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UNIVERSITY OF ILLINOIS BULLETIN

ISSUED WEEKLY

VOL. XI.

NOVEMBER 10, 1913

No. 11

[Entered as second-class matter December 11, 1912, at the postoffice at Urbana,  
Illinois, under the Act of August 24, 1912]

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# Law Examinations

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PAPERS USED AT THE

FIRST SEMESTER EXAMINATIONS

1913-1914

IN THE

COLLEGE OF LAW

OF THE

UNIVERSITY OF ILLINOIS

=====  
PUBLISHED BY THE UNIVERSITY OF ILLINOIS  
URBANA

# UNIVERSITY OF ILLINOIS

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The course of study extends through three years; it covers a wide range of subjects, in part elective and in part required, including all subjects required by the rules of the Supreme Court of the State of Illinois for admission to the bar, and upon the successful completion of the course the degree of Bachelor of Laws (LL. B.) or the degree of Doctor of Law (J. D.,) (depending upon the preliminary education and the grade of work done in the law courses) is conferred.

### INFORMATION

For the printed announcement of the courses, entrance, requirements, dates of examinations, requirements for graduation, etc., and for other information, address Secretary of the College of Law, University of Illinois, or C. M. MCCONN, Registrar, Urbana, Illinois.



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1913-16

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## Examination in Agency.

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(Cover all points involved and give reasons fully.)

PROFESSOR VERNIER.

1. (a) P called A over the telephone and said: "Will you go down to T's office and sign my name to a deed? I have already told T that you will do so." In compliance with this request A signed the name of P to the deed. Is P bound by the signature?

(b) P, a horse dealer, authorized A to sell a horse. A sold the horse to T, warranting title and good driving habits. Is P bound by these warranties? Would your answer be the same if P were a person not dealing in horses?

2 S, a clerk in M's jewelry store, saw a sneak thief escaping with a watch and ran to catch him. The thief gained the sidewalk and S, in order to disable the thief and secure the watch, threw a heavy paper-weight at the thief. The paper-weight struck and injured T who was passing by with a crowd of others. Is M responsible to T?

3. (a) M, owning a gun store, gave his clerk, S, express directions not to load weapons in the store. A prospective customer asked to have a gun loaded to see how it worked. S at first refused, saying it was against orders. The prospective customer refused to buy unless the gun was loaded. S then consented and while showing how

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the gun was loaded it was discharged, injuring T, who was passing by on the opposite side of the street.

Is M liable to T?

(b) T purchased goods in M's store and offered to pay the clerk, S, in bills, which S said were counterfeit. S demanded and was given silver in payment. S then had T arrested for an attempt to pass counterfeit. The bills were in fact genuine.

Is M liable to T?

4. A made a contract in due form in the name of the Presidio Improvement Co. for the purchase of 200 acres of land, from T. There was no company by this name. When T failed to receive the first installment called for in the contract, he sued A for non-payment, declaring on the contract.

Is A liable? Is he liable in any other form of action?

Assume that A in payment of the first installment signed a note payable to T in the name of the non-existent company. Would A be liable to T in a suit on the note?

5. (a) P consigned goods to A for sale at not less than \$100. Being unable to find a purchaser A bought them himself at \$125. Later when the market for this kind of goods improved, A sold the goods for \$200.

(b) A bought 10 shares of stock at \$50 each and knowing that P desired to buy some, repre-

sented to P that he could buy shares at \$75 or less and asked P to authorize him to buy at \$75. P did so. A then transferred his own shares to P at \$75 each, representing that C was the vendor.

(c) A, having collected money for his principal, P, put the money into his own account at the bank. The bank though considered sound and conservative failed.

(d) A induced his principal, P, to contract to buy goods of X in consideration of a bribe of \$50 from X to A.

What are the rights of P in the above cases? If he has more than one remedy mention each one.

6 (a) A contracted for the sale of a farm to T in the name of his principal, P. A falsely and fraudulently represented that the farm contained 160 acres, whereas it in fact contained 140. P did not know of or authorize this representation. Is P liable to T in tort for deceit?

(b) A sold a house belonging to his principal, P, to T. A described it as free from taxes and it was bought on the faith of that description. The agent made the statement in good faith but without having investigated the matter. P knew that the house was not free from taxes but had not told A to make any representation about taxes. Is P liable to T in tort for deceit?

7. S was the servant of the P. Suction Cleaning Co., which engaged in cleaning the exteriors

of stone and brick buildings by the application of suction tubes. S, while engaged in cleaning a building for the company, applied a suction tube to T, a friend who was passing by. The intention of S was to play a practical joke on T. The force of the intruding air ruptured a blood vessel causing T's death. Is the P. Co liable to the proper representatives of T under a statute allowing recovery for wrongful death?

