

Exam Identification Number: _____

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THE EXAM ROOM.**

PROPERTY: SAMPLE OBJECTIVE QUESTIONS

Professor Donahue

Date

Time

PART I

[I mocked this up to make it look as much as possible like the exam that you will be taking. The questions, however, go back some years cover some material that we did not cover this year. Suffice it to say that the questions about running of covenants in the assignment of a lease would probably be unfair questions for your group, though the concepts involved should be familiar to you. The suggested answers given at the end].

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

*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, that a grant or devise to two or more persons creates a tenancy in common unless otherwise specified, 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 THE NEXT PAGE UNTIL THE PROCTOR TELLS YOU TO BEGIN.

PROPERTY, SECTION Number, PART I, CONTINUED

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.)

1. 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.
2. Effectively, B has: (a) a remainder; (b) an executory interest; (c) a right of entry; (d) nothing; (e) none of the above.
3. 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.

4. 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.
5. 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.”

6. 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.”

7. Effectively, C has: (a) an executory interest; (b) a reversion; (c) a right of entry; (d) nothing; (e) none of the above.

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

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

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O conveys “to A and B, my beloved sons, as joint tenants with right of survivorship.” A then conveys “all my right, title, and interest in the land to C.” Then A dies.

9. 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.

10. 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.

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.

11. 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.

12. 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

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residential subdivision and, further, that lot owners in new subdivision should be able to enforce (by litigation, if necessary) restrictions already existing on the lots in Royal Oaks. 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.

13. 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.

14. 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.

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(d) There is a significant doubt as the exact freedom of choice of development scheme for the 100 acres.

Questions 15-17 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.**

15. 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.

16. 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.

17. 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:

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- (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.

ANSWERS

1. c [A fee simple followed by a void executory limitation "effectively" gives the fee-holder a fee simple absolute.]
2. d [A void executory limitation is "effectively" nothing.]
3. d [Rights of entry are not normally implied.]
4. c ["[A]s survive her" creates a condition precedent.]
5. 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.]
6. c [A springing executory interest since it *cannot* take effect upon the expiration of O's fee.]
7. d [This executory interest is void under the rule against direct restraints on alienation.]
8. 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.]
9. b [Severance of the joint tenancy (the language given presumably being sufficient to reverse the statutory presumption) creates a tenancy in common in the person to whom the estate is severed.]
10. 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.]
11. b [A zoning change would also do the job, but the purchasers would have no guarantee that the public authority would keep it in place.]

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12. d [Only the finding of a common plan stands any chance of adding the owners in the new subdivision to those who can enforce the restrictions in Royal Oaks.]

13. a [There is nothing in the facts that would suggest that Owner restricted the remaining 100 acres in any way.]

14. a [That is to say, there's nothing in the facts that suggests that the remaining acres were included in either plan.]

15. d [The covenant in the head lease runs to the assignee of that lease, and s/he can be presumed to have notice of it for purposes of the Recording Act. The action is for money and hence at law.]

16. b [Jones remains liable on the covenant contractually. Whether Alpha must proceed first against Beta before suing Jones is not completely clear, but the weight of the authority suggests that he does not.]

17. d [We're in equity not because the covenant runs only in equity but because only equity can provide the appropriate remedy.]