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LAW EXAMINATIONS

PAPERS USED AT THE

FIRST SEMESTER EXAMINATIONS

1910-1911

IN THE

COLLEGE OF LAW

OF THE

UNIVERSITY OF ILLINOIS

FEBRUARY, 1911

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COLLEGE OF LAW

Examination in Agency.

PROFESSOR THURSTON.

PART I.

(January 27, 1911)

I. X owned a farm which he desired to sell. X signed and sealed an instrument purporting to convey the property, leaving therein blanks as to the name of the grantee and the purchase price. X delivered this instrument to A, saying: "Find a purchaser for this land who will give \$5,000 or more, fill in his name and the purchase price and deliver to him this instrument." A found a purchaser, T, who was willing to pay \$5,500 for the land. A accordingly filled in the blanks in the instrument with the name of T as grantee and \$5,500 as the price, and delivered the same to T, who thereupon paid \$5,500 cash. X now repudiates the transaction and refuses to let T into possession of the farm.

What are T's rights against X?

II. M's automobile being laid up for repairs, M sent his chauffeur, S, to borrow X's automobile, with instructions to take it only if X gave his consent. S could not find X, but took the automobile anyway, and while driving from X's garage to M's house, S negligently ran over and injured P. By statute none but licensed chauffeurs could drive automobiles for hire. S was duly licensed.

P sues M. What decision?

III. A, a ship owner, engaged B, a contractor, to unload A's vessel. B employed a number of men, among them P, for this purpose. A, being desirous of having the unloading accomplished more speedily, directed X, Y and Z, members of the ship's crew and employed by A by the month, to assist in the unloading under the direction of B. While so engaged X negligently injured P.

(a) Can P maintain action against A?

(b) Against B?

IV. X authorized A to sell X's horse for \$100 and instructed A not to warrant the soundness of the horse. A sold the horse to T for \$100 and gave T a warranty that the horse was sound. It was customary in the locality to sell horses with such a warranty, though T, who was a stranger, was ignorant of such custom. T was also ignorant that A was acting as X's agent, but believed

on reasonable grounds that A owned the horse and was selling it for himself.

The horse proving to be unsound, and T having heard of the agency, T now sues X for breach of warranty. What decision?

V. X by writing authorized A, aged 20, to sell X's farm for \$10,000, payable as follows: One quarter in cash at the time of the delivery of the deed of conveyance and the balance in the purchaser's notes in equal amounts due respectively in one, two and three years. A accordingly on X's behalf entered into a written contract of sale with T, which contract conformed to X's instructions save that the notes for the deferred payments were to be made payable *on or before* the respective periods.

(a) Can T hold X to this contract in Illinois?

(b) Assume that X is not bound by this contract. In that event, is A under any liability to T?

PART II.

VI. X and A, the latter being the shipping clerk of the D Railroad Company, entered into a scheme by which A issued to X as consignor and consignee the D Company's bill of lading purporting to represent a carload of grain. In fact, X delivered no grain to the D Company. X indorsed and delivered this bill of lading to the P

Bank which advanced money thereon in ignorance of the fraud.

(a) Can P maintain action against D in contract?

(b) Or in tort?

VII. O owned an office building in a large city. O moved away from that city and intrusted to A (a local real estate agent) the care and management of the office building. The elevator in the building fell out of repair, of which fact A had notice. A neglected to have the elevator repaired or to give warning of the danger, whereby P, a tenant, (who had rented an office from O) was injured.

P sues A. What decision?

VIII. A, who was duly authorized by X, made on X's behalf the following contract:

"It is hereby agreed that X will convey to T and T will purchase from X for the sum of \$5,000 certain land [described].

"It is further agreed that T will pay \$1,000 upon the signing of this agreement (which sum X agrees to repay to T in case X is unable to give a good title to the land) and the balance of the purchase money upon delivery by X to T of a deed of conveyance of the land.

[Signed] X.

By A, Agent,

T."

T upon the execution of the above contract paid \$1,000 to A and A gave T his receipt therefor as follows:

“Received from T \$1,000 pursuant to a contract [describing the principal agreement] which sum is to be repaid to T in case X is unable to give a good title to the land.

[Signed] T, Agent.”

A promptly paid this \$1,000 to X. X failed to make a good title to the land.

T now sues A for the \$1,000. What decision?

IX. October 20, 1910, A sold a horse to T for \$100 at ninety days' credit. A was acting for X pursuant to authority from X, who owned the horse, but T was ignorant of the fact. November 1 T sold \$10 worth of groceries to A on credit. November 10 T learned that A had acted merely as an agent in making this sale of the horse, but he did not then learn who was A's principal. November 20 T sold a second \$10 worth of groceries to A. November 30 T sold \$20 worth of groceries to X. December 10 T learned that X was A's principal in the sale of the horse.

X now sues T for \$100, the price of the horse. What decision?

X. Discuss the Fellow Servant and Vice Principal Doctrines. (The answer to this question should not exceed four pages in length).

Examination in Bills and Notes.

MR. HALE.

PART I.

I.

A drew a draft on the X bank payable to the order of himself (A) and forged the signature of B, as drawer. Thereafter A indorsed the draft to K, a holder in due course. K presented the draft and the X bank accepted it. Neither the X bank nor K knew of the forgery at the time of the acceptance of the draft. Before paying, however, the forgery was discovered and the X bank refused to pay the draft when it came due. K sues the X bank.

What judgment?

II.

A promissory note purporting to have been signed by A and payable to the order of B. A's name had in fact been forged. B did not know that the signature was a forgery. B indorsed the

instrument to C, a holder, in due course. C presented the instrument to A when it matured, in the proper manner, and three days later mailed notice of dishonor to B.

What are C's rights against A?

Against B?

III.

A wrote a letter to B stating that he (A) would accept a bill of exchange for any amount up to \$500 drawn by B on A. B drew a bill on A for \$400 in favor of C and delivered the same to C in payment for goods purchased by B from C. On the due date C presented the bill to A and A refused to pay it. Thereafter C learned of the letter which A had written to B and on the strength thereof brought an action against A, as acceptor.

What judgment?

IV.

Note by A to the order of B, executed March 1, 1909, payable on demand at the X bank. B gave no consideration for the note. B indorsed the note to C, a bona fide purchaser, May 1, 1909.

(a) What are C's rights against A?

(b) Is it necessary for the holder to make a demand before bringing suit on such a note against the maker?

(c) When must such a note be presented in order to charge an indorser?

(d) When does the statute of limitations begin to run against such a note?

V.

A drew a bill of exchange on B, dated January 2, 1909, payable sixty days after date, to the order of C. C presented the bill at once to B and B accepted to pay in eighty days. At the expiration of eighty days C again presented the bill to B and B refused to pay. C gave notice the same day to A.

What are C's rights against A?. Against B?

PART II.

VI.

A signed a printed form of check leaving the name of the payee and the amount of the check blank and handed it to his (A's) clerk H, with instructions to ascertain the name of a certain contractor, who had been doing some work for A and the amount due such contractor and thereupon to fill in the contractor's name as payee and the amount due the contractor as the amount of the check and deliver the check to such contractor. H, in disregard of A's instructions, went to Y, a merchant, bought a suit of clothes for himself for \$50 and filling in the name of Y as payee and \$50 as the amount of the check, delivered the check to Y in payment for the suit of clothes. A discovered H's fraud and gave notice to the bank on which

the check was drawn not to pay it. When the check was presented by Y payment was refused, whereupon Y brings an action against A for \$50, the amount of the check.

What judgment?

VII.

Note by A to the order of B for \$1,000. B negotiated the note to C before maturity on the following terms to-wit: C was to pay \$700 for the note, \$500 cash at the time of transfer (which was in fact paid) and the balance, \$200, in two months. C was well acquainted with A and knew at the time of the transfer that A was in sound financial condition. B told C that he (B) was badly in need of cash and was willing to sell the note at a sacrifice for that reason, B had obtained the note from A by fraudulent representations with reference to the amount of work which he (B) had done for A. C did not know of the fraud at the time of the transfer of the note to him (C) but learned of the fraud before it was time to pay the \$200 to B. Thereafter C paid the \$200 to B in the honest belief that it was his legal duty to do so. C now sues A for \$1,000

What judgment?

VIII.

- (a) Define indorsement.
- (b) State the various kinds of indorsements.
- (c) Give an illustration of each.

IX.

\$1,000.00.

Urbana, Illinois, July 1, 1909.

Two years after date I promise to pay to the order of A B, cashier of the H Bank, one thousand dollars.

(Signed) C D, President.

Across the left margin of the above instrument was printed "The Y Manufacturing Co."

On the back of the instrument was the following indorsement, "A B, Cashier."

A B, after indorsing in the above form, delivered the instrument to K in payment of a personal debt. K negotiated the instrument to P, who had no knowledge of its previous history. Assuming that the proper steps are taken to charge parties secondarily liable, the instrument not being paid when due, against whom will P have a cause of action?

X.

Instrument in the following form: "Bangor, Sept. 8, 1882, I, A. B., bought of C. D., one black horse, for (\$80) eighty dollars, and interest on same until paid for, which I agree to pay to said C. D., or order, out of my next quarter's mail pay, which becomes due Jan. 1, 1883, on the route which I am now carrying. The above horse is to remain said C. D.'s until fully paid for.

(Signed) A. B."

Is this instrument a negotiable note?



Examination in Constitutional Law.

PROFESSOR GREEN.

January, 1911.

(Give reasons for each answer.)

1. The eighth amendment to the Constitution of the United States says: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." The fourteenth amendment says "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." A state statute imposed a fine of \$100 for selling impure milk, whether the seller knew of its impurity or not, the fine to be doubled with each successive offense. A naturalized citizen of the United States unwittingly made ten sales of impure milk, and his fines under the statute amounted to \$102,300.

Does the imposition of such fines violate the foregoing amendments?

2. An officer in the United States army is held in jail under an indictment in a state court for assault and battery on a private soldier. The indictment shows that he committed the battery in resisting the soldier's attempt to desert, and that he had authority under the laws of the United States to do as he did, if he used no excessive force. The indictment alleges that he did use excessive force, and this is the only point in dispute.

(a) Has the state court jurisdiction to try the case?

(b) If the officer applies by petition showing the above facts to the appropriate federal court for a writ of habeas corpus to secure his release, what should the federal court do?

(c) If he applies by removal proceedings to have the case tried in the federal court, what should the court do?

(d) If he is tried by his consent in the state court, and verdict and judgment go against him, can he obtain any relief from a federal court, and how?

3. The legislature of Pennsylvania, in 1866, prohibited the sale of spirituous liquor in Potter county. An act of 1899 declared that the act of 1866 "be and it hereby is, repealed. Provided, however, that the question whether said act be repealed be submitted to the voters of the county, and that the repeal do not go into effect unless a

majority vote be cast in favor of repeal." The county voted for repeal, and one McGonnell applied for a liquor license. Prohibitionists objected that the prohibitory law had not been validly repealed.

Was the objection well founded?

4. The Drainage Act of Illinois (Laws of 1897, p. 206), provides that the owner of land through which a river runs shall annually clean it of brush, trees or logs which impede the flow of the water; that the tax assessor shall, in assessing the land, ascertain whether the owner has performed his duty, and if he has not, shall assess on the land an extra tax of \$10 as a penalty; the money to be collected like other taxes.

Is this tax constitutional?

5. A state statute provided that an annual tax should be levied on all property by assessors, who should meet at their office on February 1, and after hearing argument and proof from all persons interested who might appear, make an assessment which should be final and not subject to review by any court. X was assessed at \$100,000, made up, as the assessment book showed, of the following items, each put down at \$10,000:

- (a) House and land within the state, valued at \$10,000 and subject to a mortgage of \$5,000.
- (b) Household furniture.
- (c) United States bonds.

(d) Bonds of another state.

(e) Shares of stock in corporations of the state, all of whose property was within the state.

(f) Shares of stock in foreign corporations, all of whose property was without the state.

(g) Money due from debtors residing within the state.

(h) Money due from debtors residing without the state, and secured by mortgages on land of greater value without the state.

(i) A farm without the state.

(j) Cattle on the farm.

X had no actual notice that he was subject to assessment, and did not appear before the assessors. The valuations were all excessive.

May X escape paying any, and, if so, what, parts of the tax under the assessment?

6. A dealer in Detroit imports and sells in kegs beer from Milwaukee, Wisconsin, and beer from Windsor, Canada.

If there is no act of Congress which affects the subject, what effect upon him has a Michigan statute which prohibits the sale of intoxicating liquor? A statute which imposes on every liquor dealer a tax of \$1,000 a year for the privilege of carrying on his business?

7. Would the following acts of Congress be valid?

(a) An act laying a tax to provide bounties for builders of merchant ships?

(b) An act forbidding interstate commerce in goods manufactured under conditions dangerous to the workmen's health?

(c) An act prohibiting interstate commerce in oleomargarine?

(d) An act requiring railroads to employ in interstate commerce no workmen except such as belonged to a labor union?

8. A state taxed a national bank on the value of its right to do business, and the bank had to pay the tax to avoid the seizure and sale of its property. An act of Congress gives the Circuit Court of the United States jurisdiction over actions arising under the constitution or laws of the United states. The bank sues the state in that Court to recover the money, as having been unconstitutionally exacted.

What decision?

9. A citizen of Indiana sued a citizen of Illinois in the Circuit Court of the United States for the Eastern District of Illinois on a cause of action which arose in Illinois. It became necessary for the court to determine the common law rules as

to title to real estate in Illinois, as to the construction of a will made in Illinois concerning Illinois property, and as to liability on a promissory note made in Illinois, and to determine the meaning of a clause in the Illinois Negotiable Instruments Act. On each of these points there were decisions of the Illinois Supreme Court and earlier decisions of the United States Supreme Court in conflict with them, all of which decisions had been rendered before the cause of action sued on arose.

Which court should the Circuit Court follow?

10. "Nor shall any State deprive any person of life, liberty or property without due process of law."

Explain briefly with illustrations the effect of this provision.

Examination in Contracts.

MR DECKER.

1. A and B owned adjoining lots in a new subdivision. A agreed with B that if the latter would build a house on his own lot of a value not less than \$2,500, he, A, would pay B \$500. B builds the house and A refuses to pay the money agreed.

(a) In what form of action should B sue A?

(b) Could A successfully interpose the defense of no consideration?

(c) Would it be a good defense if A could prove that he had offered to pay the money and B had told him that he was able to pay for his own house and did not want the money from A?

2. A and B were both present at a race track in Chicago. They went to the betting ring to buy pools on the races. A found that his pocket had been picked and asked B for a loan of \$100, which B made, taking A's note therefor. Next day B sold the note to H, a bona fide holder. The note is not paid at maturity and H sues A.

(a) Has A a good defense, and if so, what?

(b) Might it make a difference if the transaction took place in some other place than Illinois?

Why?

(c) What is necessary to make a person a bona fide holder of a promissory note, and how do his rights differ from those of an assignee of a debt?

3. A had a lot of hay in his barn which B had baled under an agreement that B would buy the hay if they could agree on the price, and if they could not, A was to pay B \$50 for baling. A lived at X and B lived at Y, two towns fourteen miles apart with a daily mail between. B wrote A on June 14th offering \$9.50 per ton for the hay. A waited until the 20th, and failing to get a better price by that time, wrote B saying that he accepted the price offered and told B that he could come and get the hay any time he pleased. B received this letter but did not reply to it. Four days later A's barn burned down and the hay was consumed. B demands pay for the baling and A claims he sold the hay to B.

Which should prevail?

4. A sold a horse to H for \$100 on credit. H sold the same horse to Y for \$150, of which Y

paid \$50 in cash and agreed with H to pay the balance to A.

(a) What are A's rights when he learns of this transaction?

Answer in full with authorities.

5. A exposed a picture for sale in his store marked \$5,000. B bought it, thinking it was a genuine Rembrandt, of which it was a good copy. A knew B thought so, and also knew it was not a Rembrandt, but did not make any representation to that effect.

(a) When B learns the truth about the picture, which in fact is worth only \$50, has he any remedy against A?

If so, what?

(b) Suppose, before B discovered the truth, he sold the picture to C, representing it as a genuine Rembrandt, would C, on learning the truth, have any remedy against B?

If so, what?

6. A took a contract to build a house for K, and after it was partly built K, for reasons of his own, concluding that he did not want the house completed, ordered A to quit work. The value of the work already done was \$500; the cost of completing the work would have been \$2,800; the con-

tract price was \$3,000. A had already received \$100 from K to apply on the contract.

What are A's rights? Answer fully, with authorities.

7. The proper officers of N county advertised for bids for the county printing for the year 1909, and let the contract to L, who was the lowest bidder. The work was to be paid for monthly as done.

L made a contract with K, by which the latter agreed to sell and deliver to L, as ordered by L, a quantity of paper of certain designated quality, to be paid for within sixty days of date of invoice. L also hired C as foreman of his plant for the year 1909, at a salary of \$100 per month.

On Feb. 1, 1909, and before any of the paper had been delivered by K, L sold out his business to M, who agreed with L to carry out the foregoing contracts, and was ready and willing to perform them all. He requested K to deliver a part of the paper contracted for, which K refused to do. C refused to work for M, and the county officers refused to accept any printing from him.

What are M's rights against the county, K and C?

8. J desired to buy a house and lot in Champaign owned by Y, a resident of Chicago. J drew

up and signed a contract of sale by which he was to pay \$6,000 for the property, \$1,000 down and the balance in installments. He mailed two copies of the contract to Y, with a letter directing Y, if he accepted, to sign the contracts and return one copy to a bank in Champaign, on receipt of which by the bank, J would immediately deposit the \$1,000 payment to Y's credit. Y answered, refusing to take less than \$7,000. J replied by return mail that he would pay \$7,000, and told Y to change the amount in the contracts and return copy to the bank as previously directed, on receipt of which J would deposit the \$1,000. Y received this letter and also an offer of Z by the same mail of \$8,000 for the property. Y sold to Z and returned the contracts unsigned to J.

Is Y liable to J for breach of contract?

9. K, a manufacturer, contracted with L, a coal dealer, for the purchase of 25 carloads of coal, to be delivered at K's factory at the rate of one carload a week, to be paid for as delivered. After five carloads had been delivered and paid for, L was unable to deliver any coal for two weeks on account of the failure of the railroad to deliver coal to him. K thereupon notified L that he would not accept any more coal from him. The following week L tendered K a carload of coal, which K refused.

Has L a cause of action against K?

Has K a cause of action against L?

10. N agreed to dig a ditch for O at \$1.00 per rod. Finding that he was losing money, N refused to complete the ditch unless O would pay him \$1.50 per rod, which O agreed to do. When the ditch was completed, O refused to pay more than \$1.00 a rod. N refuses to settle on that basis and sues O.

How much can he recover?

Examination in Court Practice.

DEAN HARKER.

1. A brings suit in case against B to recover for alleged fraudulent acts done and representations made in Missouri. The law of the case, substantive and remedial, is different in Missouri from what it is in Illinois.

The law of which state should be applied? What difference, if any, should be observed between an action *ex contractu* and an action *ex delicto*, when the law of the state where the cause of action arose differs from that of the state where suit is brought?

2. A bought a house and lot, worth not more than \$1,000, with the purpose of making it his homestead. He immediately notified the occupant of the house of his intention and demanded possession, which was given at the end of the month. After A had made some slight repairs on the house, and had bought carpets and furniture for it, B recovered a judgment against him for \$800 in the county where the property is situated. On the

following day A, with his wife and two children, moved into the house and has continued to occupy it as his home ever since. Ten months afterward B sued out an execution which the sheriff levied upon the property, and under it advertised the same for sale. On the day advertised A appears and forbids the sale, claiming the property is exempt because it is the homestead of himself and family.

State fully your reasons why the sale may, or may not, be legal.

3. A leased of B, for a term of four years, a two-story building located in the city of Decatur, Ill. The first floor was arranged for carrying on the saloon business. The second was divided into four rooms suitable for light housekeeping. It was agreed between the parties, although not so specified in the written lease, that A should use the first floor for a saloon and the second as a dwelling for himself and wife. A so occupied the building for two years, when he was compelled to close his saloon by reason of Decatur, through an election, becoming "anti-saloon territory." He then notified B of his election to cancel the lease, paid all rents to the end of the month and vacated the property. B refused to accept a cancellation of the lease and told A that he should hold him for the rent. The property remained vacant to the end of the four years.

In a suit by B on the lease, how and what should

A plea? How should B meet the plea? Discuss fully the rights of the parties.

4. Under a statute of the state no one is allowed to practice dentistry without a license from the state board of dental examiners. Such license is obtained upon examination before the board or upon a diploma issued by a dental college which the board deems reputable.

To a petition for mandamus in which the relator shows that he is a graduate of and holds a diploma from the Missouri Dental College, a chartered institution with a full corps of professors, conducting a college for instruction in dental surgery at St. Louis, Mo., that the college is a reputable one and as thorough in its instruction as any in the state of Illinois, that he pursued all the courses of study there required and successfully passed them off on final examination, that he presented to the state board of dental examiners and tendered the regular license fee, but that the board refused to accept the fee and issue the license, the board files a demurrer. State whether the demurrer should be sustained or overruled, and upon what ground.

5. Draft a declaration in ejectment for James Smith against John Jones, wherein the plaintiff claims ownership in fee of Lot 4, Block 3, in the City of Urbana, Illinois.

Draft affidavit of common source, naming William Jones as common source.

6. Draft indictment against Robert Hood, on the facts contained in Case No. 19, *The People of the State of Illinois vs. Robert Hood*.

7. In the trial of a personal injury case the defendant at the conclusion of the plaintiff's evidence moves for a peremptory instruction directing the jury to return a verdict of not guilty.

State and discuss the rule that should govern the Court in passing on the motion.

8. In the trial of a case for murder the defendant offers to prove declarations of the deceased, made on the day following the one on which he received the injuries of which he died, to the effect that he first assaulted the defendant and that what the defendant did was in self defense.

What must the defendant show to make the proof admissible?

Suppose the Court should improperly admit the testimony, could the State's Attorney in rebuttal show that the deceased on the second day after the infliction of the injuries declared that the defendant first assaulted him and that the defendant was not acting in self defense? State reasons.

9. A, an employe of the Peoria and St. Louis Packet Compony, was with others engaged in making a landing of one of the company's boats at a stopping place on the Illinois river. The ice was running, and there was great danger to the boat unless it could be made fast just below some piling which extended out into the stream. B, an employe of the company, was on the shore pulling in a large cable to be used in making the boat fast. The cable was too heavy for his strength, and A, seeing H, a fisherman and in no wise connected with the boat crew, standing on the shore, called upon him to assist B. H complied, and while handling the cable was, through the negligence of B, knocked into the river and drowned.

In a suit by the administrator of H against the packet company, what are the liabilities?

10. The Harmon Drug Company, engaged in manufacturing and compounding drugs, has a wholesale house in Chicago from which it supplies retail druggists. By mistake of an employe in the factory several bottles containing a very poisonous drug were incorrectly labelled and sold to a retail druggist for a kind comparatively harmless. The retailer sold to A who called for a drug bearing the name of the label. A, taking the drug, was badly injured from the effects.

What are the liabilities of the Harmon Drug Company in a suit by A against it?

11. Name the different Courts in Illinois; state which have appellate and which original jurisdiction; which concurrent and which exclusive jurisdiction. What is meant by "jurisdiction of the subject matter?" What is meant by "jurisdiction of the person?"

Examination in Criminal Law.

PROFESSOR GREEN.

January, 1911.

(Give reasons for every answer.)

1. X intentionally killed Y. Is he punishable (a) if he was unable by reason of insanity to know that his act was wrong? (b) if he knew his act was wrong, but did it because of an insane impulse which because of insanity he was incapable of resisting?

2. A negro married to a woman of his own race went through a marriage ceremony with a white woman. A statute made marriages between persons of different races void.

Is A guilty of bigamy?

3. A advised B to cut off B's arm so he could live by begging instead of work. B hired C to cut it off, and C did so. B then summoned D, a surgeon, who, knowing the facts, bound up the wound.

Have any crimes been committed? If so, what crimes, and who are principals and who are accessories?

4. Four sophomores, A, B, C and D, go out at night with the purpose of cutting the hair of any freshman they meet, regardless of any resistance he may make. They meet X, a freshman. A and B seize and hold him. C cuts his hair against his protest and resistance. D looks on and laughs. X turns his head suddenly, a point of the shears held by C enters his eye, penetrates to his brain and kills him.

What crimes have been committed and by whom?

5. M, on trial for the statutory offense of setting his house on fire with intent to defraud the insurer, admits that he set fire to the house, but offers to prove (a) that he was very drunk at the time, (b) that his policy had expired the day before, though he supposed it still in force.

Should he be allowed to prove these facts?

6. A, with intent to steal whatever might be in B's pocket, followed B about through a crowd, and at a favorable opportunity jostled against B, and then put his hand in B's pocket. The pocket was empty.

Is A guilty of an attempt to commit larceny,

and, if so, at what moment did he become guilty of it?

7. Section 140 of the Criminal Code of Illinois says: "Murder is the unlawful killing of a human being in the peace of the people with malice aforethought, either express or implied."

Tell under what circumstances unlawful killing is murder, in language such that a person unacquainted with law could understand your statement and apply it to cases that might occur.

8. A took B's umbrella by mistake for his own and sold it to C, still thinking it his own.

D sold his umbrella to E on one week's credit. E failed to pay, and D, mistakenly thinking he had a right to the umbrella, snatched it out of E's hands, who was too surprised to resist, took it away and sold it to C.

F was told and believed that it was no crime to steal an umbrella. He secretly took G's umbrella and sold it to C.

C received all the umbrellas with knowledge of the facts, and with intent to keep them. C also believed it no crime to steal an umbrella.

What crimes have been committed and by whom?

9. A went to his office leaving his wife, B, and the cook, H, at home. H, planning to steal and

wanting to get B out of the way, wrote the following note: "B, come to my office at once, A," showed it to B, and told her it had been brought by a messenger. B went to the office. H opened a closet where silverware was kept, put B's suit case on the closet floor, and filled it with the silverware, intending to carry off both suit case and contents. Before she had closed or moved the suit case, she was frightened away.

Is H guilty of larceny of suit case or silverware?

10. Is H, in the preceding question, guilty of forgery?

Examination in Damages.

MR. DECKER.

1. A buys a horse from B, who warrants that the horse is gentle and well trained. While A is driving the horse, it balks and kicks, badly damaging A's buggy. A sues B for breach of warranty.

How would you instruct a jury as to the damages recoverable?

2. The city of N cut down a street to a level of 15 feet below the level of an abutting lot belonging to A, which caused the land of A to cave down into the street. A sues for damages and N pleads the general issue.

(a) What is the measure of damages?

(b) Would evidence of the fact that A's land had been increased in value by the cutting down of the street be admissible?

(c) Would a plea by N that the land was worth more after the cutting down of the street than it was before be good on demurrer as a bar to the action?

3. What is the measure of damages for conversion? What is the "highest intermediate value" rule? Illustrate and explain when applicable. Is it in force in Illinois?

4. A hired out to B as a traveling salesman at a salary of \$200 a month and expenses and agreed not to use intoxicating liquors while on the road, with the further agreement that if he should do so he would be subject to immediate discharge and should forfeit all salary remaining unpaid. B learned that A had been drinking and immediately discharged him, and refused to pay A his last month's salary, which was then due. A sued B for the salary.

Can he recover? Explain principles in detail, and suggest any modification of the facts which to your mind would change the result.

5. A was run down by an automobile negligently driven by B, suffering severe bodily injuries. He was confined to his bed for two weeks, and was unable to work for thirty days longer. He was cared for by his wife and his employer paid him his wages during his disability. He also had a sick benefit policy from which he received more than enough to pay all other expenses of his sickness.

A sues B and seeks to recover for loss of time, nursing, doctor's bills, and other expenses. Also for pain and suffering caused by his injury. Instruct the jury as to each of these elements of damage.

6. A ordered some shirts of B to be made to his measure and sent to him by express, charges collect. After the shirts were cut out, but before they were made up, A countermanded the order. B completed the shirts and delivered them to the express company as per contract. A refused to take the shirts from the express company and they were eventually sold by the latter to pay charges of transportation.

What is the nature of B's action against A, how would you declare upon it, and what is the measure of B's recovery?

7. A, a conductor on B's railroad, wilfully and wrongfully ejected X from a train, using unnecessary force and abusive language. X sues B and claims exemplary damages.

Is he entitled to them?

Discuss the right to exemplary damages from the standpoint of principle and authority under the circumstances above and in general.

8. A contracted to sell a house and lot to B for \$5,000 and to convey a good, merchantable title. On examination of the abstract, it appeared that there was a flaw in A's title which, at the time, A was unable to remove, and B refused to go on with the sale. He subsequently sues A for breach of contract and offers evidence that the property was worth \$5,500 at the time of the breach, and

that he had a purchaser who was willing to pay that amount at that time.

Is the evidence admissible?

Would your answer be different if it were shown that A had wilfully refused to sell?

9. On December 10, 1909, A purchased from B 50,000 bushels of wheat, to be delivered at any time in May, 1910, at 95 cents per bushel. On January 1, 1910, B notified A that he would be unable to deliver the wheat. The price was then \$1.00 and fluctuated between that time and May 31st from 90 cents to \$1.10. On the latter date it was \$1.05. A commenced suit against B in June.

How much is he entitled to recover?

Suppose he had purchased 50,000 bushels on the market at \$1.10 on January 10th, would your answer be affected?

10. What is the rule of *Hadley vs. Baxendale*? How does that rule differ from the rule as to consequential damages in tort? Illustrate.

Examination in Equity.

February 1st, 1911.

I.

A is a fiduciary (trustee, attorney or guardian), B a beneficiary (A's *cestui que trust*, client or ward). State and explain rules of equity where (1) A, having power to sell the trust property, sells to himself without consulting B; (2) where A bargains with B and buys the property from him; (3) where A receives a gift from B.

II.

State and illustrate fully two meanings of the phrase "irreparable injury," in connection with injunction against trespass.

III.

Mention and explain three classes of cases where lack of mutuality has been unsuccessfully urged as a defense to specific performance. When may it be successfully urged?

IV.

A owned a lot near which were large hay barns belonging to A and B respectively. The lot furnished the only means of access to B's barn. On Sept. 1 A orally agreed to sell the lot to B for \$500. B paid \$100 on the price, and spent \$100 in grading a road to his barn from the nearest boundary of the lot. A had used the lot for temporary storage of hay, and continued so to use it; B also used it for the same purpose after Sept. 1. B, on Sept. 6, bought a hay press for \$300, intending to move it onto the lot; on Sept. 10 he had moved it to the vicinity of the lot, when A repudiated the contract. B sues for specific performance. Discuss points suggested.

V.

In which of the following cases is rescission an appropriate remedy, in which reformation, in which neither? Reasons.

(a) A offers to lease a house for \$33 a month, intending offer to be \$53. B accepts, realizing that A has made a mistaken offer.

(b) A offers to lease a house for \$53; B accepts. C, a clerk, draws up lease for \$33, which A and B sign, neither noticing the mistake.

(c) A owes a debt to B, B sells the debt to C for its face value, neither B nor C knowing at the time that A has just become insolvent.

(d) A offers to lease a house for \$53, B accepts; C draws up a lease for \$33, which A and B sign, B noticing and A not noticing the mistake.

VI.

When may a Court of Equity give damages in place of specific performance? When may it grant specific performance with an abatement from the purchase price?

VII.

(a) State as fully as possible the nature and effect of a mortgage, at law and in equity.

(b) Give two illustrations of the maxim: "Equity looks at the substance or intent, and not at the form."

VIII.

A was negotiating with B for the purchase of B's house and lot in Urbana. B stated that the dimensions of the house were 90 by 25 feet. A examined the house, had a chance to measure it, which he did not do, and agreed to purchase, relying on B's statement. The real dimensions were 70 by 23 feet. B sues A for specific performance. Discuss.

IX.

State what you can relating to the protection in equity of trade marks, trade names, etc. K, the manufacturer of a popular beverage named Coca-Cola, sued to enjoin L, who was manufacturing and selling a beverage, similar in taste and appearance, under the name Ko-Kol. It was shown that

plaintiff's beverage contained no trace of the drugs coca or cola, but did contain a slight quantity of a stimulating substance much more wholesome than the above drugs. Should the plaintiff succeed? Why?

X.

A was negotiating for the purchase of Blackacre and Whiteacre, and employed B to examine the title of Blackacre, while A examined the title of Whiteacre himself. C held an unrecorded mortgage on Whiteacre, and notified B thereof, Jan. 2. B did not communicate the notice to A, who on Jan. 3 bought Whiteacre and on Jan. 5 sold it to B. Both A and B supposed that Whiteacre was occupied by the owner, X, from whom A purchased. In fact, on Jan. 4 and 5, but not before, Whiteacre was occupied by D as tenant of C. Does B take subject to C's mortgage? Reasons in full.

(b) In above case, suppose Whiteacre was occupied by D as tenant of C on and before Jan. 3, but not later?

Examination in Evidence.

MR. HALE.

PART I.

I.

At a point where the highway crosses the tracks of the B Railroad Company, one of the company's trains collided with a wagon in which A was riding. A was seriously injured. A brings an action against the B Railroad Company and, at the trial of the case, offers a witness, X, who testifies as follows:

- (a) The train was running 30 miles an hour.
- (b) The train was running at a reckless rate of speed.
- (c) The flagman who had charge of the crossing was intoxicated.
- (d) A told me, the day following the accident, that he stopped, looked and listened before attempting to cross the track and saw or heard no train.

(e) Two days after the accident the engineer admitted to me that he did not blow the whistle or ring the bell as he approached the crossing.

Would it make any difference whether or not the engineer was dead at the time of the trial?

Is any or all of foregoing testimony competent evidence?

II.

Action by K Coal Company for coal sold and delivered to X. At the time the coal was ordered the company's clerk made a memorandum in duplicate on which was placed the amount of coal ordered, the price and the probable time of delivery. X offered to prove an oral warranty made by the coal company as to the quality of the coal and a breach thereof.

Should an objection to the proof of this oral warranty be sustained?

III.

A is suing B for goods sold and delivered. During the period covered by the alleged sales, A had in his employ a clerk, H, who made all sales and kept a record of the sales made. In what way or ways, if any, may A make use of the record kept by H, as evidence?

(a) If H is alive and available as a witness?

(b) If H is dead at the time of the trial.

IV.

(a) What is the "Best Evidence Rule"?

(b) When in an action on a contract it appears that the contract has been reduced to writing, what foundation must be laid before oral evidence of its terms will be received?

V.

A was injured in a collision with a street car. Five minutes after the accident, while A was being carried to an ambulance, he said to H, "The motor-man was not sounding the gong." An hour later, at the hospital, he said to his nurse, "I have a severe pain in my back and my left side. Prior to this accident I never suffered any pain in either of these places.

A was available as a witness at the time of the trial. Both H and the nurse were offered as witnesses, but on objection by the defendant were not allowed to testify to any of the above statements made by A.

Was this testimony properly rejected?

PART II.

VI.

A executed a will August 1, 1909, and died six months later. Y applied for probate of the will, claiming that the will had been accidentally des-

troyed, and that under the terms of the will he (Y) was the sole devisee of A's property. To prove the contents of the will, Y offered to prove that A had said, on July 15, 1909, that he (A) was intending to make a will and leave all his property to Y, and also that A had made the statement, on September 1, 1909, that he (A) had made his will and left all his property to Y.

(a) Are either or both of these statements of the testator admissible?

VII.

A is suing B on what purports to be a promissory note executed by B. B claims that the signature is a forgery.

Enumerate and discuss the various ways in which it may be possible for A to prove the genuineness of B's signature.

VIII.

A owned a warehouse adjoining the tracks of the Y Railroad Company. The warehouse was burned. A brings an action against the Y Co. for the loss, and after negating the possibility of any other origin of the fire than the company's engines, offered to prove that three other fires had been set by sparks from some of the company's engines, at points along the track from one to two miles from where A's warehouse was located; these other fires extending over a period of from one to two

weeks prior to the burning of A's warehouse. The company offered to prove that its engines were constructed and equipped in the same manner as the engines on two other roads.

All of the foregoing testimony is objected to. What ruling?

IX.

A devised "my house on Main street to my nephew, Charles J. Young." The testator (A) owned two houses on Main street. The testator had no nephew by the name of Charles J. Young, but had a nephew by the name of Charles A. Young and another nephew by the name of Charles S. Young. In one of the Main street houses the testator had made his home for a number of years; the other he rented. Both Charles A. and Charles S. Young claim as devisees under the will.

In case of litigation between these two claimants, what kind of evidence will be admissible? In case of litigation to determine which property is carried by the will, what kind of evidence will be admissible?

X.

A sued B in the Circuit Court for breach of contract. Both A and B testified. Judgment was given on a verdict for B. A moved for and was granted a new trial. Before the case could be tried again, A died, and his administrator was substituted as plaintiff. When the case came on for trial, K, a juror at the previous trial, was called as

a witness on behalf of the plaintiff, and was asked if he could state the testimony given by A on the former trial. Defendant entered an objection on the ground that he was not a competent witness. The objection was overruled. K replied that he could state it in substance. Defendant thereupon objected on the ground that it was hearsay, and on the further ground that witness was unable to give the testimony of A verbatim. The objection was overruled.

(a) Were these rulings correct?

(b) Would B be a competent witness in his own behalf?

Illinois Procedure.

DEAN HARKER.

1. Mention the two actions at law whereby a party may obtain possession of real estate.

Show wherein they are alike and wherein they differ.

2. B, who had resided at Urbana, Illinois, for several years, died at Jacksonville, Florida, where he had gone temporarily, for his health. He was a single man and owned real estate and personal property located in Urbana. His only known relative is a brother, A. Learning of his brother's death, A sued out letters of administration from the Champaign County Court, advertised a day of adjustment and subsequently paid off three claims of the seventh class allowed by the Court. The claims were paid from the proceeds of sale of the personal property of the estate. B died leaving a will whereby he left his entire estate, real and personal, to C, his nurse, appointed C his executor and specified that the administration be in a Probate Court at Jacksonville. After proving the will

and taking out letters in accordance with the laws of Florida, C learned of the administration in Illinois.

Employed by C, how would you proceed?

Discuss fully the rights of the parties.

3. James Brown, now a resident of Joplin, Mo., owes John Scott the principal and interest (at six per cent) on a promissory note for \$800, executed July 4, 1909, at Champaign, Illinois, payable one year from date. He owns lots 4 and 5, block 6, Urbana, Illinois.

Prepare all papers necessary for Scott to recover a judgment *in rem* against the property.

4. A, having recovered a judgment against B and C for \$600, had execution issued which was returned by the sheriff unsatisfied for the reason that he could not find property on which to levy. X owes B \$700.

How may A proceed to obtain satisfaction of his judgment?

State reasons.

5. John Smith, owner of lots 3, 4, 5, 6 and 7, in block 4, Tolono, Champaign county, Illinois, and, while living upon lot 3 as a homestead, died July 4, 1910, leaving Mary Smith, his widow, Eli

Smith, an adult son, and George Smith and Jane Smith, minor children, as his only heirs at law.

For Eli Smith prepare petition for partition, assignment of dower and homestead.

6. A filed a bill in the Circuit Court asking that an interest claimed by him in certain lands be declared and that the same be partitioned between him and the defendants, B and C. B and C answered denying A's claim and set up that the interest claimed by him belonged to H. As a part of the answer was a prayer that H be made a party and that the rights of B, C and H be declared. Replication was filed and after H appeared as a defendant the parties went to trial on the pleadings and proofs taken by the Master in Chancery. At the conclusion of the argument the Court announces orally that the interest of the parties in the land are as set up in the answer, to-wit: a one-third interest each in B, C and H, and thereupon, before decree entered, A asks leave to dismiss his bill, to which the defendants object.

What should be the ruling of the Court?

Why?

7. What are the different modes of procuring service upon a defendant in a chancery cause?

State in detail the requirement in each mode.

8. In a suit in ejectment A recovers against B.

What remedy does the statute afford A to recover rents from B which takes the place of the ancient action for mense profits?

If B, under color of title acquired in good faith, placed lasting improvements on the land, state in detail the means by which he may receive compensation for them.

9. State a case in which a petitioner is entitled to a writ of habeas corpus; to a writ of certiorari; to a writ of mandamus.

10. On December 14, 1910, John Sax leased of Thomas Jett, of Champaign, for one week, a horse and buggy to be used in driving between and about the towns of Champaign, Tolono and Urbana only. On December 18th Sax learned that Jett had driven the horse to Danville.

Is Sax entitled to sue in replevin before the end of the week?

May he commence before a demand?

Fixing the value of the property at \$300, prepare all papers necessary for the plaintiff in replevin.

Examination in Municipal Corporations.

PROFESSOR POMEROY.

(January, 1911.)

1. The constitution provided that salaries of officers should not be changed after appointment or during term of office. By ordinance of X city, passed January 2, 1910, the chief of police was to receive a salary "of not less than \$2,500." A was duly appointed chief of police July 1, 1910. On July 6, his salary was fixed by ordinance at \$3,000 and he was, at the same time, authorized to employ B as private secretary at a salary of \$1,200. B was so employed July 8. On December 1, 1910, by ordinance, the salary of A was changed to \$2,500 and of B to \$1,000. A and B claim that this last ordinance is void under the above constitutional provision.

2. The general incorporation law of Illinois declares that cities organized thereunder shall have power "to do all acts and make all regulations which shall be necessary or expedient for the promotion of health or the suppression of

disease," and, under other sections, to prohibit slaughter houses or other offensive businesses within the city, to regulate the location of and to cleanse, abate or remove the same.

Does this authorize a city to appropriate city funds for the erection and maintenance of a public slaughter house? Reasons.

3. An ordinance of an incorporated village made it the duty of the mayor or chief of police to order all street processions, which seriously obstruct public travel or interfere with business, to disperse; disobedience to which order should constitute a misdemeanor. A member of the Salvation Army, arrested under this ordinance, defends on the ground that it is a discriminating ordinance.

Discuss.

Give two illustrations, actual or imagined, of discriminating ordinances.

4. Summarize the law, as deduced from the cases read, relating to the liability of a city for defects in sewers or in the sewer system, and the liability for imperfect drainage of surface water.

5. The constitution of Arizona provided that no city should become indebted in excess of one per cent of the assessed valuation of property in the city. The Legislature, by Act of March 1, 1912, provided that the city council of any city might issue bonds not in excess of the constitutional limit of indebtedness. No statute required a public

record of city indebtedness; the assessment rolls of cities were, however, a matter of public record. The city of Tombstone, being already indebted up to the constitutional limit, issued bonds to the amount of \$50,000. Each bond was signed by all members of the council, and recited that it was issued under and in full compliance with the Act of March 1, 1912, and of the constitution of Arizona; but did not recite the amount of the issue. The plaintiff, a *bona fide* holder, residing in Illinois, sues the city in a Federal Court on one of these bonds.

Should he recover?

State fully the rule or rules involved, with reasons.

6. In 1850 the charter of the city of A was revoked by the Legislature, and all its territory equally divided between and annexed to the adjoining cities, B and C. In 1855 half of the territory so annexed to C was erected into the new city of D. The statutes were silent as to the assumption of debts by B, C or D. Plaintiff, owning bonds legally issued by A in 1848, sued B, C and D thereon in 1856.

Could he recover against any or all? Reasons.

7. What are the legal arguments for and against the implied liability of cities for injuries resulting to travelers from defective and unsafe streets?

8. The city of Champaign vacated Green street for a distance of 100 feet west of Wright street. Shop keepers and owners of clubs and boarding houses on Green street between Wright and Sixth and west of Sixth sued the city under a statute allowing "special damages" on the vacation of a street.

Should they recover?

Why?

What is meant by "special damages" in this connection?

9. The city of Urbana was permitted by its charter to build school houses and own and operate a lighting system. In June, 1911, the city authorized the making of contracts for the building of a school, to cost \$20,000, and for the purchase of an electric lighting plant for \$100,000, the latter to be paid for in annual installments of \$5,000 out of the income derived from the operation of the plant. The debt of the city, at the time, was \$8,000 short of the constitutional limit. There was \$12,000 in the city treasury not appropriated to the above or any other purposes. Plaintiff, a resident tax payer, sues to enjoin the city from entering into these contracts.

Discuss points involved, including the jurisdiction of equity.

10. The city of A, in 1850, issued valid bonds under a statute which authorized A to levy and col-

lect a special annual tax to pay interest accruing on the bonds. In 1860, by amendment to the charter of A, its annual tax rate, for all purposes, was limited to one per cent. The full amount of the one per cent tax for 1862 had been collected and used for current expenses; a special tax was levied, but the tax collector refused to collect it and resigned his office. The appointing power refused to appoint a tax collector to fill the vacancy. Plaintiff, a bond holder, having exhausted his legal remedies, brings his bill in equity, asking the appointment of a receiver (1) to collect the equitable assets of the city not subject to execution and (2) to collect the special tax; the proceeds to be applied to payment of the delinquent interest for 1862. X, a tax payer, intervening in the suit, asserts (a) that the special tax is void; (b) that a Court of equity is without jurisdiction.

Discuss.

Examination in Personal Property.

(February 1, 1911.)

PROFESSOR THURSTON

PART I.

I. (a) What kind of property is each of the following and to whom does each pass upon death of the owner leaving no will:

(1) A farm?

(2) An automobile?

(3) A lease of a house for ten years?

(4) A certificate of stock in the Illinois Central Railroad Company?

(b) What is meant by the term "possessory actions?" Name as many of such actions as you remember.

(c) What is meant by the term "special property?" Point out the situations in connection with which the term is usually employed.

II. A, who lived in Champaign, owned a mare named "Dolly," which mare B stole in 1901.

The day after the theft B sold the mare to C (an innocent purchaser) and C a few days thereafter moved to Indianapolis taking the mare with him. In 1905 the mare gave birth to a colt named "Jonathan." In 1909 C moved back to Champaign bringing with him the mare "Dolly" and the horse "Jonathan." In 1910 X, a sheriff, having an execution against the property of C, in the belief that the mare "Dolly" and the horse "Jonathan" were the property of C, levied upon and sold them at sheriff's sale to D. A now (February, 1911,) brings replevin against D for the mare and the horse.

What decision?

III. X owned land in which was a coal mine, bordered on one side by A's land and on the other side by B's land. X innocently mined 100 tons of coal from A's land, shipped it to Chicago and sold it to Y for four dollars a ton. X wilfully mined 100 tons of coal from B's land, shipped it to Chicago and sold it to Z for four dollars a ton. The coal thus taken from A and B was worth one dollar a ton as it lay in the ground, that is, before it was mined. The expense to X of quarrying such coal was fifty cents a ton and the expense of bringing such coal to the pit's mouth was also fifty cents a ton.

- (a) A sues X in trespass.
- (b) B sues Z in trover.

What is the rule of damages to be applied in each case?

IV. X owned a grain elevator in which elevator A deposited 500 bushels and B 400 bushels of wheat. There was already in the elevator 300 bushels belonging to X. The wheat was all of the same quality. The receipt given to A ran thus: "Received in store from A 500 bushels wheat; this wheat may be stored with other wheat of same quality." The receipt given to B was in the same form with the following clause added: "Wheat of the same quality or its value to be returned." X thereafter drew out 600 bushels. The next day the elevator burned to the ground.

What are the rights of A and B against X?

V. A wilfully picked apples from B's apple trees and mixed them with apples picked from his own apple trees. A sold all the apples to X.

(a) What are B's rights against X?

(b) Would your answer be the same if A had innocently picked the apples from B's trees under a mistake as to the boundary between A's apple orchard and B's apple orchard?

PART II.

VI. A owned a quantity of lumber which B wrongfully took and converted. A sued B in trover and got judgment. A then retook the lumber from B's land. A thereafter enforced payment of the judgment.

B now brings trover against A for the value of the lumber.

What decision?

VII. A, a traveling salesman, came to X's inn with a bag containing his own clothing and a trunk full of samples belonging to B, his employer. During his stay at X's inn A had B send to his (A's) room on approval a pair of skates.

A is about to depart without paying his board bill. Can the innkeeper, knowing all the above facts, lawfully detain:

- (a) The bag containing the clothes?
- (b) The trunk full of samples?
- (c) The skates?

VIII. X pledged his horse with D to secure a loan of \$50. D, before X's debt was due, repledged the horse to E to secure a loan of \$75.

- (a) Can X maintain trover against D?
- (b) Can X maintain replevin against E?

IX. M lost his watch and advertised a reward of \$10 for its return. N read the advertisement and thereafter found the watch. O then stole the watch from N.

- (a) Can M maintain replevin against O?
- (b) Can N maintain trover against O, and if so what is the rule of damages to be applied?

X. Define each of the following terms and illustrate your definition by an example wherever practicable:

- (1) detinue.
- (2) pledgor.
- (3) lienor.
- (4) bailor at will.
- (5) custody.
- (6) judgment in rem.
- (7) wreck.
- (8) general lien.
- (9) agistment.
- (10) confusion of goods.

Examination in Trusts.

PART I.

(January 30, 1911.)

PROFESSOR THURSTON.

I. P was engaged by D to act as a traveling salesman of D's wares, and, as security for the performance of his contract, P delivered to D one hundred dollars. D, in P's presence and without objection on P's part, placed this money in D's cash drawer with other money belonging to D. That very day D's store was burned to the ground and all the money in the cash drawer destroyed. P, having fully performed his contract with D, demanded back his security, and D set up the loss of the money by fire in excuse.

(a) P thereupon brings assumpsit against D. What decision?

(b) Would your answer be the same if, in P's presence, D had placed the money received from P in a sealed envelope and laid the envelope away in a separate drawer—the other facts being the same?

