PLEASE DO NOT REMOVE THIS QUESTION BOOKLET FROM
THE EXAM ROOM.

PROPERTY: SECTION IIA

Professor Donahue

January 12, 1996

1:30 p.m.—3:30 p.m.

PARTS I AND II

PART I

Please refer to the general instructions which precede this Part and which were separately distributed. At the end of two hours you should turn in this booklet of questions with your answers on them.

Throughout Part I, you are to assume that O has, at the effective date of the conveyance or devise, a possessory estate in fee simple absolute in certain lands, and that the conveyance or devise in each problem adequately describes the land. You should assume that the Anglo-American common law is in force, including the so-called common law statutes such as Quia Emptores, De Donis, and the Statute of Uses. You should also assume that a Statute of Wills, a Statute of Frauds and a Married Women's Property Act are in force. You should presume that in any conveyance or devise a fee simple absolute is conveyed unless the contrary appears on the face of the instrument, that any conveyance or devise is effective to raise a use without an initial feoffment to uses, and that the doctrine of destructibility of contingent remainders has been abolished. Unless otherwise stated, all individual persons named in grants are living (but not necessarily classes of persons), and no express conditions have been fulfilled. Unless otherwise stated, you are to answer the question as of the time of effective date of the conveyance or devise last mentioned in the fact statement.

DO NOT TURN TO PAGE 5 UNTIL THE PROCTOR TELLS YOU TO BEGIN.

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O conveys "to A for life, then to B and his heirs." B then conveys "to C and his heirs." Then A dies; then B dies.

1. Title to the land is now in: (a) O's heirs; (b) A's heirs; (c) B's heirs; (d) C's heirs; (e) none of the above.

O delivers an unsigned deed conveying certain land "to A and her heirs." A takes possession under the deed.

2. At the time she takes possession A has: (a) a fee simple absolute; (b) an estate at will; (c) a tenancy at sufferance; (d) nothing; (e) none of the above.

O conveys "to A and his heirs, but if the premises are ever used for business purposes, then to B and his heirs." (Don't forget the Rule Against Perpetuities and remember that rights of entry are generally not implied but possibilities of reverter are.)

3. Effectively, A has: (a) a fee simple determinable; (b) a fee simple subject to an executory limitation; (c) a fee simple absolute; (d) nothing; (e) none of the above.

4. Effectively, B has: (a) a remainder; (b) an executory interest; (c) a right of entry; (d) nothing; (e) none of the above.

5. Effectively, O has: (a) a remainder; (b) an executory interest; (c) a right of entry; (d) nothing; (e) none of the above.

O conveys "to A for life, remainder to such of A's children as survive her, but if none of A's children survive her, remainder to B and her heirs." A has two children X and Y.

6. X and Y have: (a) a vested remainder subject to open; (b) a vested remainder subject to complete defeasance; (c) a contingent remainder; (d) an executory interest; (e) nothing.

7. B has: (a) a vested remainder subject to open; (b) a vested remainder subject to complete defeasance; (c) a contingent remainder; (d) an executory interest; (e) nothing.

O conveys "to A and his heirs, if and when A marries my daughter B."

8. A has: (a) a vested remainder; (b) a contingent remainder; (c) an executory interest; (d) nothing; (e) none of the above.

O conveys "to A for life remainder to B and her heirs, but if B attempts to sell her estate during her lifetime, remainder to C and her heirs."

9. Effectively, C has: (a) an executory interest; (b) a reversion; (c) a right of entry; (d) nothing; (e) none of the above.
PROPERTY: SECTION IIA, PART I CONTINUED

O conveys "to A and her heirs." A is married to B. They have no children and have never had any.

10. B has: (a) a tenancy by the entireties; (b) an estate jure uxoris; (c) curtesy initiate; (d) curtesy consummate; (e) none of the above.

O conveys "to A and B, my beloved sons." A then conveys "all my right, title, and interest in the land to C." Then A dies.

11. C has: (a) an undivided half interest in the land as a joint tenant; (b) an undivided half interest in the land as a tenant in common; (c) an undivided half interest in the land as a coparcener; (d) nothing; (e) none of the above.

12. B has: (a) an undivided half interest in the land as a joint tenant; (b) an undivided half interest in the land as a tenant in common; (c) an undivided half interest in the land as a coparcener; (d) nothing; (e) none of the above.

Questions 13-16 are based on the following fact situation:

Owner held 500 acres in fee simple absolute. In 1980 Owner platted and obtained all required governmental approvals of two subdivisions of 200 acres each.

In 1980 and 1981, commercial buildings and parking facilities were constructed on one, Royal Center, in accordance with the plans disclosed by the plat for each subdivision. Royal Center continues to be used for commercial purposes.

The plat of the other, Royal Oaks, showed 250 lots, streets, and utility and drainage easements. All of the lots in Royal Oaks were conveyed during 1980 and 1981. The deeds contained provisions, expressly stated to be binding upon the grantee, his heirs, and assigns, requiring the lots to be used for single-family residences. The deeds also stated that these provisions were enforceable by the owner of any lot in the Royal Oaks subdivision.