8. A was an agent of the P. Insurance Co. He had been told not to assume a risk exceeding \$10,000 on a single building or \$50,000 to a single city block. A insured T's building for \$10,000 although he had previously insured buildings in the same block for 50,000. T knew of the limit but had been assured by A that this risk was within the limit. May T recover of the P. Co. in case of loss?

9. (a) P stole twenty chickens belonging to T. P consigned the stolen chickens along with others owned by P, to A, a commission merchant, who sold them in good faith believing P to be the owner. T sued A in trover for the conversion of the 20 chickens. Is A liable?

(b) A was the transfer agent of the P Banking Co., and as such was charged with the duty of entering on the books of the company all transfers of stock. X, owning stock, sold same to T. T requested A to enter the transfer, which A refused to do. T sued A in an action on the case. Is A liable?

10. A, knowing that his friend, B, desired to buy certain stock, secured an option of T in the name of B for the delivery of ten shares at \$105 per share until 3:00 p. m. of the same day. Being unable to find B and secure authority, A telephoned T at 3:00 p. m. that B would take the stock. A found B at 4:00 p. m. and B expressed his assent to what had been done. The price of the stock declined the next day and B refused to take it. Has T a contract against B?

Assume that T learned that A had no authority to act for B and notified A before 3:00 p. m. that the option was rescinded and that B, after seeing A, telephoned T at 3:00 p. m. that he would take the stock. Assume further that the price of the stock advanced and T refused to deliver. Would B have a contract right against T?





2. Are the following instruments negotiable in form?

(a) \$125.00.

Township of Buffalo, Mch. 25, 1868.

Six months after date I promise to pay to E. W. Lowe or order One Hundred and Twenty-five Dollars with interest. Waiving the right of appeal and of all valuation, appraisement, stay and exemption laws. Morton Anderson.

(b) \$150.00.

Laredo, Texas.

One year after date I promise to pay to Pedro Flores—One Hundred and Fifty-five Dollars—in Mexican currency, with interest at 7 per cent per annum until paid: 5 per cent if paid when due. This note is secured by a chattel mortgage on my household furniture. If on a sale under the mortgage the entire amount is not realized, I promise to pay the deficiency.

Jose Valdemoro.

3. Chicago, Dec. 1, 1912.

No. 41.

Continental and Commercial Savings Bank.  
Pay to the order of Wm. Norton—One Hundred Dollars—\$100.00, and charge to my account on savings bank book No. 41.

Augustus Nash.

The bank book of depositor must accompany this order.

On the back of the above instrument was written: "Pay Henry Johnson. Wm. Norton." Henry Johnson presented the order accompanied by book No. 41 to the bank on December 2, 1912.



Payment was refused because of a rule of the bank reserving the right to refuse payment unless given thirty days notice. This rule was printed in the bank book.

Is the instrument negotiable in form? If not, strike out or add anything necessary to make it negotiable. If it is already negotiable or if you have changed it to make it so state briefly the rights of Johnson against Norton, Nash and the bank in case payment is refused by the bank.

4. M made two notes payable to the order of P. P delivered the notes to his agent, G, who had authority to indorse and deliver notes in P's behalf. P, who lived alone, died suddenly one night. The next morning, before any one knew of P's death, G indorsed on one of the notes "P" and on the other "Pay to A. P" and delivered them to A in payment of a debt owed by P to A. At maturity A sued M. Has M any valid defense?

If M refuses to pay and A gives due notice of dishonor to P's administrator, may A recover of the latter?

5. M made a promissory note for \$100 payable on demand to the order of P with six per cent interest. Six months after date P indorsed the note to A for value. A month later A presented the note to M for payment, which was refused. A then sued M. May M avail himself of either of the following defenses:

1. Payment to P five months after the note was issued.

2 A set-off against P to the extent of \$50.

3 That the note was given in payment of a gambling debt.

6 Chicago, December 1, 1912.

Two years after date I promise to pay to the order of P, One Hundred Dollars. Value received.  
M.

Indorsed: (1) "P," (2) "A," (3) "Pay to C, B."

(4) "Pay D without recourse. C" D lost the note. X found it and sold it to E for \$75. E did not know that X was a finder. D learned that E had the note and demanded its return. After refusal D sued E in trover. Judgment?

