 or 75% fractional share and E having a 1/4 or 25% fractional share:

B ***TIC*** ***E***
¾ ***¼***

24. Please state which non-freehold estate (landlord-tenant relationship) each of the following situations creates. Please be as specific as possible. Please do not provide any explanations for your answers:

A. T needed a place to stay for only 15 days. On March 27th he met with L and inspected an apartment L owned. The two agreed that T would lease the apartment from April 1st until April 15th. L and T did not memorialize their agreement in writing.

Estate for a term. The tenancy had a definite beginning, definite ending, and the term was fixed in advance. In multistate, law there does not have to be a writing unless the agreed term is for a year or more.

B. L and T agreed that T would rent an apartment from L from April 1st until either party gives written notice terminating the tenancy. T did not show up on April 1st and never took occupancy of the apartment.

No tenancy. They seemed to agree to a tenancy at will, an estate of indeterminate duration. A tenancy at will continues until either party terminates it by written notice. However, a prospective tenant is required to take occupancy for there to be a tenancy at will. That has not happened here.

C. L and T agreed that T would rent an apartment from L from April 1st until either party gives written notice terminating the tenancy. This time, T did show up on April 1st and did take occupancy of the apartment.

Tenancy at will. See explanation to B above.

D. L and T agreed that T would rent an apartment from L from January 1st to December 31st at a rent of "$24,000, payable in twelve (12) monthly installments of $2,000 on or before the first day of each month. T did not leave on December 31st when the tenancy ended. Ten days after the tenancy ended, T gave L a check for $2,000, which L endorsed and deposited. What tenancy, if any, did the parties have when L endorsed and deposited the check?

Periodic tenancy from year-to-year. The original tenancy was an estate for a term. When it ended T became a holdover tenant/tenant

at sufferance. The act of T paying, and L accepting, rent after the end of the original tenancy created a new tenancy between them. In multistate law it would be a periodic tenancy. Whether the periodic tenancy is from month-to-month or year-to-year depends on whether the rent in the original lease was paid yearly or monthly. Because the entire year's rent was stated in one gross sum, the breaking it up into 12 installments did not make it monthly rent; it was yearly rent and thus the new tenancy was a periodic tenancy from year-to-year.

25. L and T entered into a 10-year written enforceable lease for commercial space. The lease states that T cannot assign or sublease the tenancy without the express written permission of L. In each of the following situations, please assume that L is bringing a breach of lease action for failure to pay rent:

A. One year after the execution of the lease, T_1 asked for permission to assign the tenancy to T_2 and landlord agreed in writing. T_2 then took over occupancy. At some point T_2 fell behind in rent.

i. Would T_1 be liable to L for the rent that T_2 had failed to pay? ("Yes" or "No")

Yes.

ii. In no more than one (1) typed line, give the legal justification for the answer you stated immediately above.

T_1 remained in privity of contract with L.

iii. Would T_2 be liable to L for the rent T_2 had failed to pay? ("Yes" or "No")

Yes.

iv. In no more than one (1) typed line, give the legal justification for the answer you stated immediately above.

Although T_2 was not in privity of contract with L, he was in privity of title with L.

B. T_2 eventually paid the back rent. Two years into the lease T_2 assigned to T_3 without notifying L or obtaining her permission.

i. Was T_2 legally justified to assign to T_3 without L's permission? ("Yes" or "No")

Yes.

ii. In no more than one (1) typed line, give the legal justification for the answer you stated immediately above.

The Rule in Dumpor's Case holds that once a landlord gives permission for an assignment or sublease, s/he deemed to have given it for the remainder of the lease term.

C. Shortly after T_2 assigned to T_3, T_3 fell behind in the rent.

i. Would T_1 still be liable to L for the rent that T_3 had failed to pay? ("Yes" or "No")

Yes.

ii. In no more than one (1) typed line, give the legal justification for the answer you stated immediately above.

T_1 remained in privity of contract with L.

iii. Would T_2 be liable to L for the rent T_3 had failed to pay? ("Yes" or "No")

No.

iv. In no more than one (1) typed line, give the legal justification for the answer you stated immediately above.