II. A, the owner of a policy of insurance on his own life (payable to A's legal representatives), by writing not under seal assigned the policy to T in trust for C. A notified T, who accepted the trust. A also notified the insurance company, which noted the assignment on its books. The policy was never delivered by A, but on A's death A's executor (E) found the policy (with the assignment attached thereto) among A's papers. T now refuses to take any action in the matter.

What are C's rights?

III. (a) A contracted orally to sell land to B. A then contracted in writing to sell the same land to C. A thereafter conveyed the land to B, who had notice of the contract with C. Can B keep the land?

(b) A contracted orally to sell land to B. A then sold and conveyed the same land to C, who had notice of the contract with B. A subsequently delivered to B a memorandum of the contract between A and B. Can C keep the land?

IV. A conveyed land to B, B promising orally to reconvey to A upon request. B, however, refused to do so when requested.

What are A's rights against B?

V. A bequeathed a sum of money to T (A's executor and trustee), to be expended by T for

masses to be said for the repose of the souls of A and B (A's deceased wife). T is willing to perform this trust. R, the residuary legatee, files a bill to enjoin T from expending the trust moneys in this way.

What decision?

PART II.

VI. B, owing \$100 to A, gave A his (B's) check for \$100 drawn to A's order on the X bank. A, having a deposit account at the Y bank, endorsed in blank and delivered this check to the Y bank, which bank credited A on the books of the bank and on A's pass book with "\$100 cash." Thereafter and on the same day the Y bank became insolvent and closed its doors. The receiver of the Y bank duly collected the full amount of this check from the X bank. The Y bank will pay a dividend of 50 cents on the dollar to its creditors. A had a credit balance (exclusive of this \$100 check,) at the time the Y bank failed.

Is A entitled to the full \$100 collected by the receiver on this check, or must he be content with a 50 per cent dividend thereon?

VII. T was trustee for A of certain negotiable securities. X, by bribery, induced T to deliver to X the securities. X promptly sold the securities to a bona fide purchaser and bought land with the proceeds.

- (a) Can A maintain a bill in equity against X?
- (b) Can T maintain such a bill?

VIII. A, the registered owner of a certificate of stock, endorsed and delivered the same for value to B. Before B had procured a transfer of this stock into his name on the books of the corporation, X, a judgment creditor of A, levied execution upon this stock.

What are the respective rights of B and X, at law and in equity, with regard to this stock?

IX. A devised \$10,000 to T upon trust to pay the net income to B (A's son), during B's life, "free from the interference or control of his creditors, my intention being that the use of said income shall not be anticipated by assignment." A also devised \$10,000 to T upon trust to pay the net income thereof to C (A's son), "until he becomes 35, and then to convey and deliver to him the principal of said trust fund." B for value, by deed, assigned to C all his (B's) interest under the will of A.

C (now 25 years old), files a bill against T to obtain a transfer to him of both trust funds. What decision?

X. T, a trustee for C, received a trust fund of \$10,000 in cash. T promptly invested \$2,000 thereof in unsecured bonds of the A Railroad company, \$2,000 in stock of the B Railroad company, \$2,000 in a loan to Y secured by a mortgage on real estate of the value of \$4,000, and he put \$3,000 thereof into his own private business. The

remaining \$1,000 T deposited in the X bank (where T had no other account) to await investment, under the name of "T, trustee for C." A month thereafter the X bank failed. At the end of a year the land which secured the loan to Y depreciated to \$1,500 (and Y became hopelessly insolvent), the bonds of the A Railroad depreciated 50 per cent, the stock of the B Railroad doubled in value, and T's private business proved highly successful.

What are C's rights against T?



Outline
1910/11
pt. 2

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SECOND SEMESTER EXAMINATIONS

1910-1911

IN THE

COLLEGE OF LAW

OF THE

UNIVERSITY OF ILLINOIS

JUNE, 1911

UNIVERSITY OF ILLINOIS

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C
IZZINE

1910/11

pt. 2

Examination in Bankruptcy.

MR. DECKER.

On January 15, 1911, A, a resident of Champaign, engaged in the grocery business, made an assignment of all of his property to B, as trustee, for the benefit of his creditors, reciting therein that it was made pursuant to the statute of Illinois regulating such assignments, and attached thereto a schedule showing a total of twenty-five creditors to whom he owed a total of \$25,000. B qualified according to law, gave notice to creditors, took possession of the property assigned and on March 20, 1911, sold all of it except a house and lot, hereinafter mentioned, for \$12,000, to X, Y and Z.

Among his creditors were the following: The First National Bank of Champaign, \$10,000 on a note, on which A was a joint maker with C, A's son, for money loaned by the bank to C, which note was due; M, who held A's note for \$1,000, due May 1, 1911, on which K was an indorser, and N, who had a claim originally for \$750 for goods sold and delivered to A, but which had been reduced

to \$250 by a payment of \$500, made on January 14, 1911.

On January 10, 1911, P, another creditor, had recovered a judgment against A for \$2,000, which became a lien on a house and lot included in the assignment, worth \$5,000, and which the sheriff had advertised for sale on April 5, 1911. The suit was for personal injuries sustained by P from falling down a cellarway in A's store, and had been defended by A, who denied his negligence and claimed contributory negligence of P.

1. Draw an involuntary petition as of April 1, 1911, naming the bank, M and N as petitioners, and assigning as many acts of bankruptcy as the above facts disclose.

2. Assuming the sufficiency of the petition, outline the course of proceedings.

3. Suppose that all of the creditors, except the bank, N, P and nine others, not heretofore specifically named, had proven their claims under the assignment, could the petition be sustained if attacked on the ground of insufficient petitioners? When and how should that objection be taken? How may it be cured?

4. Suppose that A should file an answer to the petition, alleging that C had at all times been

able to pay the note to the bank, and that he had in fact paid the same on April 2, 1911, and denying his insolvency at any time. Would the answer be demurrable?

Discuss the question of insolvency in its relation to involuntary bankruptcy.

5. Assume that A is adjudged a bankrupt on the petition filed as above. What are the rights of his trustee in bankruptcy to the property assigned to and sold by B to X, Y and Z?

Suppose that the assignment had been made November 15, 1910, instead of March 15, 1911. Would this affect the trustee's rights? Explain.

What would be the rights of the trustee to the house and lot as against B and P, under the original statement?

6. Suppose that A had made a present to his wife in 1906, when he was solvent, of bonds worth \$5,000; that later she re-assigned the bonds to A without consideration, to enable him to use them as collateral security for a loan from the Champaign National Bank, by which they were afterwards sold and applied on the loan; that on January 10th, 1911, A, while insolvent, conveyed to his wife the house and lot occupied by them as a homestead, for an expressed consideration of \$6,000, though nothing was paid by her at the time, said \$6,000 being about the value of the property.

Would A's trustee in bankruptcy take any title to this property under section 70a of the bankruptcy act?

Could he avoid the deed under any other section? If not, suggest facts which would enable him to do so.

7. (a) Could P prove his judgment against A's estate?

(b) If he had not reduced his claim to judgment prior to the date of the petition, could he prove it?

(c) What are the rights of K, the endorser on A's note to M, against A's estate?

(d) Suppose A were an endorser on a note of H to I, due six months after the adjudication could I prove it against A's estate?

8. How may a bankrupt obtain his discharge, and under what conditions will it be refused?

What is the effect of a discharge?

Examination in Carriers.

(June, 1911.)

PROFESSOR GREEN.

PART ONE.

(When possible, write first a direct answer to the question and then a brief statement of your reasons.)

1. A malting company in Chicago agreed with a brewing company to receive from the brewing company 50,000 bushels of barley at any railroad station in the city, convey it to the malting company's plant, store, malt and deliver it at the brewery, all for fifteen cents a bushel. After the malting company had taken the barley to its warehouse and it was there waiting to be malted, it was burned.

Is the malting company liable if the fire occurred without its fault, except that by reasonable diligence it would have malted and delivered the barley before the fire happened?

2. X bought a ticket from Danville to Urbana over the Wabash railroad, stamped "Good for two days from date of sale." He rode on it that day as far as Sidney, where it was necessary to change to another train in charge of a different conductor. While standing on the station platform at Sidney he was arrested by mistake for another man. He could not obtain his release until after the train for Urbana had gone. No other train ran that day. He attempted to ride on the same ticket from Sidney to Urbana by the first train next day, but the conductor, though he knew the facts, refused to receive it, and compelled X to pay fare by threatening to eject him.

Has X a cause of action against the railroad?

3. A, in Mexico, ordered rifles on credit from B in Texas. B shipped the rifles by railroad, consigned to A, who thereby acquired title. After shipment, an insurrection broke out in Mexico along the line of the railroad and it seemed likely that if the rifles were sent forward the train which carried them would be attacked and burned. For this reason the railroad refused to send the rifles forward, although A insisted that they be forwarded at once. A had contracted to resell the rifles, and because of his inability to fulfill his contract became insolvent. Thereupon B, without saying anything to the railroad, took the rifles back. As it turned out, if they had been sent forward promptly they would have reached A safely.

What is the railroad's liability to A?

4. The Big Four ticket agent at Peoria by mistake sold a ticket to Urbana, Illinois, to a man who asked and paid for a ticket to Urbana, Ohio, which ticket the man intended for and gave to his wife. The mistake was not noticed until the train reached Urbana, Illinois, when the conductor, in spite of explanations, forcibly but without more force than was necessary to accomplish the purpose, compelled the wife, who, having money, refused to pay fare further, to leave the train.

What, if any, breach of duty has the railroad company committed, who may sue, and what damages are recoverable?

5. A borrowed a book of B, and having read it sent it to B by express. The express company lost it.

May A sue in contract? In tort? May B sue in contract? In tort?



Examination in Carriers.

(June, 1911.)

PROFESSOR GREEN.

PART TWO.

6. A delivered to a railroad company ten barrels of flour to be carried to Chicago, and took from the company a bill of lading, signed by it, which stated that it had received from A ten barrels of flour to be carried to Chicago and there delivered to A's order. A then sold the flour to B, wrote on the back of the bill of lading, "Deliver to bearer, A," and handed it to B. A thief stole the bill of lading and delivered it to C, under a contract to sell to C the flour mentioned in it. C paid value to the thief without notice of the facts. Thereafter the flour reached Chicago, and A telegraphed the carrier to deliver to D, and the carrier did so.

Discuss the carrier's liability to B and to C.

7. A railroad ran from a coal mining region through the cities of X and Y to Chicago. X was

nearer to the mines, Y was nearer to Chicago. Several roads to Chicago ran through X; no other road ran through Y. There were factories using coal at each city and the products of all the factories were sold in competition on the Chicago market. The railroad made a lower rate on coal to Y than to X, because it was sure to carry the products of Y's factories to Chicago. On the other hand, competition between the railroads through X had brought about lower rates to Chicago from X than from Y. The manufacturers at each place complain of the cheaper rates given to the other as constituting an illegal discrimination at common law.

Discuss the merits of their contentions.

8. What are the principal prohibitions of the interstate commerce act?

9. A passenger traveling on a free pass was hurt in a railroad wreck caused by the train leaving the track. The contents of his trunk were damaged. They consisted in part of ordinary wearing apparel and in part of samples of merchandise.

What kind or degree of fault on the part of the railroad company must there be to make it liable for the damage (a) to the passenger (b) to his wearing apparel (c) to his samples?

10. A railroad company accepted cattle to be delivered at a slaughter house adjacent to its tracks. The workmen at the slaughter house went on a strike and for several days forcibly prevented the unloading, feeding or delivery of the cattle. In consequence they were delivered in an emaciated condition.

Is the railroad company liable for the delay in delivery or for the bad condition of the cattle?



Examination in Common Law Pleading.

(June, 1911.)

DEAN HARKER.

1. A is the owner of a tract of uninclosed wood land. Without his consent, and by a person unknown to him, two valuable walnut trees were cut from the land and the logs hauled to B's saw mill, where they were manufactured into boards. A is able to identify the boards as coming from his trees.

State the different forms of action he may elect in a suit against B.

2. X, as sheriff, by virtue of a distress warrant, took possession of a team of horses driven by A, tenant on the landlord's farm. B claiming to be the owner of the horses, replevied them from X. The suit was dismissed upon the motion of X, because of B's failure to file a declaration within the time required by law and a writ of *retorno habendo* awarded, on which the property was re-

turned to X. B now sues X in trespass for the wrongful taking of the horses.

May he maintain his action? Why?

3. In a suit brought by A against B on a promissory note, B files a special plea in which it is alleged that A, in consideration of twenty dollars paid by B to him, extended the time of payment one year beyond the date of maturity and agreed with B that he would not bring suit within one year, which time has not yet elapsed. There are no objections to the body of the plea. It concludes as follows: "And this, the defendant is ready to verify; wherefore he prays judgment." To the plea the plaintiff interposes a demurrer.

Give reasons why the court should sustain or overrule the demurrer.

4. A, as the administrator *de bonis non* of the estate of X brings an action of debt against B, a surety on the bond of Y, a former administrator. The declaration, after reciting the appointment of Y, the execution of the bond with B as surety, and his assuming to administer upon the estate, averred that on a certain day (naming it) the county court revoked Y's letters and ordered him to turn over to A all notes and other assets in his hands as administrator and that Y had turned over all the assets except a certain \$4560. The failure to pay over the \$4560 was assigned as a breach. To the declaration B demurs upon the ground that

sufficient facts to show that the court had jurisdiction of the parties in the proceeding to revoke Y's letters are not pleaded.

Should the demurrer be sustained or overruled? Why?

5. To the plaintiff's declaration in assumpsit the defendant pleads *non assumpsit* and two special pleas. Plaintiff accepts issue on *non assumpsit* and demurs to the special pleas. The court sustains a demurrer to one of the special pleas and overrules it as to the other. On a subsequent day, the case is regularly called for trial, and, in the absence of the defendant, a jury is empanelled which hears evidence for the plaintiff and returns a verdict in his favor for \$500. The defendant has no legitimate excuse for absenting himself from the trial.

Was the action of the court proper? If not, what remedy has the defendant to relieve himself from the effect of the verdict?

6. To the plaintiff's declaration in debt, based upon a foreign judgment, the defendant pleaded: First, *nul tiel record*; second, that the judgment was erroneously entered against him. Plaintiff joined issue on the plea of *nul tiel record* and demurred to the second plea. The declaration was bad in substance and obnoxious to a general demurrer. Upon the argument of the demurrer to the plea, the defendant asked that the demurrer

be carried back to the declaration. The court refused to carry the demurrer back to the declaration.

State your views upon refusal of the court to so do.

7. To the plaintiff's declaration to recover, upon the promise of the defendant to pay for goods furnished the defendant's father by the plaintiff, the defendant filed a plea in which he set up that the promise was bad under the statute of frauds and that the debt was barred by the statute of limitations. Plaintiff files a general demurrer.

State why you think the plea is bad. State why the court should sustain or overrule the demurrer.

8. In the trial of a case brought by the plaintiff against a railroad company to recover for injuries sustained at a highway crossing, the jury found the defendant guilty and assessed the plaintiff's damages at \$2,000. In answer to a special interrogative, "Was the plaintiff at the time he received the injury complained of, in the exercise of reasonable care for his own safety?" The jury answered: "No."

Representing the defendant, what motion would you make?

Examination in Domestic Relations.

(June, 1911.)

PROFESSOR GREEN.

PART ONE.

(When possible, write first a direct answer to the question and then a brief statement of your reasons.)

1. An habitual drunkard who, though otherwise sane, was afflicted with an uncontrollable propensity for drink amounting to a monomania, induced a woman to marry him by fraudulently telling her that the reports of his intemperance were false. Within a week after the marriage he resumed his drinking habits. The woman wants to put an end to the marriage relation and consults you, her attorney, as to her rights.

What will you tell her?

2. Albert married Bertha. A year later he became insane and wandered away. After he had been absent unheard of for two years, a report

came to Bertha that he was dead. Reasonably believing it, she married Charles and lived with him for six years. Then she deserted Charles and lived for two years with David. Then Albert turned up alive.

Is Albert entitled to a divorce? Is Charles? Is Bertha?

3. A, aged 20, fraudulently represented himself to be 21, and thereby induced X to sell and deliver him a bull dog in consideration of A's promise to pay \$25. The bull dog was killed next day in a fight. A, when 21, well knowing that he had \$25 in his pocket, said to X, "I admit I promised to pay \$25 for the dog, and I would do so if I had \$25."

What remedies, if any, has X?

4. A, aged 20, for money paid, conveyed land to B. Two years after reaching majority, he brought ejectment without previous notice of disaffirmance or offer to return the money, which he still had.

What decision?

5. On the fourth of July, a father handed a watch to his minor son, saying: "You may keep this watch until Christmas, when I shall give you a better one instead." At Thanksgiving the son returned the watch to his father saying he did not care for it any longer. Next day he changed his mind and wanted it back, but his father would not let him have it.

Is the son entitled to the watch?

Examination in Domestic Relations.

(June, 1911.)

PROFESSOR GREEN.

PART TWO.

6. A, aged 19, bought a ticket to the theatre, good for a particular performance. Before the performance he lost the ticket and asked for a return of his money.

Is he entitled to it?

How if he had attended the performance and asked for his money after it was over?

7. A boy at school bought a hat and a pair of shoes. He had plenty of money in his pocket but bought on credit. He needed the hat but was already well supplied with shoes.

What is his liability?

8. A hired B, aged 19, to run A's automobile. B, in taking A to his office, negligently ran into

C's automobile, whereby both automobiles were damaged and A's leg and C's leg were broken.

What is B's liability?

9. John married Mary. Afterward he executed and delivered to her a deed of his farm, in consideration of her promise to pay \$5,000. If she refuses to pay, may John maintain an action against her (a) at common law; (b) by the present law of Illinois?

How would you answer both questions if John and Mary were divorced before the suit began?

10. A woman bought meat telling the seller to charge it to X. The seller charged it to X, not knowing who X was. It turned out that X was the woman's husband, and that she was living apart from him and bought the meat for herself.

Under what circumstances, if at all, is X liable for the price?

Examination in Conflict of Laws.

MR. DECKER.

PART I.

I. What is the doctrine of *Ditson vs. Ditson* and how does it differ from the doctrine of *Haddock vs. Haddock*?

Explain the reasoning on which each doctrine is based. Which case represents the law of Illinois, so far as our courts have spoken?

II. A, a resident of Illinois, sued B, a resident of Louisiana, in Chicago, and made the Illinois Central Railroad Company a garnishee defendant. No personal service was had on B. A proved an indebtedness to him from B of \$500, and obtained judgment for that amount. The railroad disclosed an indebtedness to B of \$200. Judgment was rendered against it as garnishee for that amount, and the money was paid by it to A.

(a) If B sued the Railroad Company in Louisiana for the \$200, could it plead the judgment in Illinois as a defense?

(b) Could A successfully sue B in Louisiana on the judgment recovered against him in Illinois for the balance of \$300?

III. M, a single woman, was domiciled in Illinois until she was 25 years of age, when her health failed and she went to California, expecting to remain only until her health was restored. Doctors there advised her that she could never live again in this climate and she decided to make a permanent home in California, if she could find a place to suit her. She was looking at orange groves near Los Angeles when she was taken sick and died at a hotel in that city. She left real estate in Illinois, \$10,000 on deposit in a Los Angeles bank, and \$50,000 in stocks and bonds in the hands of a trust company in Chicago.

(a) If she died intestate, by the law of which State would each of the above items descend or be distributed?

(b) Suppose that she made an holographic will, just before she died, good by California law but not by Illinois law, would it pass the real estate? The personal estate?

(c) Would it affect your answer if it could be shown that the will was duly probated in California?

IV. Supposing M had recovered from her sickness and afterwards married in California a

man from South Carolina who was making a pleasure trip to the coast; that they had intended to return to South Carolina to live, but after traveling for three months settled in Illinois. Assuming that the common law prevails in South Carolina, the law of community proper in California, and that the present statutes existed in Illinois, who owned the personal property which M had when she married?

Examination in Conflict of Laws.

MR. DECKER.

PART II.

V. A statute of Michigan provided that "No action shall be brought whereby to charge any person on any representation as to the financial responsibility of another, unless the same shall have been made in writing." X, a resident of Michigan, made false oral representations in Michigan to the agent of M, a wholesale firm doing business in Chicago, as to the financial condition of Y, another resident of Michigan. M sued X in Chicago. Assuming that there is no such statute in Illinois, has X a defense under the Michigan statute?

Suppose that the misrepresentation had been made in Chicago and the suit brought in Michigan. What result?

VI. X made a note payable to Y in Michigan, where both resided, which had become barred by the Statute of Limitations of that State. X sub-

sequently, while temporarily in Chicago on business, was sued by Y and personal service obtained.

(a) Has the Illinois court jurisdiction?

(b) Can X plead that the action is barred by the Statute of Limitations of Michigan, where both reside?

VII. X, a resident of Chicago, was injured in a railroad wreck in Ohio and died six months later from his injuries. He had commenced a suit for damages in Illinois, which was pending at the time of his death.

By the statutes of Ohio, actions for personal injuries survive to the personal representatives of the deceased; and in case of death by wrongful act, a statutory action is also given to the executor or administrator for the benefit of the deceased's next of kin, for such damages as they have sustained from the death.

(a) Assuming that Illinois had no such statutes, could the administrator of X, appointed in Illinois, be substituted as plaintiff in the action commenced by X and prosecute the same to judgment?

(b) Could he bring an action in Illinois for the benefit of the next of kin?

(c) How would his rights be affected by the present statutes of Illinois?

VIII. X made a note in Michigan to Y, payable at a bank in Denver, Colorado, with interest at the rate of 10 per cent per annum. The note was not paid at maturity and suit was brought thereon in Illinois, where X then resided. Assume that by the law of Illinois the agreement to pay 10 per cent interest would be void; that by the law of Michigan the notes would be void for usury, and by the law of Colorado the agreement to pay 10 per cent is not usurious.

(a) Has X any defense arising from the agreement to pay 10 per cent interest?

(b) Suppose the above note was payable "with interest" but no rate specified. The law of which state would fix the rate?

Examination in Equity Pleading.

(June, 1911)

DEAN HARKER.

1. A has filed a bill for the specific performance of a contract for the conveyance of land, to which B, the defendant, files a plea setting up the statute of frauds.

How may the attorney of A have the sufficiency of the plea determined?

2. To A's bill in equity, which waives answer under oath, B answers under oath.

What is the effect of the sworn answer?

In such state of the pleading, what would you as the attorney of A do—except to the answer, move to strike from the files, or reply? Why?

3. A and B, residents of Champaign county, are tenants in common with the unknown heirs of C in lands situated in Macon county. For the last four years B has been receiving the rents and profits and refuses to pay A anything.

State in what form of action, in what court and against what defendant A should bring suit. For what relief should he pray, and how should service be obtained?

4. B, served by summons in a suit in equity brought by A to the April term (1911) of the circuit court of Champaign county, was defaulted for want of answer and a decree was rendered against him. He had a good defense, but neglected to set it up. The court has adjourned for the term.

Employed by B, what would you advise and what course would you take?

5. In a suit brought by A service was had upon defendant B by summons, and upon defendant C by newspaper publication. Defaults and decrees were entered against both defendants. C did not receive notice of the publication nor notice of the suit until after decree.

What remedy is open to him?

6. James Smith secured a foreclosure decree against John Doe in the circuit court of Champaign county at the January term, 1909, on a mortgage executed to Smith by Doe on Lot 4, Block 2, Urbana, Illinois, to secure the payment of a promissory note for \$2,000, dated September 1, 1907, due in one year. The property was sold under the decree for \$2,200, May 1, 1909. Doe did not

redeem, and on August 10, 1910, the Master in Chancery executed a deed to Smith. September 1, 1908, Doe sold the property to George Bush for \$1,000 and executed a deed to him which was immediately placed on record. Smith did not make Bush a party, although the deed had been recorded three months when he began suit.

For Bush draft a bill to redeem, September term, 1911.

7. In the name of James Smith, as complainant, draft a bill, January term, 1911, to cancel a tax-deed to the property described in question 6, (Smith in possession,) executed to Walter Jones by John Watts, as county clerk, August 1, 1910, after tax sale of June 10, 1908, basing the bill on failure of Jones to give notice to Doe, then in possession, as required by statute.

8. A files bill to foreclose mortgage given to secure payment of two notes after the maturity of the first note, but before the second is due. Court adjourns for the term before he is able to secure decree and the cause is continued generally to the next term. By the next term the second note matures.

How may A secure a decree covering both notes?

9. A files a bill to foreclose a mortgage executed to him by B on Lots 2, 3 and 5, in Block 6,

of a certain city addition. It is the contention of B that Lot 5 was included in the mortgage by mistake.

How may he plead so as to make his contention available and have the decree exclude Lot 5?

10. To A's bill for the specific performance of a contract B desires to interpose the statute of frauds as a defense.

State under what conditions he should demur, plead or answer.

Examination in Mortgages.

ASSISTANT PROFESSOR POMEROY.

PART FIRST.

1. State what you can concerning the grantor's implied lien after conveyance, and contrast it with the vendor's lien before conveyance. Give two other examples, facts real or fictitious, of equitable liens or equitable mortgages.

2. A receiver is appointed in foreclosure of a railroad mortgage. Are unpaid claims, accruing within six months previous, (a) for wages of station agents, (b) for wages of track repairers, (c) for the salary of the president, (d) for personal injuries to a passenger--entitled to preference in payment over the mortgage bond holders? Reasons, as fully as possible, for the doctrine involved.

3. (a) E, the lessee of a saloon. under a lease expiring in 1920, mortgaged it to B, a brewer, on July 1st, 1910, to secure a note due July 1st, 1911,

the mortgage containing a covenant that during the continuance of E's lease he should sell no other brand of bottled beer in the saloon except the beer manufactured by B.

(b) E mortgaged a house to B on January 1st, 1910, to secure a note falling due July 1st, 1911, for \$3,000, the value of the house being \$5,000. On January 1st, 1911, he gave B an option to purchase the equity of redemption for \$2,000 at any time before July 1st, 1911. On June 15, 1911, B gave notice of his intent to exercise this option.

On July 1st, 1911, E tendered B the principal and interest due on the two mortgages, and now seeks to redeem, to cancel the contract to sell the equity of redemption and the covenant relating to the sale of beer.

Discuss principles involved.

4. E mortgaged land to B to secure a negotiable note for \$1,000, payable May 1st. On March 1st, B, for a valuable consideration, assigned the mortgage, with a forged note, to C. On April 1st, for value, he indorsed the genuine note to D, who took in good faith without notice of the assignment to C. On February 1st, E had made a payment to B of \$400 on the mortgage debt, of which fact neither C nor D had notice.

What rights have C and D respectively upon the mortgage and upon the note? Reasons. (Illinois law.)

5. M made the following mortgages of Blackacre: on January 2, to A, to secure \$1,000 (a) then loaned, and future advances; this mortgage was recorded. On January 10, to B, to secure \$900 (b); this mortgage was recorded but A had no actual notice of it. On January 20, to C, to secure \$800 (c); this mortgage was not recorded, but A had actual notice of it. On January 30, A advanced \$700 (d) to M under the first mortgage.

What are the priorities among (a), (b), (c) and (d)? Reasons.

If Blackacre sold on foreclosure for \$3,000 how should the fund be distributed?

Examination in Mortgages.

ASSISTANT PROFESSOR POMEROY.

PART SECOND.

6. E mortgaged Blackacre and Whiteacre to B in one instrument; this mortgage was recorded. E afterwards mortgaged Blackacre to C; this mortgage was recorded. Later E mortgaged Whiteacre to D. Blackacre is insufficient to pay both B's and C's mortgages; Blackacre and Whiteacre together are insufficient to pay all three mortgages.

What are the rights of C and D?

7. E gave a mortgage of land to B to secure two notes; one for \$1200, falling due June 1st, the other for \$800, falling due September 1st. On March 1st, B assigned the \$800 note to C; on April 1st, the \$1200 note to D. The land sold on foreclosure for \$1500.

State, with reasons, three ways in which the fund may be distributed. What is the Illinois rule?

8. E mortgaged a tract to B for \$1,500; the mortgage was recorded. E afterwards sold the tract in five lots, at different dates, in the order 1, 2, 3, 4, 5, each sale being made with warranty against incumbrances. B, with actual notice of these sales, released lot 4 from the mortgage. Each lot is worth \$400.

E, being insolvent, how shall the burden of the mortgage be apportioned among these lots? Reasons in full.

9. A mortgaged land to B; A then conveyed the land to C, C not assuming the mortgage. C then conveyed the land to D, who assumed payment of the mortgage debt. Can B sue D for the deficiency resulting on foreclosure? State reasons for conflicting rules on the subject.

What is the rule in Illinois?

10. When is a mortgagee, in Illinois, entitled to possession? On accounting by a mortgagee in possession, with what is he chargeable, and for what may he be credited?

Examination in Partnership.

(June, 1911)

PROFESSOR GREEN.

PART ONE.

(When possible, write first a direct answer to the question and then a brief statement of your reasons.)

1. A, having a capital of \$20,000 invested in his business, made the following contract with B: "A hereby agrees to employ B as manager of his business at an annual salary of \$1,000. In order to secure faithful service, it is further agreed that B shall have half the profits and stand half the losses of the business." B carried on the business in A's name. At the end of the year the capital was used up and A was bankrupt.

What, if any, rights have A's creditors against B?

2. A, B and C are partners. A dies. Who should sue to recover a firm debt? For trespass

to a firm chattel? For trespass to firm realty, the deed to which stands in the name of the partners? Whom should a creditor of the firm sue?

3. A and B were equal partners in a manufacturing business. The firm assets consisted of personal property worth \$10,000 and a factory building worth \$20,000, which had been bought with firm money and conveyed by the seller "to A and B." The firm debts amounted to \$15,000. A died, leaving a widow, a son and a will by which his personal property was bequeathed to X.

What disposition should be made of the firm assets?

4. A and B are equal partners. The firm assets consist of chattels worth \$3,000. The firm debts are \$1,000. A separate creditor who has a judgment against A for \$2,000 levies on the chattels and the sheriff sells "the right, title and interest of A" therein to a purchaser who, knowing that they are firm property, pays \$1,500, which the sheriff turns over to the judgment creditor.

What, if any, interests in and claims against the chattels after the sale have the partners, the firm creditors and the purchaser?

How would you answer if the purchaser bought without notice that the chattels were firm property?

5. A and B are partners. X has a judgment against A. Y has a judgment against B. X and Y levy on the firm goods and the sheriff separately sells the interest of each partner to M, who takes possession. Next day a fire renders the firm insolvent.

Can firm creditors reach the goods held by M?

Examination in Partnership.

(June, 1911)

PROFESSOR GREEN.

PART TWO.

6. Blondheim and Kelley were partners. Blondheim sold out his interest to Kelley, who started a new business with the assets of the former firm. A year later Kelley became insolvent, creditors of the former firm being unpaid.

What are the rights and priorities in regard to payment out of firm assets in Kelley's possession as between the creditors of the old and the creditors of the new business?

7. A and B were partners. X had a judgment against A. Y had a judgment against B. Z had a judgment against A and B as partners. A's separate property was insufficient to satisfy X's judgment; B's separate property was insufficient to satisfy Y's judgment; the firm property was insufficient to satisfy Z's judgment. X levied on the firm property and on A's separate property; there-

after Z levied on all the property; thereafter Y levied on B's separate property. The sheriff sold the property under the writs.

What are the respective rights of X, Y and Z to the proceeds?

8. A and B were partners. A retired, selling out to B who with A's consent continued the business under the name of A and B, as before. B thereafter, by letter signed "A and B," bought goods on credit for use in his business from a person who knew all the facts.

May the seller maintain an action for the price against A and B jointly? Against B alone?

9. A, B and C were partners doing business under the name of A and B. A borrowed money, ostensibly for the firm, but really for his personal use, and gave a written promise to pay signed "A and B." The lender supposed he was lending to the firm, but did not know that C was a partner.

May he on default in payment maintain an action against A, B and C?

10. A, B and C, partners, agreed that if a certain contingent firm liability of \$30,000 should fall due, each would contribute \$10,000 to the firm capital to meet it. It fell due. A was ready to contribute, but B and C refused. Thereupon A paid the debt out of his own pocket.

What are his rights?

Examination in Private Corporations.

I. MAURICE WORMSER.

PART I.

I. (a) What is not, to employ the language of Pomeroy (Eq. Jur., Sec. 1046), "in any true and complete sense a trust, and can only be called so by way of analogy or metaphor?"

(b) Outline the Illinois doctrine on the corporate question to which the author refers.

(c) Criticize the Illinois rule both from a theoretical and practical standpoint.

II. (a) Is a British corporation whose shareholders are all foreigners, entitled to have a vessel owned by it, registered under a British statute, limiting the right of registry to such vessels as "shall *wholly* belong and continue wholly to belong to her Majesty's subject's," and further providing that no foreigner should be "the owner, in whole or in part, directly or indirectly," of any vessel seeking British registry?

(b) Action by the United States to recover from the stockholders of a corporation engaged in the business of distilling, a penal tax for spirits illegally manufactured. The statute read: "Every proprietor and possessor of, and every person in any manner interested in the use of, any still, distillery or distilling apparatus shall be jointly and severally liable for the taxes imposed by law on the distilled spirits produced therefrom." The stockholders demurred.

What do you think was the ground of their demurrer, if any?

Should it be sustained or overruled; why?

III. (a) What are regarded as essentials of corporate existence?

(b) Contrast, if necessary, the attitude of the United States Supreme Court at this time toward joint stock companies with its attitude of forty years ago.

(c) What is the significance of the recent decision of the United States Supreme Court in the so-called "Standard Oil" case?

IV. The X corporation filed a bill in equity against the Y corporation to enjoin it from selling agricultural implements. In May, 1887, a contract was duly entered into between the X corporation and a partnership composed of A, B and C, where-

in and whereby the said partners sold out their entire stock in trade and good will to the X corporation and further agreed not to handle any more agricultural implements of any kind. In March, 1888, A, B and C organized the Y corporation and became its sole stockholders. The Y corporation was, as its articles of incorporation disclosed, organized for the purpose of carrying on, and did commence to carry on, the same general business which the partnership had previously conducted.

The bill did not state, in terms, that A, B and C formed the Y corporation in order fraudulently, to evade the force and effect of their agreement with the X corporation, but it did state and charge that the effect of their formation of the Y corporation "would be to perpetrate a fraud." It also alleged that the business of the Y corporation was substantially the same as that conducted previously by A, B and C, and that the only change, in fact, was in name. The Y corporation demurred to the bill.

Should the demurrer be sustained? If so, why? If not, why not?

V. (a) Plaintiffs were the executors of the estate of G, deceased. Part of the estate consisted of shares of stock in an Iowa corporation whose sole tangible property was a bridge across the Mississippi river. This bridge had been assessed and the taxes thereon duly paid. The State now

seeks, also, to tax the shares of stock in said corporation. Plaintiffs resist the tax.

On what grounds?

Do they win or lose, and why?

What is the Illinois rule?

(b) How much of the capital stock of an Illinois corporation must be subscribed for, and what percentage thereof must be fully paid in before a certificate of complete organization will issue?

(c) On principle, should an exemption of shares of corporate stock from taxation also exempt (1) its capital stock, (2) its surplus, (3) its franchise?

What does Illinois hold, and why?

Examination in Private Corporations.

I. MAURICE WORMSER.

PART II.

VI. (a) Trace briefly the history and development of corporate legislation in Illinois.

(b) Outline the essential steps in the formation of a private corporation for pecuniary profit in Illinois.

(c) What are the "disadvantages" of incorporating in Illinois?

(d) What is the attitude of the Illinois courts toward corporate monopolies? Contrast, if necessary, with other jurisdictions.

VII. Action in the United States Circuit Court for the district of South Carolina by L, a citizen of New York, against the X Railroad Co., a corporation chartered by South Carolina. A plea to the jurisdiction alleged that, although some of the stockholders were citizens of South Caro-

lina, there were two who were residents of North Carolina. A demurrer to this plea was sustained below.

What decision on appeal? Discuss fully.

VIII. (a) The X Accident Insurance Co., without authority from the Legislature of Illinois, decided to add to its duly authorized business a general life insurance business. It advertised, solicited patronage and wrote numerous policies. Among others, one for \$25,000 on the life of Y, was written on October 16, 1910. On October 20, 1910, before his first premium had been paid, Y died. Z, his widow, the beneficiary under the policy, sues the Company, which defends. The lower court non-suited Z. Draft a short brief as counsel for Z on her appeal from the judgment of non-suit.

(b) State, comment upon, and concisely criticize the doctrines of the Federal, New York and Illinois courts on "ultra vires" corporate contracts.

IX. Plaintiff and various individual defendants entered into a written agreement to form a corporation to be known as the X company. All requisite steps were duly taken, up to and including the filing of a certificate of organization with the Secretary of State. Plaintiff was chosen a director and actively participated in its business. Some months thereafter plaintiff became ill and

incapacitated and his shares of stock were sold for non-payment of installments due thereon. After being restored to health plaintiff's demands to be reinstated in his alleged rights were without avail. Plaintiff then, for the first time, ascertained that the certificate of complete organization issued by the Secretary of State had never been filed, as required by statute, in the recorder's office of the county where the principal office of the corporation was located. Plaintiff immediately brought suit in equity to have the X company declared a partnership and its affairs between plaintiff and the individual defendants also wound up accordingly. A demurrer to plaintiff's bill was sustained below. Plaintiff appealed.

Did he succeed?

What doctrine is involved?

What is the Illinois rule?

How would the Illinois Supreme Court decide the case in question, and on what line of reasoning?

X. (a) A and B agreed with C to sell to C on behalf of a corporation to be formed thereafter and to be called "The National Construction Co.," certain realty belonging to A and B, at a certain price. A and B also agreed with C to render legal services in incorporating the contemplated corporation, for a certain agreed sum. Thereafter, the corporation was duly organized, took over the

property, and its directors affirmed and "ratified" the said agreements. The corporation soon became insolvent. An order was made for winding it up, and the entire claim, on their contracts, of A and B was disallowed.

Should an appellate court affirm?

What would Illinois do, and why?

(b) Suppose A and B had sued in quasi-contract; would your answer remain the same? Discuss.

Examination in Quasi Contracts.

(June 1, 1911)

PROFESSOR THURSTON.

(Give reasons fully in every instance.)

PART I.

I. X, the proprietor of a livery stable, employed P at ten dollars a week to feed and water the horses in the stable. X died and P continued to feed and water the horses in the stable until the appointment of D as the administrator of X, three weeks after X's death. D paid P at the contract rate for the services rendered by him up to the time of X's death; but, although requested, D refused to pay P anything for the services rendered after X's death. P now brings assumpsit against D in his capacity as executor for the sum of thirty dollars.

What decision?

II. P, an actor, entered into a written contract with D, a theatrical manager, to act in D's

theatrical company for the period of two years at an annual salary of \$1,200, payable in semi-annual instalments at the end of each half-year of service. After acting in D's company for four months, P threw up his contract with D to accept a more lucrative engagement with a rival theatrical manager. P now sues D in assumpsit for \$400.

What decision?

III. The county of X, by contract in writing, duly employed P to make certain repairs upon a county bridge for \$500. In order that the repairs might interfere with traffic as little as possible, it was stipulated in the contract that P should have all the material to be used piled adjacent to the bridge before beginning to make the repairs. Accordingly P piled all his materials near the bridge and then started to make the repairs. After P had finished half the repairs, and without fault on his part, the bridge was destroyed by fire, as also were P's unused materials piled adjacent thereto.

P now brings assumpsit against the county (1) for \$250, half the contract price, and also (2) \$50, the value of the unused materials destroyed.

What decision?

IV. In a jurisdiction in which gambling was made unlawful by statute X and Y made a bet on the outcome of a baseball game and they deposited the stakes with S.

(a) Before the game was played X demanded back his money from S, who refused to surrender it. Whereupon X brings assumpsit against S.

What decision?

Would your answer be the same if, after the game had been played, Y's team winning, X had for the first time demanded the return of his money?

(b) Before S had delivered the stakes to Y?

(c) After S had delivered the stakes to Y?

V. A's parents both died when she was a few months old. X and Y, a childless couple, thereupon took this child, A, into their home and brought her up as their own daughter. A lived thus with them as a member of their family and performing her share of the household duties until she reached the age of 25 years, when X and Y both died. A then learned for the first time that she was not their own daughter. X and Y had from the first intended to legally adopt A, as was provided for by statute, but they had neglected to do so. X had amassed considerable wealth in the last year of his life and died intestate. Had A been legally adopted by X, she would have inherited this property; but as it was X's estate went to a distant relative. A now brings assumpsit against Y's administrator to recover for the value of the services rendered by her while she lived in X's household.

What decision?

Examination in Quasi Contracts

(June 1, 1911)

PROFESSOR THURSTON.

(Give reasons fully in every instance.)

PART II.

VI. X by deed conveyed land to Y, X's wife (W) joining in the deed and thereby releasing her dower rights in such land. Upon the death of X, his widow, W, having forgotten that she had released her dower in the land in question, brought suit against Y to establish her dower rights therein. Y, though believing that W had released her dower, but being unable to produce the evidence thereof, (the original deed having been mislaid, and the record copy having been destroyed by fire), paid W \$1,000 in full settlement of her claim, she thereupon discontinuing her suit and releasing her dower. Subsequently Y found the original deed containing W's release of dower, and he now brings assumpsit against W to recover the \$1,000 so paid to her.

What decision?

(a) Would your answer be the same if Y had paid the money to W, not because of his inability to produce the deed, but because, having in his possession the deed of conveyance, he had showed it to his lawyer, who erroneously advised him that W's joining in the deed by X to Y was not effective to release her dower rights?

VII. The plaintiffs, doing business under the name of H. E. Clark & Co., ordered goods of the defendant which were by mistake shipped to J. H. Clark & Co., by the X railroad company. The railroad company not finding any firm by the name of J. H. Clark & Co., kept the goods for eighteen months and then (pursuant to a statute) sold them as unclaimed goods to pay the freight and storage charges thereon. In the meantime the plaintiffs had paid defendant's bill for the goods under the mistaken belief that they had been duly received. Plaintiffs, having discovered that the goods had never been delivered, now brings assumpsit to recover the money so paid. Defendant sets up in defense, (1) that plaintiff has been negligent in making the payment without ascertaining whether or not the goods had been received, and (2) that defendant has changed his position, since [as is here assumed to be the fact] he could not now recover the goods (or their value) from the carrier.

What decision?

VIII. A and B contracted in writing, A to buy and B to sell a lot of land. A understood that he was buying lot X. B understood that he was selling lot Y. The contract could reasonably be construed either way. At the time of signing the writing A paid B \$50 to bind the bargain. B refusing to convey lot X, and A declining to accept a conveyance of lot Y, A demands back the amount of the \$50 deposit from B, but B refuses to repay that sum. A now brings assumpsit for this \$50.

What decision?

IX. O, a storekeeper in Champaign, was in the habit of purchasing goods in Chicago through his agent A, and O had a deposit account with a Chicago bank upon which A was authorized to draw checks in O's name for goods purchased for O's account. O's account having been all checked out by A for legitimate purposes, A, without authority, borrowed \$100 from P upon a note signed by A in O's name and A deposited this \$100 to O's account in the Chicago bank. The next day A checked out \$50 for goods purchased by him for O's account and \$50 for his private purposes. A then absconded. P, having discovered that A had no authority to borrow money in his principal's name, and thus that O was not liable upon the note, after demand and refusal, sues O in assumpsit for \$100.

What decision?

X. It is essential that P shall immediately put a certain mortgage on record at the county seat, some miles distant. He therefore employs A, the village doctor, who owns the only automobile in the place, to carry him (P) to the county seat. A demands, and collects in advance, the sum of \$50 for this transportation, P asserting vehemently that this charge is exorbitant. At the county seat, B, the recording officer, refuses to record P's mortgage unless P shall first pay him \$10 for so doing. P, under protest, makes this payment. A reasonable charge for A's service would be \$5, and the legal fee for recording mortgages is \$5.

- (a) What sum, if any, can P recover from A?
- (b) From B?

Examination in Real Property II.

I. MAURICE WORMSER.

PART I.

I. (a) A, the owner of a freehold estate, granted to B the right "to take all of the turf" from his (A's) land. Some months later A takes turf from the land. B sues. A demurs.

Who wins and why?

(b) Would your answer be the same if A had granted to B the right "to take the turf" from his (A's) land? If so, why? If not, why not?

(c) What remedies in Illinois, if any, in either or both of the above cases has B? Indicate, if any, the specific common law action or actions which will lie; explain fully.

(d) Complete the following: "Corporeal hereditaments lie in——; incorporeal hereditaments lie in——." Discuss briefly.

II. (a) Plaintiff sues for an alleged trespass. Defendants justify under an immemorial custom for all the inhabitants of their township to take

water from a natural spring on plaintiff's land for their domestic use. Plaintiff demurs to the plea. On what ground or grounds did plaintiff demur? Should the demurrer be sustained or overruled, and why?

(b) Suppose that, in the above case, firstly, valuable mineral water; second, water in a large artificial well; third, natural oil and gas, were involved. What answers?

(c) What are the requisite elements to give legal, binding validity to a special usage or local custom?

III. (a) H sold to P an half-acre of land adjoining his (H's) 17-acre pond, also giving to P the exclusive right to take ice for purposes of sale from the pond to the said half-acre, on which P built a large ice house. P began to cut ice and store it therein. Some time later, H conveyed to K, and K, in turn, to plaintiff by deeds reciting that the conveyances were subject to P's right. Later, P conveyed to defendant his half-acre, "with its appurtenances," making no special mention of the right to cut ice. Defendant goes on the pond to cut ice and is sued in trespass by plaintiff.

Who wins and for what reason?

(b) Define and illustrate the following: (1) Profit in Gross, (2) License, (3) Easement Appurtenant, (4) Surcharge.

(c) Discuss the respective inheritability of a license, an easement in gross, and a profit in gross.

(d) Will a profit appurtenant pass to the grantee of the dominant estate, though "appurtenances" are not mentioned in the deed? If so, why? If not, explain concisely, why not?

IV. Defendant converts his extensive country estate into a fashionable summer resort with several large hotels, numerous villas and cottages, etc., and then sinks wells and erects a pumping plant of considerable dimensions to supply the resort with adequate water. The result of his operations is to dry up the artesian wells on plaintiff's land and to render the latter unfit for cultivation.

Has plaintiff a remedy? Would it make any difference if defendant were the Illinois Central Railroad and was drawing off the water for the use of its locomotives? Would it in any case be material to inquire whether defendant's operations had the effect of drawing off water from the plaintiff's land, or only of intercepting water on its way thereto?

Discuss fully the principles involved.

V. (a) Plaintiff claimed a prescriptive right to drain his land by a ditch through and over defendant's land. Plaintiff's land was formerly woodland, but had gradually been brought under cultivation, with the result that the drainage therefrom had for many years been increasing in quantity.

It was now several times as great as at the beginning of the prescriptive user. Defendant stopped up the ditch.

What are plaintiff's rights? How, if at all, can plaintiff enforce them?

Would your answer be the same if the easement had been created by express grant? If so, why? If not, why not?

(b) What is an "easement by necessity," and what is its duration and extent?

Examination in Real Property II.

I. MAURICE WORMSER.

PART II.

VI. (a) A leases an estate to X for five years. X covenants to keep the leased premises insured against fire and earthquake. A conveys the estate, subject to the lease, to B. B conveys to C. Thereafter, X assigns the lease to Y, who, in turn, assigns to Z. Z sublets to R, who breaches the covenant.

Who can sue? Who can be sued? Discuss, at length, the rules involved.

(b) How were covenants running with the land affected by the passage of the Statute 32 Henry VIII, c. 34, in the year 1540?

VII. Plaintiff, a professor in the University of Illinois, built a residence near certain large and important railroad terminals and repair-shops located in the city of Champaign. The soot, smoke, noise and vibrations from the railroad plants seriously interfered with the comfortable enjoyment

of plaintiff's premises. It being conceded that all due care was used in the operation and maintenance of the plants, is plaintiff entitled to an injunction in equity? Would your answer be different if plaintiff had brought an action at common law for damages? Discuss.

VIII. (a) The two defendants, Y and Z, were restaurant-keepers at an amusement resort near a large city, and ran large merry-go-rounds practically the entire day and evening in connection with their restaurants. The noise from neither alone was very appreciable, but combined, their noise and vibration were extremely inconvenient to plaintiff, X. A demurrer to X's bill in equity for an injunction was sustained below. Draft a short brief as counsel for X on his appeal.

(b) A factory's refuse polluted a running stream. X, Y and Z, lower riparian owners, join in an action in equity for a restraining injunction. Can they do so; if so, why? Would your answer be the same if they joined in a common law action for damages against R, the proprietor of the factory?

(c) Action on the case for obstructing a stream by defendant's erection of a mill-dam, which cut off the supply of water for plaintiff's mill lower down the stream. The stream was small, not navigable, and could not supply both mills.

Can plaintiff recover?

What is the rule of law in Illinois?

Would your answer be different if plaintiff's supply of water were cut off because of defendant's large consumption of water for domestic purposes and for watering his very considerable herd of cattle?

What is the rule?

Discuss its reasonableness both from the theoretical and practical points of view.

IX. (a) Plaintiff owned a tract of land from which, by means of a depression, surface waters ran off his land on to adjoining land. The defendant, a railroad company, built a large embankment along the line of plaintiff's land, entirely filling up the depression and the channel, and throwing all the surface water back on to plaintiff's land and preventing it from flowing, as it formerly did, towards the adjoining land. A demurrer to plaintiff's declaration was sustained below.