7. Plaintiff, as indorsee of a bill of exchange, sued defendant as acceptor. The bill was in proper form but there was no acceptance on its face. Can plaintiff recover if: (a) He puts in evidence a written promise of defendant to accept the bill, such promise being made and dated before the bill was drawn. (b) The word "accepted" is written across the back of the bill in defendant's handwriting but with no signature. (c) Plaintiff proves that previous to taking the bill he called defendant by telephone and defendant promised to accept, the bill being then in existence.

8. (a) P, a traveling agent, called on M, a farmer, and sold M some farm machinery. After M had signed a written contract of sale P requested M to sign a duplicate. M signed the paper

offered him as a duplicate without reading it. In fact the paper was a note for \$100 payable to the order of P. (b) P also induced M to buy an interest in a patent right on this farm machinery. The patent was worthless although P represented that it was very valuable. To pay for his interest M made a note for \$100 payable to the order of P. P sold both notes to A for \$150. M, when sued by A at maturity, pleads fraud in each case. Is the defense good? What are A's rights against P?

9. M, a stenographer in the employ of DE, bought a typewriter of P and in payment gave P the following:

Urbana, Illinois, July 1, 1913.

Sixty days after date pay to the order of P, out of my salary for August, the sum of \$90.00, the price of one Oliver No. 5 typewriter, delivery of which is hereby acknowledged.

To DE.

M.

Is the above instrument negotiable?

10. (a) M, to accommodate P, made a note for \$500 payable to the order of P six months after date. The note was dated January 2, 1910. On September 1 of the same year P indorsed the note to A for value. A knew that M was an accommodation maker. A did not demand payment of M until three years later, after P became bankrupt. Can A recover of M?

(b) \$88.00 Chicago, Illinois, January 10, 1910.

Forty-five days after date pay to the order of P Eighty-eight Dollars and charge same to account of

M.

Is the above instrument negotiable? If so, is it a bill or a note?



## Examination in Bankruptcy.

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PROFESSOR DECKER.

1. A, a citizen of Indiana, in 1892 loaned \$5,000 to B, a citizen of Massachusetts, taking a note therefor payable in five years in Indianapolis. In 1894 A moved from Indiana to Boston where his home still remained in 1900. In that year he sued B on the note in the Massachusetts courts, to which suit B pleaded a discharge under the Massachusetts insolvency law (a statute permitting proceedings to be commenced by creditors of an insolvent for the liquidation of his property and discharging debtors proceeded against from their debts) obtained in 1893.

(a) Is B's defense good?

(b) Would it alter the case if the discharge pleaded was obtained in 1896?

(c) Or in 1899?

2. A, a resident of Chicago, made an assignment for benefit of his creditors on June 1, 1905, to B as assignee, who took possession of A's property, recorded the assignment in the County Court of Cook county and gave bond in accordance with the Illinois Assignment Act. X, a constable, on June 15, 1905, levied execution on goods in the hands of B on a judgment recovered by M against A, and sold them at execution sale two weeks later.

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

(b) If A is adjudicated a bankrupt on a petition filed July 1, 1905, what are the rights of the trustee to the proceeds of the sale provided they are still in the officer's hands? Or provided they had been paid over by the officer to M?

(c) What would be the rights of the trustee to other property included in the assignment still in the hands of B?

(d) Would it alter your answer to (c) if the date of the petition were November 1, instead of July 1? If so, how and why?

3. The Aetna Coal Company was incorporated under the laws of New Jersey, which requires that every corporation organized under it shall maintain its principal office in that State. It kept its stock books and maintained an office in Newark, where it held its annual meetings of stockholders, but did no other business there. The company owned extensive coal mines and was engaged in mining coal in Carbon county, southern Illinois. It also had large coal yards in Chicago, where it sold its product and maintained its business office.

(a) Could this company be a voluntary bankrupt? Or involuntary?

(b) If either, what court or courts would have jurisdiction?

(c) Would a letter written by the president of this company, acknowledging that it was insolvent and willing to be adjudged a bankrupt, be a sufficient act of bankruptcy, admitting that the company is one which may be adjudged an involuntary bankrupt?

4. Smith gave a note to Jones for borrowed money which Jones endorsed to and discounted at the X bank. When the note matured, Smith told Jones that he was hard up and could not raise the money to pay it, but if Jones would loan him the money, he would make a new note and give him a mortgage to secure it. Jones accordingly advanced Smith the money to pay the bank, and Smith made a new note to Jones, with a mortgage on Blackacre and Whiteacre, the latter being Smith's homestead.

(a) Admitting that Smith was insolvent, would this transaction amount to an act of bankruptcy?