T_2 was not in privity of contract with L. Although he was in privity of title with L, prior to the assignment to T_3, the assignment terminated T_2s possession and he was in privity of title with no one.

v. Would T_3 be liable to L for the rent T_3 had failed to pay? ("Yes" or "No")

Yes.

vi. In no more than one (1) typed line, give the legal justification for the answer you stated immediately above.

Although T_3 was not in privity of contract with L, he now was in privity of title with L; his possession would return directly to L upon the end of the lease term.

D. T_3 eventually paid the back rent. One year after the assignment from T_2 to T_3, T_3 subleased to T_4 for a term of one year. Shortly thereafter, T_4 stopped paying rent.

i. Would T_1 still be liable to L for the rent that T_4 had failed to pay? ("Yes" or "No")

Yes.

ii. In no more than one (1) typed line, give the legal justification for the answer you stated immediately above.

T_1 remained in privity of contract with L.

iii. Would T_2 be liable to L for the rent T_4 had failed to pay? ("Yes" or "No")

No.

iv. In no more than one (1) typed line, give the legal justification for the answer you stated immediately above.

T_2 was not in privity of contract with L. Although he was in privity of title with L, prior to the assignment to T_3, the assignment terminated T_2s possession and he was in privity of title with no one.

v. Would T_3 be liable to L for the rent T_3 had failed to pay? ("Yes" or "No")

Yes.

vi. In no more than one (1) typed line, give the legal justification for the answer you stated immediately above.

Although T_3 was not in privity of contract with L, he now was in privity of title with L; his possession would return directly to L upon the end of the lease term. The sublease to T_4 does

not deprive him of possession as an assignment does. So T_3 remains in privity of title.

v. Would T_4 be liable to L for the rent T_4 had failed to pay? ("Yes" or "No")

No.

vi. In no more than one (1) typed line, give the legal justification for the answer you stated immediately above.

T_4 is not in privity of contract with L. Nor is he in privity of title because, when T_4's sublease is done, possession will go back to T_3 before eventually going to L.

26. A seller and buyer entered into a written enforceable purchase and sales agreement regarding a particular parcel of real estate that was silent about the quality of title the seller was obligated to deliver. In addition to these facts, each of the subparts below will ask you to make specific factual assumptions that only apply to the specific subpart you are considering, and not to the subparts you are not considering at the moment.

A. The buyer's title examination report has revealed that there is an outstanding mortgage in the amount of $125,000 encumbering the parcel of land.

i. Assume that seller has taken the position that he does not have to arrange to discharge the mortgage because the purchase and sale agreement did not require him to deliver a good "record" title. "Yes" or "No," is the seller correct that he is not legally obligated to deliver the buyer a good "record" title?

Yes, the seller is correct. He is not required to deliver a good record title because the P & S did not expressly require it.

ii. Assume that seller has taken the position that he does not have to arrange to discharge the mortgage because the purchase and sale agreement did not require him to deliver "marketable" title. "Yes" or "No," is the seller correct that he is not legally obligated to deliver the buyer "marketable" title?

No, the seller is incorrect. Marketable title is always implied when there is a valid and binding purchase and sale

agreement unless the agreement expressly waives the obligation.

iii. Regardless of your answer above, assume for this question that the seller is obligated to deliver a marketable title. "Yes" or "No," will the undischarged mortgage create unmarketable title?

Yes, it will. A mortgage is an interest in real estate. Because it's an interest in real estate, it's an "encumbrance." An encumbrance creates unmarketable title.

B. For this question, please assume that the purchase and sale agreement was silent as to the specific type of estate the seller was to deliver to the buyer. Also assume that the purchase and sale agreement expressly required the seller to deliver a marketable title to the buyer. Finally, assume that the buyer's title examination report disclosed two things: (1) there were no outstanding mortgages or other encumbrances, and (2) that the seller only owned a fee simple subject to a condition subsequent. The buyer had assumed she was receiving a fee simple absolute and would like to back out of the transaction. She has demanded a return of her deposit. The seller has taken the position that he has no duty to deliver a fee simple absolute because the purchase and sale agreement did not require him to do so. He insists that he will keep the buyer's deposit if she refuses to pay the full purchase price and accept delivery of a deed. "Yes" or "No," is the seller correct that he is not legally obligated to deliver a fee simple absolute to the buyer?