Was the ruling correct?

If so, why?

(b) What are the respective doctrines of the Civil and Common law with regard to interference with surface water?

What is the law in Illinois?

(c) Discuss the acquisition of rights to drainage by means of (1) Prescription, and (2) Necessity?

X. (a) On what ground, on whose behalf, and against whom, are covenants with regard to the use of real estate enforced in equity, although they would not run with the land at law?

(b) A has a right-of-way across B's land. A says to X one day, "I never mean to use that way. I abandon it, and you may, if you so desire, build across it." B thanks A and says he (B) will build across it shortly, but a week after and before B has as yet done anything, A tells B that he (A) has concluded finally to keep the way. Is A's easement lost or not? Give your reasons. Suppose B had already built?

(c) What is a "public highway?" and discuss concisely the rights of the public in connection therewith, illustrating, if necessary.

Examination in First Year Real Property.

(June 5, 1911.)

PROFESSOR THURSTON.

Give reasons clearly and concisely.

PART ONE.

I. (a) Give the date and state the chief results brought about by the Statute Quia Emptores.

(b) Give the date and state the chief results brought about by the Statute De Donis Conditionalibus.

(c) State the chief points of similarity and of difference between Dower and Curtesy.

II. X, seised in fee of Blackacre, for a consideration and by word of mouth, made a lease thereof for one year to A. The next day, before entry by A, X by deed, without consideration, released all his estate and interest in Blackacre to A and his heirs.

Who was then the legal owner of Blackacre?

(a) Before the enactment of the Statutes of Uses and Enrollments.

(b) After the enactment of these statutes.

III. After the Statute of Uses who had what legal and equitable estates in each of the following cases?

(a) X, seised in fee of Whiteacre, made a feoffment thereof to A for ten years to the use of B for ten years.

(b) X, seised in fee of Blackacre, for a consideration, agreed by word of mouth, to stand seised thereof to the use of B. B was X's son. for life.

(c) X, seised in fee of Greenacre, for a consideration, executed an agreement under seal to stand seised thereof to the use of B and the heirs of his body.

IV. X, seised in fee of Whiteacre, desired to convey all his interest therein to his nephew Y, from and after the death of X.

Define the various methods by which after the Statute of Uses X could accomplish that purpose.

V. Describe briefly, and (if profitable) illustrate by example, each of the following:

- (a) Joint-tenants.
- (b) Surrender.
- (c) Gavelkind.
- (d) Contingent remainder.
- (e) Shifting use.

Examination in First Year Real Property.

(June 5, 1911.)

PROFESSOR THURSTON.

Give reasons clearly and concisely.

PART TWO.

VI. O erected a theatre on his own land. O then purchased on credit from A some seats, especially adapted for use in theatres, giving to A a chattel mortgage thereon to secure the purchase price. These seats H installed in his theatre, fastening them to the floor. O then borrowed a sum of money from Y giving Y as security a mortgage on the land on which the theatre stood. O then purchased on credit from B a theatre curtain under an agreement by which title thereto was to remain in B till the curtain was paid for. This curtain H set up in his theatre. O having made default in payment of his debt to Y, Y now files a bill to foreclose his realty mortgage. A and B, whose debts have been partially paid by O, intervene in the foreclosure suit, claiming that they are

entitled to remove the theatre chairs and curtain respectively supplied by them.

How should the controversy be decided?

VII. A was the owner of a farm. He purchased a quantity of bricks intending to use them in the construction of the foundations of a new house which he planned to build on the farm. (a) He built a part of such foundation with some of these bricks, and (b) he piled the remainder of the bricks nearby, ready to be used in the construction of the rest of the foundation. There was standing timber on the farm. A cut some of this timber and split it up into fence rails. (c) He piled some of these rails in a field intending to use them in the construction of a new fence around that field. (d) He piled the rest of the fence rails near the road, ready for removal, intending to sell them to some of his neighbors if he could get a satisfactory price for them. This being the situation as to the bricks and fence rails, A went to town and met B who offered to buy the farm, and A that day sold and conveyed the farm to B. No mention was made of the bricks or the fence rails at the time of the sale.

Did these bricks and fence rails pass to B by the conveyance of the land, or has A the right to remove them?

VIII. A leased from B two adjoining city lots for a term of twenty-five years. B agreed orally that A might erect for himself a residence on the

premises and that he might remove the same at the end of the term. Accordingly A erected for himself a two-story frame dwelling house upon a brick foundation. The next year A erected another house on the land, similar to the first one. A intended to remove this house also at the end of the term, but he made no agreement with B to that effect. This second house A leased to his brother for several years. After that it stood vacant. A finally became financially embarrassed and to raise money sold and conveyed to Y both houses. Shortly thereafter A gave up his lease and surrendered up possession of the premises to his lessor, B. Y, a few days after such surrender, having just learned about it, started to remove both the houses, when B refused to allow him to do so.

What are the rights of the parties?

IX. Land was devised to L for life, remainder in fee to R. L entered and leased the land to T for fifteen years. T set out apple trees on part of the land and planted the rest with corn. Some weeks later T by deed sold the apple trees and the crop of corn to Q. L died a few days thereafter.

Who is entitled to the apple trees and the crop of corn (which is not ripe)?

X. H was seised in fee of a farm containing 75 acres of arable land and three acres of woodland. H devised this farm to his wife, W, for her

her life, remainder to his son S, in fee. H died and W entered into possession. W is now about to cut timber from the woodland,

(1) to repair the barn on the farm,

(2) for firewood to be used the next winter in the farmhouse,

(3) to build a house for her daughter on adjoining land owned by W in fee.

(4) W is also about to open a coal mine on the premises, and

(5) to tear down the farmhouse (an old wood-structure, badly out of repair) and erect in its stead a better and more commodious brick farmhouse.

Can S prevent W from doing any of these things, and, if so, how should he proceed?

Examination in Sales.

(June, 1911)

MR. HALE.

PART I.

I.

A, having a crib of corn, agreed to sell the corn to B at 50 cents per bushel, the corn to be removed by B as he needed it, the weighing to be done on a neighbor's scales.

What are the rights of the parties if after one-third of the corn is removed and paid for,

- (a) the rest of the corn is accidentally destroyed,
- (b) A becomes bankrupt,
- (c) B becomes bankrupt.

II.

A agreed to sell to B two cargoes of cotton to be shipped from Charleston to Liverpool, the bills of lading to be taken in A's name and transferred

to B upon acceptance of drafts for the purchase price. A's agent tendered the bills of lading, indorsed in blank, to B for examination. B, however, refused to give up the bills of lading or to accept drafts for the cotton and indorsed one of the bills of lading to X, a bona fide purchaser for value without notice.

What remedy, if any, has A against B?

Against X?

III.

A contracted to sell to B two carloads of grain to be shipped to B the next day. A took the bills of lading in his own name, but sent them indorsed to B. Only one of the bills of lading reached B. B indorsed this to X, to whom he had sold both carloads, giving X a bill of sale of the other carload. Before this, however, A had given notice to the carrier to stop the goods, having heard of B's insolvency. X paid value for both carloads in good faith.

Discuss the rights of A and X.

IV.

A went into X's store and fraudulently represented that he was M, an agent of B. He bought, on credit, a suit of clothes and a dozen shirts. The suit of clothes, he stated, was for himself and the shirts for B. A took all the articles and sold them to Y, a bona fide purchaser.

X brings replevin against Y. What judgment?

Examination in Sales.

(June, 1911)

MR. HALE.

PART II.

V.

A said to B: "I have just bought that bin-full of wheat from X; I have not yet removed it, and I will sell you 500 bushels of it now at 90 cents a bushel." B said: "I accept your offer." A then gave B an order on X for 500 bushels and X accepted it. That night all the wheat was accidentally destroyed by fire.

Discuss the rights of A against B for the price?

VI.

On June 1, 1909, A placed in B's house a piano under an agreement that B was to hold it as lessee for a period of two years, paying a monthly rental of five dollars on the first day of each month, and if B should pay the rental promptly for the full

two year period, at the end of such period A would, upon the payment of a further sum of fifty dollars, convey the piano to B by a good and sufficient bill of sale. In May, 1911, X, a creditor of B's attaches the piano.

Who will be protected, A or X?

VII.

Mrs. Leslie Carter ordered costumes from a New York theatrical dressmaker, suitable for Mrs. Carter's production of the drama "La Tosca." At the time of the order the dressmaker was well acquainted both with the character and historical period of the play and with the elaborateness of the production contemplated. On their completion, the costumes were sent by the dressmaker to Mrs. Carter, who, with her company, was in Denver. On their arrival in Denver, the costumes were examined by Mrs. Carter and found by her to be totally unsuited to the historical period of the drama and also not in conformity with the elaborate production desired. Mrs. Carter, being unable to obtain other costumes and being booked to produce "La Tosca," retained the garments. Payment having been refused, the dressmaker later sued Mrs. Carter for the purchase price. Mrs. Carter interposed a counter-claim.

1st. What would you say the counter-claim was?

2d. Should a demurrer to the counter-claim be sustained or overruled?

3d. What are the respective New York and Illinois doctrines and which view is preferable on principle?

VIII.

A, a merchant in Champaign, orders ten barrels of sugar from B, a wholesale dealer, in Chicago. The sugar is shipped, but is destroyed en route. A consults you as to whether he must pay B for the sugar.

How would you advise him?

Examination in Suretyship.

MR. DECKER.

PART ONE.

1. A was injured in an accident and B, a doctor, was called by a bystander to attend him. B restored A to consciousness and afterwards set a fractured leg. C, a brother of A, then appeared on the scene and told B to go on and attend A as long as he needed care, and he, C, "would see that his bill was paid." B afterwards rendered a bill to C for \$50.00, of which \$25.00 was for setting the leg, and \$25.00 for subsequent attention. C refused to pay any part of the bill and B comes to you for advice as to his rights.

State your advice, giving reasons. If you were to sue C as B's attorney, in what form would you bring the action?

2. S was surety on a debt from P to C for \$1,000 which was also secured by a chattel mortgage on goods to the value of \$500. C failed to record

the mortgage, and the goods, which were in the hands of the mortgagor, P, were seized by other creditors and sold.

Has S a defense if afterwards sued by C?

Suppose C had recorded the mortgage but failed to foreclose when it came due, leaving the goods in the possession of the mortgagor. (Possession of the goods by the mortgagor after default is a constructive fraud on creditors in this State.) The goods were then attached by X, another creditor of P, and were sold to satisfy a judgment subsequently obtained, and C thereby lost his mortgage security.

Would your answer be the same as in the prior case? Give reasons carefully.

3. C, the obligee, sued P and S on a joint and several bond, and obtained a joint judgment. The bond was to secure the obligation of P alone, S being surety. The judgment became a lien on Blackacre, owned by P, and which he afterwards sold to X, who had no actual notice of the lien. C subsequently caused execution to be levied on the property of S, and advertised the same for sale.

a. Can S enjoin the sale?

b. If S pays the judgment, what are his rights, in law and in equity?

c. Would it make any difference if C had sued P and S separately, obtaining a several judgment against each?

4. A sued B, alleging in his declaration that B had signed before delivery the following guaranty on a note from X to A: "I hereby guarantee the collection of the within note," that the note was due and payment had been refused by X.

Does the declaration state a cause of action?
Why?

5. Explain the difference between a grantor and a strict surety. Illustrate.

To what extent may a joint maker of a note be treated as a surety?

What is the effect of writing "Surety" after his name?

What is meant by "real surety?"



Examination in Suretyship.

MR. DECKER.

PART TWO.

6. In consideration that A will sell B merchandise, G agrees to guarantee the payment of any amount which may be due from B to A on a final settlement between them, not exceeding \$1,000. B bought goods from time to time, part of which he paid for in the regular course of business, but finally sold out his store, at which time he owed A \$500, for which A accepted his note payable in 60 days. The note was not paid when due and A now sues G on his guaranty. C pleads that he was released by A's acceptance of the note.

Which should prevail?

7. A, on becoming cashier of a bank, gave two bonds, one for \$5,000 with C and D as sureties, and the other for \$10,000, with X and Y as sureties. Both were conditioned for the faithful performance of his duties. A absconded, owing

the bank \$9,000, which recovered judgment therefor in a suit on the second bond, and Y paid the judgment. Y sues C and D in equity for contribution, alleging that X is insolvent.

a. Are they liable?

b. If so, to what extent?

c. Would it affect your answer if it could be shown that C and D had no knowledge that a second bond was given by A?

Why?

d. How does the right of contribution differ at law from that in equity?

8. Suppose that only the \$5,000 bond, in the preceding question, had been given when A was first appointed, that subsequently the bank discovered a slight shortage in A's accounts which was privately settled and the bank had continued A in its employ, believing that he had had his lesson and would not be guilty again, but requiring him to give a further bond of \$10,000. X, A's father, who knew the circumstances, became one of the sureties, and Y, who did not know, the other. Y became surety at the request of A and , the bank taking no part in securing his signature. C and D knew nothing of the defalcation. A afterwards embezzles the \$9,000.

a. Has the bank any rights against C and D?

b. Against X and Y?

9. A addressed the following guaranty to X:

"I hereby agree to guarantee all bills for goods purchased from you by B for one year from date." Nine months later A died. At the end of the year there was a balance due X from B of \$1,000 for goods furnished during the year, of which \$500 worth had been sold after X had knowledge of A's death. X sues A's personal representatives.

a. Have they a defense, and if so, what is it?

b. What would be the effect on A's liability during his lifetime if X fails to notify him of his acceptance of the guaranty? Explain doctrine fully.

10. X had a judgment lien on P's farm. X had a mortgage on the farm which was subsequent to the lien, and orally promised X that if he would satisfy the judgment of record, he X would pay the judgment within thirty days. H discharged the judgment and now sues A, who pleads the statute of frauds.

Is the defense good?

Examination In Torts.

(June, 1911.)

MR. HALE.

PART I.

I.

A and B had engaged in a quarrel. As B turned to walk away A threw a stone at him but missed him by two feet. The stone also came within one foot of X, a bystander, X having avoided being struck by dodging to one side. B did not know at the time that A had thrown at him. Both B and X bring an action of assault against A.

What decision in each case?

II.

(a) A and B own adjoining farms. The supposed boundary line between the two farms had been surveyed by a surveyor hired by A. As a matter of fact the line surveyed was wrong, being

a rod on B's land. A had been using the rod strip as a private road way. When the mistake is discovered B sues A for trespass.

(b) Assume that the fence is on the correct line. A's horse runs away, breaks through the fence and, crossing B's land, injures B's garden. B sues A for trespass.

What decision in each case?

III.

X, a sheriff, with a writ of execution against the property of M, levied upon P's cordwood and sold the same at execution sale to A. A, before taking possession, sold his interest in the cordwood to B, who removed the property. The sheriff (as well as A and B) honestly and upon reasonable grounds believed that the cordwood in question belonged to M, and was therefore subject to writ.

- (a) P brings action of trover against A.
- (b) P brings action of trover against B.
- (c) P brings action of trover against X.

What decision in each case?

IV.

A, a manufacturer of automobiles, sold a car to B, a retail dealer in automobiles. B sold the

car to X, who, before using it, resold it to Y. While using the car, Y, by reason of the breaking of a defective axle, was thrown out and injured. Neither A nor his employes, nor B, nor X, nor Y had any knowledge of the defect.

In an action by Y against A, what judgment?

In an action by Y against B, what judgment?

V.

A, the proprietor of a theater in the city of X, was instrumental in procuring the passage of a law imposing a high license upon the sale of liquor in that city. The saloon keepers thereupon met together and passed resolutions as follows:

(a) That they would not attend any performance given in A's theater.

(b) That they would not sell liquor to any person who attended A's theater.

(c) That they would discharge any of their employes who attended A's theater.

(d) That they would post a copy of these resolutions in conspicuous places in each of their saloons. These resolutions having been carried out and the attendance at A's theater having in consequence fallen off. A brings action against the saloon keepers. What decision?

Examination In Torts.

(June, 1911.)

MR. HALE.

PART II.

VI.

The X newspaper published concerning Y, while he was mayor of the town of P, the following statement: "Mayor Y is a bribe-taker and a disgrace to the town" In an action for libel by Y against X, X defends on the ground that he honestly and upon reasonable grounds believed the statement to be true and that it was "fair comment and criticism." Is his defense good?

VII.

A boy, having had a quarrel with defendant in a city street, ran away from him. Defendant took up an ax and followed the boy, pursuing him into the store of plaintiff, by whom the boy was employed. In trying to save himself, the boy took

refuge behind a counter, and in so doing tripped the plaintiff. Plaintiff, in the attempt to keep himself from falling, seized the corner of a show case on the counter. The show case broke and plaintiff fell to the floor, breaking his arm. Plaintiff sues defendant for the damage to himself and to plaintiff's show case.

What judgment?

VIII.

A fine shade tree stood on A's land, near the street. Children in that neighborhood were in the habit of playing under the tree and climbing through its branches. A noticed one day that one of the limbs was badly decayed, but paid no further attention to it. A few days later X, a seven-year-old boy, was, by the breaking of the limb, thrown to the ground and injured. Y, the father of X, was near the tree at the time of the accident, and had noticed the condition of the limb, but had not warned the child, X, nor done anything to prevent X from climbing the tree. An action is brought against A on behalf of X by his next friend.

What judgment?

IX.

A was an order taker for a retail grocery store and in the discharge of the duties of his employment went daily from house to house, taking

orders. Occasionally a small boy, B, went with A, for the sake of A's companionship solely. One day as A and B were mounting the steps leading to the back door of X's residence for the purpose of securing X's order for groceries, the steps fell, injuring both A and B.

Both A and B consult you with reference to their rights against X. What would you advise each? Why?

X.

A buys a horse from B, intending, at the time, never to pay for it.

What remedy or remedies has A against B?

Examination in Wills.

ASSISTANT PROFESSOR POMEROY.

PART FIRST.

1. (a) Give the substance of the Illinois statute relating to the survival of cause of action.

(b) A and B were business rivals. For a number of months A maliciously annoyed and intimidated the customers of B with the result that the trade of B fell off greatly. In retaliation, B engaged in a similar persecution of the customers of A, whereby A's business was also greatly injured. Neither party gained in any way by reason of the injury suffered by the other. Each party refrained from committing any direct trespass upon the real or personal property of the other; but the facts were such as to give each a cause of action against the other. A died. The executor of A sues B for B's tort and B sues the executor of A for A's tort.

Can either or both recover at common law or under the statute?

2. T's will read: "I give my house and lot in Urbana to A, all the furniture in my house to B, \$10,000 to C, \$10,000 payable out of my Illinois Central stock to D, my lots in Champaign, charged with the payment of my debts and legacies, to E, the residue of my personal property to F, and the rest of my land to G." The house and lot in Urbana are worth \$10,000, the furniture \$5,000, the lots in Champaign \$20,000, the rest of the land \$25,000. T's only personalty other than the furniture consists of \$15,000 worth of Illinois Central stock.

Assuming that the bequest to D is a demonstrative legacy, how shall the estate be distributed if the debts and expenses of administration are \$5,000? If they are \$20,000? If they are \$50,000? Reasons in full.

3. On opening T's safe deposit box after her death there were found (a) a letter in T's handwriting, dated January 10, 1910, directing X to give all T's furniture to A; (b) a sealed envelope (the seal being unbroken) with the following writing on the face: "July 1, 1910: I hereby ratify what I have written in the enclosed documents;" signed by T, and by Y and Z as witnesses. On opening the envelope there were found (c) a slip of paper, undated, containing the words, in T's handwriting, "I wish my bed-room furniture to be given to B;" and (d) T's duly executed will, dated January 2, 1910, which appointed X executor and contained

this clause: "I wish my furniture to go to the person or persons mentioned in a letter addressed to X, which will be found with this will; the rest of my personal property I give to C." It was proved by Y and Z that the writing on the envelope, (b), was attested with all the formalities requisite for a will, and that the envelope was sealed by T just before T signed the writing thereon.

Who gets the bed-room furniture? Who gets the rest of the furniture? Reasons in full.

4. Testatrix bequeathed \$5,000 to a nephew, \$10,000 to her son. Later, believing the son to be dead, she (a) added a codicil, properly executed, which read, "as my son is dead, I hereby revoke my legacy to him." Afterwards, learning that her son was still living, she (b) altered her will by cancelling the figures and word "\$5,000" and "nephew," and writing above them \$15,000" and "son," but leaving the original words decipherable. These alterations were not attested. Later, becoming estranged from her son, she made a second will, whereby she revoked the first will entirely. Finally, in order to avoid possible legal complications, she determined to destroy both wills and make a new will. She therefore (c) crumpled up the first and second wills, (d) threw the first into the waste basket and (e) the second into the fire. A few weeks after she died without making any new will. The second will was rescued by another person, some words being slightly singed, but the whole will being decipherable. The first will was

(f) carted off and burned by the garbage man. Proof is offered of the contents of the first will. The second will is also offered for probate.

What result?

State the legal effect of each of the acts, (a), (b), (c), (d), (e), (f).

Examination in Wills.

ASSISTANT PROFESSOR POMEROY.

PART SECOND.

5. A, a testator, was bedridden but fully conscious, and able to speak and move his head and arms. After A signed the will his attorney, B, summoned into the bedroom two competent witnesses, C and D, and stated to them that he wished them to witness a paper which the testator had signed. A heard the conversation, but expressed neither assent nor dissent by word or gesture. B then handed the will—which was so folded that the signature was invisible—to C and D, who took the will into an adjoining room and there signed it as witnesses. C and D did not know the nature of the document nor see A's signature. A did not see the witnesses when they were signing the will, since the foot of the bed in which A was lying cut off the view; if, however, A had raised himself on his elbow A could have seen the back of each witness as he signed. There is some evidence that A was too weak to raise himself on his elbows unassisted.

Discuss each point in the above statement which bears on the question, whether the will was properly acknowledged and attested. (Illinois law.)

6. T's will read: "I give my son A \$15,000 from my Illinois Central stock, my son B my house and lot in Urbana, my son C \$5,000, my nephew D \$5,000, and the residue of my personal property to my son E." Some time after making the will he took \$5,000 worth of the stock and gave it to C, and gave D \$3,000 in cash. At T's death his property consisted of Illinois Central stock, now worth \$10,000; the house and lot, worth \$20,000, but subject to a \$10,000 mortgage of which T had assumed payment when he bought the premises; and cash amounting (after paying expenses of administration) to \$20,000. There are no debts against the estate, unless the mortgage be so considered.

On the above facts, how shall the estate be distributed, assuming that the bequest to A is a demonstrative legacy? Reasons in full.

7. A, in his last illness, handed B the key of a locked box which A kept beneath his bed, saying, "I want you to have the papers in the box if I die." This was after banking hours. A died during the night. In opening the box B found these papers: (1) a promissory note made by C to A, unindorsed, (2) a mortgage made by C to A, securing the prom-

issory note, (3) a check for \$1,000 drawn by A in favor of B on the D bank, (4) A's savings' bank book.

What are B's rights, and why?

8. T's will gave his brother, X, \$1,500. If T had died intestate, X's share of the estate would have been \$10,000. The will is offered for probate in December, 1910. One of the two attesting witnesses is undoubtedly competent.

What is the effect, under Illinois statutes and decisions, when the other witness is (a) X's wife, (b) T's executor, (c) X himself? Reasons.





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pt. 1

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LAW EXAMINATIONS

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PAPERS USED AT THE

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1911-1912

IN THE

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IZELINE

1911/12

pt. 1

Examination in Agency.

(Give reasons in all cases.)

PROFESSOR VERNIER.

1. X made a contract with Y, who was really acting for an undisclosed principal Z. After learning of Z's relation to the matter, X sued Y for breach of contract. While the suit against Y was pending, X sued Z for the same breach of contract. Z pleaded the suit pending against Y.

Is this a good defense?

Would your answer be the same if X had recovered judgment against Y before suing Z and Z had pleaded that fact?

Would the fact that Z lived in a different State or country from and Y influence your decision?

2. P, who owned a building in another city, put it in charge of A, a real estate agent there, with authority to lease and collect the rent, and

with directions to keep the building in repair. T owned adjoining premises on each side. A negligently permitted P's building to become and remain out of repair. As a result, water was cast onto T's premises on one side and T's tenants on the other side refused to remain because of the ruinous building adjoining.

Has T any recourse against A?

Would your answer be the same if A's conduct instead of being negligent had been inspired by malice against T?

3. A was employed by the P. R. Co. at a yearly salary as claim agent. It was his duty to report on all claims against the company and settle them if possible. In the course of his work he did much traveling over P's lines on a pass furnished by the P. Co. While thus traveling he was injured in a collision due to the negligence of the engineer on his train.

What are A's rights, if any, against the P. Co.?

Would your answer be the same if the negligence which caused the wreck was that of the construction department in buying poor rails?

4. A, acting as agent for an undisclosed principal X, made an agreement in his own name to buy merchandise of T. The price was \$500, payable in sixty days or with five per cent discount for cash. T billed the goods to A and charged A on his books. Three months after the sale, X,

thinking that the goods had been paid for, settled with his agent A. A absconded with the money, leaving the bill unpaid. T, on learning that A was in fact the agent of X, brought suit against X. The court below charged that payment to A did not discharge X. After judgment for T, X brought this appeal.

Judgment for whom?

5. A, thinking in good faith that he had authority to do so, signed a note for his principal P. The signature read: "P by his agent, A." In fact, P had not authorized the signing of the note and refused to pay it. When the instrument fell due, the holder sued A (1) on the note, (2) on an implied warranty. At the time the note fell due P was bankrupt and able to pay only fifty cents on the dollar.

Can the holder recover in either action at common law or by statute? If he can recover in any case, what will be the measure of his damages?

6. The Board of Trustees of the X Business College contracted with Y for the erection of an additional wing to the college building. By the contract the work was to be supervised by an inspector named by the college, and all employes had to be approved by this inspector and those whose work was unsatisfactory could be discharged by him. In paying the men it was agreed that

they should be given time slips, showing the time worked and amount due, and these were to be cashed by the cashier of the business college and the total amount subtracted from the contract price of the building. It was also stipulated that the contractor alone should be liable for any claims growing out of negligence in erecting the building. By the carelessness of one of the workmen, a window-frame was dropped upon a passer-by, who wishes to bring suit for the injury.

Granting that the workman is financially irresponsible, whom would you advise him to sue? Give reasons and indicate whether he would have any choice.

7. P employed D to buy and sell wheat. When D wanted money to buy wheat he would send a telegram saying, "Send me fifteen", which by the agreed code meant \$1500, to be sent by express. A, the local agent of the Western Union Telegraph Co. and the American Express Co. was accustomed to sending such messages for D and receiving packages soon after by express for D. He suspected the packages contained money. One day he sent a message to P saying, "Send twenty on Friday", and forged D's name to the telegram. On Monday he received a package by express addressed to D. He opened the package and found that it contained \$2000 in bills, which he converted to his own use.

What are P's rights against the Western Union Telegraph Co. and the American Express Co.?

8. M, a mortorman on a street car, was instructed to keep newsboys off the front of the car and to run his car on schedule time. M, in order to put a newsboy off the car, deliberately kicked him off. A man driving a buggy on the street car tracks neglected to get off the track promptly when M sounded his gong. M intentionally drove his car into the buggy, demolishing the buggy and killing the horse.

Can either the newsboy or the owner of the horse and buggy recover damages of the street car company?

Suppose the mortorman offered to allow the newsboy to ride a few blocks if the newsboy would give him a paper, and that upon the newsboy's refusal, the mortorman shoved the newsboy off, his sole motive being to get even with the boy.

Would this change in the facts change your answer?

9. F was the foreman of M's machine shop. W, a workman, was injured by the falling of a piece of machinery which was defectively installed. W's skull was fractured and in order to save his life it was necessary to have a piece of bone removed from his skull. M was out of town and could not be reached. F sent for a physician saying that M would pay the bill for the operation. F had never been told to hire physicians for injured workmen. The physician sued M for \$150. a reasonable fee for the services performed.

Can he recover?

10. C, the conductor of a street car, got into a dispute with X over a transfer. C claimed that the transfer was void and threatened to put X off the car unless he paid his fare. X refused to pay. C stopped the car and put X off using only necessary force. After X was on the street C got off the car also, and without justification struck X a blow with his fist.

Assuming that C was justified in putting X off the car, is the street car company liable to X for the subsequent assault of C while on the street?

Examination in Bills and Notes.

(In answering questions give reasons in every case and state what you believe to be the law both before and after the adoption of the Negotiable Instruments Act.)

PROFESSOR VERNIER.

1. Are the following instruments negotiable?

(a) \$5,000.00. Chicago, Aug. 15, 1892.

On the first of July next we promise to pay to the order of H. B. Schuler----Five Thousand---- Dollars, at the Commercial National Bank with interest at 6 per cent per annum.

Certificate of stock No. 113 for 50 shares of stock of the Hopkins Mfg. Co. to be surrendered on payment of this note.

Harry L. Hopkins.

Daniel B. Whitacre.

(b) \$795.00. Boston, Mass., Mch. 16, 1903.

At sight pay to the order of the Eliot National

Bank----Seven Hundred and Ninety-five----Dol-
lars, for value received, and charge to account
of 250 bbl. meal ex Schooner "Aurora Borealis".
To Geo. Morrison, Esq., St. John, N. B.
Hathaway & Co.

2. M, an intimate friend of P, received a re-
quest by telephone to come and act as witness to
P's will. At P's request he signed his name at the
bottom of a sheet of paper after being told that
the paper was P's will. P was in bed. The paper
was covered by a blotter which M did not attempt
to remove. In fact, the paper had written upon it
a promissory note, payable to the order of P. P
indorsed the note to A, who was present and had
full knowledge of the facts. A indorsed the note,
"Pay B at his own risk. A." B took the note for
value and before maturity. He had no notice of
any defect unless the form of the indorsement
gives him notice.

What are the rights, if any, of B against A, P
and M?

3. P induced M by fraud to believe that he
owed P \$500. M in fact owed P nothing, the ac-
count having been settled three years before. But
induced by this fraud, M made a note to P's order
for \$500. P indorsed the note before maturity to
A without notice, A paying, however, only \$300.

How much, if anything, can A recover from M?
Assume that A, instead of paying \$300 for the

note, took it from P as collateral security for a debt previously owing from P to A, and that this debt was \$200. Under these facts how much, if anything, can A recover from M?

4. E, of Chicago, the executor of X, had been directed by the will of X to pay a legacy of \$10,000 to a distant relative of X, named William N Horner. R. D. Forbes, of Chicago, learned of this bequest from newspaper accounts. He knew that the legatee Horner had recently been accidentally drowned in Lake Michigan while on a boating trip. The death of Horner was at this time unknown to any one else. There being a superficial resemblance between Horner and Forbes, the latter came to E and represented that he was the legatee Horner. E, the executor, had once seen Horner, and being deceived by the resemblance, made out a check on the Corn Exchange National Bank of Chicago, where the money of the estate was on deposit, and received a release from Forbes in the assumed name. The check was payable "to the order of William N. Horner." Forbes forged Horner's name as indorser and then presented the check to the Corn Exchange National Bank, indorsing a second time in his own name. The cashier of the bank, knowing Forbes, paid over the money without question. Forbes disappeared with the \$10,000. The bank charged the same to the account of E as executor. Horner's death became known later and E, the execu-

tor, was compelled to pay the legacy over again to Horner's legal representatives.

Has E any recourse against the bank?

5. M signed a note in blank and gave it to his agent A, telling A to see either X or Y and make one of them the payee and to fill in the amount for whatever amount M owed, which in neither case exceeded \$300. A however filled in the note for \$500 and made it payable to P. With the note in its completed form he went to P and induced P to take the note for \$500 worth of goods. A resold the goods and converted the proceeds. P took the note in ignorance of A's abuse of authority.

What are the rights of P against M, if any?

6. X forged the name of M as maker to a check for \$100, payable to the order of X and drawn on the plaintiff's bank. X indorsed the check to A for value. Defendant bank without negligence cashed the check for A and indorsed it—"Prior indorsements guaranteed. Pay to any bank or banker," and sent it to a collecting bank which presented it to the plaintiff bank, where it was paid. Plaintiff bank, upon discovery of the forgery a month later, promptly returned the check to the defendant bank and demanded the money back. Defendant bank refused and plaintiff brought this suit.

Judgment for whom?

Would your answer be the same if defendant bank had cashed the check for A, a stranger, without requiring any identification?

7. P, the payee of a negotiable promissory note, indorsed it to A by writing on its back, "Pay to A upon his delivery to me of 10 tons Pocahontas coal. P." A, after receiving the note, indorsed it to B for value and with no notice of defects other than the law will imply from the instrument itself. The coal was never delivered by A. At maturity M, the maker of the note, paid the face of the note to B upon his presentment and demand, without noticing the peculiar form of the payee's indorsement.

What are the rights of the payee against M at common law and under the N. I. L.?

8. Are the following instruments negotiable?

(a) \$2,750.00.

Goldsboro, N. C., June 2, 1909.

One year after date I promise to pay to the order of the Auburn Machine Co. Twenty-seven Hundred and Fifty Dollars, being the price of machinery this day purchased, title to which is to remain in the Auburn Machine Co. until this note is paid.

Walter Rae.

(b) \$500. Fall River, Mass., June 1, 1907.

One year after date I promise to pay to the order of Elijah Pierce Five Hundred Dollars with interest the same as Savings Banks pay.

Value received.

Isaiah B. Winslow.

9. What is an irregular indorser? Illustrate by example. Explain briefly the nature of and reasons for his liability at common law and under the N. I. L.

10. On January 1, 1910, B, by duress, obtained a demand note from A, payable to B or order. On January 15 B indorsed the note to C who gave full value and had no notice of the duress. On the same day C indorsed the note to D by way of gift.

What are D's rights against A, if any?

Would your answer be the same if D knew that B had obtained the note by duress?

Examination in Criminal Law.

PROFESSOR GREEN.

(Give reasons for each answer.)

1. A county sheriff corruptly refused to serve a writ in a civil suit. The legislature had provided no punishment for such refusal. Is the sheriff guilty of a criminal offence?

2. In a prosecution for the statutory offense of selling beer without a license, which was punishable by a heavy fine, it appeared that defendant kept a drug store, and had a large quantity of beer there, but no license to sell it; that a detective employed by the state to discover whether the statute was being violated, entered the store and offered defendant five cents for a glass of beer, and that defendant delivered to him the beer and received the money. Can the prosecution be maintained?

3. A man ordered his wife and his fourteen year old daughter to go with him to a store and steal from the counter a certain article worth ten dollars, threatening them with violence if they refused. They obeyed through fear. When they took the article the man stood beside them and watched them. What offences have been committed and by whom?

4. Statutes punished by fine—

(a) selling milk below standard.

(b) voting at an election by a person not a resident of the district,

(c) taking by officers of excessive fees.

May a conviction be had

under (a) if the milk was believed to be above standard because carefully tested, but mistakenly so believed because the testing instrument was out of order;

under (b) if the voter, a university student, mistakenly believed himself entitled to vote because informed by a professor (1) that a self supporting student was a resident of the district where he roomed, (2) that whether a resident or not, every man has a legal right to choose as his voting place any district where he has spent a considerable part of his time;

under (c) if the officer mistakenly believed the fee was allowed by law because he carelessly misread the statute which fixed his fees?

5. Answer either (a) or (b).

(a) Discuss the subject of insanity in criminal law.

(b) Section 284 of the Criminal Code of Illinois provides as follows:

“A lunatic or insane person without lucid intervals shall not be found guilty of any crime or misdemeanor with which he may be charged; Provided the act so charged as criminal shall have been committed in the condition of insanity.”

In a trial for murder in an Illinois court, there being evidence of insanity, prisoner's counsel asked the judge to tell the jury that the prisoner was not guilty

(1) if at the time of the act he was an insane person without lucid intervals;

(2) if his act was the product of insanity;

(3) if insanity irresistibly impelled him to commit the act. The judge refused all these instructions, and told the jury that insanity furnished no defense unless it obliterated the sense of right and wrong as to the particular act charged.

Discuss the correctness of the judge's action.

6. A prisoner in jail, by collusion of his keeper, obtained saws to break out of jail with and hid them under his mattress for use later in the day. They were discovered and confiscated before the time of their intended use arrived. Of what, if any, offense is the prisoner guilty?

7. X went into a store and left his horse in the street. Y with intent to steal the horse, started to ride him away. There was no way to prevent his making good his escape with the horse except by shooting him, and X for this purpose shot him, inflicting a wound of which he died six months later. Y had ridden the horse one hundred feet away when he was shot; X could not have accomplished his object except by shooting in the way he did. Of what, if any, offenses are X and Y respectively guilty?

8. A student for amusement was carving his initials in the top of a desk which belonged to the university, and seriously diminishing its value by his work. A splinter of wood flew by accident from his knife and hit in the eye a student seated beside him. The wound inflamed and caused the student a year later to lose the eye, and a month later still to lose his life. What offenses have been committed?

9. A saw an umbrella outside the door of his house and recognized it as belonging to his friend B who had thoughtlessly left it there when calling. A picked up the umbrella and started down the street to return it to B, when his wife called after him to hand the umbrella to her for her to keep as her own and he did so. What, if any, offenses have been committed and by whom? What, if any, difference would it make in your answer if A, after recognizing but before touching the umbrella, had

difference would it make in your answer if A, after recognizing but before touching the umbrella, had determined to keep it for his wife, and at no time intended to return it to its owner?

10. Section 140 of the criminal Code of Illinois says: "Murder is the unlawful killing of a human being in the peace of the people with malice aforethought either express or implied."

Tell under what circumstances unlawful killing in this state is murder, in language such that a person unacquainted with law could understand your statement, and apply it to cases that might occur.

Examination in Constitutional Law.

(Give reasons for every answer.)

PROFESSOR GREEN.

1. An act of a state legislature provided for the appointment by the Governor of commissioners to build across a river between two cities as many bridges of suitable design and reasonable cost as might be necessary to serve the convenience of the citizens, and to apportion the cost, after hearing, between the two cities in proportion to the benefit each received. It was objected that the act was an unconstitutional attempt to vest in the commission legislative and judicial power. Is the objection well founded?

2. The United States Constitution provides that the President shall be chosen by Presidential electors appointed in each state as its legislature shall direct. State legislatures have directed that Presidential electors and state Governors alike

shall be chosen by popular vote and that only residents of the state may vote. If a treaty between the United States and a foreign nation should provide that citizens of that nation owning land within the United States should have the same right to vote at all elections as if they resided where the land was situated, would such landowners be legally qualified to vote (a) for Governor, (b) for Presidential electors?

3. An act of a state legislature imposed on a railroad a yearly tax of seven per cent of its gross receipts in lieu of all other taxes, and gave the Governor final power to determine, after hearing, the amount of the year's gross receipts. The railroad company contended that this was an invalid attempt to confer judicial power upon the Governor. What is the merit of the contention?

4. May a legislature ever impose a special tax on land in a particular district? If so, under what circumstances may it do so, and how far, if at all, is its power limited as to fixing the boundaries of the district, as to apportioning the tax between the different lots of land, and as to the amount of tax to which any given lot may be subjected?

5. A, B, and C owned separate but adjoining pieces of land comprising a single tract, too swampy for cultivation but not dangerous to health,

which, if drained at all, had to be drained as a whole. A and B wanted the lot drained and were willing to pay their share of the expense. C objected and was unwilling to pay anything. Under a general act of the legislature covering all similar cases, commissioners were appointed on application of A and B to drain the tract and assess the expenses in proportion to benefit on all land within it. Can C or his land be subjected to a share of the expense?

6. A owned grain elevators in Wisconsin and Illinois. He was accustomed to receive grain at his elevator in Wisconsin and to redeliver to the baylor in lieu of it an equal amount of like grain from his elevator in Illinois, charging in such cases, in addition to the usual warehousing charge, an amount equal to the freight between the two points. He did not ship grain from one warehouse to another, but replenished his stores when necessary by local purchases. Is he subject to an act of Congress which imposes certain duties on persons engaged in interstate commerce in grain?

7. If Illinois imposes taxes—

(a) of one dollar on every railroad car;

(b) of one cent for every hundred miles run within the state by every railroad car;

(c) of one per cent upon the gross receipts of every railroad; are the taxes valid as to cars solely engaged in interstate transportation, and as to receipts from interstate transportation?

8. If a state by a statute, which recites that it is passed to protect the health and morals of its people, prohibits the sale of enumerated articles, including beer that contains over three per cent of alcohol and oleomargarine that is colored to look like butter, are the prohibitions valid, in the absence of any federal law on the subject, as applied to sales of such beer and oleomargarine imported duty free from a foreign country and sold by the importer in the original package?

9. Would a statute of Illinois be constitutional which required every employer to compensate his workmen for bodily hurt received in the course of the employment from risk inherent in the nature of the work?

10. Would a statute of Illinois be constitutional which imposed a penalty on every employer who made it a term of hiring that the employment should cease if the workman joined a labor union?

Examination in Contracts.

PROFESSOR DECKER.

PART I.

1. Discuss the different forms of actions to enforce contractual obligations with reference to their historical development and the circumstances under which each may be appropriately brought.

2. D was negotiating for the purchase of a cow from P. P said, "I will sell you this cow for \$40; take her and try her for a week. If you do not return her by the end of the week, I shall consider the bargain closed." D took the cow and kept her for ten days, when he sought to return her. P refused to take her back and demanded his money. D refused to pay. Which is right?

3. John Jones, Jr., gave his note to X for money loaned, signing it "John Jones." X sold

and endorsed the note to P, representing the note to be that of John Jones, Sr. P presented the note when due to John Jones, Sr., who refused to pay it, saying that it was the note of his son, who corroborated his father's statement, but said he was unable to pay it. P refused to believe it was the son's note and threatened to sue the father, who thereupon promised that if P would forbear to sue him for six months, he would then pay it. P waited for six months and then sued the father in assumpsit on two counts. The first count was on the note. How should the defendant plead to this count?

The second count was on the new promise, to which the defendant pleaded lack of consideration and that the promise was not in writing.

What decision? Discuss fully.

4. (a) X owed Y \$100. Y accepted X's note for \$75 payable in three months in settlement of the debt. The note was paid when due. Y now sues X for the balance. Can he recover?

(b) Supposing instead of a note, X had mailed Y his own check for \$75 marked "In full of all claims," which Y had cashed. Would this alter the answer to (a)?

(c) Suppose X had paid the \$75 in cash and had received a receipt in full?

Discuss fully.

5. A sent an offer from Chicago to B at Champaign by mail on the 8th and said, "I will be in Champaign on the 10th. If you accept, call on me at the Beardsley Hotel at 10 a. m." P was obliged to leave town, so left a letter of acceptance at the hotel on the 9th.

(a) Is there a contract if A receives B's letter?

(b) Is there a contract if A arrives at the hotel as intended, but the clerk neglects to hand him B's letter?

(c) Suppose B had telegraphed A in care of the hotel countermanding his letter of acceptance, and both letter and telegram are handed to A at the same time. What effect, if any, would this have on your answer to (a)?

PART TWO.

6. D wrote to P as follows: "I have decided to hire you for two years on the terms which you offered in our conversation of yesterday. Come to my office tomorrow prepared to go to work, at which time I will have the agreement in writing ready for your signature." P presented himself next day as directed, but D repudiated the transaction and refused to allow P to go to work. P sues D in *assumpsit* and D pleads *non-assumpsit* and Statute of Frauds. What decision on each issue?

7. (a) P contracts with D, a city, to grade and macadam a certain road for \$5,000. The grade

involved a deep cut in which P encountered hard rock on which he had not calculated. Seeing that he was going to lose money on the job, P refused to complete it unless D would pay the extra cost of the rock excavation. D agreed but refused to pay more than \$5,000 on completion of the job. Is he liable on his promise to pay extra cost?

(b) Suppose X, who owned land along the road had promised to pay P \$500 if he would complete it. Is the promise enforceable if P completes the road?

Discuss fully.

8. P was a tenant in D's house. A part of the roof was carried away by a tornado. P was under no legal obligations to repair the roof and might have moved out of the house, but D was away from home and P caused the repairs to be made at an expense to himself of \$100, believing that D would consider it a favor and repay him on his return.

(a) Is D liable?

(b) Suppose D on his return promises to pay but fails to do so. Is he liable? Discuss fully.

9. "We hereby each severally agree to pay the 1st Methodist church of Champaign the sum of \$100 when its new church building is completed. Signed this 10th day of January, 1912.

A----- [SEAL]
 B-----
 C"-----

A and B paid, C refused. Is he liable and by what form of action should he be sued, if at all?

10. D sold the timber on forty acres of land in Champaign county to P, who entered and commenced cutting. After about half was cut and piled on the ground, D ordered P and his men off from the land. The contract of sale was for \$4,000; to be paid when the timber was removed. The timber was worth \$6,000 above the cost of cutting and removing. The contract was oral. Advise P as to his rights.

Examination in Damages.

PROFESSOR DECKER.

PART I.

1. A contracted with B to build a house but ordered B to quit when the house was only partially completed. While A was out of town, B did additional work to the value of \$500. The contract price was \$2500, the value of work done at time A first notified B to quit was \$1200, the cost of completing the house at that time was \$1000. Nothing had been paid. What is the measure of B's recovery.

- (a) If he sues for breach of contract?
- (b) If he sues on a quantum meruit?

2. P was ejected from an amusement park owned and operated by D, by a private watchman employed by D, who suspected P of having entered without a ticket. P having bought a ticket, pro-

tested when he was ordered out, and was forcibly ejected in the presence of other persons, the force being supplemented by abuse and profane language. P suffered no physical injury.

Discuss D's liability for damages, both compensatory and punitive.

3. X was about to engage in a mail order business and contracted with Y to print a supply of catalogs to be delivered by a certain day. X had invested \$10,000 in goods, had rented a place of business, had contracted for help and was ready to commence operations on the date named, but was delayed for 3 months by Y's delay in delivering the catalogs.

(a) Discuss Y's liability for damages as affected by the rule of *Hadley vs. Baxendale*.

(b) Can X recover substantial damages for loss of business during delay? Discuss fully.

4. A conveyed land to B by warranty deed for a purchase price of \$5000. X sued B in ejectment, claiming a superior title, and obtained a judgment of ouster. The land at this time was worth \$6000. A had no notice of the suit. B now sues A for breach of covenants of seizin and warranty.

What is the measure of his recovery?

5. D converted property of P to the value of \$700. X obtained a judgment against P on a note for \$1000. The goods converted by D were seized by the sheriff on an execution, sold at public sale for \$500 and that amount was paid over to X to apply on his judgment.

P sues D for the conversion. What is the measure of his recovery?

PART II.

6. D was under contract with X to build a large factory by a day certain, subject to a forfeiture of \$100 a day for each day's delay beyond that time. D thereupon contracted with P to build the foundations for \$5000 by a certain day and in default to forfeit a like sum of \$100 for each day's delay. P was 10 days late, D paid \$4000 and refused to pay the balance.

In a suit by P against D for the balance, D relied on the terms of the contract as a defense, setting up a claim for \$1000 damages for the delay by way of recoupment. P claims that the damages were only nominal, and offers to prove that no work was done on the building for 30 days after the foundations were completed, owing to a strike of steel workers. Is the evidence admissible? Discuss fully.

7. A sues B for injuries received in a wreck on B's street car. The evidence shows that though he was suffering much pain from injuries

to his back, he walked home and did not call a doctor till a week later. The injury resulted in total paralysis of his lower limbs. He had no nurse but his wife. He was a machinist and wholly incapacitated for labor.

(a) On the above facts, for what elements of damage can A recover?

(b) Suppose there was evidence to prove that if A had had prompt surgical treatment, he might have been wholly cured. Frame a correct instruction for the jury based on the facts.

(c) Suppose A's disability was partly due to the incompetence of his physician or nurse. What result?

8. Suppose a verdict for \$50,000 were rendered in the preceding case. What step would you take as attorney for the defendant and what argument would you make in support thereof?

9. D hired P for 5 years as superintendent of his automobile factory in Chicago at a salary of \$5000 per year, and discharged him without cause after 2 years. P sues for damages six months after his discharge and the trial occurred six months later.

(a) On the above facts only can P recover and how much, suit being in Illinois?

(b) Suppose suit in Federal court?

(c) If properly introduced in evidence how would P's rights be affected by the following facts: During the first 6 months after his discharge, P could have obtained work in Chicago as a skilled machinist at \$5 per day, but remained idle. He then hired out for one year at a salary of \$4000 as a superintendent of a similar factory in Detroit, where he moved his family and was working at the time of the trial?

10. A owed B \$100 due January 1, 1911, but did not pay. B was counting on the money to pay his life insurance premium which came due January 5th, and as a result of A's default, B's policy lapsed.

B sues A in assumpsit and seeks to recover the value of the lapsed policy as part of the damages. What result?

Examination in Evidence.

January, 1912

ASSISTANT PROFESSOR WORMSER.

PART ONE

I. What is meant by 'a relevant fact'?

A stopped B on a lonely road, produced a revolver, and threatened to shoot B, if B would not give him all his money. A is now on trial for robbery. Are any of the following circumstances relevant? If so, why? If not, why not?

(a) That A was out of work and in great want of money.

(b) That A honestly believed that B owed him money.

(c) That A had told others that he would shoot B some day.

(d) That A had been convicted of highway robbery five years ago.

(e) That A had fired a gun at C, against whom he had an ancient grudge, two months previously.

(f) That A was possessed of an irresistible mania to commit highway robberies.

(g) That A's actions were solely the result of a wager with L, a friend.