(b) If adjudicated on a voluntary petition filed by Smith within 4 months, what would be the rights of his trustee to the property mortgaged?

5. Discuss the subject of voluntary conveyances as a fraud upon prior and subsequent creditors.

6. Jones conducted a butcher shop in the city of Urbana in leased premises and also owned a farm of 80 acres near the city where he resided with his family. He operated the farm with hired help, using it as a place to fatten cattle, hogs and poultry, and did his slaughtering there.

In the fall of 1910, Peters commenced a suit against Jones for the seduction of his daughter, which came on for trial at the December term, and on January 15, 1915, resulted in judgment against Jones for \$5,000.

Pending the trial, on December 1, 1910, Jones deeded the farm to his wife without consideration, and the deed was recorded on January 14, 1911. At the time Jones owned stock and tools on the farm worth about \$3,000 and fixtures, stock and book accounts at the shop worth about \$2,000. He owed a note of \$2,000 at the X bank, due January 10, 1911; another note at the Y bank of \$1,000 due February 1, 1911, in which Smith was endorser; and he was an accommodation endorser on a note of Brown to the Z bank for \$2,500, due July 1, 1911. He also owed scattering amounts to other persons, amounting to about \$1,000, of which \$200 was for taxes and \$50, \$100 and \$500 respectively was to B, C and D for wages.

On December 15, 1910, Jones borrowed \$500 of Lewis and gave him a bill of sale of the shop fixtures, stock on hand and book accounts. This was intended as security, but Jones continued in possession and conducted the business as before.

On January 14, 1911, the X bank brought suit on the \$2000 note and attached the tools and livestock on the farm. This suit resulted in judgment on April 15, execution was immediately levied and the attached property advertised by the sheriff for sale on April 25th.

(a) Is Jones subject to involuntary bankruptcy?

(b) Assuming that he is, how many acts of bankruptcy has he committed, what are they, and what is the earliest and latest date that a petition would lie on each?



(c) Which of his creditors enumerated are eligible to act as petitioning creditors on the latest date, and how many of them would be required to join? Would any of these have been ineligible, or would others have been eligible if the petition were filed at the earliest date possible?

(d) If Jones were adjudicated on a petition filed on the latest date, what would be the rights of his trustee to the various items of property enumerated?

(e) Would Jones have a right to a discharge, assuming that he turned over all of his property and obeyed all of the orders of the court?

(f) Which of Jones' creditors, if any, are entitled to priority of payment?



## Examination in Contracts.

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First Semester.

PROFESSOR DECKER.

1. "One year after date I promise to pay to John Jones the sum of One Thousand Dollars (\$1,000.00) with interest at seven per cent.

Witness my hand the first day of March, A. D., 1911.

Peter Smith (L. S.)"

(a) What form or forms of action could be properly brought on this instrument at common law and why?

(b) Does the law of Illinois differ from the common law in this respect? If so, how?

(c) Could the defense of "no consideration" be successfully interposed by Smith in a suit on this instrument?

2. Define "consideration" and explain the origin of the doctrine.

3. X located a homestead on the public domain and received a certificate of entry from the U. S. Land Office. This certificate was valueless unless the holder actually resided three years on the premises when the holder became entitled to a patent. After one year X abandoned the land and went to an adjoining State where he worked in a mine for a year. He then returned

to the land and found Y in possession, the latter having proven the abandonment and received a new certificate of entry from the land office. X, knowing that he had no rights, threatened to bring legal proceedings against Y to oust him from the premises, as a result of which Y finally agreed to buy X's certificate for \$100 and gave X his promissory note for that amount payable in six months. The note being unpaid X brings suit on the note.

(a) If Y wishes to make the defense of no consideration should he do so by demurrer or plea?

(b) If properly raised, is the defense good?

4. D, a brewer in Danville, received a letter from P, of Champaign, informing him that P was about to start a bottling works and inquiring at what price D would furnish him beer by the barrel. D replied, "I shall be glad to supply your demands at \$5.00 per barrel, settlements at the end of each month." P immediately ordered twenty-five barrels and D filled the order. Three weeks later P ordered fifty barrels and D refused to fill the order. Is he guilty of breach of contract?

Suppose, before the above orders were made, D and P had drawn and signed a written agreement by which D had agreed to furnish and P had agreed to buy from D all of the beer that "P's trade demanded for one year," and after the refusal of the fifty barrel order, P had purchased 500 barrels elsewhere within the year to supply his trade at an additional cost of fifty cents per barrel.

Would D be liable to P for breach of contract, and if so, for how much? Explain fully.