No, the seller is incorrect. When the seller is required to deliver a marketable title, which is expressly the case here, s/he is also required to deliver a fee simple absolute unless the parties agree to waive the requirement. The facts state nothing about waiver, so the buyer deserved a fee simple absolute.

C. For this question, please assume that the purchase and sale agreement expressly required the seller to deliver marketable title. Also assume three additional things: (1) although the buyer's attorney represented to the buyer that he did a title search and that the title was clean, the buyer's attorney actually had not done a title search, (2) when the seller delivered a deed to the buyer at the closing, the buyer was unaware that there was an outstanding mortgage of record in the amount of $125,000, and (3) when the buyer found out about the mortgage two weeks after the closing, she brought an action against the seller for breach of his duty to deliver a marketable title. "Yes" or "No," will the buyer prevail in her action.

No, the buyer will not prevail. Although the seller was obligated to deliver a marketable title, and the existence of the mortgage caused title to be unmarketable, the seller's obligation to deliver marketable title ended when s/he delivered the deed; this is the so-called "merger doctrine." Since the deed was delivered, it's too late for buyer to claim a lack of marketable title. Of course, buyer has a malpractice action against his/her own attorney.

27. On October 13th, a seller and buyer entered into an enforceable written purchase and sale agreement regarding a particular parcel of real estate with a residence built upon it. The purchase and sales agreement was silent about the quality of title the seller was obligated to deliver. The agreement called for a closing date of November 30th. The agreed purchase price was $625,000. The buyer paid a deposit of $125,000 and applied for a purchase money mortgage for the remainder of the purchase price.

    On November 20th, during a bad storm a lightning bolt struck the residence and burned it to the ground. The buyer asked for a return of his deposit. The seller responded by stating that the buyer was required to pay the entire purchase price of $625,000 on November 30th and that, if the buyer did not attend the closing and pay the full price, the seller would keep the deposit as damages for breach of the purchase and sale agreement.

    A. Yes" or "No," will the seller be legally entitled to keep the deposit as damages if the buyer does not attend the closing on November 30th, accept the deed, and pay the full purchase price?

       Yes, the seller may keep the deposit if the buyer does not close.

    B. In no more than three typed lines, please provide the legal justification for your answer directly above.

       The doctrine of equitable conversion shifts the risk of loss from seller to buyer once an enforceable P & S is signed, as here. Buyer must accept the deed and pay the full price despite the damage.

28. A seller delivered a deed to a buyer that intended to convey title to a parcel of land with a home on it located at 323 Murdock Road, Wausau, Marathon County, Wisconsin. The deed stated the full and proper name of the seller, full and proper name of the buyer, and was signed by the seller and notarized. The deed stated that the seller "hereby grants" the parcel to the buyer "with warranty covenants." The deed described the property as "323 Murdock Road, Marathon County, Wisconsin."

A. Yes" or "No," did the deed from seller to buyer convey a proper title to the buyer?

Yes, the deed did deliver a proper and full title to buyer.

B. In no more than three typed lines, please provide the legal justification for your answer directly above.

The elements of a deed are: (1) identify seller, (2) identify buyer, (3) have a proper description, (4) contain granting language, & (5) be signed by seller. All are present and the delivered deed was proper.

29. A grantor drafted a deed that stated that he conveyed title to a parcel of real estate to a grantee. It was meant to be a gift. The grantor signed the deed and had it notarized. The deed was proper in form, but the grantor could not deliver the deed to the grantee directly because the grantee was serving in the Peace Corps in the Ukraine. The grantor asked her attorney to record the deed in the appropriate Registry of Deeds, which the attorney did.

    Shortly thereafter, the grantor died. The grantor's estate now claims that the grantor owned the property at his death and that it passed to his heirs through intestate distribution. The grantee claims that the deed properly transferred title to him.