II. In an issue about to be tried in an Illinois Circuit Court in Cook County, the following facts are relevant, (a) The abrogation of treaty relations between Russia and the United States (b) The law of Russia on the indefeasibility of citizenship (c) A municipal ordinance of the city of Chicago (d) The name of the present Premier of Russia.

May the Court take judicial notice of all, or any, of these? Must it?

III. (a) X offers the will of Y for probate. Z contests on the ground of the insanity of the testator. The trial justice charges the jury that the burden of proving the sanity of the testator beyond a reasonable doubt is upon X, to which X's attorney excepts. Is the exception good?

(b) Draft a charge which would satisfy the Illinois doctrine on this question.

IV. A sues B for an alleged trespass over his farm, Blackacre. B seeks to justify under a right of way over Blackacre, appurtenant to his neighboring tenement, Whiteacre. At the trial, B offers evidence that X, his grantor, while in possession of Whiteacre, repeatedly asserted his ownership of such a right of way. Over the objection and exception of A's attorney, this testimony was received. A then offered to show that shortly after the conveyance from X to B, X stated in the course of conversation that the right of way over Blackacre had long since been extinguished. The trial Court excluded this testimony, to which A's attorney again excepted. The verdict was for B. What decision upon appeal and why? Discuss fully.

V. A, while crossing Michigan Boulevard on a rainy day was severely injured due to the skidding of B's automobile. In A's subsequent suit for damages predicated upon B's alleged negligence, B offered to show that on that day his automobile was equipped identically as the majority of other automobiles on the avenue. A offered to show that a certain chain well known to automobilists would have effectually prevented the skidding. A also offered proof that very shortly after the accident, B procured these chains. Which, if any, of these proffers of proof are competent, and why?

PART TWO.

VI. In a damage suit for alleged negligence against a street railway company, P testifies that the starting signal was given before he had fully alighted from the car. On cross examination, he admits that, at the time, he was thinking of the details of an important financial transaction. The defense produces the conductor who swears that he is certain that he did not ring the signal until P was well away from the car and that he is particularly sure of this because he had noticed that P was aged and somewhat infirm. Neither plaintiff nor defendant produced any further witnesses. The trial Court thereupon granted defendant's motion to non-suit plaintiff, to which exception was taken. Was the disposition of the motion error?

Assuming the Court had allowed the issues to go to the jury and that the jury had found in plaintiff's favor, what test or tests should be applied in passing upon defendant's motion to set aside the verdict? With what result?

VII. Same facts as in preceding question. To strengthen his case, could plaintiff have shown that he was habitually cautious in boarding and descending from surface cars and that his reputation for prudence was unquestionable?

Under what circumstances, if at all, could plaintiff show this in the courts of Illinois?

VIII. Action by X against the city of Chicago for damages for personal injuries caused by a defective sidewalk. A offered to prove by a police officer that as many as ten other persons had fallen at the identical place.

(a) For what purposes, if any, is this proof competent?

(b) How, if at all, might defendant succeed in having it excluded?

(c) If admitted, would evidence also be competent in behalf of the city that many persons had passed the place complained of without receiving any injury. Discuss.

IX. A, mortally stabbed in the back, tells D, his attending physician, that he is sure that X stabbed him, for he had no other enemy in the world. A few moments later A expired. At the trial of X for murder, the State's Attorney succeeds in getting in evidence, over the exception of X's attorney, the testimony of D. Is the exception good or bad?

X. (a) What is meant by hearsay evidence and on what principles is it rejected?

(b) Comment upon and illustrate if necessary
 (1) Res inter alios acta (2) Stop, Look and Listen Rule in Illinois (3) Presumption of Legitimacy (4) Pedigree Declarations.

Examination in Equity.

PROFESSOR POMEROY

February 1, 1912.

PART ONE.

1. A, contracted to sell to B, (a) a United States Government bond; (b) ten shares of stock of the Illinois Central R. R. Co.; (c) ten shares of stock of a local grocery company, practically all of whose stock was owned by two persons. Of which of these contracts, if any, can B have specific performance? Reasons. Is the English rule different?

In the above cases suppose A is insolvent: is the result the same? Discuss this question fully.

2. A owned a house and lot, No. 201 Q street; B owned a house and lot, No. 203. Each house was worth \$2000, but lot No. 201 was worth \$3000 more than lot 203. On January 2, they entered

into a contract to exchange these premises; B to pay \$3000 in cash, good title to be shown, and possession and deeds to be delivered on February 1st. A did not have a perfect title to 201 on January 2d, but on January 15th he succeeded in clearing his title and offered to B an abstract showing perfect title. The title to 203 was unquestionably good. Meanwhile, on January 10 without fault of A or B, both houses were burned. 201 was uninsured. 203 was insured in B's favor for \$2000, which B collected from the insurance company. B sues A for specific performance, demanding conveyance of lot 201 and offering \$1000 cash and lot 203 in payment. A resists specific performance unless he shall receive the agreed \$3000 cash and the \$2000 insurance money in addition to lot 203. What result?

Discuss fully principles involved.

3. The A company is manufacturing and introducing automatic telephones in England and America. It engaged the services of B and C, both of them famous engineers and men of unusual business ability, as general managers of its English and American business, respectively. B and C each contracted to give "the whole of his time" to A company for three years. The A company employs several thousand linemen both in England and America. Each lineman signed a contract not to accept employment from any other telephone company within three years. Within the three years B, C and numerous linemen in

England and America left the service of the A company and began to work for a rival telephone company. What relief may the A company have in English courts of Equity against B and the English linemen? and in American courts of Equity against C and the American linemen?

4. The Florida East Coast R. R. Co. in consideration of acquiring its right of way through the land of the A hotel company, which owned a large tourist hotel on the beach two miles from the railroad, agreed to build a branch line to the A hotel, to back all its through passenger trains down this branch to the A hotel, and to build a station on the A company's land adjoining the hotel in accordance with plans submitted by the A company. The railroad company neglected to build the station, but operated its trains according to the contract for two years; having then completed three large hotels of its own further south it ceased to run its trains over the branch but stopped them on signal at the junction, two miles from the A hotel. The patronage of the A hotel, in consequence, was much diminished. The railroad's passenger traffic south of the A hotel consists chiefly of through tourist travel from northern cities to the railroad hotels. The A company now sues for specific performance of the railroad's contract, including the agreement to build the station.

Discuss questions suggested by above facts.

5. Mention three classes of cases in which "lack of mutuality" as a defense to specific performance has been urged without success. State a case (facts real or imagined) in which this defense should succeed.

PART TWO.

6. Smith, on June 1st, 1911, sold 10 acres to Jones for \$1000. Jones went into possession of the land immediately and still holds possession, Smith retaining the legal title. Jones paid \$600 cash and gave Smith two negotiable notes for the balance, each note being due Dec. 1st, 1911. On July 1st, 1911, Brown, a creditor of Smith, recovered judgment for \$500 against Smith and recorded the judgment. On August 1st, 1911, Smith indorsed one of the notes for value to Robinson, who took it without notice of Brown's judgment; Smith retains the other note. Neither note has been paid. What are the rights of Brown and Robinson against Jones, and how may they be enforced against the land? Explain fully.

7. May the rendering of personal services, without taking possession, be a sufficient part performance to take an oral contract to convey land, made in consideration of the services, out of the statute of frauds? Discuss the question fully with illustrative facts, explaining the principles involved, and showing the state of the law on this question in England, in the United States generally, and in Illinois.

8. A was in the business of digging clay from his land in the town of P and manufacturing brick. He sold part (lot 1) of the land to his partner B, who agreed to retire from the business and covenanted for himself and his assigns with A and his assigns not to dig clay from lot 1 and not to carry on the business of manufacturing brick in or within 50 miles of P. For breach of the latter covenant he agreed to pay as liquidated damages \$50 for each thousand brick manufactured. Later, A sold the land retained by him (lot 2) and the brick business to C. B sold his lot 1 to D, who had notice of the covenants. D proceeded to engage in digging clay from lot 1, and, in partnership with B, in manufacturing brick in the town of P. C sues to enjoin D from digging clay from lot 1, and B from manufacturing brick in or within 50 miles of P. Should C succeed in these suits? Discuss.

9. (a) A, residing in Indiana, owned land in Illinois and mortgaged it to C. Can an Illinois court acquire jurisdiction to foreclose the mortgage? If so, how will the purchaser at the foreclosure sale get title to the land? Reasons.

(b) B, residing in Illinois, owns two farms, X and Y, in Indiana, and a farm, Z, partly in Indiana and partly in Illinois, the state boundary running through the farm buildings of Z. He contracts to sell X to C, and mortgages Y and Z to C. C brings three suits in Illinois: for specific performance as to X, and for foreclosure as to Y and Z. Will the Illinois court take jurisdiction? Reasons in each case.

10. (a) A executed a written lease to B, expiring Sept. 1, 1911. The lease contained this clause. "A agrees that in case B, before the expiration of this lease, shall pay to A the sum of \$10,000 as purchase price of the premises herein demanded, after giving to A three months' notice of his election to purchase said premises, A will upon the expiration of said lease convey said premises to B." B on May 31, 1911, gave notice of his election to purchase and on Sept. 3, 1911, tendered the purchase price to A; this tender was refused. Sep. 4th B files his bill for specific performance. Should he succeed? Reasons.

(b) Explain, with illustrative facts, the meaning of the phrase, "Time made essential by the circumstances of the case," and of the phrase, "Time made essential by notice."

Examination in Illinois Procedure.

January, 1912.

DEAN HARKER.

1. A, administrator of the estate of B, was served with a writ citing him to appear before the probate court and "show cause why he did not pay a claim allowed" to C against B's estate. A did not appear and an order of default was entered against him. C showed to the court that A had paid all claims allowed except his, that A had received ample funds to pay all claims and costs of administration, but had neglected to pay the claim of C, after repeated demand.

C, at the suggestion of the court, amended his petition by praying for the removal of A and his own appointment as administrator. The court thereupon revoked A's letters and appointed C as administrator *de bonis non*. After C had qualified he made demand on A to turn over to him all money and other assets belonging to the estate.

A failed to comply, and C as administrator *de bonis non* brought suit against A and X on A's bond, X being surety.

Employed by the defendants, how would you plead and what should be the result of the suit?

2. A, partner of B in the lumber business at Urbana, Illinois, died February 1, 1911, leaving a widow who was appointed administratrix of his estate. Within sixty days after A's death B filed an inventory of the co-partnership property and list of liabilities, as required by statute. He has since then been engaged in winding up the partnership business, collecting claims and paying of debts, but has rendered no account to the administratrix or paid her any money, although repeatedly requested to do so.

How should the administratrix proceed? Prepare the necessary papers.

3. A retail merchant heavily in debt for goods purchased of the Bacon Grocery Company, John Long and other wholesale dealers, wrote to all of his creditors that he owed debts to an amount more than double the value of his property, that if his creditors should undertake to enforce collection by judgment and execution the net proceeds of a forced sale would not pay more than twenty per cent of the claims, but that if all his creditors would allow him to continue business and discount their claims forty per cent, he would pay half the

remainder in cash and give well secured notes for the other half. He further wrote that he had a wealthy brother who would advance the cash and guarantee the payment of the notes. All creditors accepted the proposition and agreed to meet at A's place of business on a certain date to effect the commutation. On arriving there they found that A on the day before had turned over his entire stock of goods, all of his property, to his brother in satisfaction of a debt which he owed him. The value of the goods did not exceed the amount of his brother's debt. The brother refused to comply with the terms of the commutation as outlined by the letter and refused to pay anything on the claim.

Thereupon the Bacon Grocery Company and John Long began suit in attachment alleging fraudulent transfer to delay creditors, and had writs levied upon the goods. How should A plead? How should the brother plead? What should be the result of the attachment on the facts above stated?

4. Draft declaration in ejectment for Robert Brown, claiming to hold fee simple title in lots 2 and 3 in block 6 and life estate in lots 4 and 5 in same block, in city of Urbana, Illinois, against Richard Yost, defendant. Prepare affidavit of common source, making William Gray common source.

5. Jane Blake employs you to bring suit for divorce and to take such legal steps as will afford

her the utmost relief under the following state of facts: She married William Blake July 1, 1900. Two children were born to them, Anna and William, aged respectively six and four years. For more than two years Blake had been in the habit of getting drunk. On three different occasions he, while intoxicated, violently assaulted her. He owns several shares of stock in the Champaign National Bank and lot 4 block 2 in Champaign on which is a building renting for \$150 per month. Give in detail the steps you would take.

Prepare the bill of complaint.

6. State the difference between the common law writ of certiorari and the statutory writ of certiorari. State a case in which the common law writ would be applicable and one in which the statutory writ would be applicable.

7. State the leading facts in *Commissioners of Mason and Tazewell Special Drainage District vs. Griffin et al*, 134 Ill. 330. What were the points of contention urged by appellant in seeking a reversal of the judgment of the circuit court? State the holding and the reasoning of the supreme court on each point.

8. Explain the nature of a writ of *scire facias* and enumerate the instances in which the Illinois statutes allow its use.

9. At Savoy, a station on the Illinois Central Railroad in Champaign county, an attempt was made to organize a village corporation, embracing territory amounting to two square miles. The petition presented to the county judge was defective because it did not contain the names of thirty legal voters as required by statute. Twenty-eight names only appeared as petitioners. Nevertheless, the county judge ordered an election to determine whether the territory should incorporate. A majority of the voters residing in the territory refrained from voting. Of those that did vote, a majority voted for organization and the result was reported to the county judge, who ordered an election for Trustees of the Village of Savoy. After six candidates had been declared elected, they assumed to qualify and are now carrying on official functions. All the matters stated appear of record. Certain voters and tax-payers of the territory, who have not participated in either of the elections mentioned, desire to test the validity of the organization. What form of remedy would you advise? Is it exclusive or concurrent? Why?

10. A began suit in replevin against B to recover certain personal property which was turned over to him after he had executed to the sheriff a replevin bond with C as surety, conditioned that A would prosecute his suit to effect and make return of the property. Soon after obtaining possession of the property, A shipped it to Chicago with the intention of selling it. It was destroyed

by fire within twenty-four hours after reaching Chicago. There was no insurance upon it and the loss was total. A did not follow his suit by prosecution of it and the circuit court dismissed it and awarded a return of the property to the defendant. What may A plead in defense to suit in debt subsequently brought on the bond?

Examination in Municipal Corporations.

January, 1912.

ASSISSTANT PROFESSOR HENRY.

PART I.

1. By an act of the legislature the X county was extinguished and the counties A and B created out of the same territory. X county was heavily indebted. The court house and nearly all of the property of X county is now in A county. Nothing was said by the legislature as to how the debts should be apportioned. How should the courts treat the matter in suits brought by creditors of the X county against the two new counties?

2. One-half of the territory, including two-thirds of the taxable property and all of the public buildings, of the city of X was severed by statute and created into a new city, the city of Y. The city of X was heavily indebted and the legislature made no provision as to the payment of the debt. (a) Against which city should the creditors of the

old city whose claims arose prior to the severance bring their actions? If they should recover the full amount of their claims from one of the cities, would such city have a claim for contribution against the other? (b) Suppose that shortly after creating the new city the legislature had passed an act extinguishing the old city. How would that have affected the situation of the creditors?

3. A statute was passed providing: that all the municipal corporations in the state should pay to all their employes not less than the prevailing rate of wages for each occupation; and that such employes should not be required to work more than eight hours per day. Is the statute constitutional?

4. (a) An act of the legislature provided that the mayor and aldermen of the city of X should be appointed by the governor of the state.

(b) Another act provided that the city of X should maintain a certain number of playgrounds for the children and should expend \$100,000 in the purchase of the sites and for their improvement.

In the absence of any express prohibitions in the constitution of the state, is such legislation valid?

5 (a) A city under express authority of the general law incorporating cities passes an ordinance requiring all persons occupying houses in

the city to keep the sidewalks in front of their premises free from snow and ice. X does not comply with the ordinance and is fined by the municipal court. He appeals. Judgment for whom?

(b) Another city under similar authority changes the grade of a street thereby causing damage to an abutting property owner. Is the city liable?

PART II.

6. A state statute provides that municipal corporations shall not become indebted to an amount exceeding five per cent of the assessed valuation of the taxable property within the corporate limits. A city issues bonds reciting on their face that all provisions of law have been complied with. The city would have had authority to issue the bonds in question if the limit of municipal indebtedness had not already been reached. May a purchaser of a bond without actual notice enforce it against the city?

7. (a) A and B are rival candidates for the office of Mayor of a city. A receives the majority of the votes cast. It is afterwards discovered that A is ineligible for the office because he is not thirty years of age as is required by statute. Is B entitled to the office?

(b) The city of X is heavily indebted. A and others are elected officers of the town, but refuse to accept. The city therefore has no officers.

What course should the creditors of the city pursue in order to get their claims paid?

8. A is injured by a defective road in the X county and B is injured by a defect in a sidewalk in the city of Y. A sues the X county, and B sues the city of Y. Should either A or B recover?

9. A statute provides that cities in which property is stolen by burglars shall pay the owners the value of their property so stolen. A's house in the city of X is broken into and his silver stolen. A sues the city. Should he recover?

10. A city ordinance provides that a certain street shall be paved with cedar blocks and that the cost shall be assessed on the abutting property owners. A year later, at a time when the wooden pavement is still in good condition, another ordinance is passed directing that an asphalt pavement be put on the same street, the cost to be assessed on the abutting owners. The owners refuse to pay their assessments. Should the city recover in suits brought against them to compel payment?

Examination in Partnership.

February, 1912.

ASSISTANT PROFESSOR HENRY.

PART I.

1. A was the owner of a theatre. He entered into a contract with B. B was to provide the plays and the players, and was to have the entire management of the performances. A was to pay for the general service, and the expenses of the theatre other than those connected with the plays, the players and the advertising. The gross receipts were to be equally divided. Under this agreement the theatre had been operated for some time, when it appeared that a play had been given, which constituted an infringement of a dramatic copyright belonging to C. C sues A and B as partners. Should he recover?

2. (a) State the rule in the case of *Cox vs. Hickman*; the facts of the case briefly in so far as

you recall them; and something about the development of the law on the question involved up to the decision of that case.

(b) Has *Cox vs. Hickman* been followed in the United States?

(c) What do you consider the true test or tests for determining whether a partnership exists or not?

3. A and B are partners. C carries on a competing business. The firm of A and B would be benefitted by a knowledge of the transactions and methods used by C. A without the consent or knowledge of B bribes a clerk of C's to disclose confidential particulars of C's business in breach of his contract with C. C sues A and B as partners. Should he recover?

4. A and his son B had been engaged in business in Urbana as partners under the firm name A & Co. A retired, but consented to allow his son to continue using the old firm name. B went to Chicago and ordered goods from C in the name of A & Co., telling C at the time that he and his father were partners. C knew A to be a man of financial standing, but he had never heard of the firm of A & Co. The goods were shipped to A & Co. and received by B. B became insolvent and the goods were not paid for. Can C hold A for the purchase price of the goods?

5. A and B were engaged in the lumber business in Champaign as partners. A went to Chicago and discounted a promissory note in the firm name. A used the proceeds for his own private purposes. C the payee did not know the purpose for which A wanted the money. B had not authorized A to discount the note and knew nothing about the transaction. Is the note a binding obligation on B?

PART II.

6. A, B and C are partners in the business of sugar refiners. C is the managing partner, and also does business separately, with the consent of the others, as a sugar dealer. He buys sugar in his separate business, and sells it to the firm at a profit at the fair market price of the day, but without letting the other partners know that the sugar is his. A and B seek to have the profit made by C on the sugar sold to the firm turned over to the firm. What are their rights in the matter?

7. A, with the assistance of his three sons to whom he paid salaries, carried on the business of nurseryman. A devised the land on which the business was carried on and bequeathed the good will of the business to his three sons as tenants in common in equal shares. After A's death the sons continued to carry on the business on the land, in partnership, and two of them bought the share of the third in the land and business as an undivided whole. Is the land partnership property? Was it

partnership property before the two brothers purchased the interest of the third?

8. (a) A, B and C are partners. A and B decide to sell the land and the building used for the partnership business to D. C tells A and B that he refuses to consent to the sale and so notifies D before the contract is signed. The land stands in the names of A, B and C. Can D compel C to execute a conveyance to him?

(b) A and B are partners, each with full authority by the articles of agreement, to buy goods for firm purposes on the credit of the firm. The firm had frequently bought on credit from C. A without saying anything about the matter to B wrote C that he would no longer be bound by any order of goods by B on credit. C nevertheless furnished the goods. Can he hold A as a partner for the purchase price?

9. A and B are partners. The assets of the firm are \$6000, and its liabilities \$9000. A's individual assets are \$300 and his debts \$600. B's individual assets are \$1200, and his debts \$600. The affairs of the firm and of A and B individually are being wound up. How should the assets be distributed between the creditors of the firm and the individual creditors of A and B?

10. A, B and C were partners. After all the creditors of the firm had been paid the assets

amounted to \$3000. The original capital of the firm was \$5000, of which A had contributed \$4000 and B \$1000. B and C agreed to devote their time to the business, and the profits and losses were to be divided between A, B and C equally. The firm had borrowed \$1000 from B. C is insolvent. The affairs of the firm are being wound up. How would you distribute the \$3000 between the partners?

Examination in Private Corporations.

January, 1912.

ASSISTANT PROFESSOR WORMSER.

PART I.

I. The State of X, by special charter, conferred upon a company the right to sue and be sued in the company name, to hold real estate, to have perpetual succession despite changes by death, sale or otherwise among the individual members, and finally, provided that no associate should be liable for the debts of the company beyond the amount unpaid on his or her shares. The act expressly disclaimed any intent to create a corporation and stated that the association was to be known as a "trading company." Subsequent to the organization, State X passed a Corporation Tax law. So did State Y where the new company was also doing business. As attorney for the company, you are consulted as to its liability under

the respective statutes. What would you advise and why?

II. (a) X, a widow, who had been left \$10,000 by her husband, desired to risk one-half of that sum in a millinery establishment. Accordingly, she persuaded two friends to act as dummies for the purpose of organizing a private corporation pursuant to the Illinois statute, with \$5,000 of capital stock. The proper procedure was duly followed and business was begun. From the outset the venture was a losing one and debts to the extent of over \$10,000 were incurred. The creditors sought to hold the widow individually, claiming that she was sole stockholder, that the sole purpose of forming the company was to evade personal responsibility, and that the entire procedure was a sham and subterfuge. The widow defended the action. Who wins and why?

(b) State, and briefly discuss the case of *Salomon vs. Salomon*.

III. The Board of Directors of the Standard Kerosene Company duly adopts a resolution that it is for the best interests of the company that one Richard Roe, a private detective in the employ of the Federal Department of Justice, be assaulted to the end that he be rendered incapable of obtaining further proof of the illegality of certain of the company's transactions. Subsequent to the passage of the resolution, John Doe, a notorious

thug, was employed by an agent of the directors for this purpose. The plot succeeded and Roe was severely injured. An indictment for assault was found against the corporation.

(a) As attorney for the corporation indicate your line of defense.

(b) As attorney for the State indicate your line of attack.

(c) As trial Judge what would be your decision and why?

IV. You are retained to form a corporation to engage in the hotel business in the city of Chicago.

(a) Outline in detail your procedure before the company could transact business as a *de jure* corporation.

(b) Draft the clause of the articles of incorporation in which the nature of the corporate business to be transacted is set forth.

V. A corporation formed to manufacture shoes undertakes to run a line of automobile stages. One of its vehicles negligently runs down and injures A. A sues the company, which demurs.

For what reason or reasons, if any, was the demurrer interposed?

Should the demurrer be sustained? If so, why? If not, why not?

PART II.

VI. The charter of the National Foundry Company, a Maryland corporation, exempted forever from State taxation its shares of capital stock. After its organization, it was sought to tax the realty owned by the company, its personalty, the accumulated surplus and its franchise. The company resists. What decision? Discuss fully.

What is the rule today in Illinois?

VII. A sells certain machinery to the Suburban Development Company, a well known concern doing business as a corporation. Later A discovers that the company had failed to prepare, execute, and file with the Secretary of State, the articles of incorporation as required by statute. He also hears rumors as to the solvency of the concern. Suit for the purchase price is thereupon brought by A against the individual associates as partners. They demur. Who succeeds and for what reason? What is the doctrine in Illinois?

Would your answer be the same if the articles of incorporation had been duly prepared, etc., and the omission had been to file the organization certificate in the office of the county clerk where the

company's principal business office was to be located?

VIII. X sells hardware to the Johnson Plumbing Company which, he later ascertains, has been created under an unconstitutional statute. X, thereupon, seeks to hold the individual shareholders liable. What decision?

What are the elements essential to the existence of a *de facto* corporation?

IX. The United States Iron Corporation, a successful, going concern, votes 5964 to 75, in favor of leasing its entire plant to the Carnegie Steel Company. What rights, if any, have the dissenting stockholders?

Would your reply differ if the corporation were losing money daily? If so, why?

X. (a) The Chicago Shoe Company, a combination in unlawful restraint of trade, sells and delivers a consignment of footwear to B, a retail dealer in shoes. B refuses payment. The company sues for the agreed purchase price. Upon this conceded state of facts, the trial Court directs a verdict in plaintiff's favor. Draft a short brief as counsel for B on appeal to the Supreme Court of Illinois.

(b) Discuss the interpretation placed upon the Sherman Anti-Trust Act by the Supreme Court in the "Standard Oil" and the "Tobacco" cases, from the standpoints both of intrinsic soundness and of *stare decisis*.

Examination in Personal Property.

(Give reasons in all cases.)

PROFESSOR VERNIER.

1. T, a traveling salesman, stopped at H's hotel, bringing with him three trunks of jewelry samples, which as H knew belonged to T's employer. At the end of T's stay H presented a bill of \$25 for T's board and room, \$3 for the storage of the trunks at \$1 apiece, and \$20 for T's board and room on a former visit. Upon T's refusal to pay these charges, which were reasonable, H allowed him to go with two trunks, but retained the third for his lien. E, the employer, wrote asking that the trunk detained be sent to him. H replied refusing to send the trunk but gave no reason. For how much, if anything, can H hold this third trunk?

2. X borrowed \$1000 of Y and gave his note for the amount, payable in one year with 6 per

cent interest. As security for the note he deposited with Y twenty shares of stock of the par value of \$2000. When the note fell due X neglected to pay it when payment was demanded. Two days later Y, without giving any notice to X, traded the stock for an automobile worth \$2500. At this time the market value of the stock was also \$2500. X, without offering to pay his debt, sued Y in trover for the conversion of the stock. How much, if anything, can he recover?

3. B, employed in a hotel, found a set of silver toilet articles in an empty room, a purse lying on the floor of the public lobby and a diamond ring on the sidewalk in front of the hotel. He turned all the articles over to the manager. The articles were not claimed and B requested that they be given back to him. On refusal by the manager, is B entitled to sue for any of the articles?

4. (a) A ships a car-load of cattle and B ships two car loads by the same train to Chicago. On the way the train is wrecked. Part of the cattle are killed. Many are so mangled that they are worthless. About one-half of the cattle are saved but in the confusion are mingled. What are the rights of A and B in the cattle left?

(b) X steals twenty hogs belonging to Y and ships them to Chicago over the Illinois Central. Y claims his property at Chicago before it is un-

loaded. The Illinois Central refuses to give up the hogs until paid \$20 freight. The hogs are worth \$60 more in Chicago than they were worth at the place where stolen and shipped. Y sues the Illinois Central in replevin without tendering any freight. Can he recover?

5. T stole a bicycle belonging to P and abandoned it on the road-side. D found it and took it home. He left it outdoors where it rusted badly. Is he liable to P?

X claims that the bicycle belongs to him and D gives it up without any inquiry. Is D liable?

If D keeps the bicycle safely until P advertises that he will give a liberal reward for its return, can D refuse to give up the bicycle until paid \$5?

6. A, B and C owned adjoining timber lots. A cut down some of his own trees and by mistake owing to the uncertainty of the boundary line he included some of B's trees. All the trees cut down were cut into logs, hauled to A's mill and made into wood-pulp. The wood pulp was then manufactured into paper by A.

A also encroached on C's land, although he knew where the boundary was, and cut down some of C's trees. These were also made into paper by A. This was paper of a different and much higher grade. A had taken about \$100 worth of timber from the land of B and \$50 worth from the land of C. B's timber when made into paper was worth \$800, and C's worth \$1500. C sued in re-

plevin for the paper made from his timber, and B sued in trover. What are their respective rights?

7. P deposited 500 bushels of wheat in D's warehouse. D bought and sold wheat and also received wheat for storage. In depositing the wheat P said nothing to indicate whether he wanted to store or to sell. He received a receipt which read: "Received of P 500 bu. No. 1 wheat. Present at office. (Signed) X, weigher".

D placed the wheat in bins with other grain of like grade. At all times there were sufficient grain in the warehouse to satisfy all outstanding receipts, but the identical grain deposited by P had been sold. Under the foregoing facts answer the following questions:

(a) Is evidence of custom admissible to show the nature of the transaction?

(b) On the facts as they stand, without other evidence, what would be the rights of P; (1) in case the warehouse burned; (2) in case D became bankrupt and had not sufficient assets to satisfy his creditors?

8. A leased a house and furniture to B for one year. X, a sheriff, wrongfully seized the furniture as the goods of C on an execution against C. May A sue X in either trover or trespass? In any other action? May B sue X in trover? If so, what is the measure of his damages?

9. Show that you know the meaning of the following terms either by definition or example?

(a) Pawn. (b) Gift enter vivos. (c) Chattel real. (d) Chose in action. (e) Judgment in rem. (f) General lien. (g) Tortious confusion. (h) Gratuitous bailee. (i) Agister. (j) Custody.

10. X owned an automobile, which was seized by S, a sheriff, on an execution against X in favor of Y. S stored the automobile in the garage of G, who agreed to give it up on the demand of S. B, a servant of G, was told to care for and watch over the automobile. One night B took the automobile out without permission and while speeding collided with a street car and wrecked the automobile. May X, the owner, G, the garage keeper, or S, the sheriff sue B in trespass?

Examination in Real Property II.

January, 1912.

ASSISTANT PROFESSOR WORMSER.

PART I.

I. Discuss, and if necessary, compare or contrast, the essential characteristics of the license, the easement in gross, and the profit in gross.

II. In trespass, defendant justifies alleging a prescriptive right to enter on plaintiff's premises and to take sand and gravel therefrom for use on defendant's land; also to take sand and gravel *ad libitum* for sale. Defendant claimed as tenant for years of land on which his lessor had for upwards of 20 years carried on the business of selling sand and gravel for building purposes, taking the materials from plaintiff's land. This was the user relied on by defendant. Are the pleas good?

Assuming an affirmative answer to the foregoing question, what would be the legal effect of replications by the plaintiff, viz:—(a) that plaintiff is not seised of the entire parcel of land in which defendant's alleged rights exist, but only of parcel thereof recently purchased by him; (b) that defendant is tenant of only a part of the land of his lessor as to which said right is claimed; (c) that defendant's lessor had, before the acts complained of were committed, become the owner of a part of the plaintiff's land?

III. Trespass for disturbance of plaintiff's possession by the erection of a bay window on defendant's adjoining house, which window projected over land claimed by the plaintiff. The *locus in quo* was part of defendant's original lot, but had been unintentionally enclosed with plaintiff's lot by one Q, a former owner thereof, who occupied for upwards of twenty years without discovering the mistake. Q conveyed his lot to the plaintiff, but the deed did not describe the land in dispute. Can the action be maintained?

How would it affect the question if it appeared that Q had been in possession only twelve years and had then conveyed as aforesaid to plaintiff more than eight years before the erection of the bay window?

IV. (a) In *Booth v. R. W. and O. R. R. Co.* (140 N. Y. 267), the New York Court of Appeals

held that no liability rested upon the defendant for damages sustained by plaintiff's premises as the result of vibrations caused by blasting operations conducted by defendant on its own land. Re-examine this case in the light of the principles governing the so-called "natural rights" in land.

(b) Plaintiff's house has stood for 60 years on the verge of his land. Defendant, excavating his adjoining land without notice to plaintiff, caused the walls of plaintiff's house to crack. It is admitted that no injury was done to the land on which the house stands. Is plaintiff entitled to recover? If so, on what principle? What is the rule in Illinois?

V. Plaintiff owned an extensive tract of land from which rain water ran, by means of a depression, to adjoining land, and thence into a natural lake. A neighboring railroad company erected an embankment along its tracks which bordered plaintiff's land, to secure them from any danger of flooding. Plaintiff, as a result, ascertained that water which had hitherto found an outlet in the depression, was now forced back upon his land. Defendant, the railroad company, demurs to plaintiff's declaration. Who wins and why? Are the authorities all in accord? If not, indicate the diverse doctrines.

PART II.

VI. P leased to D for one year a flat in his apartment house. After D went into possession, P leased the immediately adjoining flat to X, an operatic singer, who despite D's protests, refused to refrain from continually practicing her roles in her apartment. The penetrating sound of X's voice and the accompanying piano could be heard plainly at frequent intervals. Oftentimes D's family, as a result, were unable to sleep till late into the evening and were aroused in the early morning. D, after duly notifying P who protested that he could do nothing with regard to the matter, refused to pay rent. D also threatened to, but did not, move out. What are the rights and remedies of the parties?

Assuming that D had moved out, would your answer be different? If so, state why. If not, why not?

VII. A and B, tenants in common of a three-story dwelling, make a voluntary partition, A taking the first story, with the land on which the building stands, and B the second and third stories. A, having conveyed to C who has no knowledge of B's interest in the premises, C proceeds to tear out the staircase leading to the upper floors of the building and to erect an ell or wing in the rear of the building, cutting off B's light and air from the back yard. What are B's rights in the premises?

VIII. A, a riparian proprietor, covenants with B, a lower proprietor on the same stream, to build and maintain a dam on his (A's) land for the regulation of the water supply for B's mill. B, at the same time, covenants (1) that he will not use the power so furnished for any other purpose but the sawing of logs, (2) that he will pay A and his successors annually one-half the cost of maintaining the dam and (3) that he will pay annually a certain compensation for the flowage of A's land. The covenant extends to the heirs and assigns of both parties. A having conveyed to X and B to Y, and all the covenants having been broken, what are the rights of X and Y in law and in equity?

IX. X, in 1895, purchased a long, narrow island situated in the Missouri river and separated from the westerly bank of the stream by a channel approximately ten feet wide and three feet deep. Due to a slow change in the course of the stream, and to a constant deposit of silt and alluvial soil, this channel by the year 1910 became wholly imperceptible in times of low water, and in times of even the highest water was only something over a foot wide and a few inches deep. Y, the riparian owner of the westerly bank from 1895 to 1910, claiming title, erected in 1911, a small frame structure on what concededly had once been part of the island. X sues Y. What decision and why?

X. (a) X disseises Y in 1882. In 1884, Y becomes incurably insane. In 1905, Y dies. In 1906 Y's son and sole heir, claims the land in dispute. X defends. Who wins?

(b) Contrast the use of the term "privity" in connection with adverse possession and covenants running with the land.

Examination In Torts.

January, 1912.

ASSITANT PROFESSOR HENRY.

PART I.

1. A on a public street and within the hearing of a crowd of people called B a liar and a scoundrel. B responded with similar epithets. A fight ensued and both A and B were injured. What action or actions might B successfully bring against A; and what further facts would you wish to bring out in connection with the words spoken or the blows struck?

2. X, in a state of intoxication, stood on the sidewalk in front of the door of the house of A, a woman. There was no other door by which she could leave her house. X made threatening gestures and insulting remarks to the people who passed on the sidewalk. A wanted to go to mar-

ket, but she was afraid to pass X, and therefore remained in the house, for some time longer than she had expected, until after X left. She sues X for false imprisonment. Should she recover? If not, is there any action she can bring in which she should recover?

3. A went to B and asked for a loan of \$1000. B went to C and inquired as to A's financial standing. C was a good friend of A's, and told B that A was a man of means and thoroughly responsible. As a result of what C said B lent A the money. At the time C had good reasons for suspecting that A was in embarrassed circumstances, but he did not know how bad the state of affairs was. It turned out later that A was insolvent at the time of the loan; and B was never repaid. Can B sue C and recover damages?

4. A stole some books from B's library and sold them to C, a bookseller. D, a clerk in C's bookstore sold them to E, who gave them to F. F on learning the facts offered to give the books back to B. B refused to take them. B sues C, D, E, and F for the conversion of his books. None of the defendants knew that the books had been stolen. Should B recover in any of the actions?

5. (a) The boundary line between the land of X and that of A had never been marked with precision. X cut the grass on his own land for hay

and also some of the grass on A's side of the line, believing, however, that he was cutting his own grass. A sues X in trespass. Should he recover?

(b) Every morning in going to work X cut across the corner of A's lawn. A repeatedly told X to stop walking across his lawn. X continued to do so, however. X did not injure the lawn to to any appreciable extent. A sues X in trespass. Should he recover?

PART II.

6. A, a passenger, was injured in a collision between the train on which he was traveling and another train. The accident was due to the combined negligence of the engineers of both trains, which belonged to different companies. Should A recover from either company?

7. X left his motor car in the street in front of a house, while he went in to give a message. He neglected to take out the key. If he had done so the machine could not have been started. A, a boy of nine, set the car in motion thereby injuring himself; and B, his four year old brother, who was standing in front of the car was also injured. Is X liable for the injuries to the boys?

8. A, a cook employed by X, was accused by him of having stolen a gold stick pin and was discharged. A applied to B for employment, and B knowing that A had been cooking for X asked X

what he thought of A. X said that A was dishonest, believing the statement to be true. In consequence of what X said B refused to employ A. A sues X for slander. Should he recover?

9. A's house was on fire and he was removing his furniture and goods as rapidly as possible. He came out with some household goods and started to go back for some more. X thinking that A was about to do a foolhardy act, as it had become very dangerous to enter the house, seized him and against A's protests dragged him back to a safe distance from the fire and held him there until it was too late to attempt to save any more property. Has A a right of action against X?

10. (a) A maliciously starts a store next door to B's store and sells goods of the same kind at cost. As a result B's business is destroyed. Should B recover in an action against A?

(b) B for many years has sold baking powder in yellow cans of a certain size and shape. A sells baking powder in similar cans. Has B a right of action against A?



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1911/12

pt. 2

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PAPERS USED AT THE

SECOND SEMESTER EXAMINATIONS

1911-1912

IN THE

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1911/12

pt 2

UNIVERSITY OF ILLINOIS

COLLEGE OF LAW

Examination in Evidence II.

ASST. PROFESSOR WORMSER.

June, 1912.

PART I.

I. Witness testified that defendant, who was being tried for murder, on the day of the alleged murder "acted funny", "looked fierce", and "appeared as if something was on his mind". Defendant was convicted and on appeal urged that the ruling of the trial court admitting the aforesaid testimony was error.

As counsel for State's Attorney, brief this proposition. What decision?

II. (a) A sued X for damages caused by a fire alleged to have been negligently built by X on his land, from which it was communicated to A's land. A's contention was that in consequence of the wind, and dryness of the ground and brush, it

was an improper time to build fires to clear the land. The court allowed a witness to answer the question: "What do you say as to whether it was a proper time, or not, to burn a fallow?"

Was this error?

(b) May a witness for plaintiff in an action for alleged negligence against a street railway company be asked: "Was there any room in the car for other men?"

(c) May the same witness be asked "whether the motorman was negligent and careless?"

III. (a) You desire to qualify Dr. John Williams as an expert on the subject of melancholia and manic-depressive insanity. State in detail the questions you would ask in order successfully to achieve your purpose.

(b) Edward Smith is the sole witness called by you to establish testator's incompetency. Dr. Williams was in the court room listening attentively throughout the direct, the cross, and the redirect examination of Smith. You then call the doctor to the stand and after qualifying him ask this question: "Doctor, will you tell us whether in your judgment, based upon the testimony of Mr. Smith, which you have just heard, the testator was sane or insane?" This question is objected to. Should the objection be sustained or overruled?

(c) What is the function and purpose of the so-called "hypothetical question?"

IV. Plaintiff sustained injuries in alighting from a street car. She was taken to a nearby pharmacy and treated for her injuries. A carriage was then ordered to carry her to her residence. While being taken to the carriage, some two hours later, she said to the conductor of the car: "I hate to cause you people all this bother. I was foolish to try to get off your car before it stopped." Subsequently plaintiff sued the street railway company for alleged negligence. The trial court excluded the testimony of the conductor as to plaintiff's statements to him. The jury rendered a verdict against the company.

(a) Draft an outline brief as counsel for the company on appeal. (b) Draft an outline brief as counsel for plaintiff-respondent. (c) What decision?

V. Trace the history and development of the Shop-Book rule. What connection, if any, has it with the rule pertaining to entries made in the regular course of business? Discuss, and if profitable, illustrate.

PART II.

A sued B for breach of a written contract, wherein and whereby B agreed to deliver to A on May 15, 1912, ten barrels of flour at \$5 per barrel. B offered evidence that it was orally agreed between the parties at the time of entering into the contract that it should not be binding on either

party if flour should rise in price more than \$1 per barrel between that time and May 15, and that flour had risen more than that sum. A objected to this testimony. The trial court sustained the objection.

Was the ruling erroneous or sound? Discuss.

VII. Defendant is on trial for wife-murder. The State's Attorney offers in evidence the blood stained garments worn by deceased "in order to enlighten the jury on their understanding of the facts." Defendant's counsel objects.

(a) On what ground or grounds was the objection interposed?

(b) Should it be sustained or overruled?

(c) Assuming the evidence was admitted, and further assuming that its admission was erroneous, should the appellate court affirm or reverse where the record leaves practically no doubt of defendant's guilt?

VIII. (a) Is it competent in order to prove that a handwriting is genuine to offer in evidence a concededly genuine signature to a paper not otherwise relevant evidence in the litigation in order that court and jury may institute a comparison?

(b) Is it competent to call a handwriting expert to give his opinion to the jury founded on a comparison without any personal knowledge of the handwriting of the party in controversy?

(c) May a witness who has seen a party write on two occasions testify to the genuineness of the signature in litigation?

(d) Is it competent to call a handwriting expert to give an opinion to the jury from a mere inspection of the disputed signature, whether it is genuine or forged?

Indicate any conflict of authority if there be such.

IX. Plaintiff sues defendant for alleged slander. A, on June 15, is called as a witness for plaintiff and undergoes direct examination. The trial is then adjourned to June 20. On June 19, A dies. Defendant, on June 20, moves that A's testimony be stricken out, on the ground that there was no opportunity for cross-examination.

Should the motion be granted or denied? Can you suggest an alternative to the granting or denying of defendant's motion?

X. Testator bequeathed "unto my nephew, William Root, one thousand dollars." It appeared that testator had a nephew, William Root, to whom he had not spoken for years. It also appeared that testator's wife had a nephew, William Root, of whom testator was very fond and to whom he often referred as "dear nephew."

Should the probate court refuse said oral evidence in interpreting the will? Discuss fully.

Examination in Bankruptcy.

PROFESSOR DICKER.

PART I.

1. B, being out of debt, conveyed to his wife, without consideration, a house and lot worth \$5000 located in Champaign, Illinois. The next day he borrowed \$1000 on a note from a bank and invested this sum together with \$2000, the only other property which he had, in wheat, which he purchased on the Chicago Board of Trade on a margin. Wheat went down and he lost his money.

(a) Would this conduct alone constitute an act of bankruptcy?

(b) Could the bank alone file an involuntary petition?

(c) Would the bank have any remedy outside of bankruptcy, and if so, how should it proceed?

2. (a) When will a voluntary conveyance be void as to creditors existing at the time of the conveyance?

(b) As to creditors who become such subsequent to the conveyance.

3. B, a grocer, called X into his store and offered to sell the whole stock for \$500. The stock was easily worth \$1500. X, after a little investigation, accepted the offer, paid cash and took possession. No questions were asked. B, who was insolvent, left town at once and has not since been heard from. C, a creditor of B, attached the stock next day, and now X sues the sheriff for conversion.

Give judgment.

4. X obtained a judgment for \$2000 against B, who was insolvent, on March 15, 1912, in a suit commenced in December, 1911, and levied execution on Blackacre, worth \$5000, which at the time stood of record in B's name. B filed a voluntary petition in bankruptcy on May 2, 1912, was duly adjudicated, and M was appointed his trustee. Blackacre had not yet been sold on execution and is now claimed by Y, a corporation, as a purchaser from B, in July 1911, for a good consideration, its deed, however, not having been recorded till April 1, 1912. X had no notice of Y's deed and as to X, B's title is void.

What are the rights of M, X and Y respectively to Blackacre?

5. Referring to the preceding question, suppose X's judgment had been obtained by default and the sheriff had advertised Blackacre for sale on April 15, 1912, would these facts be sufficient to entitle other creditors to file an involuntary petition against B, other jurisdictional facts being present?

- (a) On April 10, 1912.
- (b) On August 15, 1912.

PART II.

6. B, a resident of Illinois, having been adjudicated a bankrupt, what are the rights of his trustee to the following property:

(a) Goods which were in B's possession as vendee at the time of the petition under a contract of conditional sale.

(b) Goods of H which B held on consignment for sale.

(c) A lease which B held to a store building.

(d) An endowment life insurance policy payable to B at the end of 20 years, or in case of his prior death, to his wife.

(e) A judgment which B had obtained against a railroad company for injuries to his person.

7. A bank held a valid mortgage for \$2000 on Whiteacre, property of B, and 3 months before the petition against B, and with full knowledge that he was in failing circumstances, loaned B an ad-

ditional \$3000, cancelled the first mortgage and took a new mortgage on Whiteacre for \$7000, to cover the amount of the first mortgage, the present loan and \$2000 which B had previously overdrawn his account?

What are the bank's rights against M, B's trustee?

8. Draw a petition in involuntary bankruptcy against John Doe, alleging all jurisdictional facts and an act of bankruptcy as defined in Sec. 3a (1) (2) or (3).

9. Are the following claims provable against a bankrupt, B, who was adjudicated May 1st on a petition filed April 15, 1911.

(a) A note due January 1, 1912, on which B was maker.

(b) A note due January 1, 1912, on which B was an endorser.

(c) A claim for goods converted by B on April 20, 1911.

(d) A claim for assault and battery committed by B on March 1, 1911, and reduced to judgment May 15, 1911.

10. Referring to previous question, suppose X, a creditor of B to the amount of \$300 on book account for goods sold and delivered, had received a payment on account of \$100 on March 15, 1911. Might this fact affect his right to prove against the estate? If so, how and under what condition?

(b) Could the trustee recover such a payment?

Examination in Conflict of Laws.

PROFESSOR VERNIER.

(Give reasons fully in all cases.)

PART I.

1. T was domiciled in West Virginia near the Pennsylvania line. While visiting in the town of X in Pa. on May 1 he decided to move to X on May 15, with the intention of making X his permanent home. On May 3 he rented a house in X. He sent his goods over on May 14. In the morning of May 15 he left his W. Va. home to go to his new home in Pa., intending to live there henceforth. In the afternoon while arranging the furniture he began to feel ill, and decided to return to W. Va. to spend the night at the home of his brother. He died in W. Va. the same night.

T left a will bequeathing personal property to X. The will if controlled by W. Va. law is valid in form and X will take. If the will is controlled by Pa. law it is defective in form and X and Y

will share equally under the statute of distribution of Pa.

Who should have the property?

2. X, a citizen of the United States and domiciled in Illinois, held an official position in Italy, and while residing there committed a fraud against an Italian citizen. X returned to the U. S. to take up his permanent abode here, before Y, the Italian citizen, started suit in Italy. In the Italian suit notice was served on an Italian official, who mailed notice to X. X received the notice but paid no attention to it. Y obtained a judgment for a sum equivalent to \$1000. Is the judgment entitled to recognition in the U. S.? Is the judgment good in Italy under proper principles of private international law?

3. D, a resident of Illinois, owed P \$500 on a promissory note. Suit was brought in Illinois but D was not personally served.

(a) Assuming that D is in Illinois at the time suit is brought but is in hiding, will a judgment obtained on substituted service by publication be entitled to recognition in other states?

(b) Assuming that D, though residing in Illinois, is at time of the suit temporarily out of the state on business and this is known to P, will a judgment obtained on substituted service by publication be entitled to recognition in other states?

4. A Mass. statute provides that when a non-resident sues there, he may be served in a cross demand by service on his attorney in the first suit.

X, of Illinois, sued a Mass. citizen Y. Y filed a cross-demand, served X's attorney and obtained a judgment for \$500. Assuming that X had never been in Mass. and was ignorant of the Mass. law, should the judgment stand in Mass. on appeal? Should Y's judgment be entitled to recognition in Illinois?

5. W sued H for divorce in Ohio, where both were domiciled at the time of marriage. H deserted his wife and had lived in Colorado three years before suit was begun. As a preliminary to the suit for divorce the Ohio court enjoined H from disposing of his land in Ohio pending the issue of the suit. W sought divorce and alimony. The court granted the divorce on the ground of desertion, but refused to grant a personal decree for alimony upon service by publication. However the Ohio court gave a decree for alimony charged upon the Ohio land. Under the facts was the court justified (1) in refusing a personal decree for alimony: (2) in charging alimony upon the land?

PART II.

6. (a) H and W, residents of New York, married and lived together in New York. Soon after the marriage they separated, W, the wife, moving to Illinois and H moving to Michigan.

Granting that the wife has cause for divorce, under what circumstances, if any, will an Illinois court have jurisdiction to grant it, assuming that H does not come into this state. If the Illinois court should grant a decree upon service by publication must the divorce be recognized elsewhere, e. g., Michigan and New York?

(b) Does the decision in *Haddock v Haddock* cover the above case? State the decision in *Haddock v Haddock* and your opinion of it in brief.