At all times since 1979, the 200 acres in Royal Center have been zoned for shopping center use, and the 200 acres in Royal Oaks have been zoned for residential use in a classification which permits both single-family and multiple-family use.

13. What land-use control device would be most likely to implement Owner's scheme to preserve the residential character of Royal Oaks subdivision and be most readily acceptable to purchasers?
   (a) easement;
   (b) covenant;
   (c) fee simple subject to a condition subsequent;
   (d) zoning (assuming the appropriate authority could be persuaded to zone for single-family use only);
   (e) none of the above.
14. Assume that Owner now desires to open his remaining 100 acres as a residential division of 125 lots (with appropriate streets, etc.). He has, as an essential element his scheme, the feature that the restrictions should be identical with those he planned for the original Royal Oaks residential subdivision and, further, that lot owners in Royal Oaks should be able to enforce (by litigation, if necessary) restrictions on the lots in the 100 acres. The zoning for the 100 acres is identical with that for the 200 acres of Royal Oaks residential subdivision. Which of the following best states the chance of success for scheme?

(a) He can restrict use only to the extent of that imposed by zoning (that is, to residential user by not more than four dwelling units per lot).
(b) He cannot restrict the 100 acres to residential user because of the conflicting user for retail commercial purposes in the 200 acres comprising the shopping center.
(c) He cannot impose any enforceable restriction to residential user only.
(d) Any chance of success depends upon the 100 acres being considered by the courts as a part of a common development scheme which also includes the 200 acres of Royal Oaks.
(e) None of the above.

15. Assume, in lieu of the additional statements in Question 14, that Owner desires to open the remaining 100 acres for retail commercial user as an extension of Royal Center. Assume further that the zoning classification will permit such user as to the 100 acres. Ignoring provisions of their leases, those persons who are now lessees in Royal Center:

(a) have little chance of preventing the projected development;
(b) can assert that the implications of the transactions of 1980 and 1981 indicate that the 100 acres were to be used for residential purposes and can, therefore, enjoin Owner from pursuing his scheme;
(c) can assert that the covenants in the deeds of 1980 and 1981 require that the addition bear some name other than Royal Center;
(d) can recover damages for any diminished profits which may result from Owner's projected development for the 100 acres because the 1980 development plans for the two subdivisions established an equitable servitude which protects the commercial user of Royal Center;
(e) None of the above.

16. Assume, in lieu of the additional statements in either Question 14 or Question 15, that Owner now desires to sell the 100 acres which were not included in either of the subdivisions established in 1980. Which of the following is the most appropriate comment about the effect of the 1980-1981 transactions on the title to the 100 acres?

(a) There is reasonable assurance that title is clear of encumbrance.
(b) The title is encumbered to the extent that no user can be made of the land except for residential user.
(c) There is a substantial basis for the position that Owner (or his successor) can only continue the present user of the 100 acres and not change the user by any further development.
(d) There is a significant doubt as to the exact freedom of choice of development scheme for the 100 acres.
Questions 17-19 are based on the following fact situation:

Smith, an owner in fee, leased a house and lot to Jones for ten years. By the terms of the lease Jones, for himself, his heirs, executors, administrators and assigns, expressly covenanted to pay rent and to pay the taxes on the premises during the term of the lease. The lease also contained a covenant by the lessor, for herself, her heirs, executors, administrators and assigns, that she or they would, upon thirty days' notice before the end of any year within the term of the lease, convey the leased premises in fee simple to the lessee, his heirs and assigns, for a stated sum to be paid in cash. Two years later Smith conveyed her interest in the premises to Alpha. About the same time Jones assigned his lease to Beta by a written assignment which expressly assumed the obligation of the covenant to pay rent but was silent concerning the payment of taxes.

17. Beta refused to pay taxes and Alpha, after paying the same, brought action against Beta for the amount paid. A court will probably grant judgment for:

(a) Beta, because Beta has made no contract concerning payment of taxes and is not liable upon contracts he did not make;
(b) Beta, because the covenant to pay taxes is a collateral covenant not touching or concerning the land;
(c) Beta, because no covenant will run with the land unless the intent that it run is clearly expressed;
(d) Alpha in law;
(e) Alpha in equity only.

18. Beta made regular rent payments for about a year after the assignment and then defaulted. Alpha brought action against Jones for the unpaid rent. A court will probably grant judgment for:

(a) Alpha, because the assignment did not terminate Jones's status as tenant;
(b) Alpha, because Jones's contractual obligation under the lease survived the assignment;
(c) Jones, because the assignment terminated the obligation of Jones to pay rent;
(d) Jones, because Alpha failed to give Jones notice that he acquired title;
(e) None of the above.