    A. Assuming no additional facts, who will prevail, the grantor's estate or the grantee?

    The grantee.

    B. In no more than three typed lines, please provide the legal justification for your answer directly above.

    The only question involves delivery & intent. Recording creates a presumption that the grantor intends transfer of title & delivery has occurred. There are no facts rebutting this presumption.

30. Which of the following deeds grants the greatest protection to a grantee: the special warranty deed, the general warranty deed, or the quitclaim deed?

    The general warranty deed.

31. An owner of a parcel of land in fee simple absolute granted an easement on the property to a neighbor that allowed the neighbor a 100' wide easement to

drive commercial vehicles over his land. The owner did not mind the fact that the neighbor allowed large semi-unit trucks to drive over the land. Some time later, the owner sold the parcel to a buyer for $325,000. The deed was a special warranty deed and contained the covenant against encumbrances and covenant of quiet enjoyment.

The buyer was a "flipper" who never moved onto the property. Instead, he quickly sold it to an investor. Although the developer intended to develop the property for commercial use, he ended up lacking the financial ability to do so. The buyer then sold the land to a developer by a special warranty deed. The deed contained the covenant against encumbrances and the covenant of quiet enjoyment.

The developer learned of the easement and was unable to develop the property because it rendered its value nearly worthless. The developer has sued both the owner and developer for breach of deed covenants. Neither claim is past the statute of limitations.

A. "Yes" or No," will the developer prevail against the buyer?

No, the developer will lose against the buyer.

B. In no more than three typed lines, please provide the legal justification for your answer directly above.

O → N (easement)
↓
B (SW)(CAE, CQE)
↓
D (SW)(CAE, CQE)

The buyer gave the developer a special warranty deed which makes the buyer liable for only those encumbrances he created. The owner, rather than the buyer, created the easement as issue. Buyer isn't liable.

C. "Yes" or No," will the developer prevail against the owner?

Yes, but only on the covenant of quiet enjoyment.

D. In no more than three typed lines, please provide the legal justification for your answer directly above.

Yes, but only on the covenant of quiet enjoyment, a future covenant enforceable by remote grantees. Covenant against encumbrances, a present covenant isn't enforceable by remote grantees.

32. An owner of real estate delivered a deed to a buyer of a parcel of land "to husband and wife, as tenants by the entirely." The husband and wife were legally married to each other. The husband delivered a warranty deed to a buyer that purported to transfer the entire title of the parcel to a buyer, but the deed did not bear the wife's signature.

    When the wife discovered what the husband had done, she filed for divorce. The divorce court awarded all of the property owned by the couple to the wife, except for the parcel of land that the husband had purportedly conveyed to the buyer. It awarded that parcel to the husband.

    The husband has brought an action to eject the buyer, claiming that the husband did not own the parcel when he sold it to the buyer.

    A. Who will prevail in that lawsuit, the husband or buyer?

       Buyer

    B. In no more than three typed lines, please provide the legal justification for your answer directly above.

       Estoppel by deed: an equitable doctrine that prevents a seller who lacks title, but purports to transfer valid title by warranty deed. from denying he had title if he later acquires title.

33. An owner of real estate conveyed a fee simple absolute to a buyer for $375,000, its fair market value. The buyer did not immediately record. Then, the owner conveyed the same real estate to an investor for $380,000, its fair market value, who did not immediately record. The investor had no notice of the prior transaction between owner and buyer. Then the investor recorded. Then the buyer recorded.

    A. As between buyer and investor, who will prevail in a pure notice jurisdiction?

       Investor

    B. In no more than three typed lines, please provide the legal justification for your answer directly above.

       Investor is a subsequent BFP who prevails over a prior grantee who fails to record, even if the Investor – the subsequent BFP – himself fails to record.

C. As between buyer and investor, who will prevail in a race-notice jurisdiction?

Investor

D. In no more than three typed lines, please provide the legal justification for your answer directly above.

Investor is a subsequent BFP who prevails over a prior grantee who fails to record if the subsequent BFP records first. Here, the Investor recorded first and wins.