7. A promissory note was executed in New York by a married woman to secure a debt of her husband, and was charged upon her separate estate. By the law of New York this constituted a legal liability enforceable by *assumpsit*. The married woman moved here and suit was brought here. By the law of Illinois, at the time this case was decided, such a note if made here would constitute an equitable charge upon the separate estate of the married woman. Should the holder of the note be allowed to recover in Illinois in an action of *assumpsit*?

8. H, as holder of a promissory note, brought suit against the maker in Iowa. The note was under seal. By the law of Iowa on instruments under seal the consideration was open to inquiry in spite of the seal. In the state where the note was made it constituted a legal obligation without con-

sideration. In the Iowa suit may the maker defend on the ground of lack of consideration?

9. (a) Suit was brought in Illinois on an obligation incurred in a state where the period of limitation is four years. Assume that in Illinois it is five years. Obligor and obligee lived in the state where the obligation was made until the four year period was up and then both moved to Illinois. The obligee brought suit here before the five year period was up. What judgment under the Illinois statute covering this case?

(b) By the law of Wisconsin a tax deed is conclusive evidence of title after two years. After two years should this title be recognized in Minn., where under similar facts the law is different?

10. (a) An uncle and niece married in Russia where such marriages are valid. They moved to Pennsylvania where by statute marriages between uncle and niece are declared incestuous and void by statute. Should the marriage be recognized in Pa?

(b) Assume that in North Carolina marriages between whites and blacks are forbidden by statute and that there is no such statute in South Carolina.

A white woman domiciled in N. Car. went to S. Car. to marry a negro domiciled there. They

intended to live in S. Car. Shortly after the marriage they changed their plans and moved to N. Car. Should the marriage be considered valid in N. Car.?

Examination in Contracts.

PROFESSOR DECKER.

PART I.

1. A sold his retail grocery business to B, who assumed and agreed to pay all of A's bills for stock. X, a wholesaler, having a bill against A, presented the same to B, who refused to pay.

Has X a right of action against B?

2. Suppose in the preceding case A had agreed with B as a part of the transaction, that he, A, would never engage in the grocery business again in that county.

Is the agreement binding?

3. X agreed to rent a certain store building to Y for use as a liquor saloon for a period of five years. Y agreed to pay the rent and not to use the building for any other purpose than that spec-

ified. Two years after Y went into possession, a state prohibition law went into effect. Y desired to use the building for a nickel theatre, but X refused his consent. Y then abandoned the building and notified X of that fact.

Is he liable for breach of contract?

4. A sued B in assumpsit for the price of a furnace sold and delivered by him to B. B pleaded that the furnace was delivered and set up in his house by A in pursuance of the terms of a special contract, one term of which was that B should have 60 days in which to try the furnace, and if it did not heat the house to his satisfaction, on notice of such dissatisfaction within said 60 days, A was to remove the furnace without cost to B; that the furnace did not heat the house to his satisfaction, and that he had given notice thereof to A within said 60 days. A demurs to the plea.

What judgment? Reasons.

5. On May 1, 1909, A entered into a contract with B to sell B a house and lot for \$3,500, payable \$500 down and three installments of \$1000 each, payable annually thereafter.

(a) Suppose all payments but last have been made and B now sues A for failure to convey. In his declaration he alleges that he was ready and

willing to pay on delivery to him of a deed, but that A has failed to tender a deed. A demurs.

Judgment?

(b) Suppose B had paid nothing since the first \$500, what are A's rights at the present time?

PART II.

6. Thirty days after date we promise to pay to X the sum of \$500 with interest.

Signed,

A——

B——

C——

C died and M was appointed as his administrator. The note was not paid at maturity. Assuming that proper objections are taken, can X recover in a suit?

- (a) Against A, B and M jointly?
- (b) Against A and B jointly?
- (c) Against M alone?

In each case base your answer on the common law and the law of Illinois.

7. X is a hotel keeper and contracts with M to supply the hotel with meats as ordered for a period of one year, at certain stipulated prices, payment at end of each week. During year X sold his hotel to Y and assigned to Y his contract with M. M refused to fill Y's orders except at market prices, which were higher than the contract prices, and Y now sues for breach of the contract.

Is M liable? Give reasons fully.

8. A owes B \$100. B gives to X an order on A for \$50 in payment for a wagon. A refuses payment of the order.

What rights, if any, has X vs. A?

9. X, a mining company, contracted to sell to Y 6000 tons of coal at \$3 per ton, deliverable in equal monthly installments, commencing with January, 1910, and each month's shipments to be paid for within 30 days from the end of the month. The January, February and March shipments were duly delivered, and the first two paid for, but owing to a strike at the mine, no coal was delivered in April. On May 1st, the strike being still on, Y purchased 500 tons from M to meet his immediate needs, at \$4 per ton, that being a fair price, and sent X a check for \$1000 in full for March deliveries, being contract price less excess paid to M. X refused the check, and a few days later, the strike having been settled, wrote to Y offering to resume shipments at once on payment in full of the March bill. Y refused to pay more than \$1000 and X sues for \$1,500. No further shipments were made by X.

Y, in defense, seeks to recoup damages of \$500 on account of failure of Y to deliver in April, and \$1000 additional for failure of X to complete contract, coal having gone up 25c a ton on future contracts.

Give judgment and reasons.

10. A sold a piano to B for \$400, payable \$100 down and balance in three equal installments, payable 6, 12, and 18 months thereafter. A also agreed to keep the piano in tune for two years.

In a suit by A for the last installment, B pleads that A failed to keep the piano in tune for two years as agreed.

Is this a good defense?

Examination in Constitutional Law.

June, 1912.

PROFESSOR GREEN.

(Give reasons for every answer.)

PART I.

1. If an act of Congress provided that District Courts of the United States should have jurisdiction of actions on contracts to perform acts of interstate commerce, would the act be valid?

2. A state statute provided that in actions against a carrier by vessel on navigable waters of the United States for breach of a contract of carriage, plaintiff might have the vessel seized and held as security to satisfy the judgment.

If such an action is brought in a state court has the court power to order the seizure?

3. A, owning one undivided half of a quarter section of land, conveyed it to the United States for a soldiers' cemetery. The United States, through the Secretary of War, sent an army officer to hold possession in its behalf. The officer took possession in behalf of the United States and forcibly ousted B, who owned the other undivided half. B wishes to bring an action against the United States for a partition; an action such as the statutes of the state permit to be maintained in ordinary cases against the officer for a judgment admitting him to joint possession with the officer, pending partition; and an action of assault and battery against the officer for the forcible ouster.

Which, if any, of these actions may be maintained in a state court? In a federal court?

4. Where city bonds are issued under a law which the highest court of the state has repeatedly held valid, and after the issue the state court, reversing its former decision, holds that the law is in violation of the state constitution and the bonds invalid, and thereafter a citizen of another state sues upon a bond in a federal court, how will the federal court decide the case (a) if it thinks the earlier decisions of the state court were correct, (b) if it thinks the later decision would have been correct if it had been made when the question first arose?

5. Do you think that the established doctrine

by which a state court refuses to give effect to a state statute passed in violation of the state constitution is theoretically correct, and why?

PART II.

6. Explain why it is that the United States constitution secures the right to trial by jury in Alaska and not in the Phillipines.

7. A sued B in Ohio on an alleged contract and the sheriff made return that he had served B with summons in the suit. On suggestion that the person served was not B, the court heard A's testimony that it was B, entertained the suit and gave judgment against B by default. A then sued B in Illinois on the Ohio judgment. B appeared and urged in defense (a) that he had never been in Ohio and was not served with summons in the original suit, (b) that he never made the alleged contract, (c) that the Ohio judgment was obtained by A's perjury. Which, if any, of these defenses, if proved, would be good?

8. A state statute provides that priority shall be given to resident over non resident creditors. In proceedings in a state court to wind up a domestic corporation and distribute its assets, it appears that it is indebted to another domestic corporation, to a citizen of another state, and to a foreign corporation and that the total indebtedness exceeds the assets.

What are the rights of the creditors?

9. The constitution of Illinois provides that the right of trial by jury as heretofore enjoyed shall remain inviolate.

Could the legislature constitutionally provide (a) that trials in civil and criminal cases should in the first instance be by a court without a jury, with right to either party to appeal, on giving security for costs, to a court which should try the case anew with a jury; (b) that in civil cases where a jury found for the plaintiff, an appellate court might set the verdict aside if satisfied it should have been for the defendant and enter judgment for the defendant?

10. A state legislature passed an act which recited that the state expressly agreed with any railroad company that would accept its offer and within two years abolish grade crossings, not to require it for ten years thereafter to reduce its rates nor make further changes in the direction of additional safety to the public. The railroads accordingly formally accepted the offer and abolished grade crossings. Thereupon the legislature at once passed acts requiring reduction of fares and installation of block signal systems.

What is the effect of these acts?

Examination in Common Law Pleading.

June, 1912.

MR. LITTLE,

I.

- (a) What is pleading?
- (b) What is the most distinctive feature of Common Law Pleading?
- (c) Name the three principal objects of pleading.
- (d) Is it to your advantage as an attorney to have your pleadings unobjectionable? Explain fully, and state how faulty pleading on your part might be to your disadvantage.
- (e) Is it to your advantage as an attorney that your opponent's pleadings be correct in form? Explain fully, and state how faulty pleading on his part might be to your disadvantage.

II.

What is the modern rule with reference to assignment of causes of action *ex contractu*? Give examples of those which may be assigned and those which may not.

III.

What is the law with reference to the beneficiary in a contract to which he is not a party, suing on such a contract?

IV.

State the law with reference to joinder of parties, both plaintiff and defendant in actions *ex contractu*, and in actions *ex delicto*.

V.

(a) What is meant by the expression, "waiving the tort and suing in contract?" Explain fully giving theory and illustrating.

(b) Can a party pursue both actions at the same or different times? Why?

VI.

(a) State briefly the distinction between forcible entry and detainer, and ejectment.

(b) What in your opinion is the most characteristic feature of the action of *replevin*?

(c) Briefly distinguish between dilatory and peremptory pleas. Give illustrations of matter that would be pleaded in each plea.

(d) How can the court determine whether to consider a plea as a dilatory or as a peremptory plea?

VII.

(a) What is a demurrer? What are its uses, effects and results?

(b) What is color in pleading and where is it found?

VIII.

(a) Draw a declaration.

(b) Draw a general demurrer to above declaration.

(c) Draw a plea of general issue to above declaration.

IX.

Give the steps in the conduct of a suit in the circuit court from the statement of the case by the client to judgment in said court. Show in proper order every step that might be taken by either party, and state briefly the purpose of each of such steps.

X.

(a) A declaration is bad in substance. The plea in abatement is defective in form. A general demurrer is filed to said plea. What should be the judgment of the court?

(b) A's declaration is bad in substance and form; B's plea is bad in substance and good in form; A's replication is good in both substance

and form; B files a special demurrer to said replication. What should be the judgment of the court on said demurrer?

XI.

(a) You have filed a declaration and the defendant has filed a general demurrer, and the court has sustained the demurrer. What is the effect on your case? What step would you take upon the demurrer being sustained.

(b) If the demurrer is overruled and the defendant refuses to file a plea, what is the effect on your case?

XII.

Suppose you filed a declaration on a note, alleging that it fell due on March 1, 1912; the defendant filed a plea in abatement alleging an extension of time to March 1, 1913; you know that there was no extension of time, and that you can prove there was no such extension, what would you do? In such an event what steps would be necessary in order for you to get judgment on the note?

Examination in Carriers.

June 1912.

PROFESSOR GREEN.

(Give reasons for every answer.)

1. A, the owner of a steam tug with which he was engaged in the business of towing boats for hire on the Mississippi, contracted in writing with B to tow B's flat boat for \$75 from Dubuque to St. Louis and to deliver it safely at St. Louis. The flat boat while being towed by A and manned and controlled by his employes' was, by the sole fault of a steamboat, run into, sunk and lost.

Discuss A's liability.

2. A was traveling on defendant railroad on a free pass. He had a suit case with him. His trunk, which he checked in the usual way, was in the baggage car. The suit case contained only ordinary wearing apparel. The trunk contained ordinary wearing apparel and also merchandise,

which A intended to sell at destination. Because of a broken rail the train was wrecked. In the wreck, A's leg was broken, and his trunk and suit case with their contents were destroyed. A contends that as to his bodily injury, the railroad was bound to the exercise of the highest degree of care consistent with the practical conduct of its business, and that there is a presumption that it did not use such care or at any rate the maxim, *res ipsa loquitur* applies; and that as to his property, the railroad is liable as if an insurer. The railroad contends that because A was traveling on a free pass all risk was on him.

What is the railroad's liability?

3. C was a conductor of a passenger train running from Chicago to St. Louis. D delivered to him at Chicago a package containing \$1000, directed to the Union Bank, St. Louis. C gave D a receipt which ran "Received of D, a package said to contain \$1000, which I promise to carry to St. Louis and there deliver to the order of D indorsed hereon. (Signed) C." D told C he was going to indorse the order to the Union bank and to deliver the money to it on arrival. C so delivered it. In the meantime D bought an automobile of X, told X he might have the package of money in payment for it, and endorsed and delivered the receipt to X, who relying thereon let D take the automobile. Next day X presented the receipt to

C at St. Louis and demanded the package, which C could not give him.

What, if any, right has X against C (a) in contract, (b) in tort?

4. A box of cut flowers was sent by express to Mary Smith, Decatur. They reached Decatur in good condition. It was then found that there were four Mary Smiths in Decatur. The express company promptly tendered to each in succession. The last person was the person intended by the shipper, but the unavoidable delay in finding her had caused the flowers to wither.

Is the express company liable? Would it have been liable if just before tender to her the flowers had been stolen? If it had delivered in good faith to the first Mary Smith, she claiming the flowers?

5. On a rainy day, a passenger paid his fare on a trolley car and asked for a transfer to the Neil St. line. By mistake the conductor gave him a transfer which on its face was good only on the Oregon St. line. Without noticing the mistake, the passenger boarded a Neil St. car, and presented the transfer, which the conductor refused to accept, though the passenger told him of the facts. The conductor required him to pay fare or leave the car and on his refusal ejected him, whereby he was compelled to walk a long distance through the rain.

What are his rights against the car company?

PART II.

6. Plaintiff for freight paid in advance, shipped goods over defendant railroad consigned to himself. The railroad without good reason, delayed sending the goods forwarded for a month. While in transit, they were overtaken by an unprecedented flood and damaged to the extent of half their value. On arrival at destination they were put into a freight station ready for delivery, but before there was time for the consignee to take them, they were struck by lightning and burned up.

What is the railroad's liability?

7. A shipped 99 barrels of flour by railroad. The railroad by non-negligent miscount, issued a bill of lading for 100 barrels, to be delivered to the order of A. B bought the flour from A on the faith of the bill at \$5 a barrel and received the endorsed bill. The railroad delivered to him only the 99 barrels which were worth \$6 each.

Has B a claim against the carrier and for what sum?

8. A seller of goods shipped them by railroad to the buyer marked for a point on a connecting line. The railroad carried them to its terminus and there delivered them to the connecting road. They arrived damaged. There is no evidence as to where the damage occurred.

What carrier is liable for the damage, who may sue him and in what form of action?

9. What exceptions are there at common law to the rule that a common carrier is liable for accidental damage to goods in course of transportation?

10. What is the effect of the following agreements made at shipment between shipper and common carrier for hire in case of loss of a box containing goods worth \$100, whose contents the carrier did not know or ask about?

(a) that the carrier shall not be liable for any loss however caused.

(b) that it shall not be liable for loss though caused by neglect of servants.

(c) that the article is agreed to be worth \$50.

(d) that the carrier shall not be liable for more than \$50, though the loss is due to negligence, unless the shipper states the value.

(e) that no suit shall be maintained for any loss unless claim is made within 30 days from the time the loss is known.

(f) that no suit shall be maintained unless brought within one year.

Answer first on the assumption that the carrier is without fault; then on the assumption that the loss is due to its neglect.

Examination in Domestic Relations.

(In answering questions, answer first, according to the common law; second, indicate the rule under the Illinois or other modern statutes. Give reasons fully in all cases).

PROFESSOR VERNIER.

PART I.

1. The plaintiff, wife of defendant, after procuring a divorce, sued the defendant for an assault committed by him during coverture.

Should the plaintiff recover?

2. F, an unmarried woman, became pregnant by A. A, seeking a way out of the difficulty, induced B to marry F, A representing to B that F was a virtuous young woman. Soon after the marriage B discovered the above facts.

(a) May B have the marriage annulled?

(b) Assume that B does not care to have the

marriage annulled. May he sue A for the deceit or for loss of the consortium?

3. H married W. At the time of marriage W owned the following: (1) a house and lot in town, (2) the furniture therein, (3) a farm and (4) sixty acres of forest land. She also owned (5) a term of 99 years in another farm, (6) \$1,000 worth of stock in a railroad corporation, (7) a promissory note for \$50, (8) her clothes and jewelry.

Indicate the exact nature of the interest, if any, which H would be entitled to at or during the marriage, or upon W's death. Distinguish clearly between common law and statute.

4. F, the father of S, caused S to be confined in an insane asylum. The father's action was wrongful, as the son was sane though eccentric. The father acted maliciously.

What redress has the son, if any, (a) in criminal action; (b) in a civil suit?

5. P, a minor owning land, by written power of attorney authorized A to sell the land, make all necessary deeds, etc, Acting under the authority A sold the land to X and when the contract price was paid transferred the legal title to X. The contract was a fair one, but P decided that he would prefer to have the land.

What are the rights of the parties? May P disaffirm before he becomes of age. After he becomes of age. How long after? Is disaffirmance necessary?

PART II.

6. W caused her husband H to be prosecuted for assault and battery. The action was discontinued because the evidence showed that there was not the slightest grounds upon which to support the indictment. In spite of this many people believed the charge, in view of the fact that the wife, even after the suit was dismissed, widely published that the facts supported her. H's business suffered because of these false charges.

H sues W for divorce on the ground of cruelty, alleging the above facts. What decree? State what is meant by cruelty under the Illinois statute and in what respect it differs from some other statutes in this regard.

7. H married W. While on their wedding trip H lost the money he had with him. W had \$100 of her own but refused to give it to H for fear that he might lose it or spend it for drink. While W was asleep, H took the \$100, went out and lost it in a poker game.

May H be convicted of larceny?

8. T, an enemy of H, assaulted H by striking him on the head, causing him to become insane. W, the wife of H, sued T in her own name, claiming damages for loss of H's support, comfort, society, etc.

May she recover?

9. (a) H married W. H sued to annul the marriage. Should he succeed if he can show that W was a common prostitute, that this fact was unknown to him until he married her, and that he never lived with her after the marriage?

(b) Change the facts. Can W have the marriage annulled, if she can show that H is a counterfeiter, but had induced her to believe that he was an honest mechanic, and that she left him as soon as she learned the facts?

(c) Suppose H had been convicted of a felony and sent to the State penitentiary before the marriage, had escaped, married, and then had been pardoned after marriage. If W left him as soon as she learned these facts could she have the marriage annulled or get a divorce?

10. H desired a divorce from his wife W, but had no grounds for bringing suit. In order to induce his wife to bring suit, H engaged in adultery with C, and saw that information of this fact was brought to the attention of W. W had secretly wished that she might obtain a divorce but had never said so to any one. She now brought suit on the ground of adultery. Her sole witness was C, a prostitute. H did not contest the suit, but appeared and confessed to the offense. Pending the trial the wife lived apart from H and he paid her an agreed sum per week for her support. All these facts appearing at the trial, the court denied the wife a divorce.

How should the case be decided on appeal?

Examination in Equity.

PROFESSOR POMEROY.

June, 1912.

PART FIRST.

I. Plaintiff, who was suing defendant in ejectment for certain farm land, obtained a temporary injunction by which defendant is prohibited from (1) plowing up the uncultivated part of the land, (2) pasturing stock thereon, (3) erecting any fences or buildings whatsoever, (4) running any wagons or agricultural implements over the land except for the purpose of harvesting such crops as have been planted or shall be planted by defendant before determination of the ejectment suit.

In what respects, if any, is this injunction proper, and in what respects, if any, should it be modified? Reasons.

II. Name the four requisites to the successful maintenance of a bill of interpleader. Illustrate two of these requisites by means of two cases

(facts real or fictitious) in each of which the requisite in question is lacking.

III. Several tax-payers sue, on behalf of themselves and the other tax-payers of the community, to enjoin the levy of a tax because it is wholly illegal and void as against all tax-payers.

On what three grounds have the courts which refuse an injunction in such a case based their holding?

IV. A sold Blackacre to B; the deed was recorded. Later, C recovered judgment against A, levied execution on Blackacre as the property of A, purchased it at sheriff's sale and put the sheriff's deed on record. B, being in possession of Blackacre, sues to cancel the sheriff's deed as a cloud on his title.

How do courts which grant relief and those which refuse relief to B in these circumstances justify their respective holdings?

PART SECOND.

V. Defendant, owning mines adjoining plaintiff's farm on each side, began to dig a tunnel 100 feet under the surface of plaintiff's land and threatened to continue it across to the other boundary of plaintiff's land. Defendant claimed no right whatever in plaintiff's land. No injury would result to the surface of the land if the tunnel should be completed.

On what theory will some courts grant an injunction on such facts, and on what theory will other courts refuse an injunction?

VI. Discuss the rule, sometimes asserted, that on application for a permanent injunction against a proved nuisance the court will "balance the injuries" to the parties. When and why may the court "balance the injuries" on application for a temporary injunction against an alleged nuisance? Illustrate.

VII. What is meant by an accounting of profits in a suit for infringement of a patent? In a suit to enjoin the infringement of a patent and for an accounting, the patent expired six months after suit was brought, and shortly thereafter the defendant died. Can the suit be revived against his administrator? Explain fully questions involved?

VIII. An explosion occurred in the mine of the A Coal Company, whereby 500 miners were killed. The administrators of several hundred of the miners bring separate suits at law against the A Co., each suit being based on the alleged negligence of the A Co. The A Co. now sues in equity to enjoin all these suits, and prays that the court may decide the question of the A Co.'s negligence, and if the court finds that the company was negli-

gent, that the court will award damages to the numerous parties in the single equitable suit.

Should the A Company have any or all of the relief which it asks? Discuss fully questions involved.

THOMAS.

Examination in Future Interests.

June, 1912.

ASSISTANT PROFESSOR HENRY.

PART I.

1. X by will gives a term for 100 years and an oil painting to A for life, remainder to B in fee. Will B get an interest in either the term or the painting? If so, what is the nature of the interest? Can the same result be accomplished by deed?

2. X by will gives his property to his son A for life, and after A's death to A's sons B and C and all his other children thereafter to be born, and the children, who attain 21 of A's children who die under 21, equally to be divided. A died after the testator having had only two children, B and C, who now claim the property.

Is their claim valid?

3. Devise of land to A for life, remainder to her child B in fee, but if B die before A, then to any child of A who may survive her, in fee. B dies before A, and without heirs, being illegitimate. C, a second child of A, is born. A levies a fine and dies leaving C surviving, who now claims the premises devised.

Should his claim prevail?

4. X bequeaths personal property as follows: (a) To A when, at or if he attains 21; (b) To A to be paid at 21; A if he attains 21 together with the accumulated interest. Assuming that A in each case dies under 21, will his personal representative take?

5. What is the rule in Shelley's Case? Does it apply to the following limitations: (a) Devise to A for life, remainder to A's children; (b) Devise to trustees in fee to hold for A for life, and at his death to convey the fee to A's heirs; (c) Devise to A for life, remainder to B for life, remainder to A's heirs in fee?

PART II.

6. State the rule against perpetuities. What is the nature of the rule? Does it apply to the following limitations and are any of them void under the rule: (a) To A (a bachelor) for life, remainder to A's first son for life, remainder in

fee to the first son of such son of A; (b) To A and his heirs 25 years after the death of the testator; (c) To A and his heirs for 30 years, then to B and his heirs?

7. (a) What are springing and shifting uses and executory devises?

(b) Explain how the Statute of Uses made it possible to create future estates which could not be created before the statute.

(c) What is a power of appointment? Distinguish it from other kinds of powers and explain its nature and the way in which it operates

8. X devises land to A until the capitol of the State is removed from the town of B, and provides that it shall then go over to C. What is the nature of A's interest? Five years after X's death the capitol of the State is changed to the town of D. What then becomes of the land?

9. X seised in fee of certain land leases it to A for a term of 99 years. A assigns his interest in the entire term of 99 years to B, reserving rent and a right to re-enter in case B permits the sale of intoxicating liquors on the premises. B starts a saloon. Has A a right to enter? What is the nature of a right of entry? Compare it with a possibility of reverter.

10. What is the effect of the following limitations in a will at common law and under the Illinois statute: (a) To A and the heirs of his body, remainder to B and his heirs; (b) To A and his issue, but if A dies without issue, to B and his heirs?

Examination in Insurance.

PROFESSOR GREEN

June, 1912.

(Give reasons for every answer.)

PART I.

1. P owned and insured against fire a building in which he had a dry goods store. The house next door caught fire, and in trying to put it out the city firemen through lack of skill deluged P's building with water, though it was in no danger from fire, to such an extent that he had to do considerable replastering and repainting and for this purpose to remove his goods at some expense, and he lost money by the interruption of his business,

For what, if any, items of loss is the insurance company liable?

2. B insured his saloon against fire. Afterward he became insane and burned the saloon

down in an insane belief that it was his moral duty to do so.

Is there a claim under the policy? Would it make a difference if he intentionally set fire to the building in an insane belief that the flames would cleanse but not damage it?

3. A insured his life by a policy which provided that it was conditioned on the correctness of the statements in the written application. The application blank contained a long list of diseases including tuberculosis, indigestion, kidney trouble and heart disease, and requested the applicant to state which of them he had had. A read the list, knew he had had tuberculosis but did not notice it in the list, knew he had had indigestion but thought it was immaterial because he was wholly cured, knew he had had kidney trouble, but feared that if he admitted it he could not get insurance, and had heart disease but did not know it. He wrote "I have had none of these diseases." Three years later he discovered that he had an incurable and painful disease of the heart and to escape suffering committed suicide in sound mind.

What, if any, defence may the insurance company make to an action on the policy?

4. What, if any, difference would it make in the answer to the preceding question if the policy provided that it should be incontestable after two years?

5. A fire policy contained a printed condition that the assured should furnish proof of loss within sixty days after the fire. The policy was burned in the fire and insured, who never knew of the condition, made no proof for eighty days.

Is the underwriter liable? Would it matter if thirty days after the fire the underwriter had written requesting proof within ninety days? If he had so written after the sixty days were up? If when the policy was issued the underwriter had said, "We waive the condition about proof of loss?"

PART II.

6. D owned an undivided half of a house and lot, was tenant of another house and lot for three years, had a mortgage of three thousand dollars on a third, had contracted in writing to pay five thousand for a fourth, was stockholder in a corporation which owned a fifth, was the only child of an intestate father, weak minded from age, who owned a sixth, and had determined to buy, provided he could insure it on reasonable terms, a seventh, which was offered for sale at a certain price. He took out a separate policy against fire on each house, stating his interest.

Are the policies enforceable and for how much?

6. How would you answer the preceding question if D had not stated his interest? If he had said in each instance "I am owner?"

8. An insurance company issued a policy insuring G "on his brick house, numbered 220 Main St., occupied as a dwelling, wired throughout for electric lights, and having a set bath tub on every floor." In fact, the house was of stone, which was in every respect better than brick; was numbered 222 Main St.; was occupied as a dwelling when the insurance was issued and took effect, but was vacant at the time of the fire; the tenant never used the electric lights, but used kerosene lamps instead; and there were no faucets of running water connected with the set bath tubs, but it was necessary to bring water up from the ground floor.

Which, if any, of these facts affect the enforceability of the policy and to what extent?

9. M, applying for fire insurance said "No gasoline is kept within one hundred feet of the building." In fact, though he did not know it, his neighbor kept gasoline in his house within one hundred feet of M's building. Before the fire it was removed. Fire was caused by lightning striking M's house.

Is the policy enforceable? How would you answer if M had made no statement, but the policy had provided "This insurance shall become void if gasoline shall be kept within one hundred feet of the building?"

10. X insured his house against fire. Afterwards he borrowed money to an amount exceeding its value and mortgaged the house to the lend-

er. Thereafter he assigned the policy to the lender as additional security. The house burned. The policy was silent as to transfer of interest, and the insurance company knew nothing of the mortgage or assignment.

Who may recover on the policy, and how much?

Examination in Mortgages.

PROFESSOR POMEROY.

June, 1912.

PART FIRST.

I. A mortgaged to B a flour mill and an adjoining farm. Default being made, B with A's consent took possession. B rented the farm to his friend C for (a) \$1,000. B operated the mill in person; he made a profit of (b) \$300 from grinding C's grain, but his net loss from operating the mill was (c) \$200. He spent (d) \$400 in repairing the roof of the farm buildings, which were leaky, (e) \$600 in putting in lightning rods and cyclone cellars, and (f) \$500 on taxes. A fair rental for the mill would be (g) \$1,000, and for the farm (h) \$1,500.

After B had been in possession one year, A seeks to redeem. Which of the items, (a, b, c, d, e, f, g, h,) should be deducted from, and which ad-

ded to, the amount of the mortgage debt and interest?

Reasons.

II. A, the lessee of a saloon, under a lease expiring in 1920, mortgaged it to B, a brewer, on July 1, 1910, to secure a note due July 1, 1911, the mortgage containing a covenant that during the continuance of A's lease no other brand of bottled beer, except the beer manufactured by B, should be sold in the saloon by A or his assigns.

A mortgaged a house to B on January 1, 1910, to secure a note falling due July 1, 1911, for \$3,000, the fair value of the house being \$5,000. On January 1, 1911, he gave B an option to purchase the equity of redemption for \$2,000 at any time before July 1, 1911. On June 15, 1911, B gave notice of his intent to exercise this option.

On July 1, 1911, A tendered to B the principal and interest due on the two mortgages, and now seeks to redeem, to cancel the contract to sell the equity of redemption and the covenant relating to the sale of beer.

Discuss principles involved.

III. A mortgaged his farm to B for \$5,000. A sold the farm to C who took it subject to the mortgage but did not assume the debt. On January 2, 1910, when the debt was due, B gave C an extension of time till January 2, 1912, without A's

knowledge. The property was then worth \$4,500. On January 2, 1911, C sold the property to D who assumed the mortgage debt; C notified B of this sale and contract. On July 1, 1911, C, for a consideration, released D from his contract of assumption. After January 2, 1912, B forecloses, making A, C and D parties; there is a \$1,500 deficiency on foreclosure sale.

Which, if any, of the parties may B hold liable for the deficiency, and to what extent?

Explain rules involved. Illinois law.

IV. A mortgaged land to B to secure a negotiable note for \$1,000, payable June 1. On April 1 B, for value, assigned the mortgage, with a substituted forged note, to C. On May 1, for value, B endorsed the genuine note to D, who took in good faith without notice of the assignment to C. On March 1 A had made a payment to B of \$400 on the mortgage debt, of which fact neither C nor D had notice.

What rights have C and D respectively upon the note and upon the mortgage?

Reasons. Illinois law.

PART SECOND

V. A on May 15 mortgaged a farm to B. By the terms of the mortgage the mortgagee is entitled to immediate possession. On January 1 previous, A had leased the premises to C, the rent being payable quarterly, on April 1, July 1, Octo-

ber 1, etc. On September 1 B served notice on C to pay him (B), all arrears of rents and all rents as they should fall due in future; on September 2 A served a similar notice on C. C paid the April and July notes to A in obedience to this latter notice but failed to pay the October rents to either party. On October 15 B sues C for the April, July and October rents.

What result?

VI. A on January 2, 1910, deeded to B a lot for the consideration, expressed in the deed, of \$500. At the same time B gave A a contract in writing, whereby he gave A the privilege of repurchasing the premises on or before January 2, 1912, for \$500. A tendered B \$500 and interest on but not before February 1, 1912, and is now asserting that the transaction of January 2, 1910, constituted as a mortgage.

The evidence showed that before January 2, 1910, A owed B \$500, the debt being evidenced by a promissory note; that (a) he called on B on that date for the avowed purpose of securing an extension of this loan; that (b) on that date B surrendered the note to A; that (c) A retained and still has possession of the land; (d) that the value of the land on January 2, 1910, was \$550; (e) that its value now is \$800.

What does each of these items of evidence tend to show?

If the evidence is evenly balanced, does the court incline to treat a transaction like the above as a mortgage or a sale?

VII. A, owning two adjoining lots, X and Y, mortgaged X to B. Later he sold X to C, reserving a right of way over X for the benefit of Y; C did not assume payment of the mortgage debt. The mortgage was foreclosed. A and C being parties to the suit, C purchased at the foreclosure sale, and now resists A's claim to the right of way.

What result? Reasons in full.

VIII. A mortgaged a tract to B for \$1,500; the mortgage was recorded. A afterwards sold the tract in five lots, at different dates, in the order 1, 2, 3, 4, 5, each sale being made with warranty against incumbrances. B, with actual notice of these sales, released lot 4 from the mortgage. Each lot is worth \$400.

A being insolvent, how shall the burden of the mortgage be apportioned among these lots?

Reasons.

Examination in Private Corporations II.

ASSISTANT PROFESSOR WORMSER.

June 1912.

PART I.

I. (a) Plaintiff, the Johnson Arms Co., was a corporation organized for the purpose of manufacturing every variety of fire-arms, ammunition and other implements of war. It entered into a contract with the defendant, the American Lock Co., to manufacture and deliver 5000 locks and keys. The locks were duly delivered, but payment, although demanded, was refused. Plaintiff thereupon sued to recover the contract price. Defendant demurred. What decision and why? What are the rules in the Federal, Illinois and New York courts respectively?

(b) Suppose that the locks were to be delivered on June 15 and on June 10 the defendant notified plaintiff that it repudiated the agreement

and would not take the locks. What remedy, if any, would plaintiff have, and for what reason?

II. (a) In 1908 the X Y Z Railroad Co. unanimously leased its railroad and equipment, and its privilege and franchise to operate the road to the A B C Railroad Co. for a term of 666 years, in consideration of a certain percentage of the yearly gross receipts. In 1910, the owners of 50 shares of stock in the X Y Z Co. applied to the company by formal statement, demanding that it rescind the lease. The company's reply was that the other stockholders representing 99,950 shares still favored the transaction and that the A B C Co. was faithfully carrying out its obligations and stipulations. Accordingly, the minority stockholders brought a bill in equity to set aside and cancel the lease, and for a return of the properties held thereunder, and an accounting. The A B C Co. defends.

Who wins and for what reason?

(b) Suppose that in 1910 all of the stockholders in the X Y Z Co. had voted to rescind, and that the company has thereupon brought its bill.

Would that change your answer, and if so, why?

III. Discuss the validity of an ordinary voting trust, defining, illustrating and criticizing if profitable.

IV. Bill in equity brought by the several heirs at law of John Doe, late of Champaign, to restrain the executors of the said Doe from paying over, and the Cook County Eye and Ear Infirmary from receiving, the devises and bequests contained in his will, A section of the Infirmary's charter provided that it "may take and hold by purchase, gift, devise or bequest, personal and real estate in all not exceeding \$100,000 in value, owned at any one time and may use and dispose thereof only for the purposes for which the corporation was organized." The Infirmary had, at the time of testator's death, property to the full amount of \$100,000 in value. The executors and the Infirmary filed demurrers.

What arguments would you advance if retained in their behalf? What arguments would you be obliged to meet?

V. On April 15, 1912, William Smith promised and agreed in writing to take 100 shares of stock, par value \$50 each, in a corporation to be formed under Chapter 32 of the Revised Statutes of Illinois, with a total capital stock of \$25,000, the object and purpose being th engage in the retail grocery business. On June 18, the Secretary of State issued and mailed a certificate of complete organization. On June 22, the certificate was duly recorded in the Recorder's office of Cook County where the principal corporate office was to be located. On June 20, however, Smith had notified the

promoters of the company that he rescinded his subscription. The corporation sues Smith.

Is Smith liable? If so, why? If not, why not?

PART II.

VI. Are you a believer in the so-called "Trust Fund" doctrine? Discuss fully.

VII. Edward Brown and Arthur White, the promoters of a steel manufacturing corporation about to be formed in Illinois, have entered into an agreement to purchase on behalf of the corporation five thousand tons of bituminous coal from the Royal Coal Co. of Danville, Ill.

(a) What is their liability, if any?

(b) What is the liability of the steel company, once duly organized, on the contract?

(c) What would be the liability of the steel company if it permitted the coal to be delivered and then proceeded to use it?

VIII. Defendant, a director in the United States Steel Corporation, learns at a director's meeting that the Attorney General of the United States and the executive committee of the corporation have agreed upon a peaceable settlement out of court of the Government's suit for dissolution of the corporation, under the Anti-Trust Act. It is also agreed at the Directors' meeting

that this shall be kept strictly secret until July 1, 1912. On June 15, 1912, plaintiff, a stockholder, offers his five hundred shares of stock to defendant at \$60 per share. Plaintiff knew nothing, and defendant said nothing, of the circumstances aforesaid. Defendant accepted the offer and on the next day, the sale of the shares was consummated. On July 1, the news was announced, the stock soared in value, and plaintiff having ascertained the situation, immediately brings an action to set aside the transaction. His action was dismissed at trial term.

What decision, and why, upon appeal?

IX. Enumerate the requisite conditions upon which a stockholder can sustain a suit to remedy unauthorized or improper corporate acts.

X. The directors of a savings bank enter upon an elaborate advertising campaign, construct a magnificent building and employ expensive help honestly acting, as they believe, for the welfare of the institution. Insolvency ensues. The receiver sues the directors to recover the damages caused by their alleged misconduct. They demur.

Should the demurrer be sustained? Discuss.

Examination in Real Property I.

June, 1912.

ASST. PROFESSOR WORMSER.

PART I.

I. Outline in brief the object, the principal provisions, and the effect of enactment, of the following statutes:

- (a) Quia Emptores.
- (b) "12 Charles II".
- (c) De Donis Conditionalibus.

II. (a) Richard de Clare in 1300 held of the Earl of Lincoln the estate of Clare as a tenant by knight-service. Richard prayed the Earl to be permitted to change his tenure into free and common socage. Why, in your judgment, did Richard wish to do so?

(b) X held lands in burgage tenure, Y in petit serjeanty, and Z in gavelkind.

What were the distinguishing characteristics of their respective tenures?

III. How, if at all, could a use be raised without transmutation of possession?

Illustrate if profitable.

IV. X, in 1920, deeded to A three estates: Whiteacre, Blackacre, and Greenacre, as follows: Whiteacre was deeded to A and his heirs provided that A would erect a mansion house thereon within ten years; Blackacre to A "and his seed and offspring" until the Socialistic party elects its candidate for President of the United States; Greenacre to A and the heirs male of his body begotten so long as Trinity Church in the city of New York shall continue to stand. On November 8, 1924, John Doe, a Socialist, is elected President. On January 5, 1928, a portion of the spire of Trinity is blown down by a heavy gale. On May 10, 1928, A dies, the mansion house as yet uncompleted. A leaves as sole heir his grandson B, the son of a deceased daughter. B consults you as to his legal right to the various estates.

What would you advise B and why?

V. (a) B leased from A a plot of land abutting on Lake Michigan, upon which was a wharf extending out into the lake. The floor of this

wharf was not strong enough for the use to which B wished to put it, so B, the lessee, laid upon the existing floor a new floor of heavy planks, nailing them down. Before the lease expired, B removed these planks.

Had B a right to do so?

(b) Suppose there had been no lease, but that these planks had been placed on the wharf by the owner of both wharf and planks, and that such owner had then died intestate.

Would the heir or administrator of the deceased be entitled to these planks?

PART II.

VI. A bought of B a portable frame dwelling house which he proceeded to set up on his own land in a firm brick and cement foundation. A gave to B a chattel mortgage on the house so purchased from him to secure the price thereof. B immediately proceeded to file the mortgage with the Recorder, but by an error of that official the mortgage was never indexed. Later A sold the premises to C who knew nothing of B's chattel mortgage. A did not pay to B the sum still due and B thereupon demanded the house. C refused to allow B to take it. B sues.

Who wins and why?

VII. X leased from Y a lot on which stood a large factory building built of brick. X installed his own machinery therein. X's business increas-

ing, it was agreed by parol between X and Y that X might erect another large brick building as an addition to the factory, and that X might remove the same upon the expiration of his term. Accordingly X erected such additional building and equipped it with his own machinery. Upon the expiration of his lease X took a new lease for another term of years. During such second term Y sold his reversion to C, who had knowledge of the agreement between X and Y. Before his second lease expired X started to remove the machinery from both factory buildings and also to tear down the building erected by him and to remove the material composing it. C now files a bill seeking to enjoin X from so doing.

What decision?

VIII. Under a lease which is silent on the subject of repairs, tenant for years of a country house refuses to make repairs. The premises were in a bad state of repair when the lease was made and deteriorated rapidly under the influence of the weather. Finally the house became so dilapidated as to be no longer tenantable. The barn on the premises had in the meantime burned down through the act of an incendiary. The lessee, having abandoned the premises, is sued by the lessor for rent for the unexpired term and for the injury to the house and barn.

Is plaintiff entitled to recover?

IX. Tenant for life of a country estate on the Hudson discovers a deposit of brick-clay on the premises and erects the necessary structures and machinery for making bricks, lays a railway track to the river, and builds a dock for shipping the bricks. He also adds a story to the mansion house, builds a conservatory, and makes other permanent improvements. The reversioner, becoming aware of the tenant's operations, brings an action to forfeit the life estate and for damages, including the injury sustained by trees and shrubbery in consequence of the brick burning.

To what extent, if at all, is he entitled to recover? What remedy, if any, would equity have afforded him if he had become aware of defendant's operations at the beginning? Would it be material for defendant to show that bricks had formerly been made on the premises?

X. On June 1, 1898, A leased Blackacre to B for a term of five years subject to a condition of re-entry by A if, at any time during said term, B should be declared bankrupt. In March and April, 1899, B sowed a field of corn, of high quality grass, of alfalfa, and expended much money and labor in attempting to renew the fruitfulness of apple and pear trees on the land. On May 10, 1899, A entered for a breach of the condition. In August and September, 1899, the different crops and fruits ripened and B then claimed the right to take them. Thereupon A filed a bill to enjoin B from in any way interfering with, disturbing, or trespassing upon his premises. B demurred to the bill.

(a) On what ground, or grounds, do you think that B demurred? (b) Should the demurrer of B to the bill be sustained? If so, why? If not, why not?

Examination in Sales.

June 1912.

ASSISTANT PROFESSOR HENRY.

PART I.

1. A of Milwaukee buys some lumber on credit from B in Chicago to be loaded by B on a certain vessel which A has chartered for the purpose and which he sends to B's wharf. The lumber is put on board and A directs the captain to proceed to Milwaukee. While the ship is on the way A sells the lumber to C in Milwaukee who pays the price, knowing that A is insolvent, but not knowing whether the lumber has been paid for or not. Before the vessel arrives B learns of A's insolvency and sends a wireless message to the captain instructing him to deliver to B's agent only. The lumber is delivered to C. B replevies the lumber from C.

Judgment for whom?

2. A in Champaign orders goods of B in Chicago for \$500. B ships them to A taking a bill of lading to the order of B. B indorses the bill of lading in blank and sends it to his agent C in Champaign telling him to give it to A when A pays for the goods. A is notified of this. C sells the goods and delivers the bill of lading to D, a purchaser without notice for \$600, which D pays. A tenders C the \$500 and C refuses to give A the bill of lading. C absconds and D gets the goods from the carrier. A replevies the goods from D.

Judgment for whom?

3. A in Urbana orders a pair of shoes from B in New York. B fills the order and sends the shoes to A by express instructing the express company to collect on delivery. The agent of the express company tenders the package. A says he will pay if the shoes are satisfactory, but refuses to pay without an opportunity for inspection. This the agent in accordance with the rules of the company refuses to allow and sends the shoes back to B.

What are A's rights?

4. A goes to B's farm and agrees to buy a certain horse for \$150, B agreeing to deliver him at the railroad station where A is loading a car of horses for shipment to Chicago. As A is about to leave B says, "Of course this is a cash sale." A assents. When B gets the horse in question to

the car he demands the price. A says "All right come up to the bank." A was mistaken in regard to his balance in bank. He hasn't the cash and offers B a promissory note which B refuses. While they are away from the station the car is started and B is unable to regain possession of the horse. The horse arrives in Chicago and is sold and delivered by A's agent to C who takes without notice, but the sale is on credit. B replevies the horse from C.

Judgment for whom?

5. A sells a piano which cost him \$100 to manufacture to B for \$200, the first payment of \$10 to be made on delivery. A takes the piano to B's house and B refuses to take it or to pay the \$10. The price of pianos goes up and A sells the piano in question to C for \$300. A now sues B for \$100 for his breach of contract. B sues A for \$100 as money paid to A for the use of B.

Should either action succeed?

PART II.

6. A goes to B's grocery store and buys 20 pounds of flour out of a certain barrel, paying the price and saying he will return in an hour to get his flour. During A's absence the grocer weighs out the 20 pounds and sets it aside for A. Before A returns the store burns and the flour is destroyed.

On whom should the loss of the 20 pounds set aside for A fall?

7. B is a merchant tailor. A goes to B's shop, selects a piece of goods and is measured for a suit of clothes. A week later A decides he does not want the suit and so notifies B. The suit is then ready and B takes it to A's house. A refuses to accept it or to pay the price. The suit is seized and sold under an execution procured by a creditor of B. Subsequently B sues A for the price.

Should he recover?

8. B has a certain horse which he offers to sell to A. The latter asks if the horse is sound. B replies that he would not be afraid to warrant it. Thereupon A buys and pays for the horse. The horse proves to be unsound and A sends it back to B and sues B for the price paid.

Should he recover?

9. A telephones to the office of B and says to B: "This is C. Send 50 tons of coal to the X wharf at the price quoted." C was a merchant in good standing with whom B had had previous dealings. Supposing he was dealing with C, B assents and sends the coal to the X wharf, where A takes possession of it. An hour later B learns of the fraud and at once notifies A to give up the coal. A immediately thereafter pledges the coal to D for an antecedent debt, and absconds, and D takes possession in good faith. B claims the coal from D.

What are the rights of the parties?

10. A writes to B asking him to send a diamond ring, at the price of \$100, on approval, saying that he would send B the price or return the ring paying the express charges both ways. The ring was sent and was lost by the negligence of the carrier, C, on the way to A. B sues A for the \$100.

Should he recover? To whom is the carrier liable for the loss?

Examination in Suretyship.

PROFESSOR DECKER.

PART I.

1. C obtains a judgment against P and S, the latter being a surety for P. C causes an execution to issue and levies on certain goods of P. X, a son of P, tells S that if he will pay the judgment and thereby release the levy on P's goods, X will reimburse S in 30 days. S pays the judgment, which is discharged of record, and after 30 days sues X on his promise. X pleads the statute of frauds.

What decision?

2. Suppose X pays S, as agreed. Has X any means of reimbursing himself?

(a) at law; or (b) in equity?

If so, how? Explain your answer fully.

3. A is sued on a promissory note signed by himself and a corporation. A pleads that he was in fact a surety on the note, the corporation being the principal; that the execution of the note was an ultra vires act on the part of the corporation, and that the payee, who is plaintiff, had notice of these facts when he took the note.

Give judgment on general demurrer to this plea.

4. A owes B \$500, for which B brings suit. A pleads that he is surety for B on a note to C for \$1000, which is due and unpaid. B demurs to plea.

Judgment?

5. P and S were joint makers of a note to C for \$1000, which was loaned by C to P. C sued and recovered a joint judgment against P and S in the circuit court for the county of Champaign. P appealed to the appellate court, giving a bond of \$2000 with X as surety. The judgment was affirmed and P again appealed to the supreme court, giving another bond for \$2000 with Y as surety. Judgment was again affirmed and was paid by S.

(a) What are S's rights for reimbursement (1) against P, (2) against X, (3) against Y?

(b) Suppose Y pays the judgment, has he any rights against S? Against X?

PART II.

6. A and B sign a note for \$500 as sureties for P, and unknown to A, B afterwards receives from P a note of X for \$250 as collateral security. A and B paid the \$500 note in equal shares. Two years later A learns for the first time that B has since been completely indemnified by payment from X of his note.

What are A's rights?

7. P owed C \$1000 which was due. C agreed to extend the time of payment one year if P would give a note or notes for the amount with good endorsers, and accepted two notes of P for \$500 each, one endorsed by X and the other by Y. When due P paid the note endorsed by X, but the other note was paid by Y, who now seeks contribution from X, P being insolvent.

Is he entitled to it?

8. S is surety on a debt of P to C of \$2000, for which C also holds a mortgage on P's land of the value of \$1500 as additional security. After the debt is due C sues S.

(a) Has he any defense arising from the existence of the mortgage? Why?

(b) If C had released the mortgage before suit, would S's rights be affected, and how?

9. A and B are partners, and as such are indebted to C on open account for \$500. A and B subsequently dissolve, A continuing the business and agreeing to pay all the debts, of which fact C has notice. C presses A for payment and finally accepts his note at 30 days for the amount of the account. Before the note came due A was adjudicated a bankrupt and subsequently discharged. C proved the note against A's estate and received a dividend of \$100. C now sues B for the balance of the account.

As attorney for B, how would you advise him as to his rights?