19. Assume that all conditions in the lease, including the obligation to pay rent and taxes, were properly complied with for the first four years of the term. Prior to the end of the fourth year of the term, Beta gave proper notice to Alpha that he desired to purchase the premises under the terms of the lease and tendered the price, but Alpha refused. Beta brought action for specific performance. A court will probably grant judgment for:

(a) Alpha, because the burden of a covenant to convey contained in a lease does not run with the land;
(b) Alpha, because a covenant to convey contained in a lease does not touch or concern the leasehold;
(c) Alpha, because a covenant to convey does not concern an act to be done upon the land;
(d) Beta, because both the benefit and the burden of a covenant to convey contained in a lease run with the land;
(e) Beta, because even though the covenant does not run at law, it runs in equity because Alpha had notice of it.

Questions 20-23 are based on the following fact situation

In 1985 Owner conveyed an artificial lake and all its shores to the Baptist Lake Organization (BLO). The day after the conveyance was signed, sealed and recorded, the same parties executed a duly recorded sealed instrument, the operative words of which were as follows: "The BLO hereby covenants to repair and maintain the dam damming the Lake [described] and the outlet thereof and to supply Owner with water through such pipes as may now exist." Owner also owned a lot several hundred yards to the south of the Lake where she operated and maintained a large summer hotel.

In 1986, BLO conveyed the land and the lake to the Anglican Decency League, which established a camp for its members on the lake shore. The ADL now refuses to provide water to Owner's hotel, and Owner sues for both damages and a mandatory injunction.

You are to determine whether the following propositions are legally relevant to the solution of the foregoing case. A proposition is legally relevant if it meets both of the following criteria:

(1) The proposition has a bearing on any principle of law necessary for the resolution of any issue, even if obvious, in the case, and
(2) The proposition states a rule of law which at least some American courts, even though a minority, are likely to accept.

On the other hand, a proposition is not legally relevant if it meets either or both of the following criteria:

(1) The proposition has no bearing on any principle of law necessary for the resolution of any issue, even if obvious, in the case, and/or
(2) The proposition states a rule of law which no American court is likely to accept.

(Each of abstract statements of law in what follows might be acceptable to some American court. The question in all cases is even if some court might accept the proposition as an abstract statement of law, would any court apply that proposition to this case?)

20. (1) Affirmative equitable servitudes are not enforceable.
(2) The burden of an affirmative covenant does not run with the land at law.

Which of the above statements is legally relevant to the case?

(a) Statement (1) only.
(b) Statement (2) only.
(c) Both Statement (1) and Statement (2).
(d) Neither Statement (1) nor Statement (2).

21. (1) No vertical privity can be found; therefore the plaintiff cannot recover at law.
(2) If the instrument can be construed to give Owner an easement or profit in the water, then there is privity of estate between Owner and the ADL.

Which of the above statements is legally relevant to the case?

(a) Statement (1) only.
(b) Statement (2) only.
(c) Both Statement (1) and Statement (2).
(d) Neither Statement (1) nor Statement (2).

22. (1) Even though there is a general necessity of privity of estate between Owner and the BLO in order that the burden of the covenant may run, there is an exception where mutual covenants are entered into as part of the same transaction.
(2) Even if the parties actually intended that they run, the burden of the covenants cannot run with the land at law because the language does not expressly bind BLO's heirs and assigns. (Remember the in esse rule.)

Which of the above statements is legally relevant to the case?

(a) Statement (1) only.
(b) Statement (2) only.
(c) Both Statement (1) and Statement (2).
(d) Neither Statement (1) nor Statement (2).

23. (1) A covenant to pay money which does not run with the land at law may be enforced in equity by means of a foreclosure of a lien.
(2) If no easement or tenurial interest was created either by the deed or the agreement, there was no privity of estate between Owner and the BLO.

Which of the above statements is legally relevant to the case?

(a) Statement (1) only.
(b) Statement (2) only.
(c) Both Statement (1) and Statement (2).
(d) Neither Statement (1) nor Statement (2).
ANSWERS

1. e [Title is in C.]

2. b ["[A]ll estates ... in ... land .. not put in writing and signed by the parties ... shall have the force and effect of ... estates at will only ... ." (DKM3, p. 361).]

3. c [A fee simple followed by a void executory limitation "effectively" gives the fee-holder a fee simple absolute.]

4. d [A void executory limitation is "effectively" nothing.]

5. d [Rights of entry are not normally implied.]

6. c ["[A]s survive her" creates a condition precedent.]

7. c [An alternative to a contingent remainder is itself a contingent remainder, since it could take effect upon the expiration of the preceding life estate.]

8. c [A springing executory interest since it cannot take effect upon the expiration of O's fee.]

9. d [This executory interest is void under the rule against direct restraints on alienation.]

10. e [The Married Women's Property Act abolishes the estate iure uxoris, and curtesy (if it survived the statute) does not apply unless and until the parties have a child.]

11. b [Severance of the joint tenancy (No statute reversing the common-law presumption is mentioned.) creates a tenancy in common in the person to whom the estate is severed.]

12. b [Whether A and B originally had a joint tenancy (common law) or whether they had a tenancy in common (modern statutory presumption), once A severed the tenancy, B has a tenancy in common with the person to whom A severed.]
17. d
18. b
19. d
20. c
21. b
22. d
23. b