E. As between buyer and investor, who will prevail in a pure race jurisdiction?

Investor

F. In no more than three typed lines, please provide the legal justification for your answer directly above.

In a pure race jurisdiction, one will prevail if s/he records first. Period. There is no need to be a BFP to prevail. Investor recorded first, so Investor wins.

34. Please state the two (2) requirements of being a bona fide purchaser.

A BFP must (1) pay value (more than nominal), and (2) lack notice (actual, constructive, or inquiry) of the prior transaction at issue.

35. In less than three typed lines apiece, please state and describe the three (3) types of "notice" required to be a bona fide purchaser.

Actual notice = actual knowledge of the prior transaction at issue.

Constructive notice = recording at the registry of deeds or registry of probate constructively puts the whole world on notice of what's been recorded because all are free to come and look it up.

Inquiry notice = not enough knowledge about the prior transaction at issue to confer actual notice, but enough knowledge to inform a reasonably prudent person to inquire further.

36. An owner of real estate purchases land and grants a mortgage to a bank in the amount of $375,000. A year later, the owner grants another mortgage to a mortgage company in the amount of $125,000. A year after that, the owner granted a mortgage to an investor in the amount of $50,000. The owner thereafter defaulted on all three mortgages.

   A. If the bank forecloses, which of the stated mortgages will the purchaser at foreclosure take subject to?

   No mortgages.

   B. If the mortgage company forecloses, which of the stated mortgages will the purchaser take subject to?

   $375,000 mortgage to the Bank

   C. If the investor forecloses, which of the stated mortgages will the purchaser at foreclosure take subject to?

   Both the mortgage to the Bank and mortgage to the Mortgage Company.

37. An owner of real estate borrowed $325,000 from a bank. The owner signed a note and granted the bank a mortgage in that amount to secure the obligation to pay it back. Two years later, the owner sold the real estate to a buyer. One year after that, the buyer ceased paying the mortgage. The bank foreclosed but after the foreclosure auction was left with a $50,000 deficiency on the loan. The bank has sued both the owner and buyer.

   A. "Yes" or "No," will the bank prevail against the owner?

   Yes.

   B. In no more than three typed lines, please provide the legal justification for your answer directly above.

   The note is a contract, and the owner remains liable through privity of contract until the entire amount is paid off, regardless of the sale to the buyer.

   C. When the owner sold to the buyer, the buyer agreed to "assume" the mortgage given to the bank. "Yes" or "No," under these circumstances, will the bank prevail against the buyer?

Yes.

D. In no more than three typed lines, please provide the legal justification for your answer directly above.

By agreeing to "assume" the mortgage, the buyer entered into a third-party beneficiary contract with owner to pay the mortgage, for the benefit of the bank, and has breached the agreement.

E. This time assume that when the owner sold to the buyer, the buyer agreed to take title "subject to" the mortgage given to the bank. "Yes" or "No," under these circumstances, will the bank prevail against the buyer?

No.

F. In no more than three typed lines, please provide the legal justification for your answer directly above.

The words "subject to" do not create a third-party beneficiary on behalf of the bank. Since the buyer and the bank aren't in privity of contract, the bank can't enforce the note against the buyer.

38. A, who owns Lot 1, granted to B, the owner of adjoining Lot 2, the right to use a paved path across Lot 1 to allow access between a public road and Lot 2. The grant of easement was recorded at the appropriate Registry of Deeds. A year later B sold Lot 2 to C. The deed said nothing about the easement. One year after that, A sold Lot 1 to D. That deed also said nothing about the easement. D has taken the position that C may not use the paved path to provide access between the public road and Lot 2 because there was no mention of an easement in either party's deed.

A. Is D correct that C may not make use of the lot?

No, D is incorrect.

B. In no more than three typed lines, please provide the legal justification for your answer directly above.

The easement created was an appurtenant easement. It was placed in the chain of title and its benefits and burdens remain attached to the two lots regardless of changes of ownership.

39. A owned Lot 1, which fronted Main Street, a public way, on its southern boundary. Directly north of Lot 1 was Lot 2, owned by B. Lots 1 and 2 shared a common boundary. Lot 2's northern boundary fronted Elm Street, also a public way. A got to and from Lot 1 by Main Street and B got to and from Lot 2 by Elm Street.