10. P was a student at the University and was over 21 years of age. S, his father, gave P a letter addressed to K & Co. of Champaign requesting them to let P have such clothing and other goods as he might need from time to time, and guaranteeing payment. P ran a bill with K & Co. on which he made payments from time to time, but which amounted to \$500 when he graduated. K & Co. demanded payment from S, who then learned of the bill for the first time, he having supplied P with money for his expenses and supposing that P was paying his bills.

Is S liable?

Examination in Trusts.

(Give reasons fully in all cases.)

PROFESSOR VERNIER.

PART I.

1. A, shortly before his death wished to give certain land to the plaintiff, a daughter. He did what he and defendant, another daughter, thought was effective to pass the legal title to the land to the defendant. Defendant was the older daughter and suggested this arrangement, promising orally to hold for the plaintiff, who was only ten years old. A died intestate and it was then discovered that the title to the land had not passed out of him. The defendant, whose intentions throughout the entire transaction had been fraudulent, refused to recognize the trust as to her interest as heiress-at-law. Plaintiff filed a bill to compel her to recognize the trust. What decree?

Assuming that defendant acted without fraudulent intent, would your answer be the same?

2. Y, a trustee for A, made a voluntary conveyance of the trust land to B, who had no notice of the trust.

(a) Assume that B, while still ignorant of the trust, sold the land to C for \$10,000. C had no notice of the trust, and has paid \$5000 of the purchase price and has received the title, giving a mortgage to secure the rest.

(b) Assume that B, while still ignorant of the trust, received the full \$10,000 from C and later bought the land back for \$15,000. Still later when B first learned of the trust the land had risen in value to \$25,000.

What are A's rights, if any, as to the land and money in each case?

3. Testator devised property to X and Y, trustees "upon trust for endowing such a charitable or other institution as they in their uncontrolled discretion shall deem to be most needed in the city of Chicago." By a residuary clause testator devised and bequeathed to his son B, all property otherwise undisposed of by the will, including property in any devise or bequest that might lapse or be declared void.

Discuss fully the rights of B, if any, and the powers and duties of X and Y as trustees under the devise.

4. A, with intent to make a gift, delivered a certificate of stock and a promissory note to X.

The note was payable to A, or order, but A delivered it to X without endorsement. On the back of the certificate of stock was a blank power of attorney for the purpose of transfer, which A signed without filling in any name. He also orally authorized X to collect and keep for his own benefit, \$100 due A from Y. The next day, before X had done anything, A desired to revoke in all three cases, if he might legally do so.

May he do so in either case?

5. (a) X devised land to his wife "in order that she may support and educate any children she may have by me." Do the children obtain any interest as cestuis que trustent or otherwise in the property?

(b) X devised land to his wife. After the words of devise came these words: "and having and reposing implicit confidence in the goodness and kindness of my dear wife, I rely upon her to make all needful provision for the future wants of my aged brother S."

Does S take any interest as cestui que trust?

PART II.

6. X deposited money belonging to himself in bank in the name of "X trustee for C." A court in passing upon C's rights made the following points:

(a) This did not necessarily amount to a trust.

(b) Lack of notice to C, however, alone, would not prevent there being a trust.

(c) If X drew money from the deposit from time to time and used it for his own purposes he was not guilty of any breach of trust, for the trust, if any, was tentative, and attached only to the amount on deposit at X's death or when C first learned of the deposit. Discuss each of the above points.

7. X held \$10,000 worth of railroad stock in trust for Y. Y assigned his equitable interest to A for value. A notified X of the assignment. X died and W was appointed trustee and received the certificates of stock. A's written notice had been lost and A did not notify the new trustee. Y, the cestui, now made another assignment of his interest in the trust to B, who had previously inquired of the new trustee if there were any previous encumbrances. W declined to answer. B took the assignment, however, but did not notify the new trustee unless the inquiry made in advance constitutes a notice. Y, the cestui, finally made a third assignment of the same interest to C. C made no inquiries whatever, but notified the new trustee at once. Of the three who has the better right?

Who has the better right as between B and C?

8. Testator devised land to X and Y trustees for the following purposes:

(a) To erect a \$5000 stone over the grave of testator.

(b) To apply \$5000 for the purpose of having masses said for the repose of testator's soul.

(c) To apply \$25000 for the purpose of erecting a statute of Lincoln at a suitable place in Springfield.

If these trusts are void A, B and C are entitled to the property.

What are the rights and duties of X and Y if A, B and C object to each of the provisions and file a bill to restrain the trustees from carrying them into effect?

9. D owed A, a single woman, \$500. A married B and after the marriage B assigned the claim his wife had against D to C. B, the husband, died a year later and before the claim had been collected.

Who is entitled to the \$500, in a jurisdiction where the common law governs the property rights of husband and wife?

What, in brief, is the nature of an assignment of a chose in action? Is the nature of the transaction changed in a code state or in equity, where the assignee is permitted to sue in his own name?

10. (a) X in his will indicated clearly that certain property was to be held in trust for A and B but did not name any trustee.

What are the rights of A and B? In bringing suit to enforce their rights, whom would you sue?

(b) A will contained a devise to X. The devise was absolute on its face but testator intended the gift to be in trust for Y. X knew nothing of the will or intended trust until the day before testator's death when he was informed of testator's intention. He at once telegraphed that he declined to act as trustee.

What are the rights of the heir, devisee and intended beneficiary?

Examination in Torts.

June, 1912.

ASSISTANT PROFESSOR HENRY.

PART I.

1. A statute is passed by the legislature forbidding gambling and providing for the summary destruction of gambling devices. A is the owner of a slot machine used for gambling. X, an officer of the law, destroys the machine. A sues X for damages.

Should he recover?

2. By a statute of the State it is made an indictable offense to maliciously burn or carry away corn or other grain stored in cribs or in any other manner. The court over which X presides has power to try persons charged with violating the statute. A was indicted for maliciously carrying away certain corn stalks. A jury under a charge from X finds A guilty of the acts charged, and X maliciously gives A the maximum penalty pre-

scribed by the statute mentioned, which is one year in prison. A is accordingly imprisoned and now sues X for false imprisonment.

Should he recover?

3. X, a boy of fourteen and a lunatic, is driving a team of horses. He runs over A in a manner which in a sane person would constitute gross negligence. A sues X.

Should he recover?

4. X washes his carriage in the street. As a result of his doing so a large amount of water collects on the street and freezes. A comes along with his horse and buggy. He sees the ice, but nevertheless tries to drive across. A's horse slips and breaks his leg. A sues X.

Should he recover?

5. X is lawfully out shooting game birds. A quail rises and X shoots at it. A is concealed in the bushes and a bullet from X's gun puts out A's eye. A sues X.

Should he recover?

PART II.

6. A as agent of X and under X's direction cuts trees on land belonging to Y. Neither X nor A knows that the land belongs to Y. Y sues A in trespass and recovers damages. A sues X to recover what he had to pay Y.

Should his action succeed?

7. A is employed by X under a contract by which A agreed to work for X for a year at a salary of \$100 per month. At the end of the first month Y out of malice toward X induces A to work for him at the rate of \$125 per month. X sues Y.

Should he recover?

8. Members of the X Union employed by A, a grocer, because of a disagreement with A as to wages, go on strike and in order to more speedily coerce A into acceding to their demands persuade members of the Y Union to join them in agreeing not to buy any groceries from A.

What are A's rights?

9. On a windy day X burns brush on his own land and negligently allows firebrands to blow into the adjoining wheat field belonging to A. The wheat burns, and because of the increasing strength of the wind sets fire to and burns a wheat

elevator belonging to B, situated over a hundred yards from X's land.

What are the rights of A and B against X?

10. A's mother dies and A's father sends him a telegram telling him of the event and of the time of the funeral. Because of the gross negligence of a messenger boy in failing to deliver the telegram promptly, A is unable to attend the funeral. A sues the telegraph company asking damages for mental distress due to his inability to arrive in time, and also asks punitive damages.

What are A's rights in the matter?

Examination in Wills.

PROFESSOR POMEROY.

June, 1912.

PART FIRST.

I. One of the two witnesses to A's will was the wife of a legatee. After A's death this legatee renounced the legacy.

One of the two witnesses to B's will was B's husband, who was not mentioned in the will.

One of the two witnesses to C's will was the executor named in the will.

Result, in each case, with reasons? Illinois law.

II. A's will read; "I give to my children \$10,000; to my sister \$1000; to my sister's children \$1000; to the G. N. fraternity my house on Green St., Champaign, and \$1000; the residue of my real and personal estate to C." At the date of the

will A had four children, O, P, Q and R; his sister, three children, X, Y and Z. O, P, X, and A's sister all died before A; X being childless, O leaving a child who survived A, P leaving a child who died before A. The gifts to the fraternity were void. The personal property is sufficient to pay all debts and legacies in full.

How shall the estate be distributed, in Illinois? Reasons in full.

In what respects, if any, would a different distribution be made at common law?

III. Testatrix bequeathed \$5000 to a nephew, \$10000 to her son. Later, believing the son to be dead, she (a) added a codicil, properly executed, which read, "as my son is dead, I hereby revoke my legacy to him." Afterwards, learning that her son was still living, she (b) altered her will by cancelling the figures and word "\$5000" and "nephew" and writing above them "\$15000" and "son," but leaving the original words decipherable. These alterations were not attested. Later, becoming estranged from her son, she made a second will, whereby she revoked the first will entirely. Finally, in order to avoid possible legal complications, she determined to destroy both wills and make a new will. She therefore (c) crumpled up the first and second wills, (d) threw the first into the waste basket and the second into the fire. A few weeks afterwards she died without making any new will. The second will was rescued by another person,

some words being slightly singed, but the whole will being decipherable. The first will was (f) carted off and burned by the garbage man. Proof is offered of the contents of the first will. The second will is also offered for probate.

State the legal effect of each of the acts, (a) (b) (c) (d) (e) (f). What result?

PART SECOND.

IV. After T, the testator signed the will, B, his attorney summoned two clerks, P and Q, from the outer office; B stated to them, in a voice audible by the testator, "I have called you in to witness a document which T has just signed.". B then stepped up to the desk where T was sitting; T took a pen from the clerk and handed it to B. B then retired with P and Q to the outer office, where they signed the will as witnesses, their backs being turned to T. P and Q did not know that the document was a will, nor did they see T's signature. During all these proceedings T was sitting, engaged in writing, at a roller top desk, the back of which cut off his view of the witnesses; if however, he had risen to his feet he might have seen, through the open door, the backs of the witnesses as they were engaged in the act of signing. There is some evidence that T, who was a cripple, could not rise to his feet without assistance.

Discuss each fact in the above statement which has any bearing on the question whether the will was properly acknowledged and attested (Illinois law.)

V. (a) Give an example of a cause of action (other than slander or libel) which does *not* survive on the death of the defendant, (Illinois law). Reasons.

(b) A, on Jan. 1st was injured by the negligence of B. A's wife and children were dependent upon him for support. February 1st, B died. March 1st, A was operated on by C, a surgeon, and died April 1st, not as a result of the injuries of Jan. 1st, but as a direct result of C's carelessness. A's executor now brings suit against B's administrator and against C. Can he recover against either or both; and if he can recover, what damages? Reasons. (Illinois).

VI. Give in substance Jarman's rules relating to the order in which the assets of an estate go to the payment of debts.



ZPINE
1912/13
pt. 1

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1912-1913

IN THE

COLLEGE OF LAW

OF THE

UNIVERSITY OF ILLINOIS

JANUARY, 1913

UNIVERSITY OF ILLINOIS

COLLEGE OF LAW

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C
IZELINE

1912/13

pt. 1

Examination in Agency.

PROFESSOR VERNIER.

(Give reasons in all cases.)

PART I.

1. A, a married woman, bought groceries of G, buying on the credit of her husband, P. P, while fighting in a Mexican revolution, was killed in battle but news of his death did not reach A or G until a month later. G sued P's estate for \$60 worth of groceries delivered to P's wife before P's death: for \$20 worth delivered after his death but before either A or G knew of it, and for \$10 worth delivered after G knew of the death.

How much should G recover? For what part, if any, can G sue A?

2. P desired to buy a horse of T, but knew that by reason of business enmity T would not sell to him. P therefore employed A to buy the horse

ostensibly for himself. A contracted to buy the horse for \$250. T orally warranted the horse's age and driving habits.

Assume that T on learning that A was buying for P refused to deliver. May P recover of T for non-delivery?

Assume that T $\frac{2}{3}$ delivers but P refuses to pay.

May T recover of P for non-payment?

Finally assume that A in buying, signs a written agreement to the effect that he is buying for himself and not as agent, that the horse is delivered and paid for, but that T's warranty as to the horse's age and driving habits is false.

May P recover of T for the breach of warranty?

3. B, a brakeman on a coal train of the X. R. Co. while slightly drunk, amused himself by throwing chunks of coal. He threw one chunk through the window of a factory along the right of way, injuring Y, a workman; with another chunk he hit a tramp, who had refused to get off the train when ordered to do so, causing the tramp to fall and break his arm; and with a third chunk he struck the conductor of the train when the latter reprimanded him for his conduct.

May either Y, the workman, the tramp or the conductor recover damages of the X. R. Co?

4. T owed P a sum of money, the exact amount being in dispute. A, purporting to be P's agent, but in reality without authority, agreed to and did receive \$150 in full satisfaction of the claim, giving T a receipt. Before P heard of the act of A, T notified A that he wanted the money back. A, however, took the money to P, told what he had done and P received the money, saying that he ratified the acts of A. T, after asking P for the money, brought this suit to recover it.

Judgment for whom?

5. P authorized A to sell a horse for the best price he could get above \$125. A bought the horse himself for \$175, which was more than it was worth and more than he could have obtained from any one else.

P employed A to run a grocery store and account for the profits each month. A secretly took \$100 belonging to the business and bought stock on margin, making a profit of \$300. He replaced the \$100 before the end of the month, his intention having been to replace it out of his private funds in case he lost.

P employed A as manager of a jewelry house catering only to select customers, who wished unusual patterns and were willing to pay fancy prices. A copied a list of P's patrons from the order book, quit P's employment, established a similar business,

and used the list of patrons on his own account, thereby greatly injuring P's business.

What are P's rights in each of the above cases, if any? If he has more than one remedy in any case, state what it is.

PART II.

6. P engaged A as traveling salesman to sell goods to the retail trade by sample, and instructed him not to make any warranties whatever and to sell only to those who had a certain rating in the recognized commercial agencies. A sold goods to T who did not have the required rating. All the goods sold to him were warranted to be equal to the sample shown. As to part of the goods an additional warranty of quality was made, which we will assume was unusual. None of the goods were equal to the sample and the part specially warranted was not of the quality represented.

May T recover damages of either P or A for either breach?

If P had refused to deliver to T because of T's poor business rating, would T have had any legal redress?

7. G, a groceryman, delivered his groceries to his customers by means of the Merchants' Delivery System, run by X. X owned and fed the horses used, but the merchants using the system

furnished the wagons. Each merchant paid X according to a scale of prices depending on the weight and number of parcels delivered. A majority of the merchants had a right to discharge a delivery boy who did not render good service, but the boys were hired in the first instance by X, who also paid them. One morning G filled an entire wagon full of groceries and urged the delivery boy to hurry in making the delivery. The boy in turning a corner, negligently collided with a buggy driven by Y, injuring Y. The delivery wagon was also upset doing \$25 worth of damage to the groceries of G. Y sued G for the injury to himself and G sued X for the damage to the groceries.

Should either one recover?

8. A, employed by the X. Ry. Co. as freight agent, issued to Y a bill of lading purporting to cover 30 bbl. of apples of a certain weight. B was named as consignee. Y as consignor drew a draft on B, attached the bill of lading to it and sent it to the F. Bank doing business in the town where B resided. The F. Bank, relying on the bill of lading for protection, discounted the draft and sent the proceeds to Y. The barrels in fact contained sand and sawdust and B refused to accept the draft when the bank presented it to him. A knew that the barrels did not contain apples and issued the bill of lading as part of a fraudulent scheme to obtain money for his own benefit.

May the F. Bank recover damages of the X. Ry. Co. for the wrongful issue of the bill of lading?

9. P bought a livery barn and put A in charge as apparent owner. A was instructed to run the business in his own name, buy all things needed in the business out of the proceeds of the business and never to buy on credit. One of the livery horses died and to replace it A bought a horse of T for \$300—\$100 down and the rest on a note for six months signed by A. At the time A had plenty of cash on hand to pay cash for the horse. A dishonored the note at maturity, saying that he was buying for P. P refused to pay for the horse on the ground that he had never authorized anything but cash purchases. T sued P in assumpsit, including a count on the note and a count for goods sold and delivered.

Should he recover on either?

10. Action in ejectment. P, a minor, executed a power of attorney authorizing A to sell the land in question. A sold the land to T, who supposed that P was of age. T went into possession, and paid the purchase price in installments, and finally received a deed to the land. A became of age one year after the deed was given, expressed satisfaction with the sale and spent part of the proceeds of the sale. Later the land increased greatly in value, owing to the discovery of oil in the neighborhood, and P, on the advice of friends, brought this suit in ejectment. The suit was brought four years after the deed was given.

Judgment?

Examination in Bills and Notes.

(In answering questions give reasons in every case and state what you believe to be the law both before and after the adoption of the Negotiable Instruments Act.)

PROFESSOR VERNIER.

PART I.

1. Are the following instruments negotiable?

(a) \$680. Boston, 21 Oct. 1906.

One year after date I promise to pay to the order of Stephen Fales Six Hundred and Eighty dollars in foreign bills.

Value received. Wm. Clapp.

(b) Bankers' Trust and Savings Co.

Pay John Lawton, or order, One Hundred and Twenty-five dollars and charge to my account on book No. 7231. J. N. Cummings.

The bank book of depositor must accompany this order.

(c) \$800.00. New York, March 16, 1903.

At sight pay to the order of the Sampson National Bank, Eight Hundred Dollars, for value received, and charge to my account, and credit according to a registered letter this day addressed to you.

To Wm. Norton,
Utica, N. Y.

W. R. Holliday.

2. State whether the following instrument is negotiable in form, and discuss each phrase in italics. Also mention any omissions, if any.

Due A, or holder, on demand one year after my death for valued received, \$100 in gold dollars or merchandise, with six per cent interest, being for property transferred to me, receipt of which is hereby acknowledged.

(Signed in lead pencil) F. 21.

3. M made a note for \$100 payable to the order of P and due six months after date. P indorsed it in blank and delivered it to A for value. Two months before the note was due, M paid A, the then holder, and A surrendered the note. M put the note on his office desk, intending to lock it up in his safe later. The note fell into the waste basket and was carried into the back yard by the janitor. The city refuse collector picked up the note and sold it to B for \$25. B suspected that something was wrong, but made no inquiries. B sold the note to C a week before maturity for \$90, C

buying in good faith. There were no indorsements on the note except the blank indorsement of P. At maturity C demanded payment of M.

What are C's rights against M, if any?

Would it make any difference in your answer if at the time M originally paid the note, he had cancelled the note with a rubber stamp, but the cancellation mark had been skillfully erased by the refuse collector?

4. B forged Y's name to a bill of exchange, drawn upon A and payable to B, or order. B indorsed the instrument to C, a holder in due course. At maturity C presented the bill to A for payment. A, being suspicious of the signature, telegraphed to Y, telling him of the bill and asking him to telegraph a reply in case the bill had not been drawn by him. A's telegram was never delivered, and A receiving no reply, concluded that Y had drawn the bill. Hence A paid C. Later A learned of the forgery, and sued C to recover back the money paid to him.

Should he recover?

5. An agent for collection accepted from the acceptor of a bill, without authority, less than the face of the bill, and allowed the acceptor to cancel his signature. The holder refused to ratify his agent's act, returned the money to the acceptor, and demanded the bill back, which last request

was refused. The holder brought suit in the usual way.

Can the acceptor successfully defend on any of these grounds: (a) cancellation, (b) discharge, (c) failure of plaintiff to produce the bill at trial?

PART II.

6. M made a note for \$61, payable to P or order. In the margin was written, "\$ 61," a slight space being left between the dollar mark and the figure 61. In the body of the instrument was written "sixty-one dollars", the word sixty beginning with a small letter and being preceded by a long blank space. P inserted "One hundred and" in the body of the note and placed a figure 1 between the \$ and 61, and sold the note to B for value before maturity.

What are the rights of B against M, if any?

7. M made a note for \$45 payable to the order of P. P indorsed the note in blank and left it on his desk with orders to a clerk to take it to the bank for deposit. X, who saw the note, stole it and skillfully altered it to read \$145. As altered the note was taken in good faith by Y in payment of a debt for that amount owed by X to Y. Before maturity the plaintiff bank discounted the note in good faith. The maker having died, the plaintiff bank sued P as indorser, after taking the necessary steps upon dishonor.

Should the plaintiff recover, and, if so, how much?

8. M signed a note for \$500 payable to the order of P. P indorsed in blank and delivered to A for value. A indorsed specially to B for value. X stole the note from B and without indorsing it sold it to C, who bought in good faith, paying however only \$400. B notified the maker to refuse payment. At maturity C presented the note which was dishonored. After sending notice of dishonor to B, he brought suit against M and B. Should he recover of either, and if so, how much?

9. A requested the X bank to draw a draft to the order of C. A indorsed the draft in the name of C. C was a person known to the bank drawing the draft, but A never intended that C have any interest in it. A, after indorsing C's name, indorsed his own name and sold the draft to B for value. B collected the amount of the draft from the bank on which the draft was drawn. The drawee bank later learned the facts as stated and sued B to recover the money paid him on the draft. Should the bank recover?

Would your decision be the same if the bank which drew the draft knew that C was not intended to have any interest in the draft?

10. M made a note payable to P or order. The note was dated Jan. 31, 1912, and payable one month from date. The note was made and dated Chicago, Illinois, and was indorsed specially by P, A, B, C and D in the order named. At maturity X was the holder of the note for value. State in accurate detail the exact steps X must take to fix the liability of all prior parties under the following circumstances:

M, the maker, had a business office in Chicago where the note was executed. M's residence was in Waukegan, north of Chicago. At the time the note fell due M was in Springfield as a member of the Legislature. P lives and does business in Chicago. A and B live in Peoria, but have no business offices. C and D live in Urbana and have business offices here. X also lives in Urbana.

Examination in Contracts.

PROFESSOR DECKER.

PART ONE.

1. X & Co. of Chicago, dealers in law books, sent a circular to the members of the bar generally containing a list of second-hand law books with prices and the following statement: "We are prepared to furnish the books listed herein at the prices quoted as long as they last. The supply is limited, so send in your order early. FIRST COME, FIRST SERVED." P and M, both of Champaign, each received one of these circulars and each ordered Cook on Corporations, one of the books listed. P's order reached X & Co. first, at which time they had one copy of the book on hand. This copy was sent to M, and P was notified that his order was too late, as all of the books had been sold.

On these facts has P a cause of action against X & Co. for breach of contract?

2. D sent the following letter to P, a wholesale grocer in Bloomington: "This will introduce Mr. Jones of Urbana, who is engaging in the retail grocery business. Please let him have what goods he wants and I will guarantee all bills he contracts during the next year not exceeding a total of \$1,000." Relying on this letter, P sold goods to Jones from time to time for a period of six months, at which time there was an unpaid balance due P of \$300, for which P presented a bill to D, who refused payment on two grounds: 1st, because he had not been previously notified by P that P was relying on his letter; and 2nd, because there was no consideration for his promise; and he further notified P that he refused to be responsible for any bills of Jones contracted in the future.

(a) Is D liable for the balance of \$300?

(b) Would he be liable for any future bills contracted by Jones with P within the limits fixed by D's letter?

3. D owed P two notes, one payable on demand and the other on December 1st, 1912. On November 10th, 1912, P presented the demand note for payment. D informed him that it was inconvenient for him to pay it on that day, but he would pay it on the 15th, if P would agree to extend the other note for 30 days, which P agreed to do. D paid the demand note on November 15th, as agreed, but P, contrary to his promise, brought suit on the other note on December 2nd.

Has he a right to do so?

4. P contracted with D to build the foundation of an office building for \$5,000. On excavating it was discovered that a stratum of quicksand underlay the building, which would largely increase the cost of the work. The existence of the quicksand was unknown to both parties when the contract was made. P refused to complete the work unless D would agree to pay \$7,500 for the job. D refused to do this without an investigation and told P that in the meantime he could quit work. Later he agreed with P for the completion of the work at the price asked. When the work was completed, he refused to pay more than \$5,000.

(a) Is he liable under the facts as stated?

(b) Would he be liable if he had agreed promptly to P's demand?

Discuss this case fully on reason and authority.

5. A sued B in assumpsit, alleging that B promised to convey to him a certain piece of land called Blackacre in consideration that A would dismiss a certain suit he had previously commenced against B for assault and battery. B pleaded that his promise was without consideration for the reason that he, B, had a good defense to the suit for assault and battery, namely, self-defense, and that A could have recovered nothing in that suit.

A demurs to this plea. Give judgment, with reasons.

PART TWO.

6. "Know all men by these presents that we, John Jones, Peter Smith and Frank Brown, are well and firmly bound unto Richard Roe for the payment of One Thousand Dollars on the first day of May, A. D. 1912, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators firmly by these presents.

"Signed and sealed this 1st day of February, A. D. 1912.

"John Jones (L. S.)

"Peter Smith

"Frank Brown."

(a) What is the technical name for this instrument?

(b) As attorney for Richard Roe, in what form of action would you sue on this instrument? Explain reasons.

(c) Could the defense of no consideration be made by Peter Smith or Frank Brown?

7. A holds B's note for \$500 which is past due and wishes to discharge the debt without payment on B's part. State three ways in which this result can be accomplished.

8. X was adjudged a bankrupt by the U. S. District Court under the national bankruptcy law, and was discharged from the payment of his

debts. Y, a creditor, proved a claim against his estate for \$100, and received a dividend of 25 per cent thereon. Afterwards, without any new consideration, X promised to pay Y the balance of his claim.

(a) May Y recover this balance from X? Discuss the principles involved.

(b) Supposing the debt were for goods purchased by X from Y, in what form should the action be brought?

9. D with 99 others signed the following agreement:

"We, the undersigned, do hereby agree to pay the sums set opposite our respective names on the following conditions:

(1) That the subscribers shall organize themselves under the law of Illinois as a Building Association.

(2) That the money subscribed is to be used by the Association for the purpose of building a club house for the local lodge of the Masonic Order.

(3) That not less than \$30,000 shall be subscribed."

D's subscription was for \$500, the Association has been organized and the full amount of \$30,000 has been subscribed. The directors of the

Association have made a call for the payment of the subscriptions, but D refuses to pay.

Is he liable? Discuss fully on reason and authority.

10. D, of Champaign, on December 1, 1912, wrote to P in Springfield, offering to sell to P a house and lot in Champaign for \$5,000. P answered on the 7th, agreeing to take the house for \$4,500. D wrote on the 9th refusing to sell at that price and concluded his letter, "I shall conclude that you are out of the market unless I hear from you at once." P received this letter on the 10th and on the 12th, in the afternoon, wrote to D agreeing to take the property at \$5,000, which letter reached D on the afternoon of the 13th. D had sold the house to X on the morning of the 12th and at noon of that day mailed a letter to P informing him of that fact, which letter was received by P on the morning of the 13th.

Is D liable to P for breach of contract?

Examination in Constitutional Law.

PROFESSOR GREEN.

(January, 1913)

PART ONE.

1. A state in which oleomargarine was largely made and sold forbade its further making or sale. Makers and dealers who would be driven out of business contended that the statute violated the clause of the fourteenth amendment which says that no state shall abridge the privileges or immunities of citizens of the United States. Discuss the merits of the contention.

2. Is an act of Congress valid which imposes a fine for hindering any citizen in the exercise of a right secured to him by the constitution or laws of the United States, and if so what is the source of power to enact the law? Give an example of hindering a citizen in the exercise of such a right.

3. A state constitution vested legislative power in a legislature, and judicial power in courts to be established by the legislature. The legislature established a court with exclusive jurisdiction in actions for divorce. Afterwards it passed an act declaring the marriage theretofore existing between A and his wife to be thereby dissolved. It also passed an act declaring that a judgment entered in the divorce court against B in his suit for divorce was thereby set aside, and directing the court to award B a new trial on the ground of newly discovered evidence. Are the acts valid?

4. A state law provided for an issue of state bonds whose proceeds should be used in paying a bounty of so much for every ton of beet sugar produced in the state. Are the bonds valid?

5. If, by an amendment to the Constitution of Illinois, all land within a radius of twenty miles from the Champaign City Hall were annexed to the City of Champaign, would farm land in the outer part of the annexed region be subject to general city taxes at the same rate as land in the centre of the city, though neither it nor its owner received any appreciable benefit from such part of the taxes as were spent for street lighting, police or fire protection?

PART TWO.

6. Has Congress a right to prohibit the taking of water from a navigable stream used in in-

terstate commerce to such an extent as to destroy its navigability, if it is necessary to the health of the people of the state so to take the water for drinking and sanitary purposes?

7. A state imposed on all railroad companies "a special property tax *equal to* one per cent of their gross receipts." Is the tax valid as applied to receipts of a railroad wholly within the state which constitute its share of through charges on goods carried over it and connecting lines between points within and points without the state?

8. In the absence of legislation by Congress may a state which prohibits the manufacture and sale of intoxicating liquor also prohibit its introduction into the state?

9. A state constitution required all trials for felony to be by a jury of twelve men. X was tried for felony in a state court by a jury of eleven only, found guilty and sentenced to imprisonment. He contends that the proceedings violate the rights to jury trial and to due process of law secured by the constitution of the United States. Is he right?

10. Is a state law valid which prohibits workmen in underground mines from working more than eight hours in any day, except in emergencies? Would such a law be valid if it related to workmen in general?

Examination In Criminal Law.

PROFESSOR GREEN.

January, 1913.

(Give reasons for every answer.)

PART ONE.

To test A's honesty, B offered to sell him goods which B falsely said were stolen goods. A, believing, bought and received the goods.

Is he guilty of attempting to receive stolen goods?

2. C finding D, a trespasser, in C's apple tree, picking apples, set a fierce bull dog on D, knowing that D, high in the tree, was safe from the dog, but could not come down, or the dog would bite him. After he had thus kept D in the tree for an hour, C called off the dog.

What, if any, crimes have been committed?

3. E trespassed on F's land, shot wild rabbits there, hid them there in a ditch until he could carry them off unobserved, went home, and at the first convenient opportunity, a few hours later, returned and did carry them off.

Is he guilty of larceny?

4. Section 429 of the Criminal Code says: "The benefit of clergy, appeals of felony, and trial by battle are forever abolished."

Explain what this means.

PART TWO.

5. State in any *six* of the following lettered subdivisions whether the homicide is criminal, and, if so, specify the grade of the crime:

(a) A for amusement, threw stones from a pier into the water. He hit and killed a man in swimming, and was grossly and culpably negligent in not realizing that he was likely to do so.

(b) B knew that his child was dangerously ill, but believing that the best chance to cure her was by prayer without medicine, withheld medicine, relied on prayer and thereby caused her death.

How would you answer if a statute, of which B was ignorant, made it a misdemeanor to withhold medicine from a sick child?

(c) C in resisting arrest which he knew to be legal, accidentally killed the officer who was

arresting him; while D, in resisting arrest which he knew to be illegal, intentionally killed the officer who was arresting him, and could not have avoided arrest otherwise.

(d) E without provocation struck F. F stabbed E with a large knife and severely wounded him. E, carried away by passion at the stabbing, immediately shot F and killed him.

(e) G, under an insane delusion that H had killed G's brother, killed H.

(f) I, under an insane delusion that J was attacking and about to kill K, a stranger, killed J.

(g) L shot and killed M, but because drunk he did not realize that shooting M would do him serious harm. Assume that by statute intentional killing is murder in the first degree; other killing with malice aforethought is murder in the second degree.

(h) N held a valid writ which directed him to arrest O for misdemeanor. O was running away and the only means to effect the arrest was to shoot O at great risk to his life. N therefore shot at O, and as it happened killed him.

(i) P suddenly attacked Q with a knife, with intent to kill. Q knew that he might easily have escaped by running, but stood his ground, and shot and killed P, which was the only other way to save his life.

(j) R entered the house of S, his debtor, and was attempting to take away S's furniture, to keep in payment of debt. S, unable otherwise to eject R or to prevent his removing the furniture, killed him.

Examination in Conveyancing.

January, 1913.

ASSISTANT PROFESSOR WORMSER.

PART I.

I. What are the ordinary covenants for title in deeds in this country? Which of them run with the land? Illustrate, if deemed profitable.

II. The description of premises conveyed by a deed ran thus: "Beginning at an oak tree on the shore of Red River, at the south-east corner of the premises, thence by said river North to a maple tree on the bank of said river, thence West, etc., to the point of beginning." How much, if any, of the bed of said river passed by this deed? Discuss.

III. An oral lease from A to B for five years from March 1st, 1894. On February 1st, 1899, A

gave B six months' notice to quit. When could A enter and why?

IV. A signed and sealed a deed of Blackacre to B and his heirs. This deed A delivered in escrow to C to be delivered to B on A's death, unless A should demand it back from C in his lifetime. A never demanded it back. On A's death, C delivered the deed to B. Is B entitled to Blackacre? If so, why? If not, who is?

PART II.

V. A, by deed, conveyed a parcel of land describing it thus: "Beginning at the southwest corner of the premises at a stone post on the highway, thence north on land of L 200 feet to another stone post, thence east on land of M 150 feet to another stone post, thence south on the land of W 200 feet to another stone post on the highway, thence west by the highway to the point of beginning." Would this deed pass the highway, or any of it? If so, why? If not, why not?

VI. Williams was attorney for Illinois Trust Company, and also one of four trustees under a settlement. A mortgage by the Trust Co. to the four trustees was duly signed and sealed and placed in the hands of Williams. Subsequently the Trust Co. urges that the delivery was in escrow and not absolute. The trustees contend that

the fact that Williams was himself one of the mortgagees was fatal to the deed being an escrow. What do you say? Explain.

VII. Comment on the following language of Halsbury, Lord Chancellor: "If the matter were to be discussed now for the first time, I think it might well be doubted whether the assent of the donee was not a preliminary to the actual passing of the property. You certainly can not make a man accept as a gift that which he does not desire to possess. It vests only subject to repudiation."

VIII. (a) Plaintiff leased premises to defendant as tenant from year to year, commencing January 15, 1905. Defendant subsequently sublet to Paine, commencing December 15, 1906. On January 15, 1907, defendant distrained upon Paine for rent in arrear. Rent being then due from the defendant to the plaintiff, the latter gave notice to Paine not to pay the rent to the defendant but to pay it to him. Upon defendant's refusal to take Paine's bill for the amount due, plaintiff agreed to take it himself in payment of the rent due from the defendant to him, declaring that he "would not have anything further to do" with defendant. In the following October, plaintiff himself distrained upon the goods of Paine for rent in arrear.

Subsequently plaintiff sues defendant in an action for use and occupation. Does he succeed? Give your reasons.

(b) Compare the English and Illinois Statutes of Fraud on the subject of "surrender."

Examination in Damages.

PROFESSOR DECKER.

PART ONE.

1. A agreed to exchange a city residence with B for a farm. The contract provided that in case either party should fail to perform as agreed, he should "pay to the other the sum of \$500 as liquidated damages and not as a penalty." B had intended to move to town to reside, but changed his mind and refused to convey the farm. It is admitted that the properties are of about equal value and A's total expenses connected with the transaction have not exceeded \$25.

Can he hold B for the stipulated damages?
Discuss.

2. A, from Chicago at 10 A. M., wires B at Champaign as follows: "Offer 100 C. H. & D. ref. 4s at 75, will hold till noon." This telegram

interpreted meant, "I offer to sell you 100 bonds of the Cincinnati, Hamilton and Dayton Railroad, known as refunding bonds and bearing 4 per cent interest, at \$75 each."

(a) Suppose this message is negligently delayed by the telegraph company and does not reach B until one P. M., at which time he immediately wires an acceptance, but A, not having heard from B by noon, has sold the bonds at 12:15 for \$73 per bond. If A sues the telegraph company how much can he recover?

(b) Suppose that B received A's message promptly and answered at 10:30, but his reply was negligently delayed in delivery till 2 P. M. At that time the bonds have gone up to 80 on the market and A refused to sell. What are B's rights against the company, assuming that the price remained at 80 for 30 days, when it dropped back to 75 and so remains?

3. A sues B for breach of contract and proves that in July he agreed to buy and B agreed to sell and deliver to A's store during the following October 500 bushels of potatoes at 50 cents a bushel, payable on delivery, and that B failed to deliver the potatoes. A then rested his case. B moved for a directed verdict of "no cause of action" but was overruled. B offered no testimony and the court gave the following instruction: "If the jury believes A's testimony, which is uncontradicted, they should find for him and fix the damages at

such amount as would compensate him for the loss of his contract." B excepted to this instruction. The jury gave A \$250 damages. B moved for a new trial on the ground of excessive damages and because there was no evidence to sustain the verdict, but was refused, it being a fact known to the court and jury that on account of a late drought in that locality, potatoes were worth \$1.00 per bushel at the time of delivery stipulated in the contract.

If the case were properly submitted to you as a court of appeal, would you reverse the lower court (a) on its refusal to direct a verdict as requested; (b) On its refusal to grant a new trial?

4. What are exemplary damages and when are they recoverable (a) against the wrongdoer himself; (b) against a principal for the wrongdoing of his agent?

PART TWO.

5. A, a liveryman, is keeping B's horse at his stable. By the negligence of A's servant in leaving the door open, the horse gets out, runs a mile, and finally trespasses on X's lawn, on which some valuable lace curtains have been spread out to dry. X endeavors in a careful and proper manner to drive the horse away, but it runs over the curtains and finally collides with a wire fence and is injured.

(a) Is A liable to X for the injury to the curtains?

(b) Is A liable to B for the injury to the horse resulting from the collision with the fence?

6. P leases a farm from D on shares for 3 years, but is wrongfully ousted from possession by D at the end of the second year. In a suit for breach of the lease, the trial being held after the expiration of the term, he offers evidence (1) of what he netted from the operation of the farm during the first two years; (2) of the nature, quantity and value of crops raised by D on the farm during the third year; and (3) of the opinion of neighboring farmers as to the amount that a good farmer could have realized on the farm in question during said third year under such a lease as P had.

(a) Give your opinion as to the admissibility of each item of evidence enumerated, with careful discussion of reasons.

(b) Would it be permissible for D to show that P had rented and worked another farm of equal size and fertility adjoining the farm from which he was ousted during said third year, for the purpose of reducing the damages?

7. The X Irrigation Co., under authority of statute of Colorado, constructed a large irrigation ditch for the purpose of conducting water from a mountain reservoir to a large tract of arid land. The ditch was laid out and excavated in accordance with accepted engineering methods, but owing to the porosity of the soil, water seeped there-

from under the surface of the soil and caused the fields of M, whose ranch lay in the valley below the ditch, to become at times wet and soggy.

(a) If M sues for damages, up to what time should they be computed?

(b) Would a second suit lie for damages resulting from the same cause?

(c) When would the statute of limitations begin to run against M?

8. The Illinois Central Railroad Co. contracted with P, a mining company, to furnish it with ten cars a day to be loaded with coal for Chicago in consideration of P's agreement to ship that quantity each day. The agent of the railroad was informed, when the contract was made, that P had a contract to supply that amount of coal daily to Chicago parties, but nothing further. In a suit against the railroad for failure to deliver cars as agreed, should P be allowed to show that his contract was with the Chicago Board of Education, that the contract price was 10 cents above the market price in Chicago, and that as a result of the delay, the Board of Education rescinded its contract? Discuss question involved fully.

Examination in Equity.

PROFESSOR POMEROY.

(January, 1913)

PART FIRST.

1. A executed to B a note bearing a usurious rate of interest, and a mortgage to secure it.

(a) A sues to cancel the note and mortgage on the ground of usury.

(b) B sues to foreclose the mortgage.

Result in each case? What maxim or maxims apply?

2. Explain, with two illustrations (facts real or imaginary), the meaning of the maxim, "Equity acts *in personam*." Explain, with one illustration, how the effect of the maxim has been limited by statutes.

3. John Smith conveyed two lots to Mary his wife, in fraud of his creditors, Mary being aware of the fraud. Mary conveyed the lots to Jones and Jones to Brown; Jones and Brown were *bona fide* purchasers for value without notice of Smith's fraud. Brown sold one of the lots back to Mary and the other to Robinson, who bought with notice of Smith's fraud. Smith's creditors now seek to subject the lots to their judgments.

State and explain principles involved.

4. A contracted to sell a tract of land to B. Before conveyance, A and B die, A leaving O his administrator and P his heir; B leaving X his administrator and Y his heir.

(a) In equity, who is entitled to the land, who is entitled to receive the purchase money, and who must pay the purchase money? Reasons.

(b) The contract, enforceable at the time of B's death, subsequently becomes unenforceable because of laches in tendering the purchase price. What right and corresponding duty, if any, as between X and Y, does this fact impose?

(c) The contract was at the beginning and still is unenforceable because of a serious defect in title to the land. What right and corresponding duty, if any, between O and P does this fact impose?

5. State the two tests for determining whether a given act of part performance is sufficient to

take an oral contract for the sale and purchase of land out of the statute of frauds in equity, and show how the tests apply to the following acts:—

(a) Payment of the purchase price.

(b) Where lessor has orally agreed to sell the land to lessee, lessee continued in possession after the expiration of the lease.

(c) Vendee, in compliance with the contract takes care of and nurses the vendor, an aged and infirm relative.

PART SECOND

6. When may a court of equity, in a suit by the purchaser for specific performance of a contract for the purchase and sale of land, award damages in place of specific performance?

7. Summarize, in five propositions, the cases studied on the subject of specific performance with abatement from the purchase price.

8. Smith mortgaged a tract to Jones; the mortgage was recorded; Jones went into possession of the tract, as he was permitted to do by the terms of the mortgage. Later, Smith contracted in writing to sell the tract to Jones. This contract was never recorded. Still later, while Jones was still in possession, Smith sold and conveyed the tract to Brown, who made no inquiries of Jones, and in fact knew nothing of Jones' mortgage or

contract. Has Brown constructive notice of the contract? Explain fully.

9. State two classes of cases where lack of mutuality has often, but unsuccessfully, been set up as a defense to specific performance. State a case where it is a valid defense.

10. Smith, a physician in Urbana, sold his practice to Jones, and covenanted not to engage in the practice of his profession in Urbana or within ten miles thereof. Smith, in connection with the covenant, executed a bond for its performance, with a stipulation for \$100 "as liquidated damages" for each and every breach. Smith having committed several breaches of the covenant, Jones sued to enjoin him from further breaches. Smith asserts that Jones' remedy at law is adequate. Discuss.

Examination in Evidence.

PROFESSOR HALE.

PART I.

I.

A took out a life insurance policy in the K Company in favor of X for five thousand dollars. It was provided that in the event of suicide by the insured within one year after the policy was issued, the policy should become of no effect.

One month after the policy was issued A died from the effects of a poison taken into the stomach. The K Company refused to pay X anything under the policy, claiming that A had committed suicide. X contended that the taking of the poison by A was accidental.

X sued the K Company. At the trial one C testified on behalf of the defendant as follows: "I was with A at the time of his death and for several hours prior thereto. About two hours before A died he called me to his bed-side and told me that

his conscience would not permit him to die without confessing that he had taken his own life; that while very despondent over a financial loss he had taken the poison."

The plaintiff objected to this testimony on the ground that it was hearsay. The court overruled the objection and admitted the testimony.

Was the ruling correct?

II.

(a) Does the court, in the trial of a case before a jury, ever decide questions of fact?

(b) Is the jury ever permitted to decide a question of law?

(c) Does the court usurp the function of the jury when it grants a non-suit?

III.

A was a passenger in a taxicab operated by B, the owner. A collision occurred between B's car and another car driven by C, as a result of which A was injured. A sued B for the injuries sustained.

B has a witness, X, who is prepared to testify that C a few weeks after the accident told him, X, that at the time of the collision he, C, was driving his machine three times as fast as the law permitted and that B was doing all in his power to get out of the way.

May B avail himself of this testimony?

IV.

A was indicted for stealing a diamond ring from X. A contended that he purchased the ring from Y, a jeweler.

Y kept a clerk, B, in his store, who made all sales and reported them at once to Y who kept the books. The books kept by Y showed a sale of a diamond ring, of the description the ring in question, to A a few days prior to the alleged theft. The sale appeared from the books to have been made for cash. Y warranted the genuineness of all rings sold out of his store.

May A avail himself of this book entry?

(a) Assuming that B and Y are both available at the time of the trial, but do not recall the sale to A.

(b) Assuming that Y is insane and B is available.

(c) Assuming that B is dead, but Y is available.

(d) Assuming that both B and Y are permanently out of the jurisdiction of the court.

PART II.

A in an action for personal injuries against the B Company, claimed to have received a serious blow on the head. X, a trained nurse, who attended A for several weeks immediately follow-

ing the accident, was called to the stand as a witness and testified as follows:

1. "A frequently placed his hands to head and groaned."

2. "A told me frequently that he was suffering intense pain in his head."

3. "A told me that before the accident he never had had any trouble with his head."

Is any or all of the above testimony admissible in evidence?

VI.

A and B were adjoining land owners. A sued B for trespassing on A's land. B's defense was that the land in question belonged to him, B.

The controversy hinged on the location of a certain section line. C, one of the oldest inhabitants in that vicinity, testified at this trial that, from his early youth, it had been generally understood that this section line was identical with a certain old fence.

Fifteen years later a similar controversy arose between X and Y, who owned lands adjacent to the lands of A and B. In the meantime C had died. X produced the court reporter who took C's testimony at the trial between A and B and asked him to state what C had said on the former occasion with reference to the location of the section line in question. Counsel for Y objected on the ground that it was hearsay.

Should the objection have been sustained or overruled?

VII.

A sued B on a promissory note. B pleaded payment. B testified at the trial that he paid this note on the 10th day of May. As further proof of payment, B's wife offered to testify that on the morning of the 10th of May, while she and her husband, the defendant B, were talking over their financial matters, B had said to her that he would go right over to A and pay this note, and that B immediately put his hat on and left the house.

Was this testimony of B's wife open to objection?

VIII.

A sued B for slander, alleging that B had publicly accused A of having stolen a horse. B pleaded truth. B placed X on the stand and asked him the following question: "Did A ever say anything to you about the matter here in controversy?" X answered; "Yes he told me that he stole the horse."

A objected to this answer on the ground that no proper foundation had been laid for the introduction of such testimony, and moved that the answer be struck out.

The motion was overruled. Was this holding correct?

Examination in Municipal Corporations.

PROFESSOR POMEROY.

(January, 1913)

PART FIRST.

1. Authority to regulate implies authority to require a license.

(a) Explain reasons for this proposition, and give an illustration.

(b) What principle, if any, limits the amount of the license fee that may be exacted?

If Illinois law differs from general law on this subject, state both.

2. Smith obtained judgment against a city and a writ of mandamus ordering the city council (the tax-levying body) to levy a tax for the purpose of paying his judgment. The members of the city council resigned without obeying the writ;

and it appears that it would be impossible to elect a council whose members would obey the writ of mandamus. Smith now brings a bill in equity, praying (a) that the court collect the judgment from the property of individual citizens, or (b) that the court direct its own officer to levy the tax. Complainant argues (c) that equity will not suffer a wrong to be without a remedy.

Discuss points (a), (b) and (c).

3. State arguments *pro* and *con* on questions (a) whether a city has implied power to borrow money; (b) whether a city has implied power to issue negotiable paper. What is the Illinois ruling on each question?

4. The constitution of the State of South Alaska provided that no city should become indebted in excess of one per cent of the assessed valuation of property in the city, as shown by the last assessment roll. The legislature, by Act of March 1, 1920, provided that the city council of any city might issue bonds not in excess of the constitutional limit of indebtedness. Another section of the same statute required each city to keep a public record showing its total indebtedness. The city of Juneau, on July 1, 1920, was indebted \$40,000; the valuation of property in the city, as shown by the last assessment roll, was \$3,000,000. On that date the city issued bonds to the amount of \$50,000. Each bond was signed by all members

of the council, and recited that it was one of an issue of \$50,000, and that it was issued under and in full compliance with the Act of March 1, 1920, and of the constitution of South Alaska. The plaintiff, a *bona fide* holder residing in Illinois, sues the city in a Federal court on one of these bonds. Should he recover?

State the theory by which the U. S. Supreme Court explains its doctrine as to estoppel by recitals in municipal bonds, and show in what respects the doctrine does or does not apply to the above facts.

5. The city hall of W was located in a public park belonging to the city. The basement of the city hall was rented out for markets; the rest of the building was used for city offices. The park was under the control of the Superintendent of Parks. In the course of making some alteration in the building, under the direction of a committee of the city council, a deep excavation was made, fifteen feet from the building, for the purpose of locating therein a steam heating plant for the building. This excavation extended across a path which had been used by the public as a walk for many years. Plaintiff, while crossing the park by this walk, and while in the exercise of due care, fell into the excavation, which had been left unguarded, and was injured.

Is the city liable? Explain principles involved.

PART SECOND.

6. Mention three private uses of streets which a city may permit and three which it may not permit without special authority from the Legislature.

7. Action to recover damages arising from a sewer laid by defendant city in A street, with which sewer plaintiff had connected his house, by a lateral pipe, as he had a right to do. The main sewer pipe in A street was too small to carry off all the sewage from the houses further up the street, so that the sewage from these houses backed up plaintiff's lateral pipe and flooded his basement. This resulted not from the sewer becoming clogged or obstructed, but because the city engineer in planning this sewer had chosen a size of pipe insufficient to carry off all the sewage from the houses on A street.