    Eventually, the city turned Elm Street into a "greenway" on which only foot traffic was allowed. With lots owned by neighbors both to the east and west of Lot 2, B was therefore no longer able to access Lot 2 by automobile.

    B asked A for permission to drive over Lot 1 to access Lot 2 by Main Street, but A refused. B has sued A, seeking that the court establish an easement for the benefit of Lot 2 over Lot 1.

    A. In that suit, who will prevail, A or B?

       A will prevail.

    B. In no more than three typed lines, please provide the legal justification for your answer directly above.

       This is neither not an easement by necessity or implication. The 1st element of both is that one person must have owned both lots as 1 big lot and then subdivided it. The facts don't say this happened.

40. An owner of a parcel of real estate sold it to a buyer. The deed from seller to buyer stated: "by accepting this deed, the buyer hereby acknowledges that neither he nor his heirs and assigns shall make no use of the property other than as a single-family residence." The deed was properly recorded.

    Shortly after the transfer from owner to buyer, an adverse possessor came onto the land, meeting each and every requirement of adverse possession for the requisite time period. After the adverse possessor's title ripened, the adverse possessor built a retail building on the parcel and opened a boutique shop. The owner has sued the adverse possessor for breaching the use restriction in the deed. The owner seeks two remedies: monetary damages and an injunction to prevent the non-residential use.

    A. Who will prevail in regard to the claim for monetary damages, the owner or adverse possessor?

       The adverse possessor.

B. In no more than three typed lines, please provide the legal justification for your answer directly above.

Privity of title is required to enforce a real covenant (money damages). Adverse possession broke the chain of title. With no privity between owner and AP, owner can't enforce the covenant.

C. Who will prevail in regard to the demand for an injunction, the owner or adverse possessor?

Owner.

D. In no more than three typed lines, please provide the legal justification for your answer directly above.

Equitable servitudes do not require privity of title; they require notice. The deed creating the covenant was recorded, so the adverse possessor had constructive notice.

END OF PART ONE

PART TWO – ONE ESSAY QUESTION
Suggested Time: One-Half Hour (30 Minutes) for Standard Time

Instructions: *The essay is fairly short fact pattern. Read the fact situation very carefully and do not assume facts that are not given in the question. Do not assume that each question covers only a single area of the law; some of the questions may cover more than one of the areas you are responsible for knowing.*

Demonstrate your ability to reason and analyze. Each of your answers should show an understanding of the facts, a recognition of the issues included, a knowledge of the applicable principles of law, and the reasoning by which you arrive at your conclusions. The value of your answer depends not as much upon your conclusions as upon the presence and quality of the elements mentioned above.

Clarity and conciseness are important but make your answer complete. Do not volunteer irrelevant or immaterial information.

Ollie owned a parcel of land that was known to have mineable oil beneath its surface. Five years ago, Ollie handed his sister, Becky, a deed to the parcel, naming Ollie as the grantor, and one of Ollie's trusted employees, Art, as the grantee. Ollie

said to Becky, "I want Art to get this land, but not until I die. Will you see that he gets the deed when I die? Becky agreed and took the deed.

A couple of months later, Ollie learned that Art had been embezzling from him. He immediately discharged Art. Shortly thereafter, in front of several employees, Ollie called out Bill, one of the employees, and said, "I am now giving the parcel to you. It'll be in my safe and you have the combination. Just wait until I die to go get it." Ollie showed Bill the deed, which named Ollie as grantor and Bill as grantee.

A month later, Ollie fired Bill for gross incompetence. Bill, however, surreptitiously removed the deed from Ollie's safe before leaving.

Art learned about the deed that Ollie had given to Becky to hold. Ollie snuck into Becky's house one day while she was at work and took the deed naming him as grantee.

Six months later, Ollie announced to all his employees that he had revoked the deeds to Art and Bill. He announced that he planned to retire.

Shortly thereafter, Ollie sold the parcel of land to Carol for $10 million. Carol promptly recorded the deed.

Ollie died on February 22nd. Bill recorded his deed on February 23rd. Art recorded his deed on February 24th.

On March 13th, in order to purchase equipment to begin mining for oil, Carol borrowed $1 million from the Big Rig Mortgage Company. Big Rig immediately recorded the mortgage that Carol gave securing the loan.

The state in which the parcel of land is located has a recording statute that says: "Unless the same be recorded according to law, no conveyance or mortgage of real property shall be good against subsequent purchasers who pay value and take without notice of a prior transaction."

Big Rig has brought an action for declaratory relief to determine the respective rights of it, Art, Bill, and Carol. What are the rights of the parties? Discuss.

1. ***Deed Delivery***

→ ***Escrow/conditional delivery***

- ***Deed given to 3rd person***
- ***No right of grantor to recall***

→ ***Satisfied with Al – no facts stating he retained the right to recall***

→ ***Not satisfied with Bill – no delivery to a 3rd person***

2. <u>Recording</u>

Although Al likely owns on Ollie's death, his failure to record the deed prior to the sale to Carol is going to be a problem

- ***Carol was a BFP: paid value and took w/o notice of the deeds to Al and Bill***
- ***Al should have been able to record upon Ollie's death***
- ***But, because it was not recorded, and Carol had no notice of it, she is protected as a BFP***
- ***Irrelevant whether Al is a BFP because he is a "first" grantee; BFPs are "subsequent" grantees.***
- ***This is a pure notice jurisdiction; Carol didn't have to record to be protected. But she did anyway. Carol prevails against both Al and Bill.***
- ***Big Rig paid value (funds on mortgage loan) and took without notice of Al's deed.***
- ***Under pure notice, the instant the mortgage was delivered to Big Rig, Al was out. Big Rig's mortgage remains valid.***
- ***Al and Bill have nothing.***

END OF PART TWO

PART THREE – "MBE" STYLE MULTIPLE CHOICE QUESTIONS WITH EXPLANATIONS

Suggested Time: One-Half Hour (30 Minutes) for Standard Time

Instructions*: Below are five (5) multiple-choice questions. You are to designate only one answer for each, which should be the "best" answer.*

----

1. ***B***
2. ***A***
3. ***D***
4. ***A***
5. ***B***

1. A landowner executed and delivered a promissory note and a mortgage securing the note to a mortgage company, which was named as payee in the note and as mortgagee in the mortgage. The note included a statement that the indebtedness evidenced by the note was "subject to the terms of a contract between the maker and the payee of the note executed on the same day" and that the note was "secured by a mortgage of even date." The mortgage was promptly and properly recorded.

Subsequently, the mortgage company sold the landowner's note and mortgage to a bank and delivered to the bank a written assignment of the note and mortgage. The assignment was promptly and properly recorded. The mortgage company retained possession of both the note and the mortgage in order to act as collecting agent. Later, being short of funds, the mortgage company sold the note and mortgage to an investor at a substantial discount. The mortgage company executed a written assignment of the note and mortgage to the investor and delivered to him the note, the mortgage, and the assignment. The investor paid value for the assignment without actual knowledge of the prior assignment to the bank and promptly and properly recorded his assignment. The principal of the note was not then due, and there had been no default in payment of either interest or principal.

If the issue of ownership of the landowner's note and mortgage is subsequently raised in an appropriate action by the bank to foreclose, the court should hold that

(A) the investor owns both the note and the mortgage.

(B) the bank owns both the note and the mortgage.

(C) the investor owns the note and the bank owns the mortgage.

(D) the bank owns the note and the investor owns the mortgage.

Question 2 is on the next page.

2. During her teenage years, a niece had often been told by her elderly aunt that when she died, she would leave the niece her beach house. Fifteen years later, the aunt was still the record title owner of the property and remained in good health. The niece grew impatient and decided to sell the property. She conveyed title to the beach house by a warranty deed to a doctor for $150,000. The doctor did not conduct a title search and recorded the deed immediately.

Five years later, the aunt died and devised the beach house to the niece.

The niece is now contesting the doctor's title and claiming ownership of the beach house. The doctor has filed a counterclaim asserting that he has title.