Should plaintiff recover? Reasons.

State briefly the law, as deduced from cases read, relating to the liability of a city for defects in sewers, and the liability for imperfect drainage of surface water.

8. (a) A suit is brought to test the validity of an ordinance. It appeared that the city council had authority to pass such an ordinance, and that it violated no provision of the state or federal con-

stitution. When will the court decline to consider the question whether the ordinance is "reasonable" or not?

(b) State all you can relating to the validity of "bill board ordinances."

9. An Illinois city is indebted up to the constitutional limit, and has but \$6,000 of unappropriated money in its treasury. It has no source of income other than taxation. It can raise by taxation during the current year \$40,000, of which \$32,000 will be needed for ordinary current expenses. The city wishes, at once, (a) to build a school house costing \$12,000, (b) to make a street improvement costing \$20,000, and (c) to enter into a contract for the purchase of an electric lighting plant for \$100,000, to be paid for in annual installments of \$5,000. Is it possible to accomplish any or all of these objects without violating the constitutional provision as to limit of municipal indebtedness? If yes, explain the method.

10. The unorganized community of Sitka attempted to become incorporated as a city under the general incorporation act of the State of South Alaska, in 1920; and acted as a *de facto* corporation for four years, during which time it became indebted to plaintiff. In 1924 the state's attorney procured a decree declaring the attempted incorporation of Sitka null and void. The legislature thereupon passed an act incorporating the territory comprised within the boundaries of Sitka as the city of Baranoff, and declaring that the city of Baranoff should not be responsible for the debts of the city of Sitka.

State and explain the legal propositions involved in the above facts.

Examination in Partnership.

PROFESSOR HALE.

PART I.

I.

A was the owner of a summer hotel property. A writing was signed by A and one B, wherein A assumed to lease the property to B for a period of three months for \$20,000, payable in four equal installments. It was further provided as follows: "(1) B shall give his undivided attention, and devote his best energies to the business to be done on said premises; (2) A shall have the right of free access to the premises at all times; (3) In addition to the sum of \$20,000, A shall have 80 per cent of the net profits derived from all the business done on the premises; (4) In addition to the current expenses of the hotel, and the business done therein, there shall be charged to the expense account the cost of insurance, water and sewer, rents, license fee, interior repairs and the salary of a person to be designated by A, who

shall keep the books, act as cashier, receive all money, deposit it in his own name, and make all payments; (5) At the termination of the agreement a statement shall be made of the business done and B shall receive 20 per cent of the net profits; (6) And at the expiration of the lease, A shall pay to B \$1000, and A shall have the right at any time, upon 24 hours' notice, to annul the agreement and assume sole and exclusive possession of the property; (7) B shall have absolute control and management of the business during the continuance of the agreement; (8) A shall not be liable for the business done or the debts contracted by A."

Did this agreement constitute A and B partners?

II.

Prior to November 5, 1891, Alfred J. Goss and J. D. Putnam were doing a milling business as co-partners under the firm name of "J. D. Putnam & Co." and as such co-partnership executed a note to one Thayer. Thayer knew that Alfred J. Goss was a member of the firm.

Thereafter the firm dissolved and the following notice was published in a local paper: "Notice of dissolution of partnership. Notice is hereby given that the co-partnership formerly existing between the undersigned, under the firm name of J. D. Putnam & Co., is this day dissolved by mutual consent and the business will in the future be carried on under the firm name of J. B. Goss &

Co., who will settle all claims of the late partnership.

“(Signed) J. D. Putnam, Alfred J. Goss.

“November 3, 1891.”

Thayer saw this notice. The business was conveyed to J. B. Goss, who carried on the business under the name of J. B. Goss & Co. Neither Putnam nor Alfred J. Goss retained any interest in the business nor had either of them anything to do with the business after this transfer.

Thereafter J. B. Goss took up the old note held by Thayer and issued to him in its stead a new note in the name of J. B. Goss & Co. At the time Thayer took this note he understood and believed that Alfred J. Goss and J. B. Goss were partners carrying on the old business under the new firm name. Thayer brought an action on this new note against J. B. Goss and Alfred J. Goss as partners:

Is Alfred J. Goss liable?

III.

A, B, C and D entered into a partnership agreement to carry on a mercantile business. A and B were husband and wife. C is a minor and D is a man with whom A, the husband of B, had formerly been in business. Each contributed \$2,000 in cash to the capital of the business.

D did all the buying for the store. Obligations amounting to \$12,000 were incurred. The

assets of the firm are of the value of \$6,000. The creditors have all assigned their claims to X, who has brought suit against A, B, C and D as partners and have attached the assets of the firm.

What are X's rights respectively against A, B, C and D and may he hold all the firm assets?

IV.

A and B were engaged as partners in the retail grocery business, under the firm name of the A B Co. A, without consulting B, borrowed \$500 from the X bank, and gave the firm note for that amount to the bank.

A then went to a large city a short distance away and bought a new supply of groceries amounting to \$300 from the Y company, a wholesale grocery concern. The Y company also carried a line of dishes, glass ware, etc., and A bought, on behalf of his firm, dishes and glass ware to the amount of \$200.

A had intended to use the \$500 which he had borrowed to pay the Y company for the groceries, dishes and glassware, but instead arranged for credit and spent the \$500 in riotous living and the purchase of personal effects for himself and family. B was away at the time the consignment arrived from the Y company, and on his return a month later, protested against the purchase and wrote at once to the Y company, saying that the purchases were not authorized by him and denying all personal liability.

The additional supply of groceries was not in fact needed in the business, and the firm had never before handled dishes or glass ware, although it had handled granite ware to a slight extent.

B also refused to honor the note when presented for payment.

1. The X bank sues A and B as partners on the note.

2. The Y Company sues A and B as partners for the \$300 worth of groceries.

3. The Y Company sues A and B as partners for the \$200 worth of dishes and glass ware.

What judgment in each case?

PART II.

V.

A and B formed a partnership for the purpose of manufacturing bricks and tiling. A owned a five acre tract of land containing the right kind of soil for the purpose. It was agreed in the written articles of partnership that this land should constitute A's contribution to the capital of the firm, and should be put in at \$200 per acre. B put in \$1,000, in cash. Some time later the firm purchased an additional two acres from K. This two acre tract adjoined the original five acres and was conveyed to A and B.

C, a personal creditor of B, sued B and attached B's individual one-half interest in the two acre tract.

A mortgaged his one-half interest in the two acre tract to X to secure a personal loan.

D, a personal creditor of A, sued A and attached the five acre tract. Neither C, D nor X knew that the land was considered by A and B to be partnership property.

Dissolution proceedings were started at once and the firm creditors claimed to have all the land dealt with and distributed as firm assets, in preference to the mortgagee and the attaching creditors.

What should be done?

VI.

The X Company, a partnership composed of A and B, purchased 100 acres of land and 10 horses. The land was deeded to A and B as partners. The bill of sale to the horses was made out to "The X Company." Shortly thereafter A died.

(a) Where was the title to the above property while A was alive and what was the character of the tenure?

(b) What became of the title when A died and what were B's duties and rights with reference to the same?

VII.

The A B Company, a partnership composed of A and B, made an assignment of all the partnership property to X, as trustee, for the benefit

of creditors. A and B, each assigned his separate estate also to X, as trustee, for the benefit of creditors.

The property has all been disposed of by X and the cash received therefor is in the hands of X for distribution. The partnership property brought \$6,000. The property of A brought \$4,000, and the property of B brought \$2,000. The firm, a few weeks prior to the above assignment, had executed a note to C for \$200, to cover a personal obligation owing from A to C. The partnership obligations, inclusive of the note to C, amount to \$12,000. A's personal obligations amount to \$5,000 and B's to \$4,000.

How should the money be distributed?

VIII.

X and Y were in partnership. X died. A few days thereafter C presented a bill against the firm amounting to \$100, for produce sold to the firm prior to the death of X. Y went over the bill with C, checking up the various items and declared the bill to be correct and promised to pay it as soon as he could wind up the firm business. C soon became anxious about his bill and filed it against the estate of X.

The administrator of X refused to allow the claim on the grounds: 1st, that the claim could not be asserted against the estate of X until all rem-

edies of C had been exhausted against Y, and 2nd, that the amount was not correct. At the hearing, to prove the correctness of the bill, C offered in evidence the statement previously made by Y, that it was correct. X's administrator objected to this evidence. His objection was overruled and the claim allowed. The administrator of X appeals.

What judgment?

Examination In Personal Property.

PROFESSOR VERNIER.

PART I.

(Give reasons in all cases.)

1. Show by definition and example that you know the meaning of the following terms: (1) chose in action, (2) chattel real, (3) special property, (4) possessory actions (name three), (5) market overt, (6) deodand, (7) specific lien, (8) agistment, (9) *ferae naturae*, [10] incorporeal hereditament.

2. Explain as fully as you can the difference between real and personal property. How did the terms "real" and "personal" as here used probably originate? What terms were used in the older law to divide property into two classes? Are the following classed as real or personal property. [1] a lease of a lot and building for 99 years, [2] a certificate of stock in a company engaged in buying

and selling land, [3] an annuity to A and his heirs, [4] the trees, fences and buildings on a farm, [5] a promissory note, [6] a collection of mounted animals, [7] fish in a pond.

3. A owned a large tract of land covered by swamp and wild grass. He was making no present use of the land, holding it for investment only. B owned adjoining land, and by mistake cut a quantity of grass on A's land. The grass immediately after severance was worth \$20. B cured, collected and baled it, when its value was \$100. B then hauled it to town where its value was \$200. At this price C bought it. C shipped it by rail to a market where hay was in great demand and where it was worth \$400. D bought it at this price. Discuss A's rights against B, C and D after each distinct step in the foregoing state of facts.

4. During the fall of 1907 A, B, and C stored wheat in W's warehouse, taking receipts as follows: "Received ofbushels of No. wheat, owners' risk of fire." On Nov. 1, 1907, there were 1500 bushels of wheat in the warehouse A, B and C each had receipts for 300 bushels and W, who bought and sold on his own account, owned the rest. On Dec. 1, the warehouse was empty, W having sold all the wheat. During December D, E and F each sent in 300 bushels and received similar receipts. W had bought 1100 bushels during the same month, so that on Jan. 1 there were

2000 bushels on hand. On Jan. 2 W borrowed \$1000 of Y and as security pledged him receipts calling for the entire 2000 bushels. W absconded owing this \$1000 and also \$500 to other creditors. What are the rights of A, F and Y?

5. Trover for a fifty-dollar bill. Defendant, a dealer in junk, bought an old iron safe paying for it by the pound. He turned it over to plaintiff, an employee, with instructions to take out the compartments and other removable parts. Plaintiff discovered in a crack in the lining of the safe a fifty-dollar bill. He gave it to the defendant and asked him if it were genuine. Defendant said he would take it to the bank and see. It was found to be genuine and defendant refused to give it back on demand. Plaintiff sues him in trover. Can he recover?

PART II.

6. X owned three horses and a buggy, all of which he loaned to Y. Y without right shipped one of the horses away by railway. He put another in a livery barn, as he had a right to do under his agreement with X. He left the buggy at a shop for repairs. With the other horse he stopped at an inn. Suppose that Y owed the railroad \$10 for freight on the shipping of the horse, and \$5 for a previous shipment of a horse of his own; that the bill for repairing the buggy is \$10; that the bill of the innkeeper is \$10 for Y's meals and room,

and \$5 for the keep of the horse,; and that Y owed the innkeeper and the repairman, \$5 each on previous transactions. If Y disappears leaving all these bills unpaid, how much, if anything, will X have to pay or tender these several claimants in order to obtain his three horses and the buggy?

7. A, B and C owned adjoining coal lands. A by mistake mined 1000 tons of coal from B's land, and purposely encroached on C's land and mined 1000 tons there. All of this coal was worth \$1 a ton in the vein. The cost of mining was 50c per ton and the cost of taking it to the pit mouth was 25c per ton. A shipped the coal to Chicago, at a cost of 75c per ton and sold it there for \$4 a ton. In addition A damaged the land of B and C by careless digging to the extent of \$200 in each case. B sued A in trover and C sued A in trespass. How much should each recover?

8. [a] A was the owner of two promissory notes for \$50 each payable to bearer. He gave them to B, his nephew, to be placed in a safe in B's store for safe-keeping. Later B asked A for a loan of \$100. A replied, "I won't loan you anything, but you may have the two notes you have been keeping for me."

(b) X and Y were friends rooming in the same house. X owned a note for \$100 payable to himself or order. One night X, without consulting Y, indorsed the note to Y, placed it in an envelope addressed to Y and shot himself. Y, hear-

ing the shot, came in and saw X lying on the floor, unconscious but still breathing. X died within five minutes but before the death occurred Y had seen the envelope addressed to him and had placed it in his pocket. Who owns the notes in each case.?

9. [a] A's boat was destroyed in a collision with B's tug. In a court of admiralty the collision was held to be the fault of the tug, which was ordered sold to satisfy A's claim. C bought the tug at the sale. It was later discovered that at the time of collision the tug was in charge of D, who had stolen it. As between B and C, who is entitled to the tug?

[b] X sued for breach of contract and obtained a judgemefft for \$200. He instructed the sheriff to levy on and sell a horse which Y had been using. The sheriff did so and Z bought the horse at sheriff's sale. The horse really belonged to W, who had loaned it to Y. As between W and Z, who is entitled to the horse?

10. X, a traveling salesman, came to Y's inn with a small trunk of jewelery samples belonging to his employer T, a suit case full of clothes belonging to himself, and a typewriter which he had borrowed of W. During X's stay at the inn Z sent in a rug for temporary use. Y knew the jewelry belonged to T and that the rug belonged to Z. X was unable ro pay his bill of \$75 on leaving. Can Y lawfully detain, [a] the jewelery samples, [b] the suit case and clothes, [c] the typewriter, [d] the rug?

Examination in Private Corporations.

January, 1913.

ASSISTANT PROFESSOR WORMSER.

PART I.

I. New York State, by special charter, conferred upon a company the right to sue and be sued in the company name, to hold real estate, to have perpetual succession despite changes by death, sale or otherwise among the individual members, and finally, provided that no associate should be liable for the debts of the company beyond the amount unpaid on his or her shares. The act expressly disclaimed any intent to create a corporation and stated that the association was to be known as a "trading company." Subsequent to the organization, New York passed a Corporation Tax law. So did Illinois, where the new company was also doing business. As attorney for the company, you are consulted as to its liability under the respective statutes of New York and Illinois.

(a) What advice would you give and for what reasons?

(b) What would be the company's liability, if any, under the Federal Incorporation Tax?

II. Comment on the following: "A corporation, however, is a mere conception of the legislative mind. It exists only on paper through the command of the Legislature that its mental conception shall be clothed with power."

III. In 1900, plaintiff leased for a term of sixty years certain premises to defendant who covenanted for himself, his executors, administrators, and assigns, to use the premises for the business of a livery stable keeper and not to assign or underlet or part with the possession of the premises without the previous written consent of the plaintiff or his heirs or assigns, but such consent not to be withheld "in respect of a respectable or responsible person." The lease contained the usual power of re-entry on breach of any of the covenants therein contained. In 1908, defendant sold his business to the Liverpool Omnibus Co., Limited, and applied to the plaintiff for leave to assign the lease to the company. Plaintiff refused to give his consent. Defendant, without plaintiff's consent, then let the omnibus company into possession of the premises. Plaintiff thereupon began an action to recover the demised premises, on the grounds that his written consent had not been obtained and that the company was not "a respon-

sible and respectable person" within the purview of the covenant. Defendant urged that the company was on a firm going basis and thoroughly solvent and that, under the covenant, he was entitled to assign the term irrespective, therefore, of plaintiff's consent.

Who wins and why?

IV. You are retained to form a corporation to engage in the retail grocery business in the city of Champaign, Illinois.

(a) Outline in detail your procedure before the grocery company could transact business as a *de jure* corporation.

(b) Draft the clause of the articles of incorporation setting forth the nature of the corporate business to be transacted.

V. Enumerate, and briefly comment upon, the taxable elements, if any, in corporations for pecuniary profit.

PART II.

VI. The Worcester Cloth Company, a Massachusetts corporation, seeks and duly obtains permission to do business in Illinois. A citizen of Massachusetts sues the Cloth Company in the appropriate U. S. Circuit Court for Illinois on a contract made in Illinois with its territorial manager there. The Company defends on the ground that the Federal court has no jurisdiction.

(a) Who should succeed and why?

(b) Would your answer be the same if the Cloth Company had been re-incorporated in Illinois?

VII. A, B, C, D and E, the sole stockholders in the Bonanza Copper Co., unite in executing and delivering a mortgage on all of the real estate of the corporation to Richard Roe to secure Roe for cash advances made by him to the Copper Company. On default in payment, Roe brings foreclosure proceedings.

(a) With what defense is Roe met by the company?

(b) What reply would you make to this defense as attorney for Roe?

(c) What decision and why?

VIII. Plaintiff and various individual defendants entered into a written agreement to form a corporation to be known as the X Company. All requisite steps were duly taken, up to and including the filing of a certificate of organization with the Secretary of State. Plaintiff was chosen a director and actively participated in its business. Some months thereafter plaintiff became ill and incapacitated and his shares of stock were sold for non-payment of installments due thereon. After being restored to health plaintiff's demands to be

reinstated in his alleged rights were without avail. Plaintiff then, for the first time, ascertained that the certificate of complete organization issued by the Secretary of State had never been filed, as required by statute, in the recorder's office of the county where the principal office of the corporation was located. Plaintiff immediately brought suit in equity to have the X Company declared a partnership and its affairs between plaintiff and the individual defendants also wound up accordingly. A demurrer to plaintiff's bill was sustained below. Plaintiff appealed. Did he succeed?

IX. Discuss the status of the *de facto* corporate doctrine in Illinois, illustrating if deemed advantageous.

X. A railroad company, wishing to increase the traffic along a branch line, encouraged the formation of a large summer hotel company, and after it had been organized, entered into a contract whereby, in consideration of the erection of the hotel, it guaranteed the due payment of interest on the bonds, and dividends of at least four per cent annually on the stock, of the hotel company. Subsequently the hotel company became financially embarrassed and demand was made upon the railroad company for a semi-annual installment of interest accrued and due upon the bonds. The railroad, disclaiming liability, defended the suit.

Is its defense good? If so, why? If not, why not?

Examination In Real Property II.

January, 1913.

ASSISTANT PROFESSOR WORMSER.

PART I.

I. X, lessee, covenants for himself, his executors and administrators, with Y, lessor, that he will put up an office building on the demised realty and keep it in good repair. He puts it up and later assigns the lease to Z, who fails to keep the building in repair.

Is Z liable on the covenant? If so, why? If not, why not?

II. A has used a path over B's land for thirty years. Throughout this period, B and B's family have constantly remonstrated with him and forbidden him to use the path, and have ordered him off the land. A has never heeded the remonstranc-

es or orders, but has continued openly and continuously to employ the path.

Has A acquired a right to use the path? Why? Discuss.

III. (a) H sold to P an half-acre of land adjoining his (H's) 17-acre pond, also giving to P the exclusive right to take ice for purposes of sale from the pond to the said half-acre, on which P built a large ice house. P began to cut ice and store it therein. Some time later, H conveyed to K, and K, in turn, to plaintiff by deeds reciting that the conveyances were subject to P's right. Later, P conveyed to defendant his half-acre, "with its appurtenances," making no special mention of the right to cut ice. Defendant goes on the pond to cut ice and is sued in trespass by plaintiff.

Who wins and for what reason?

(b) Plaintiff sues for an alleged trespass. Defendants justify under an immemorial custom for all the inhabitants of their township to take water from a large well on plaintiff's land for their domestic use. Plaintiff demurs to the plea.

On what ground or grounds did plaintiff demur? Should the demurrer be sustained or overruled, and why?

IV. A had a way X across B's land. B said to A, "I will give you \$500 if you will let me shut

up your way, and I will pay you \$500 more if you will give me a way over your land." A agreed; and B thereupon paid \$1 000, built a fence across X, and opened a way, Y, over A's land. After five years A knocked down the fence across X, and built a fence across Y.

What, if any, action at law has B?

Suppose A had waited for twenty years, instead of five, would your answer be the same?

V. On Jan. 1, 1910, A leased a residence from B for a term of five years, rent payable at the termination of each quarter. The lease contained the usual form of covenant for quiet enjoyment. Shortly after entering into possession, A discovered that the premises were overrun with rats and mice, making their comfortable enjoyment difficult; also that the roof leaked badly rendering useless the top floor rooms during rainy weather. A promptly notified B who disclaimed responsibility. A then told B that he intended to quit and B said that he would sue if A did so. A tried in vain to find a suitable similar house in the vicinity. On April 1, 1910, the first quarter's rent fell due and B demanded it. A refuses to pay. Thereupon B consults you.

What advice would you give him and why? Discuss.

PART II.

VI. (a) X disseises Y in 1882. In 1884, Y becomes incurably insane. In 1905, Y dies. In 1906 Y's son and sole heir, claims the land in dispute. X defends. Who wins?

(b) Discuss the use of the term "privity" in connection with adverse possession and covenants running with the land.

VII. The bed of a navigable stream is owned by the riparian proprietors. A, B, C, D and E are adjoining riparian owners on one side of the stream. Alluvial deposits have slowly formed in front of their land. How should the new soil be divided? Illustrate.

What is the rule in Illinois?

VIII. Defendant converts his extensive country estate into a fashionable summer resort with several large hotels, numerous villas and cottages, etc., and then sinks wells and erects a pumping plant of very considerable dimensions to supply the resort with adequate water. The result of his operations is to dry up the artesian wells on plaintiff's land and to render the latter unfit for cultivation.

Has plaintiff a remedy?

Would it make any difference if defendant were the Illinois Central Railroad and was drawing off water for the use of its locomotives?

Would it in any case be material to inquire whether defendant's operations had the effect of drawing off water from the plaintiff's land, or only of intercepting water on its way thereto?

IX. The Metropolitan Opera Co., about to give a series of operatic performances at the Bijou Theater, offered the boxes at auction. One of the boxes was struck off to A who paid \$100, the amount bid, and received a printed card entitling him to the use and occupancy of the particular box. Before the performance of the first opera began, the manager of the company, without assigning any cause, ordered A and his companions from the theater, refusing to return the price of the box.

What are A's rights? Discuss fully.

X. Define and illustrate, if deemed profitable, the following terms:

- (a) Highway.
- (b) Covenant running with the land.
- (c) Dedication.
- (d) Civil Law rule governing surface water
- (e) Right of Lateral Support.

Examination in Torts.

PROFESSOR HALE.

PART I.

I.

A and B, two boys of the respective ages of fifteen and sixteen years, were engaged in a friendly manner in throwing snow balls at each other. A dodged behind a house. Shortly thereafter, another boy, C, who was about B's size and dressed very much like B, suddenly appeared around the corner of the same house, and A, thinking it was B, threw a snow ball at C, which struck C in the eye, causing serious damage. C had not been playing with A and B.

1. What action should C bring against A?
2. What should the judgment be?

II.

X and Y were engaged in a friendly snow-balling contest. Shortly after the contest started

each became angry and began to saturate the balls with water before throwing them. Finally X placed a stone inside the ball which he threw. It resulted in serious injury to Y. Y was also placing stones in the balls which he threw.

Y sued X in an action of trespass for battery. What judgment and why?

III.

A went to his neighbor B and asked to hire a horse with which to haul some hay. On arriving home with the horse B changed his mind, and, instead of hauling hay used the horse together with two of his own to draw a binder in cutting some grain.

That night B's horse, while standing in A's stable, died. The use that A had made of the horse was in no way responsible for its death.

What are B's rights against A, if any?

IV.

A wrote a letter to B, a young lady with whom he had had a quarrel, stating that the next time he saw her he would kill her. A few days later A and B unexpectedly met at the intersection of two streets. B immediately turned and fled, in terror. After B had turned but before she had gone more than fifty feet, A drew a revolver from his pocket and pointed it at B, intending to kill her. But at that moment he decided not to do it, replaced his revolver, and walked away in the other direction.

On reaching her home, which was only a block away, B collapsed, as a result of her great fright, and was ill for several months thereafter.

(a) Is A liable in an action of trespass for assault?

(b) Is A liable in an action on the case?

V.

A intentionally threw a stone at B's horse which was in B's pasture. The stone struck the horse first and then fell to the ground.

What are B's rights against A?

PART II.

VI.

B stole a horse from A. B sold and delivered the horse to C. Shortly thereafter C instructed his stable keeper, D, to deliver the horse to E, to whom he, C, had pledged it. C, D and E were ignorant of B's misconduct.

Discuss A's rights against, B, C, D and E, respectively.

VII.

A was in a room having two exits. X, supposing the door on the south was already locked on the outside, and wishing to imprison A, locked the other door. A was asleep at the time X locked this door. The door on the south side was not in fact locked at that time, but was subsequently

locked by Y, who had no intention of confining A; the door that Y locked, being a door between Y's room and A's room. Several hours elapsed after A awoke before he was set at liberty. A has brought separate actions of trespass for imprisonment against X and Y. Can X and Y defend the action successfully?

VIII.

Are the following statements correct?

- (a) "Every imprisonment includes an assault."
- (b) "Every imprisonment includes a battery."
- (c) "Every battery includes an imprisonment."
- (d) "Every battery includes an assault."

IX.

Some one had stolen A's horse. B voluntarily went to A and told A that Y was the thief, whereupon A had Y arrested and indicted for the theft. Y was acquitted. Both A and B honestly believed Y to be the thief.

What would you advise Y as to his rights against A and B, respectively?

X.

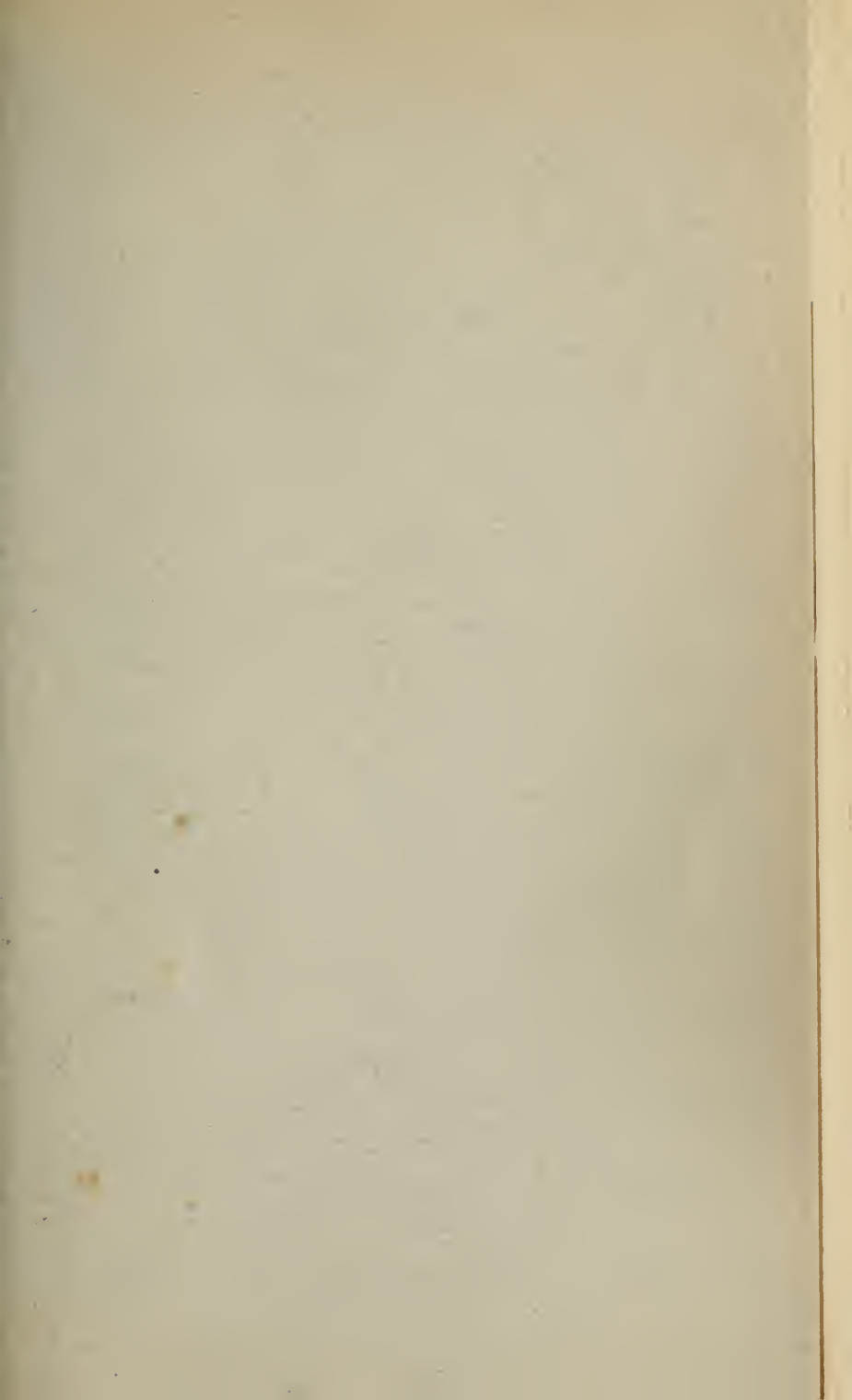
A, as a member of the General Assembly in the State of New York, voted against a certain

bill relating to the Police Department in New York City.

The New York Times, which had supported the bill very enthusiastically, printed the names of those who had voted against the bill and said: "They have done what they could to strengthen the league of the police with the gamblers, with harlots, with thieves, with all the sources of civil and moral corruption that the 'system' connotes."

Above the list of names the following head line was placed: "Roll of Dishonor."

May A recover in an action on the case for libel against the New York Times?



LINE

1912/13

pt. 2

UNIVERSITY OF ILLINOIS BULLETIN

ISSUED WEEKLY

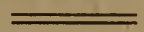
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LAW EXAMINATIONS



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1912-1913

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C
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1912/13

pt. 2

BANKRUPTCY.

Mr. Decker.

1. A owned a large tract of land near Chicago which was worth about \$30,000, though A believed that by subdividing it and selling it off in city lots he could realize nearly twice that amount. He had no other property and owed debts of over \$40,000. B, a creditor who knew A's financial condition, was threatening to sue A on a note for \$5,000, but was finally persuaded to settle on the following terms: A gave B a deed to ten acres of the land which both parties knew was worth at least \$10,000. B surrendered his note against A and agreed by a separate written contract, that he would sell the land back to A at any time within a year for \$5,000 plus interest at 7 percent., that A might retain possession of the land during the year and plat it, and if A found a buyer for any of the lots, B was to convey to the purchaser on payment of a certain portion of the purchase price. The deed was recorded but the contract was not.

Three months later C, another creditor, recovered a judgment against A and levied an execution on the property so conveyed. He now files a bill in aid of execution for the purpose of setting aside the conveyance as a fraud against creditors. Decide the case and write an opinion.

2. May persons of the following classes be either voluntary or involuntary bankrupts, or both?

(a) Infants.

(b) A farmer who also is a partner in a private bank which he visits daily as a member of the loan committee.

(c) A corporation engaged in operating a sugar plantation.

(d) A lunatic who is under guardianship.

3. Discuss the right of one who becomes a creditor of a grantor after a voluntary conveyance, to subject the property so conveyed to the satisfaction of his debt.

4. B, on July 5, 1912, made a voluntary conveyance of real estate to his wife. The conveyance was not recorded until November 1, 1912. X and Y, creditors of B, desire to file a petition against him alleging this conveyance as an act of bankruptcy.

(a) What is the last day on which such a petition, if filed, will be effective?

(b) What jurisdictional facts must X and Y allege?

(c) If B attacks the petition on the ground of insufficient petitioners, how can the petition be saved?

5. In the foregoing case would solvency at the date of the conveyance be a defense to B?

Would solvency at the date of the petition?

How should the issue be raised in each case and where is the burden of proof?

6. P commenced a suit against B on May 1, 1912, and attached B's stock of goods. B defended the suit but judgment went against him on October 15, 1912. Execution was levied on the goods attached and they were advertised for sale on November 15. On the 10th of November, other creditors of B filed a petition alleging the foregoing facts as an act of bankruptcy.

(a) Is the petition good?

(b) If B is adjudged a bankrupt, what are the trustee's rights to the property attached?

7. B was adjudged a bankrupt on May 15, 1912, on a petition filed May 1, 1912. Are the following claims provable against his estate?

(a) Installments of alimony due to his wife under a divorce decree payable April 2, May 2 and June 2, 1912.

(b) Liability of B as an indorser of a note payable August 1, 1912?

(c) Liability of B as surety on a bond of F, as county treasurer, executed January 1, 1912, for a sum embezzled by F on June 1, 1912?

(d) Liability for a slander committed by B against K on April 1, 1912.

8. What are the rights of the trustee to property held by the bankrupt as vendee under a contract of conditional sale?

To property conveyed by the bankrupt in fraud of creditors more than four months before the petition?

9. A, B and C were partners. A as manager of the firm, on December 1, 1912, paid a note of the firm to the X bank, in full. At that time the firm debts were \$25,000 and its assets were only \$15,000. At the same time A and B were individually insolvent but C was worth \$100,000 above his individual debts.

Discuss the liability to involuntary bankruptcy of the firm and of A, B and C individually on the facts stated.

10. On November 1 a petition is filed against B. At that time he had a deposit in the X bank of \$500. On November 2, with notice of the petition, he drew a check on the bank for \$500 to Y, a creditor, who also knew of the petition. The bank paid the check the same day in ignorance of the petition. What are the rights of the trustee subsequently appointed against X and Y respectively?

CARRIERS.

Professor Green.

June, 1913.

(Give reasons for every answer).

1. Two steamboats, each a common carrier, collided. A passenger on one was injured, and \$10,000 in bills, which he was secretly carrying in a bag to buy a farm with, was knocked overboard and lost. A deck hand was also injured. There is no evidence except the fact of collision to show which, if either, carrier was in fault. What is the liability of each?

2. An express company undertook to carry parcels C. O. D. and return the money to the shipper without extra charge. Smith wrote to Brown, ordering goods to the value of \$100. Brown, with intent to defraud, sent goods of an inferior quality, worth only \$50. He sent them by the express company C. O. D. with a bill for \$100, and the express company, without notice of the fraud, delivered the goods to Smith and collected \$100. On the way back the money was taken by train robbers with overpowering force. What, if any, rights against the express company have Smith and Brown?

3. A, in Chicago, lent his horse to B in Champaign for the summer. At the end of the summer, B, intending to return the horse, shipped it by railroad and received a bill of lading by which the railroad undertook to deliver it at Chicago to B's order. B endorsed and mailed the bill of lading to A. Thereafter he addressed a letter to the railroad directing them to deliver the horse to X at Chicago, and the railroad did so, and so could not deliver to A, who presented the bill of lading in due season. At common law may A maintain an action

against the railroad in contract? In tort? What actions may A maintain under the uniform bill of lading act?

4. While horses and milk were being carried in a freight train the boiler of the locomotive exploded because of a latent defect which existed at the time the carriage began, and which could not have been prevented or discovered by the utmost care. Some of the horses were injured by the direct force of the explosion, some by the kicks of other horses in the same shipment that the explosion frightened. The explosion necessarily caused delay, and the delay soured the milk. For what, if any, damage is the carrier liable?

How would you answer if, other facts being unchanged, the carriage was by a steamboat whose boiler exploded?

5. A common carrier accepted a shipment of fresh eggs addressed to L. Singer, Iuka, Iowa. The carrier then found out that there were two towns in Iowa named Iuka, and being unable to communicate with the shipper, had to delay sending the eggs forward until he found out in which Iuka L. Singer lived. At that Iuka, which was the one the shipper had in mind and the only one he knew of, were two L. Singers. The carrier knew of one only and delivered to him. The shipper knew of the other only and intended him. If the eggs had not been delayed they would have been worth \$100 when delivered; because of the delay they were worth only \$50. What is the carrier's liability?

6. Plaintiff boarded a street car so drunk he could not take care of himself. The conductor knew this, but collected his fare. When plaintiff came to his destination the conductor refused to help him off the car, though he knew he needed help, with the result that plaintiff fell from the step to the pavement and was injured. The conductor then subjected him to the derision of the bystanders by

swearing at him as he lay on the ground. What is the car company's liability to plaintiff?

7. A bought a round trip ticket over the X railroad for a dollar and a half, the single fare being a dollar each way. By mistake the conductor on the outward trip took up the return coupon. The mistake was not noticed until on the return trip A presented the outward coupon to a different conductor. A explained what had happened, and the conductor believed him, but acting under the company's rules, refused to accept the ticket and, on A's refusal to pay fare otherwise, ejected him at the next station, in spite of A's resistance, using no more force than was necessary to put him off, but inflicting slight bruises in doing so. There was no later train that day and A had to go to a hotel for the night and pay a dollar next morning as fare on the railroad to his destination. Of what, if any, breach of duty is the railroad guilty, and for what, if any, items of his damage may A recover?

8. The X railroad, by arrangement with its connection, the Y railroad, sold tickets with coupons, one of which stated that it was good for passage over the X railroad, the other that it was good for passage over the Y railroad. B bought such a ticket, and the X road checked his trunk on it through to the end of the Y road. He duly prosecuted his journey, but the Y road refused to honor the ticket, thereby compelling him to pay a cash fare, and lost his trunk. What is the liability of the X railroad company?

9. A shipped a box by defendant common carrier saying nothing about its value. He received a bill of lading which contained this clause: "It is agreed that the carrier shall not be liable in any case of loss or injury beyond the value declared by the shipper, nor if no value is declared beyond \$50." A read the bill and made no objection. The goods were worth \$100 and destroyed by the negli-

gence of the carrier's servants. If A had declared a value above \$50, the freight, as he knew, would have been higher. What are his rights against the carrier?

10. A law fixed passenger fares at two cents a mile. A passenger bought a ticket at that rate and checked for the journey a trunk which contained only ordinary baggage, saying as he did so, "I offer this trunk for transportation without liability for loss without negligence, or even for loss by negligence of your servants, as the trunk is fully insured." What is the railroad's liability (a) for loss without negligence, (b) for loss by negligence of its servants?

COMMON LAW PLEADING.

Second Semester, 1912-1913.

Dean Harker.

1. State the three leading rules which tend to the production of an issue.

What are the two kinds of issue, how are they produced, and how decided?

2. A and B, partners as retail merchants, sell on credit to C during the year 1912. For goods sold prior to September of that year C gave his promissory note payable to the firm in January, 1913. After maturity A and B assigned the note to A, who brought suit upon it. On the same day A and B brought suit on open account against C for goods sold since the execution of the note. To both suits C pleaded a set-off and moved to consolidate the two suits. The court overruled the motion. Was the ruling correct? Reasons.

3. To A's declaration B plead the general issue and two special pleas. A demurred to the special pleas, but the court overruled the demurrer. Subsequently the cause was called for trial. Neither B nor his attorney appeared and a trial was had upon the general issue, resulting in a verdict for the plaintiff. B, then, appeared and moved in arrest. What should be the judgment? Why.

4. To the plaintiff's declaration in assumpsit on a promissory note, the defendant pleads in bar an extension of the time of payment which has not elapsed.

On demurrer what should be the ruling?

5. A, as administrator of the estate of B, deceased, received a large sum of money. Six months

after his appointment his letters were revoked and C was appointed administrator de bonis non and A was ordered to turn over to C the moneys collected. He did not do so but left the state.

In a suit by C on A's bond X and Y, sureties, alone are served with process. They demur to the declaration upon the grounds, first, that it does not appear that A was notified of the application to revoke his letters; second, that it does not appear upon what ground his letters were revoked; third, that it does not appear that A or the defendant had notice of any order to pay over to C money in A's hands. Judgment and why?

6. To A's declaration, which is bad because of substantial defect in the statement of the cause of action, B pleads the general issue and a special plea confessing and avoiding. The special plea is bad in substance. A joins in the general issue and demurs to the special plea. B asks that the demurrer be carried back to the declaration. What should be the order of the court?

7. A's building, covered by insurance in company X, was destroyed by fire. A recovered judgment against the company for \$6,000, but was unable to collect more than \$2,000, because of the insolvency of the company, which is now in the charge of a receiver. B, one of the organizers, holds 100 shares of the company's stock, par value \$10,000, for which he paid into the treasury \$5,000. A sues B for the \$4,000 unpaid part of the judgment. The court sustained a demurrer to the declaration.

What should be the order on appeal and why?

8. A, B and C, partners in business, claimed ownership of property in possession of and claimed by X. In pursuance of a mutual agreement between them, A, B and C forcibly entered the premises of X and in a delivery wagon belonging to them hauled away the property.

In a suit in trover brought by X, A and B only

are made defendants. They plead in abatement because of the non-joinder of C. To the plea X demurs. Should the demurrer be sustained? Why.

9. A owned two cows and B four cows which were confined in a pasture belonging to B. Because of an insufficient fence the cows escaped from the pasture, broke into the garden of C and did damage to the amount of \$150. In a suit against the two by C the jury returned a verdict in his favor, fixing the damages to be paid by A at \$50 and the damages to be paid by B at \$100. State your views upon the correctness of the verdict and what action you would take as the attorney of B.

10. Draft a declaration for the September term, 1913, of the Circuit Court of Champaign County to recover the price of an automobile sold to James Scott by Henry Bates for \$1600 on the 14th of May, 1912, to be paid in quarterly instalments of \$400 each, the first due August 14, 1912.

CONSTITUTIONAL LAW.

June, 1913.

PROFESSOR GREEN.

(Give reasons for every answer).

1. The United States constitution provides that the judicial power of the United States shall extend to all cases in law and equity arising under the laws of the United States. Explain what is meant by a case arising under the laws of the United States, and give examples of such cases.

2. In an action in a state court for trespass to goods, defendant pleaded that he was a United States marshal and seized the goods by authority of a writ from a United States court. Issue was joined on the plea. May the state court proceed to trial and judgment? May federal courts exercise any jurisdiction in the case? If so, how may their jurisdiction be invoked, and what may they do?

3. A, on the Mississippi river, negligently ran his steamboat into B's steamboat and sank it. May B sue for the damage in a federal court? In a state court?

4. A testator bequeathed bonds of Ohio to the United States, bonds of the United States to Ohio, and bonds of Ohio, of the United States and of Maine to a citizen of Ohio. All the bonds are now due and unpaid. What, if any, remedies have their owners, and in what courts may their remedies be enforced?

5. A state admitted a foreign insurance company to do business within its borders, the permission to cease

(a) unless within a month the corporation agreed not to remove any case brought against it to a federal court on the ground of diversity of citizenship;

(b) or if the corporation did so remove a case so brought against it;

(c) or if the corporation paid the federal income tax.

Taking each condition by itself, is it valid or invalid?

6. The Constitution of the United States says, "The trial of all crimes shall be by jury." To what places under the jurisdiction of the United States does this apply, to what courts in those places and to what offences tried in those courts?

7. In an action on a promissory note brought in a United States court by a citizen of one state against a citizen of another, the decision depended upon whether, on admitted facts, plaintiff was a holder for value. There was no statute affecting the case, but in several decisions, which however the United States court believes to be wrong, the highest court of the state had held before the note was given that one in plaintiff's position was not a holder for value. Will the United States court follow its own opinion or follow the decisions of the state? How would you answer if the decision depended not on common law principles but on the meaning of a statute of the state? How would you answer if the decisions of the state court were rendered (a) at common law and (b) under state statute) after the plaintiff had taken the note but before suit was brought? How if they were rendered after the federal trial court had decided that plaintiff was a holder for value and pending appeal from its decision to a higher federal court?

8. A committed murder in another state and fled to Illinois. He is duly charged in the state from

which he fled with the statutory misdemeanor of playing cards on Sunday, and his extradition is demanded in due form upon that ground. A satisfies the Governor that he is innocent of the misdemeanor and that if extradited he will probably be lynched. What, in your opinion, is the Governor's constitutional duty?

9. A sued B, her husband, for divorce in New York. B appeared and contended, as was true, that the New York court had no jurisdiction to grant the divorce because A and B were domiciled in Illinois. The New York court heard evidence, which was perjured, and decided, in accordance with the evidence, but contrary to the truth, that the parties were domiciled in New York and entered a decree of divorce. Within a year after beginning suit in New York, A sued B for divorce in Illinois, and B set up in defence, first, that he was not her husband, and, second, that she had not been a resident of Illinois for the preceding year, as the Illinois statute requires; and he offered the New York decree in evidence, claiming that as to the first defense it is conclusive, and as to the second that it makes the fact *res adjudicate*. What decision?

10. Is a person compelled to be a witness against himself in the sense of the constitutional guaranty by being compelled to testify in a prosecution for one crime to having committed another, where a statute provides that his evidence shall not be used against him? Where a statute provides that he shall not be prosecuted for anything he testifies about?

CONTRACTS.

Mr. Decker.

1. P wrote to D, "I will sell you my residence in Champaign, Ill., for \$8,000. Wire answer." D wired, "Your offer is accepted." D later changes his mind and consults you as to his legal liability if he fails to perform. Advise him.

2. A, B and C were equal partners in the firm of A & Co., of Champaign, Illinois, and as such bought goods of X, of Chicago, in the name of the firm. The bill being unpaid, X sued A alone for goods sold and delivered, and recovered a judgment, as A made no defense. A left the state for parts unknown and the judgment being unpaid, X then sued B and C, alleging that they were partners with A and that the goods were sold to the partnership.

(a) Is the declaration demurrable? Give reasons.

(b) Would a plea of the prior judgment against A be a good plea in bar?

(c) Would A have had a defense in the prior suit, and if so, how should he have taken advantage of it?

3. Suppose a partnership consisting of A, B and C dissolves, and by the agreement B and C assign to A all of their interests in the firm assets, A pays them \$2,000 in cash, and agrees "to pay B and C at the end of one year the sum of \$4,000, each to be entitled to one-half thereof." At the end of the year, A pays B the entire amount of \$4,000, with which B absconds.

Has C any action against A?

4. The City of Champaign advertised for bids for a year's contract to clean the streets of the city and dispose of garbage. M bid \$6,000 and N bid

\$7,500, but the contract was awarded to M because the city council thought that M was a more reliable party. After three months M sold out his teams and tools to N and assigned to him the contract for the balance of the year. The city officers, on learning of the transfer, refused to let N do the work, although he was ready and willing to perform. N sues the city for damages. Give judgment with reasons.

5. L owes P \$1,000. He subsequently sells D his automobile for \$600 and agrees with D that the latter shall pay this amount to P to apply on L's debt to P. D received the automobile, but failed to pay P as agreed.

- (a) Has P a right of action against D?
- (b) Has L a right of action against D?
- (c) If D's promise was oral, would this fact give D a defense against either?

6. A hired out to B for a year as a traveling salesman and as a part of the agreement promised to refrain from the use of intoxicating liquors during the year. His salary was to be \$2,400, payable in installments of \$200 at the end of each month. B learned during the second month that A had been drinking, but as A was doing a good business, he said nothing about it. At the end of the sixth month, B paid A and discharged him, alleging as his reason that A had broken his agreement during the second month.

(a) On these facts has A a cause of action against B?

(b) Suppose A had also gone on a spree during the sixth month of which B had no knowledge at the time of the discharge. Would a plea setting forth that fact be a good defense?

(c) Assuming that A's discharge was wrongful, what are his rights against B?

7. On October 15, 1912, X agreed to lease the Illinois theatre in Urbana from Y for three days, commencing November 1, 1912, for the performance of X's theatrical company. What is the effect on the rights of the parties if

(a) The theatre burns on October 30th?

(b) If a flood prevents X's company from reaching Urbana within the time for which the theatre was rented?

8. D, a shoe manufacturer, contracted with P for a year's supply of sole leather of a quality equal to a sample submitted by P, the leather to be delivered in monthly installments to be paid for as delivered. Discuss the rights of P and D respectively if

(a) P fails to ship the amount agreed during the second month because of a strike in his tannery.

(b) The quality of the shipment is not up to sample.

(c) D fails to pay for the second installment, though he accepts it, and writes P that he proposes to withhold payment until he sees what the third installment is like.

9. Jones insured his dwelling house in the Onyx Insurance Co., by a policy which contained a clause as follows: "If the building shall remain unoccupied for a period of ten days without the consent of the company, this policy shall be void." Jones later moved to another house and twenty days later the house burned. In the meantime he had visited the house every day to superintend some repairs he was making, and his son slept in it every night in an upstairs room which had been left furnished for that purpose.

Discuss Jones' right to recover on this policy both from the standpoint of ultimate right and of pleading and proof.

10. The American Tobacco Company sued Smith, a cigar dealer in Indianapolis, for the price

of two shipments of cigarettes. When the first shipment was sent, the plaintiff had reasons to suspect that Smith intended to sell the cigarettes contrary to the state law prohibiting their sale to minors. The second shipment the plaintiff had put up in boxes marked "candy", at the request of Smith. These facts are proven at the trial. Give judgment.

DOMESTIC RELATIONS.

(Give reasons in all cases. Indicate where statutes have changed the common law).

PROFESSOR VERNIER.

1. (a) Defendant, who was already married, married plaintiff, who supposed defendant to be a single man. Has plaintiff any redress, and if so, what?

(b) If defendant under the above facts had merely promised to marry defendant, would she have any redress? If so, what?

(c) If under facts in (b) defendant induced plaintiff to delay suit for a year by a promise to divorce his wife, would your answer be the same?

2. The statutes of the state of Y specify as one cause of divorce, "conviction of an infamous crime." H was convicted of manslaughter in the state of X and sentenced to the state prison for 14 years. He was granted a pardon after serving six months. W, the wife of H, sued for divorce in the state of Y, which was the matrimonial domicile. What decree under the above facts?

3. (a) W, a married woman, made a contract with plaintiff. W was living apart from her husband and represented that she was single. She refused to perform the contract. Has plaintiff any redress either during the marriage or after W obtains a divorce?

(b) Would your answer be the same if W's husband had abandoned her and left the state before she entered into the contract?

(c) Define a chattel real and indicate what interest, if any, a husband gets in a chattel real owned by the wife: (1) during marriage; (2) at the death of the wife.

4. W's husband deserted her. During the period of desertion, plaintiff, a lawyer, defended W when she was indicted for a crime of which she was acquitted; loaned her \$100 for living expenses; induced various merchants to furnish her meat, groceries and clothes to the extent of \$200; and obtained a divorce for her when the desertion had continued during the statutory period. No alimony was granted.

Is the husband liable to plaintiff for any of these expenses? Is he liable to the merchants for the goods furnished?

5. A statute prohibits under heavy penalty the performance by a clergyman or magistrate of a marriage ceremony between minors, unless the written consent of parents or guardians has first been obtained. A clergyman performed a marriage ceremony between a boy of 19 and a girl of 17 without such consent. May the parents or either party avoid the marriage and if so, how?

May either party to the marriage have it annulled, if each represents to the other that they were of age?

6. H married W in 1900 and they lived together as man and wife until 1910. At the time of the marriage to W in 1900 H had a wife living. This wife died in 1905. Are H and W validly married: (a) if both believed the first wife died before 1900; (b) if W believed the first wife died before 1900 but H knew that she was still living; (c) if both knew that the first wife was living in 1900?

7. H and W married in Illinois where they lived together for three years. W for justifiable cause left her husband, H, and returned to her father's home in Michigan. H committed adultery in Illinois, where he continued to reside. The wife after the period of residence required by the statute, sued for divorce and alimony in Michigan. Notice of suit was given by publication. The husband did

not appear. The Michigan court granted the divorce and awarded the wife \$3,000 alimony. Are the divorce and award of alimony valid in Illinois, in Michigan, in New York?

8. H and W were both guilty of adultery. H confessed his offense and W continued to live with him. Later H was guilty of cruelty to W. Still later H learned of W's adultery and sued her for divorce on that ground. Has W any defense on the above facts?

Would your answer be the same in a state where there is a statute which provides, that "if it shall appear to the satisfaction of the court that both parties have been guilty of adultery, when adultery is the ground of complaint, no divorce shall be decreed"?

9. M, the mother of an illegitimate child by F, took care of the child until it was one year old. Then because of illness she allowed F to care for the child until it was four years old. When her health was restored, she sought to regain the custody of the child. F refused to give up the child or to marry M. who is entitled to custody?

How, if at all, may an illegitimate child be made legitimate at common law and under the usual statute?

10. M, aged 18, took out an endowment insurance policy in the X Life Ins. Co., and paid the premiums until he became of age, when he sought to avoid the policy and recover what he had paid. The contract was fair. Can he recover?

EQUITY.

June, 1913.

PROFESSOR POMEROY.

1. Jones in 1905 set up a livery stable next door to Smith's dwelling house and continued to conduct the stable in such a manner that it was unquestionably a nuisance to Smith. Smith protested several times, but took no steps to assert his rights until 1913, when he brought suit to enjoin the nuisance. Jones set up (a) the clause of the statute of limitations which fixes six years as the time within which actions to recover damages for nuisance must be brought; (b) laches; (c) estoppel, arising from the fact that Smith several times hired teams at Jones's stable. Discuss these defenses.

2. (a) Show whether or not the following state of facts justifies a bill of interpleader:

Brown deposited with Smith, a warehouse man, 100 bales of cotton. Later, Brown gave Smith an order to deliver the cotton to Jones, and Smith entered into a binding contract with Jones to do so. Later, while Smith still held the cotton, Robinson demanded it of Smith, asserting that the cotton had been delivered by Robinson to Brown as Robinson's agent, that Brown had no authority to deposit it with Smith or to assign it to Jones; and that Jones had notice of Robinson's title. Jones denies all these statements of Robinson's and claims the cotton.

(b) Four "elements" or prerequisites are laid down by the cases and text books as essential to a cause of action for interpleader. Two at least of these "elements" are criticized as being unnecessarily technical. State and illustrate these criticisms.

3. (a) What is "reconversion"? Illustrate.

(b) When is a mortgagee, who has not foreclosed his mortgage, entitled to possession of the mortgaged premises? (1) by the English common law; (2) in Illinois; (3) in most of the Western States.

4. In each of the following cases state, with reasons, whether or not rescission may be had and whether or not reformation may be had.

(1) A owned an interest in a tract, which he sold to B. Both parties supposed that A owned a one-fifth interest and contracted and fixed the price on that basis. The deed released A's whole interest, which after conveyance was discovered to be three-fifths.

(2) A owning a three-fifths interest agreed to sell a one-fifth interest to B. By mistake of the scrivener known to B but not known to A, a three-fifths interest passed by the deed.

(3) A owned a three-fifths interest. Intending to offer a one-fifth interest to B, by inadvertence he offered a three-fifths interest. B accepted in good faith, supposing the offer to be what A intended, and A conveyed to B in accordance with the offer and acceptance.

(4) Same as last, except that B accepted in bad faith, realizing that A had made his offer by mistake.

(5) A and B both supposed that A's interest was one-fifth; in fact it was three-fifths; if they had known this fact A would have sold and B would have bought the three-fifths. The contract called for a conveyance of one-fifth and the deed conveyed one-fifth, before the mistake was discovered.

5. A lot occupied by Smith adjoined Jones' lot on the west. Smith's house was built flush with the boundary line. After several years Jones, as result of a resurvey, claimed that the true boundary was six feet west of that claimed by Smith, and that

Smith's house and fence consequently encroached on Jones's land. Jones repeatedly removed pickets from the boundary fence and trespassed on the disputed strip; and finally made preparations to tear down the portion of Smith's house which stood on the strip. Title to the strip, as between Jones and Smith, has never been passed upon by any court. Smith now sues for injunction against all Jones's acts of trespass, including the threatened destruction of the house, asking for a permanent injunction and an injunction pending suit. What should the court do?

6. (a) State two cases in which a judgment obtained at law may be enjoined.

(b) Jones obtained a judgment against Smith. Smith now brings his bill to enjoin the enforcement of the judgment, alleging that the testimony on which Jones obtained his judgment was perjured, and that Smith could not with the utmost diligence, obtain proof of the perjury until after the judgment was rendered. Jones demurs to the bill. Result? Reasons.

7. Smith sold and conveyed Blackacre to Jones; the deed was properly recorded. Later, Brown recovered judgment against Smith and levied execution on Blackacre; and the sheriff is threatening to sell it as the property of Smith to satisfy the judgment. Suit by Jones to enjoin the threatened cloud on his title. Demurrer, on the ground that the sale will not create a cloud.

Four different tests are applied by the courts of different states, to decide the question whether the sale will cloud Jones's title. State and explain these four tests.

8. (a) Explain and illustrate the meaning of the maxim, "Once a mortgage, always a mortgage."

(b) What is meant by "Marshaling of securities?"

EQUITY PLEADING.

June, 1913.

ASSISTANT PROFESSOR WORMSER.

1. X rendered an account to Y, which Y admitted was correct, and which thus became an account stated. Y now claims that the account was wholly false and fraudulent, and wishes to file a bill. X wishes, if possible, to defend by plea. How should the bill, the plea, and the answer, if any, be drawn? Give reasons.

2. A, claiming the sole right of fishery in Williams Creek, brings a bill against ten different persons, as owners of riparian lands on the opposite side of the river to that owned and occupied by A, alleging that each of the defendants had wrongfully fished in, and taken fish from the river, and threatens to continue to take fish in the future therefrom. The bill prays an injunction against each defendant and an accounting of the fish already taken. You are consulted by B, one of the defendants. What would you do, and why?

3. (a) How is the question of the sufficiency in law of a plea in equity raised? How the question of its sufficiency in fact?

(b) To what pleadings in equity will a demurrer lie?

(c) How would you proceed if satisfied that the matter set up in an answer did not constitute a defense to the bill?

4. X, by bill in equity, seeks an accounting from Y, of the transactions of a dissolved law firm in which X and Y were partners. The defendant, Y, answers (1) denying X's title to account, and (2) setting up a release discharging defendant from all liability. Is this open to objection?

Suppose, in the same action, a plea of

interposed combining these defenses. Would your answer be the same?

5. On Jan. 1, 1910, John Doe mortgaged Lot 5 in Block 6, City of Champaign, to secure his promissory note of even date for \$3000 with interest at 5 per cent. from date, payable in two years, to Richard Roe. Default in payment of principal. As attorney for John Doe, draw a bill to foreclose.

6. A, trustee under the will of X, holds a fund of \$10,000 which is claimed by B and C respectively. A, in a quandary, consults you. What would you advise A to do, and why?

7. Define a bill of review. What are its functions? What rules govern its use? How does it differ from a petition for rehearing. How does it differ from an appeal?

8. X, remainderman, sues Y, tenant for life, for an accounting because of alleged waste of the inheritance and for an injunction to prevent permanently its continuance. X also seeks, and obtains, an injunction *pendente lite*. Y appeals from the order granting said injunction. X now moves to dismiss the appeal because the order to be brought under review is not a "final" judgment or decree within the meaning of that term as used in the statute giving the appellate court in question jurisdiction over appeals. What decision and why? Discuss.

9. A sues B in equity for the specific performance of a contract for the sale of real estate. B wishes to raise the defense of the Statute of Frauds. How may B do so? Explain and illustrate.

10. State, and briefly comment upon, the nine parts of a bill in equity. Distinguish the essential from the non-essential.

EVIDENCE.
PROFESSOR HALE.

I.

You wish to use A as a witness concerning the sanity of B. Under what circumstances, if any, may you avail yourself of his testimony?

II.

A is on trial for murder. May the State, under any circumstances, offer evidence of A's bad reputation? May the State offer evidence of the commission of any other particular crimes by A?

III.

State briefly the different rules pertaining to the proof of disputed handwriting.

IV.

A was injured while employed in B's factory, by getting his clothing caught in one of the machines there in operation. A sues the company in tort and offers to prove:

(1) That shortly after the accident B put a guard rail around the machine;

(2) That four other employes had been injured in the same way in the same machine during the year preceding.

Should the evidence be admitted or excluded?

V.

(a) What is meant by "Real Evidence"? Under what circumstances will it be rejected? Illustrate.

(b) What is meant by "Jury View"? What are the objections urged against it?

VI.

A sued B on a lease. B knew that there was only one original of the lease executed which was delivered to him. At the trial A called his stenog-

ographer as a witness and asked her to use her stenographic notes to refresh her recollection and testify as to the contents of the lease. A carbon copy of the lease had been made and retained by A. What two objections could have been urged on behalf of B to the testimony offered? Would either objection have been valid?

VII.

Henry Jones died leaving a will in which was the following provision: "I give to my sister, Anna Jones, my home in Thompson's addition to the city of X." The deceased had a sister Anna who had left home when about 16 years of age and more than ten years before the execution of his will. This sister had had a bad reputation and deceased had often spoken disparagingly of her. At one time he had said that he would see that she got none of his property. Deceased also had a sister-in-law, the wife of his brother, by the name of Anna. She had been keeping house for him for a number of years.

Deceased had a house and lot of small value in Thompson's addition, but the place where he had been living and which he also owned was in Smith's addition to the city of X. This property was very valuable.

Prepare a brief for the sister-in-law. Prepare a reply brief for the sister.

VIII.

A, a married woman, is suing the estate of X for money alleged to have been loaned to X during his lifetime. A calls her husband as a witness to testify to statements made by X concerning the loan. Counsel for the defendant objects to the giving of any testimony by this witness, first, on the ground that he is an interested witness, and, second, on the ground that a husband cannot testify in behalf of his wife. Should either objection be sustained?

MORTGAGES.

June, 1913.

PROFESSOR POMEROY.

1. (a) State and describe four common ways in which the vendor of land may make the land security for the unpaid purchase price.

(b) Describe the grantor's implied lien, stating and illustrating three rules, recognized in Illinois, whereby the operation of the lien is restricted.

2. (1) Smith leased land to Jones, March 1st, 1912, for a year, the rent being payable quarterly, on June 1st, Sept. 1st, etc. On June 15th Smith mortgaged the land to Brown, giving him the right to immediate possession. Brown, on Sept. 15th, served notice on Jones to pay all rentals to him, Brown.

(a) Suppose that Jones has paid no rent whatever to Smith during the whole year, what, if anything, can Brown recover from Jones?

(b) Suppose that Jones paid the rent at the end of each quarter to Smith, what, if anything, can Brown recover from Jones?

(2) Suppose the mortgage in the above case had been given before the lease, what, if anything, could Brown recover from Jones?

3. In 1905 Smith mortgaged land worth \$6,500 to Jones for \$5,000, the mortgage being due July 1, 1909. In 1907 Smith sold the land subject to the mortgage to Brown, who did not assume the mortgage debt. On July 1, 1909, Jones made a binding agreement with Brown not to foreclose until July 1, 1911; at the date of this agreement the land was worth \$6,000, and the mortgage debt, with unpaid interest, amounted to \$6,500. In 1910 Brown sold and conveyed the land to Cole, who agreed with

Brown to assume the mortgage; later, in 1910, Brown released Cole from this agreement to assume before Jones had heard of it. On July 1, 1911, the mortgage being unpaid, Jones brought suit to foreclose, making Smith, Brown and Cole parties; the foreclosure sale resulted in a deficiency of \$1,200. Which of the parties are liable to Jones for the deficiency? Explain fully. If the law of Illinois differs from that of cases studied, explain the difference.

4. A mortgaged a tract of land to B for \$1,800. Subsequently A divided the tract into five lots and sold them, by warranty deeds, in the order 1, 2, 3, 4, 5, to P, Q, R, S and T, respectively. P, R and T each recorded his deed immediately, but B never had actual notice of the sales to them. Q and S each failed to record his deed, but B had actual notice of the sales to Q and S. Later, B released S's lot (No. 4) from the mortgage. B now forecloses. Each lot will sell at foreclosure sale for \$500. In what order should the lots be sold? State reasons fully.

5. A mortgaged Blackacre to B for \$1,000; the mortgage was never recorded. Later, A mortgaged the same land to C for \$900; C took his mortgage with actual notice of B's mortgage; C's mortgage was duly recorded. Still later, A mortgaged the same land to D for \$800; D had no notice of B's mortgage; D recorded his own mortgage. The land was sold on foreclosure for \$1,200.

State and apply two rival theories on which the proceeds of the sale may be divided.

6. Smith gave a mortgage on land in Kansas to Brown. The mortgage contained this clause: "In case of default in any of the payments herein provided, the said Brown shall be entitled to immediate possession of the premises." This mortgage was recorded on Jan. 2, 1910. In June, 1910 Jones, a creditor of Smith, recovered judgment and levied execution on the land. On July 5, 1910, Smith, having defaulted on the mortgage debt, sut-

PRIVATE CORPORATIONS II.

June, 1913.

*only transfers
rights*

ASSISTANT PROFESSOR WORMSER.

1. X and Y, two shareholders in a corporation, acquiesce in the commission of a breach of trust by the directors, whereby the corporation loses much money. Several stockholders had objected. Subsequently, Y sells his stock to A, who is absolutely ignorant of the breach of trust.

^{and to}
Brown, consults you to ascertain whether ^{and to} ~~at~~ two-thirds of the mortgage debt. The debt being now due, Smith desires to redeem from the mortgage and secure Brown's payment of his share of the debt. How shall he proceed?

8. In 1895 Smith conveyed and gave possession of certain land to Jones, and Jones at the same time gave back to Smith an agreement to reconvey two years later on payment of the principal and interest of a subsisting debt of \$3,000, which Smith owed to Jones. The deed was recorded, but the contract to reconvey was not. In 1898 Jones sold and conveyed the property to Brown, who had no notice of Smith's right to repurchase. The rental value of the property was \$600 a year; its present value is \$12,000. The statute of limitations applying to redemption of mortgages and recovery of land is 20 years: applying to all other suits, 10 years. What remedy, if any, has Smith? Explain situation fully.

Brown to assume the mortgage; later, in 1910, Brown released Cole from this agreement to assume before Jones had heard of it. On July 1, 1911, the mortgage being unpaid, Jones brought suit to foreclose, making Smith, Brown and Cole parties; the foreclosure sale resulted in a deficiency of \$1,200. Which of the parties are liable to Jones for the deficiency? Explain fully. If the law of Illinois differs from that of cases studied, explain the difference.

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PRIVATE CORPORATIONS II.

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1. X and Y, two shareholders in a corporation, acquiesce in the commission of a breach of trust by the directors, whereby the corporation loses much money. Several stockholders had objected. Subsequently, Y sells his stock to A, who is absolutely ignorant of the breach of trust.

X consults you to ascertain whether he can maintain an action to compel the directors to make good the loss, and if so, what kind of action he can bring. A also consults you, asking similar questions. Draft your opinion in reply to each.

2. Discuss the effect of corporate dissolution upon the personal and real property of a private corporation at common law and under modern statutes.

3. A corporation is chartered in this State to carry on the business of iron manufacturing and steel manufacturing; either or both. For a time it carries on both. At a regular meeting of the stockholders, the majority vote to discontinue iron manufacturing, and to give an excursion and picnic, immediately upon such discontinuance, to all who have been in the corporate employ during the year last past. X, a shareholder, voted in the negative and now consults you as to his rights. What do you advise and why?

4. What is a voting trust? Discuss the legal objections, if any, to such a trust. What is the rule in Illinois?

5. A corporation issues part of its stock to X, under a written contract that X shall be liable

to pay only 50 per cent. of the par value. The corporation subsequently becomes insolvent. Creditors, who loaned money to it, some before and some after the above stock issue, now seek to compel X to pay the balance of the par value of his shares of stock. Upon what, if any, theory can the creditors win? Discuss.

6. The directors of a savings bank in Chicago enter upon an elaborate street car advertising campaign, construct a new and magnificent building, and purchase expensive ornamental furnishings and fixtures, honestly acting, as they believe, for the welfare of the institution. The bank, already none too firm is greatly weakened and ultimately insolvency ensues. The receiver sues the directors to recover the losses caused by their alleged misconduct. The directors demur.

On what grounds is the demurrer interposed?
What decision and why?

7. Bill in equity brought by the heirs at law of X to restrain the executors of X from paying over, and Cook College from receiving, a devise to said College contained in the last will and testament of X. A section of the College charter provided that it "may take and hold by purchase, gift, devise or bequest, personal and real estate in all not exceeding \$1,000,000, in value, owned at any one time, and may use and dispose thereof only for the purposes for which the College was organized." The College had at the time of testator's death, property to the full amount of \$1,000,000 in value. Shortly after the will was offered for probate, the State Legislature increased the amount of property which the College might take and hold to \$5,000,000.

The executors and the College met the bill with demurrers. What decision and why?

8. X, the owner of 500 shares of stock in the Union Pacific R. Co., executed his will on June 1st, 1905, in which he bequeathed said stock to Y. On

July 1st, 1905, dividends of 4 per cent. were declared, payable in 30 days. X died on July 20, 1905.
Who gets the dividends? Discuss.

9. Explain the rights of a holder of 5 per cent. non-cumulative preferred stock.

10. A and B, directors and officers of a private corporation, purchase ten \$1000 bonds of said corporation on June 1st, 1911, for \$5,000, from X. The bonds are to mature on Oct. 1st, 1915. Discuss in detail the rights of A and B. State specifically whether the courts have passed upon this situation, and with what result.

PUBLIC SERVICE COMPANIES.

June, 1913.

Professor Green.

(Give reasons for every answer).

1. A was a coal dealer; B was a truckman; C ran a restaurant; D ran a grain elevator. Each professed readiness to deal indifferently with all who applied, but each on one occasion refused to deal with a particular customer out of personal dislike. Which of them committed a legal wrong? Which of them could the legislature constitutionally require to serve all applicants?

2. A company incorporated with exclusive power to slaughter cattle in Indianapolis, had been in operation for a year when its workmen struck for an increase in wages of fifty cents a day. The company would not accede to their demand and could not get workmen at a lower rate, so it had to turn away many cattle offered for slaughter. Discuss its liability.

3. A ran a plant to supply electric light and power, and held himself out as ready to serve all applicants to the extent of his plant's capacity. He supplied many houses and factories including the factory of X. Each month he rendered separate bills for light and power. X paid his power bill regularly, but was in arrears for light and therefore A, after notice, cut off both light and power, though X, still refusing to pay the arrears because he disputed their amount, tendered payment for light in advance for the next three months. What are the rights and liabilities of A and X?

4. An Englishman, traveling in America, stayed for a month in Chicago, where he stopped at a

public inn and took a room by the week. His suitcase was stolen from the inn by a guest of the inn, without negligence on the part of the innkeeper or his servants. Is the innkeeper liable for the loss?

5. A railroad company attempted to give to a cab company the exclusive right to enter the station grounds with vehicles to solicit arriving passengers. The cab company gave adequate service, but other cabmen desired to share in the right. Discuss on principle and authority the railroad's right to keep them out.

6. A gas company and an electric lighting company agreed that neither would supply the customers of the other. A, who was receiving light from the electric company, had his house piped for gas which he intended to use only if and when the electric light should give out. The gas company refused on application to let him connect with its system unless he would pay its minimum charge for gas for a year in advance, which was twelve dollars. What, if any, rights has A?

7. (a) The Missouri Pacific railroad by arrangement with the Wabash railroad forms a through line extending from Chicago to St. Louis by the Wabash, and thence by the Missouri Pacific to points west, and issues through bills of lading. Is it bound at the request of other railroads between Chicago and St. Louis to make a similar arrangement with them?

(b) If the Missouri Pacific receives goods at St. Louis from other railroads and carries them to destination without prepayment of freight, is it bound to receive there and carry goods from the Illinois Central without prepayment?

8. A railroad had been accustomed to receive and deliver cattle at any of three stockyards which were situated on its line at Kansas City and within a mile of each other. Afterwards it made arrange-

ments with one of the stockyards to make it its only station at Kansas City for receiving and delivering cattle, and after three months' notice refused to receive or deliver at any other stockyards, mandamus was brought to compel it to continue its former practice. At the instance of the other stockyards and of shippers of cattle consigned to them. What decision?

9. A railroad company because of a shortage of cars which could not have been foreseen was unable to supply coal mines along its lines with cars sufficient for all their needs. At some of the mines were cars which belonged to the owners of the mines; at some were cars which the railroad had sent to be filled with coal for its locomotives; at some were cars which other railroads had sent to be filled with coal for their locomotives. By what rule should the railroad distribute its remaining cars between the different mines?

10. Assume that a statute of Illinois which fixes railroad fares between points within the state at two cents a mile is attacked as unconstitutional. State briefly how you would determine whether it was valid,—what the test of validity is, what facts you would ascertain in order to apply the test and what relative weight you would give them?

QUASI-CONTRACTS.

(Give reasons in all cases).

PROFESSOR VERNIER.

1. Assumpsit for money had and received by the village of P against D, a county clerk, to recover alleged overcharges for fees in executing tax deeds. The fees collected by the defendant clerk were in accordance with a statute alleged by P to be unconstitutional. The village of P made no protest at the time of payment. The court below refused to consider the question of the validity of the statute, ruling that the payment being voluntary could not be recovered. From a judgment for D, the village appealed. How should the case be decided on appeal? 199 Ill. 444.

2. D gave his agent, A, power to draw and indorse commercial paper in his (P's) name. A took some stock certificates belong to D, forged D's name to the blank power of attorney on the back of the certificates, and sold the same to S. & Co. In payment the latter sent a check for \$500 payable to D, which A indorsed in D's name and deposited in bank to D's account. Later A drew several checks amounting to \$400 upon D's account and used the proceeds for his own benefit. After the forgery of the stock certificates was discovered, S. & Co. returned the stock and sued D for money had and received. Judgment? 194 Ill. 157.

3. The D. Ins. Co. insured P's store for \$1500. Policy contained a clause making it void if property was encumbered and encumbrance was not expressed. There was a partial loss followed by an agreement to settle for \$900. The suit is on this agreement. The defenses offered by the Company were: (1) that the agreement to settle was made in ignorance of the fact that there was an unex-

pressed encumbrance (but no claim made that concealment was fraudulent); (2) that by errors in addition and multiplication in arriving at the values of certain items, the agreement called for \$900 when it should have called for \$760. Granting the truth of these claims, who should have judgment? 163 N. Y. 374.

4. F, an unmarried woman, who was believed to be pregnant, charged that her condition was due to X. If this were true a statute made X liable to pay D, the proper officer, an amount not exceeding \$500. In compromise of his alleged liability under this statute X paid D \$150. Should X recover this amount: (1) if F was not pregnant at all, but X, D and F believed she was; (2) if she was pregnant by another man, X believing that he was the cause; (3) if F was not pregnant at all, but F and D believed she was, but X denied it; (4) if F was in fact pregnant by him, but X denied it? 25 N. Y. 289; 28 Ind. 431.

5. D, representing himself to be a single man, induced plaintiff to marry him. At D's request, the marriage was kept secret. Plaintiff, P, nursed D through a long illness, gave him \$500 to be invested in D's business, and allowed him to collect \$50 monthly rent from a house owned by P. P, believing that she was D's wife, had made no arrangement for payment for these services. P was in fact married to another woman during all this time. Has P any rights against D in Quasi-Contract?

6. (a) P, hearing that his grandchild S was destitute and had no place to live, requested her to come and live with him. She lived with him for four years when she was killed in a railroad accident. D was appointed her administrator and recovered \$5000 damages of the railroad company. P brought suit against D to recover the reasonable value of the support furnished S during the four years. Should he recover? 8 Gray 152.

(b) P rendered D services in the management of a campaign in which D was elected to congress. P rendered the services without any express contract, in the expectation of receiving an appointment to some office. When he failed to receive an appointment he sued D for the value of the services. Should he recover? 39 Atl. 785.

7. X in good faith bought a note for \$200, payable to B. Robinson, or order, and purporting to be made by Wm. R. Ziegler. X bought from a remote indorsee. Ziegler died before the note fell due, and X presented the note to Ziegler's administrator, P, who paid the note. Ziegler's signature was later discovered to be a forgery. Can P recover the \$200 paid to X? 4 Ill. 392.

Would your answer be the same if Ziegler's signature were genuine, but that of B. Robinson were forged?

8. X in good faith believed he was the owner of a tract of swamp and timber land. His mistake was due to a careless marking of the boundary of his own land adjoining. By drainage and clearing he increased the value of the land by \$2000. He also cut down timber worth \$500 and hauled it to market where it was worth \$1000. The land in fact belonged to Y. Y peaceably took possession of the timber in the market, but X refused to give up possession of the land until paid \$2000. Y sued X in ejectment and X sued Y for the increase in value of the timber which X had retaken. What are their rights in these suits? In any other form of action?

REAL PROPERTY I.

June, 1913.

ASSISTANT PROFESSOR WORMSER.

1. Why was the Statute Quia Emptores enacted? What were its provisions? What was its effect?

2. Outline the origin of uses. State how the use of the *cestui* could be enforced against the feoffee to uses.

3. What estate at common law has X in each of the following cases?

(a) To X and the male heirs of his body begotten.

(b) To X and his heirs so long as Trinity church shall stand.

(c) To X and his assigns forever.

(d) To X and his heirs during the life of A.

(e) To X for "so long as he wishes."

4. Define and distinguish the following tenancies, illustrating if deemed profitable: (a) Joint. (b) Common. (c) Coparcenary. (d) Entirety.

5. (a) What is the common law interest of a surviving husband in the real property of his deceased wife? Explain fully.

(b) What is the common law interest of a surviving wife in the real property of her deceased husband? Explain fully.

(c) What statutory changes, if any, in Illinois? Illustrate.

6. A bought of B a portable frame dwelling house which he proceeded to set up on his land in

a firm brick and cement foundation. A gave to B a chattel mortgage on the house so purchased from him to secure the price thereof. B immediately proceeded to file the mortgage with the Recorder, but by an error of that official the mortgage was never indexed. Later A sold the premises to C who knew nothing of B's chattel mortgage. A did not pay to B the sum still due and B thereupon demanded the house. C refused to allow B to take it. B sues.

Who wins and why?

7. "We are not inclined to extend the right of removal so far as to include a thing which can not be severed from the realty without being destroyed or reduced to a mere mass of crude materials." (149 Mass. 578, *per* Allan, J.)

Discuss, with particular reference to the rule in Illinois governing the removal of fixtures.

8. A leased a store from B for a three-year term and installed counters, shelves, and similar trade fixtures. Two months before the lease expired, B executed a new lease to A, then in occupation, at a higher rental. This lease was to take effect upon the expiration of the old lease. It made no reference to the existing lease. It made no reference to the removal of any trade fixtures then upon the premises. It contained the usual covenants upon the part of the lessee to quit and deliver up the premises at the end of the term "in as good order and condition as the same now are." A continued in possession under the new lease. Upon its expiration, he (A) removed the fixtures. B sues. What decision and why?

9. X was seized in fee simple of one hundred acres of arable farm land and of ten acres of woodland. He devised this farm to his wife Y for her life, remainder to his son Z in fee. He died and Y entered into possession. She is now proceeding to cut timber,

(1) to repair the dwelling house on the farm.

(2) for firewood to be used during the next winter.

(3) for firewood to be sold to M, an adjoining farmer.

(4) to build a residence for her step-daughter on adjoining real estate owned by the step-daughter.

(5) to enable the new growth of timber in the woodland properly to flourish.

Can Z prevent Y from doing the above acts, or any of them? If so, how should Z proceed?

10. For what reason is the law of emblements of importance in Illinois? Sketch briefly the salient points of this subject.

SALES.
PROFESSOR HALE.

I.

B went to the store of A, a jeweler in Chicago, to buy a watch and chain. He first asked to be shown watches and A put out upon the show case a number of watches not wound or set to the proper time. After examining the watches and being told their respective prices, B put his hand on a certain watch lying on the counter and said that he would take that one. A replied "All right, I will wind and set it." but before he had taken it up for that purpose B asked to be shown some chains and both moved along a few feet to where the chains were. B selected a chain which he said he would take, and handed it to A to be attached to the watch. A stepped back to take up the watch but it could not be found, having evidently been stolen by someone while B and A were examining the chains. A said, "Your watch has been stolen." B replied, "I don't know why you call it *my* watch," and turned to leave the store. A called him back, tendered the chain, and demanded the price agreed upon for both watch and chain. B refused to receive the chain, saying he had no use for it alone, and refused to pay for either. He offered, however, to select another watch of the same price if he could find one to suit him, and to take it and the chain and pay the agreed price; but A declined unless B also paid for the stolen watch. What are the rights of A against B as to the watch or chain or both?

II.

A had a number of fat cattle for sale. B came to his farm and agreed to buy them for a given sum, the cattle to be delivered at the railroad station on a day named. As B was leaving, A said "Of course, this is a cash sale," and B replied "Certainly." On the day named A took the cattle to the station where he found B waiting for these

cattle to complete the filling of a car which he was anxious to forward at once. A helped B to drive the cattle into the car and then said "Now for my pay." B replied "Step right up to the bank with me and you shall have it," at the same time telling the railroad agent to start the car at once. A and B went to the bank, where B handed to A a past due note signed by A payable to bearer and a ten-dollar bill, the amount of the two being the agreed price of the cattle, and B said "There is your pay." A refused to receive them, insisting upon cash in full, and upon B's refusal to pay it, demanded back his cattle which B refused to return, saying he had bought and paid for them. A tried to stop the car but before he had found it, B's agent had sold and delivered the car load to C in Chicago for cash, C being ignorant of A's claims. C upon demand refused to deliver the cattle to A or pay their value or any other sum, and A brings replevin for the cattle. May he succeed?

III.

A, the publisher of a book, had a large number of copies precisely alike stored in his warehouse. B, a book agent, went with A to the warehouse, examined one copy and agreed to take five hundred of them to be shipped out as ordered, within six months, and paid for as shipped. A memorandum reciting "Sold by A to B 500 copies," etc., and stating the terms was signed by both parties. Before any of the books had been ordered or paid for, the warehouse with its contents was destroyed by accidental fire. Upon whom falls the loss as to the books in question?

IV.

A made a contract with B for the purchase of a large quantity of lumber to be shipped by B by vessel and paid for on delivery of bill of lading endorsed to A. Several cargoes were thus shipped and paid for. Then one shipment was made and the bill of lading forwarded and payment made, but the vessel put back on account of accident and was unloaded. Another vessel was then procured and

the same lumber put on board. B took a bill of lading in his own name as before but (a dispute having arisen between himself and A), instead of endorsing and sending it to A, he endorsed and delivered it to C for a valuable consideration, C being ignorant of A's relations to it. When the vessel arrived, A demanded the lumber but it was delivered to C. B is financially irresponsible. What are A's rights against C?

V.

A in Chicago ordered goods to be shipped by B in St. Louis. B shipped them as usual by express C. O. D. The sale of such goods was forbidden by statute in Illinois, but was lawful in Missouri. What was the validity in Illinois of this sale?

VI.

B had a certain horse which he offered to sell to A. The latter asked if the horse was sound. B replied that he would not be afraid to warrant it. Thereupon A bought and paid for the horse. The horse proved to be unsound and A sent it back to B and sues B for the recovery of the price paid. Can the action be maintained?

VII.

A, in Chicago, sold goods to B, in Champaign, and shipped them over the Illinois Central R. R., under a bill of lading running to B or order. After the goods were turned over to the Illinois Central, A learned that B was insolvent. A immediately gave notice to the carrier not to deliver the goods to B or to any one else, but to return them at once to A.

(1) Suppose that B had transferred the bill of lading to C before this notice was given.

(2) Suppose that B transferred the bill of lading to C after the notice was given.

What are A's rights in each case? Would A's possible opportunities for protecting himself be any greater in England than in the United States?

VIII.

What is a vendor's lien? What remedies are open to the holder of a vendor's lien? Explain fully.

IX.

A was a dealer in sewing machines. B went to A's store to rent a machine. A said: "The rental price is \$2 per month, but if you will agree to pay a rental of \$5 per month, I will at the end of five months, upon receiving an additional payment of \$10, give you a bill of sale to the machine." A lease was accordingly drawn up, embodying the above terms and signed, whereupon the machine was placed in B's house. At the end of one month it was attached by a creditor of B. A thereupon brought an action of replevin for the machine. What judgment?

X.

A went to the factory of the X Automobile Company to buy a car. The company put out a one price car only. The company's agent said to A: "Take your choice for \$1,000." A paid the \$1,000, looked the machines over, picked out one and drove it away. In the course of three days the car was rendered useless by a defect in the construction of the engine.

What are A's rights, if any, against the X Automobile Company?

SURETYSHIP.

Mr. Decker.

1. Distinguish between the contract of the surety and of the guarantor. Between the contract of the guarantor of payment and of the guarantor of collection. Give examples.

2. A, B and C were co-makers on a note with P to X for \$3,000, loaned by X to P. X recovered a judgment in Illinois against all of the parties to the note. At that time B owned Blackacre in Champaign county, which he subsequently conveyed to M for full value. C. and P were insolvent. Execution was levied on the property of A which was sold for the full amount of the judgment and costs.

(a) What are A's rights against B, C, P and M respectively at law?

(b) In Equity?

3. S was an accommodation endorser on a note of P to C for \$100. S afterwards bought the note from C by giving his own note to C for \$75. What are S's rights against P?

(b) Suppose S had been a joint maker on the note, would this fact alter his rights?

4. A, a manufacturer, negotiated a contract with the B Iron Co. for all of the iron he needed in his business for the year 1912, to be delivered at prices agreed upon. B insisted on a guarantor and A obtained C to sign the following instrument: "In consideration of the B Iron Co.'s agreement to supply A with his needs of iron for the year 1912, I hereby guarantee the prompt payment by A of all bills for iron delivered under said agreement." A delivered this instrument to B, who thereupon signed the contract.

B carried out its part of the agreement and payment was made by A for all but the December deliveries. When payment for them came due, he asked for more time and B wrote it would wait for another thirty days. A failed to pay at the end of that time and his factory burned a few days later, by reason of which he was rendered insolvent. B then demanded payment of C, who refused to pay and B brings suit. C pleaded in defense.

(1) That he was never notified by B of the acceptance of his guaranty.

(2) That B did not notify him within a reasonable time of A's default.

(3) That B extended the time of payment to A.
Give judgment on each plea.

5. Modify the facts of the foregoing case by assuming that C died in July, 1912, and that B sues C's executor. Would a plea setting forth that fact be a good defense? Discuss.

6. A recovered a judgment against B for \$200 and levied an execution on a team and wagon belonging to B. B's son orally promised A that is A would release the team and wagon, he would pay the judgment in 30 days. A directed the sheriff to let B take his property and B took it out of the state. A now sues the son, who pleads the statute of frauds. Decide the case.

7. M was sole heir and administratrix of her husband's estate. He left a piece of land, Blackacre, which M sold to N before the settlement of the estate for \$25,000, which M invested in government bonds, which she had registered in her own name. To secure N against claims of creditors of her husband, M gave N a bond for \$30,000, with S as surety, conditioned to indemnify N from the claims of such creditors. The personal estate of the husband fell \$15,000 short of paying his creditors and they are now threatening to take the necessary proceedings to have Blackacre sold for the payment of their claims. M refuses to pay them.

If you were consulted as an attorney by S at this stage of the proceedings, what would you advise him were his rights, and how would you recommend that he proceed for their protection? S does not wish to pay the claims if he can avoid it.

8. P obtained a judgment against D in the circuit court of Champaign county. D took the case to the Appellate Court and gave a supersedeas bond with S as surety conditioned to pay the judgment and costs of appeal. He lost and carried the case to the Supreme Court, giving a similar bond with T as surety. The judgment was again affirmed but is not paid by D.

(a) What are P's rights against S and T respectively?

(b) If either pays, what are his rights against the other?

9. P got S to sign a note with him to C. P took this note to C and asked for a loan of the amount of the note, informing C that S was a surety. C refused to make the loan unless P would get another signer. P thereupon procured T to also sign, of which S had no knowledge. The note being due, P sues S. Is he liable?

10. P, a saloon keeper, gave a bond under the dram-shop act with S and T as sureties, on which suit was brought by C and judgment recovered against them all for \$1,000, which S paid. S had previously and without T's knowledge obtained a chattel mortgage on P's saloon fixtures, worth about \$500, as security for his liability on the bond, and still holds it. What are the rights and duties of S and T as between themselves at law and in equity?



TORTS.

Second Semester 1912-1913.

PROFESSOR HALE.

Give reasons fully in all cases).

I.

B gave A permission to pass through B's yard by a narrow path, on both sides of which dangerous machinery was at work. A, although using due care, came in contact with the machinery and was hurt. He also was hurt on his way out by falling through a bridge in B's yard, which had defective supports, but on the outer surface appeared safe. Is B liable?

II.

The defendant was at the bat in a baseball game, and, in swinging back his bat to strike, hit the plaintiff, the catcher, in the head, severely injuring him. The plaintiff was not wearing a mask. What issues should be submitted to the jury?

III.

The chimney of the defendant's factory, although erected with reasonable care under the circumstances, was blown over in a high wind, and some of the falling bricks broke a window in the adjacent house of plaintiff. Is defendant liable?

IV.

The plaintiff, suing for the value of a horse killed by the defendant's horse, proved that the latter during the night escaped from the defendant's premises into the plaintiff's, and there injured the plaintiff's horse by biting and kicking, so that it died soon after. Was this enough?

V.

Plaintiff is a trespasser upon defendant's railway track and is crossing a trestle. (a) The engineer sees plaintiff, but believes plaintiff can cross the trestle before the locomotive will overtake him. The engineer miscalculates, and plaintiff is struck and injured. Is defendant liable to plaintiff? (b) The defendant is not keeping a lookout and fails to see plaintiff. Is defendant liable?

VI.

A, an employee of the X R. R. Co., swept a torpedo out of the baggage car into the station yard. B, a boy eight years of age, before leaving the station after getting off an incoming train, picked up the torpedo and carried it home with him. Ten days later, while playing with it, the torpedo was exploded and C, one of B's playmates, was injured. An action is brought on C's behalf against the X R. R. Co. What judgment?

VII.

A put up a swing under an apple tree which stood on A's premises but near a public street. The swing had been erected for A's children but had ceased to be used by them. C, a neighbor's child, when passing the premises one day, observed the swing and stopped to play in it. One of the ropes, which had become very much decayed, broke and C was injured. Is A liable for the injuries to C?

VIII.

A mother sent her child, three years of age, in company with a sister four years of age, to a certain store in the city. The children were obliged to cross a street upon which a line of trolley cars was operated. The younger child was run over and seriously injured while attempting to cross the tracks in front of an approaching car, which was

but a short distance from her when she entered upon the tracks. At the trial the mother testified that she thought it was a dangerous place for the children to cross, but she had warned them to be very careful. It was shown also that the motor-man was careless. Can the child recover for injuries sustained?

IX.

A sold to B a lot, with a residence upon it, for \$15,000. Before the bargain was closed B asked A what materials had been used in the construction of the house. A replied that it was built of stone. It was in fact constructed of concrete blocks, a manufactured artificial stone and not so valuable as stone. Because of this the property was worth very much less than what B paid for it. B consults you as to his rights against A. How would you advise him?

X.

A was clerking in B's store at \$75 a month. C, another merchant in the same town, offered A \$100 a month to enter his employ. A left B and went to work for C. B had to pay \$100 a month to get a man to take A's place. What additional inquiries would you make before advising B as to his rights against C? Explain fully the meaning and purpose of the inquiries suggested and the reasons for the conclusions based thereon.

TRUSTS.

(Give reasons in all cases).

PROFESSOR VERNIER.

1. (a) T, holding land in trust for C, in breach of trust agreed in writing to sell the land to B. B was given a deed and paid his money in ignorance of the trust. The deed by reason of non-compliance with statutory formalities passed no title. T died intestate, leaving B his sole heir. Who is entitled to the land?

(b) Give five distinctions between a debt and a trust.

2. (a) R, a tenant of L, deposited \$500 in defendant bank to secure to L the performance of his lease. The defendant bank agreed to pay L out of this sum such portion as might be needed to satisfy any damages L might sustain by the tenant's default, and after a certain time to hold the sum to the credit of L and pay it to him in monthly instalments. The bank was placed in the hands of a receiver. L claims a preference over the general creditors. Is he entitled to it?

(5) Distinguish an assignment of a chose in action from a trust of a chose in action.

3. W agreed in writing to buy land and hold it in trust for the X Co. W bought the land and took a conveyance in his own name. W owed the X Co. \$5000 and it was agreed that the X Co. should reimburse W only for the price paid in excess of that amount. W paid \$8000 for the land and received \$3000 from the company and a receipt for the \$5000 debt. W, in order to raise the \$5000 cash needed to pay for the land, sold stock which he held in trust for C and thus paid the full purchase price. C seeks to impress a trust upon the land to the extent of \$5000. Has C any rights in the land as against the X Co.?

4. T held land and stock in trust for himself and two brothers C and B in equal shares. By the will creating the trust T had power to sell and invest in other land and securities. By very careless investments he diminished the value of the trust property by one-half. What are the rights of C and B in the remaining trust property?

Would your answer be the same if T had assigned his share of the trust to X for value before the change in investments?

5. (a) Plaintiff conveyed land to his father, the defendant, upon an oral agreement by the father to hold the land in trust for the son. The defendant later repudiated the agreement. What redress has the son, if any?

(b) Suppose an uncle of the plaintiff had also conveyed land to the plaintiff's father upon an oral agreement by the father to hold the land in trust for the son and the father had also repudiated this agreement. Would either the plaintiff or the uncle have any redress?

6. The plaintiff, A bank, sent the B bank various claims for collection. After collection but before remittance to the plaintiff, the B bank failed and defendant D was appointed assignee. Plaintiff sued the assignee claiming to be a preferred creditor. The lower court allowed the claim.

(b) Plaintiff sent a note to the C bank for collection. When the latter received the note it knew itself to be insolvent, but collected the note before it went into the hands of the assignee, D. Plaintiff sued the assignee claiming to be a preferred creditor. The lower court held that plaintiff must come in with the general creditors.

How should these cases be disposed of on appeal?

7. X, for the purpose of defrauding his creditors conveyed land to his son, S, upon an oral trust

to hold for X. After X was discharged in bankruptcy he demanded a reconveyance of S. Has X any redress if S refuses to convey?

Suppose S did reconvey, but only for the purpose of outwitting his own creditors. Is the reconveyance good against the creditors of S, none of whom had reduced claims to judgment?

S. (a) R sued O and obtained a judgment for \$300. R assigned the judgment to his lawyer F, to secure the payment of a \$100 attorney fee. Later R assigned the same judgment to S for \$275. Before S took the assignment he asked O if the judgment was unpaid and unencumbered. O was so angry over the loss of the suit that he refused to reply. S gave O notice of the assignment. What are the rights of S, if any?

(b) Suppose a client wishes to buy securities held by T as trustee under a will. Advise him as to what steps he should take to avoid being liable to the cestui qui trust for a possible breach of trust.

9. (a) T, holding stock in trust for C, agreed in writing to sell the stock to B, and to transfer the title to B or to any one B might nominate. T held the stock as trustee under a will and had no power of sale, but B was ignorant of the trust. B paid in full and directed T to have the stock transferred on books of company to X, trustee for B. T did so. Who is entitled to the beneficial interest in the stock?

(b) Suppose T had transferred the stock directly to B upon payment of a first instalment of \$500 and that B had agreed to pay the rest of the purchase price, \$1000, within a year, and that B had received notice of the trust after payment of the \$500 but before payment of the \$1000. What would be the rights of B against C, if any?

10. F bequeathed the sum of \$200,000 to T to devote the income for the maintenance of his son, S, for life "free from the control of creditors and

not subject to anticipation by assignment." S contracted debts amounting to \$25,000. May the creditors reach this fund either at law or in equity? If S assigns a portion of his rights under this trust to a creditor to secure the payment of a debt, what will the creditor receive, if anything?

WILLS.

June, 1913.

PROFESSOR POMEROY.

1. State four of the things that are made necessary to the validity of a nuncupative will by the section of the Illinois statute relating to such wills.

2. Smith devised Blackacre to Jones and the residue of his real estate to Brown, who is also Smith's heir. Later, Smith conveyed Blackacre to Jones, and still later repurchased it from Jones, so that the title to Blackacre was in Smith when Smith died. Who gets Blackacre? What is the Illinois ruling on this state of facts? How does the court justify its ruling? Criticize the decision.

3. (1) Testator's will read: "I devise and bequeath (a) my house and (b) the furniture therein to A; (c) Blackacre to B, charged with payment of my debts; \$5,000 to be paid out of (d) my Illinois Central stock to C; \$3,000 to D; the residue of (e) my land to E and of (f) my personal property to F." (a) was worth \$10,000, (b) \$2,000, (c) \$5,000, (d) \$3,000, (e) \$8,000; and the remainder of the personal estate, before payment of any debts, expenses, or legacies, was worth \$12,000. What should each of the beneficiaries receive, assuming that the debts and expenses are \$10,000? That they are \$14,500? That they are \$28,500?

(2) Does a residuary devise abate for payment of debts before a specific devise? State reasons.

4. (1) What is the effect of the death of A before the testator in each of the following cases:

(a) Legacy of \$3,000 to testator's "children" (of whom A is one); B being residuary legatee.

(b) Legacy of \$3,000 to "children" of testa-

tor's sister (of whom A is one); B being residuary legatee.

(c) Devise of Blackacre to A, testator's nephew; B being residuary devisee.

(d) Legacy of \$1,000 to A, \$500 to B, both being nephews of testator; residuary legacy to A and B.

(2) Devise of Blackacre and legacy of \$3,000 to A, B being residuary devisee and legatee. What result where devise and legacy to A are void?

(1) and (2) State in each of above cases both Illinois law and common law.

5. State in substance any five of the seven clauses of Illinois Rev. Stat. Chap. 39, Sec. 1, entitled "Rules of Descent."

6. Smith made a will in 1890, and a codicil thereto on the same paper in 1892. In 1894, while in his last illness, wishing to bequeath to A the proceeds of a small insurance policy, he stated this desire to his friend Jones; Jones procured a printed form of a will and filled up a blank therein with a properly drawn legacy of the insurance money to A; this will was thereupon executed by Smith, Jones and A acting as attesting witnesses. The will contained the printed words, "I hereby revoke my former will." The proof is clear that Smith had no intention to revoke the former instruments; but there is a conflict in the evidence as to whether Smith ever read his will of 1894 or had it read to him. Which instrument should be probated? Explain fully.

7. (a) Testator's will was executed May 1st and contained this clause: "I wish my executor to pay the notes which I have executed and which will be deposited with this will." On July 1st testator executed a codicil which merely nominated a new executor. In the testator's safe in the same envelope with his will were found, after his death,

three notes: One to A, dated April 1st; one to B, dated June 1st; and one to C, dated August 1st. It is proved that these were the true dates of the execution of the notes. None of the notes constitutes a valid claim against the estate, unless its testamentary character can be established. Which of them, if any, should the executor pay? Reasons.

(b) State the section of the Illinois statute relating to revocation of wills.

8. (a) Explain what is meant by the presumption of satisfaction of a legacy, when does it arise, and what is the effect of a codicil, confirming the will, the codicil being executed after the alleged act of satisfaction?

(b) A conveyed property in fraud of his creditors; B was appointed his administrator. The property is needed for the payment of his debts. How, (if at all) can it be reached? Explain fully (Illinois law).

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