Which party has title to the property?

A. The doctor, because of the doctrine of estoppel by deed.

B. The doctor, because he was a subsequent bona fide purchaser.

C. The niece, because estoppel by deed does not apply to a warranty deed.

D. The niece, because a title search would have revealed that the aunt was the record title owner.

Question 3 is on the next page.

3. A brother and sister owned a parcel as joint tenants, upon which was situated a two family house. The brother lived in one of the two apartments and rented the other apartment to a tenant. The brother got in a fight with the tenant and injured him. The tenant obtained and properly filed a judgment for $10,000 against the brother.

The statute in the jurisdiction reads: Any judgment properly filed shall, for ten years from filing, be a lien on the real property then owned or subsequently acquired by any person against whom the judgment is rendered.

The sister, who lived in a distant city, knew nothing of the tenant's judgment. Before the tenant took any further action, the brother died. The common-law joint tenancy is unmodified by statute. The sister then learned the facts and brought an appropriate action against the tenant to quiet title to the land.

The court should hold that the tenant has

(A) a lien against the whole of the property, because he was a tenant of both the brother and the sister at the time of the judgment.

(B) a lien against the brother's undivided one-half interest in the land, because his judgment was filed prior to the brother's death.

(C) no lien, because the sister had no actual notice of the tenant's judgment until after the brother's death.

(D) no lien, because the brother's death terminated the interest to which the tenant's lien attached.

Question 4 is on the next page.

4. A landowner and her neighbor owned large adjoining properties. The boundary line between the properties was never clearly marked. Twenty-five years ago, the landowner dug a water well on a section of the property that she thought was hers, but in fact was on the neighbor's land. The landowner has continued to use the water and to maintain the well on a regular basis ever since.

The neighbor was adjudicated mentally incompetent 15 years ago. He died recently, and his executor has filed suit to eject the landowner and quiet title. The jurisdiction's statute of limitations for adverse possession is 20 years.

With respect to the land on which the water well was dug, which of the following is correct?

A. The landowner has acquired title by adverse possession.

B. The landowner cannot claim title as an adverse possessor because she did not enter with hostile intent.

C. The landowner cannot acquire title because the neighbor was adjudicated incompetent.

D. The landowner has an implied easement in the land.

Question 5 is on the next page.

5. A developer owned five adjoining rectangular lots, numbered 1 through 5 inclusive, all fronting on Main Street. All of the lots are in a zone limited to one- and two-family residences under the zoning ordinance. Two years ago, the developer conveyed Lots 1, 3, and 5. None of the three deeds contained any restrictions. Each of the new owners built a one-family residence.

One year ago, the developer conveyed Lot 2 to a doctor. The deed provided that both Lots 2 and 4 would be used only for one-family residential purposes and the restrictions would be binding on the doctor's and the developer's respective heirs and assigns. The deed was promptly and properly recorded. The doctor built a one-family residence on Lot 2.

Last month, the developer conveyed Lot 4 to a woman who operated a pharmacy. The deed contained no restrictions. The deed from the developer to the doctor was in the title report examined by the pharmacist's lawyer. The pharmacist obtained a building pe1mit and commenced construction of a two-family residence on Lot 4.

The doctor, joined by the owners of Lots 1, 3, and 5, brought an appropriate action against the pharmacist to enjoin the proposed use of Lot 4, or, alternatively, damages caused by the pharmacist's breach of covenant.

Which is the most appropriate statement concerning the outcome of this action?

(A) All plaintiffs should be awarded their requested judgment for injunction because there was a common development scheme, but award of damages should be denied to all.

(B) The doctor should be awarded appropriate remedy, but recovery by the other plaintiffs is doubtful.

(C) Injunction should be denied, but damages should be awarded to all plaintiffs, measured by diminution of market value, if any, suffered as a result of the proximity of the pharmacist's two-family residence.

(D) All plaintiffs should be denied any recovery or relief because the zoning preempts any private scheme of covenants.

6. ***B***
7. ***A***
8. ***D***
9. ***A***
10. ***B***

END OF EXAM