5. D rented a store from P for five years at a rental of \$100 per month. After two years of the term had expired D informed P that his trade was poor and he must cut down his expenses or quit. P thereupon agreed to reduce the rent to \$75 per month for the balance of the term. D continued to occupy the premises, paying \$75 at the end of each month and receiving a receipt in full for rent to date. When the last installment was due P tendered \$75 but D demanded in addition the sum of \$900, being \$25 a month for three years. Is he entitled to it?

6. P, a boy of 16, had been irregular in his attendance at school. An uncle one day said to him, "If you wont miss school a single day for a whole year, except for sickness, of which your father shall be the judge, I will give you \$100." P replied, "I will take you up on that. I want that \$100." After about eleven months, during which P's attendance had been perfect, he commenced to crow one day and asked his uncle if he had the money ready. The uncle replied that he was sorry that he did not have the money to spare and the boy must not expect it. He also said that he had never really meant it seriously anyway. What are P's rights if he continues to attend regularly for the balance of the year?

7. The University of Illinois had purchased property, on which were some dwelling houses, for

the purpose of building a new building. It advertised that at a certain time and place it would sell the houses at auction to the highest bidder. At the sale Jones bid \$650, Smith bid \$675 and Jones then bid \$680. The auctioneer refused to accept the last bid, because the advance was too small, and continued to cry the property at \$675. Nobody bidding more, he knocked down the property to Smith at that price.

Jones sues the University for damages for breach of contract. Decide the case.

8. X dictated a letter to Y offering to hire him for a year at a salary of \$250 per month, but the stenographer made a mistake and wrote \$220 instead of \$250. Y accepted and went to work and at the end of the first month received a check for \$250. He enquired the reason for the overpayment and X then learned of the mistake for the first time. He then demanded a return of the check and offered one for \$220 in its place. Y claimed that he was entitled to \$250 under the circumstances and on X's refusal to pay that amount, Y quit work.

(a) How much is Y entitled to for his month's work?

(b) Is Y liable to X for breach of contract for refusing to work for X for the balance of the year at \$220?

9. Jones, of Minneapolis, and Brown, of St. Paul, were grain brokers. On a certain day Jones found in his morning mail an offer from Brown to

sell 10,000 bushels of wheat at prices stated and stating that the offer would be kept open till noon of that day. Jones immediately decided to accept. He tried to telephone to Brown but found his telephone out of order. This was at 9:00 a. m. He then dictated a letter of acceptance to his stenographer, who wrote it out, and Jones then signed and sealed it, addressed it to Brown and at 9:30 he handed it to an A. D. T. messenger boy for immediate delivery. At 9:45, while on his way to Brown's office, the messenger boy was struck by an automobile and taken to a hospital. The letter was found in his pocket by the receiving doctor who stamped it and deposited it in a U. S. mail box at 10:15. The postman took it up at 10:30 and it was delivered in due course of mail at Brown's office at 11:55 by slipping it through a slot in the door. There was no one in the office at the time and Brown first saw the letter when he returned from lunch. Brown then notified Jones that his answer was too late and refused to sell.

Was there a contract between the parties? If so when was it made? Discuss each step in the negotiations.

10. Green sued White for breach of contract. At the trial the following facts were proven. White called on Green, a real estate agent, and asked him if he thought he could sell Blackacre, a farm owned by White, for \$10,000. Green said he thought he could and after some discussion as to terms he handed White a printed blank which

White filled out and signed. It read as follows: "In consideration of S. H. Green agreeing to act as agent for the sale of the following described property: (here Blackacre was described); I hereby agree to give him the exclusive sale thereof for three months and to pay him a commission of five per cent in case of sale. Price to be \$10,000, half cash, balance to be secured by mortgage. Dated February 1, 1910. Signed, James White." Two months later White notified Green that he had sold the property himself and to take it off the market. Green, in the meantime, had expended considerable sums for advertising and in showing the property to prospective purchasers.

There being no controversy as to these facts, Green moved the court to direct a verdict in his favor. Should the motion be granted?



## Examination in Constitutional Law.

January, 1914.

PROFESSOR GREEN.

1. A state constitution prohibited amendment except by a two-thirds vote of each house followed by a two-thirds majority at a general election. The legislature by vote of a bare majority of each house submitted to the voters the question of calling a convention to frame a new constitution to go into effect when promulgated by the convention, and a bare majority of the voters voted for it. The legislature then provided for the election of delegates by the voters, and the delegates were elected and met. If the convention promulgates a new constitution, will it supersede the old one, and if so will the change be lawful or revolutionary?

2. Discuss the validity of an act of Congress providing that any person whose liberty of action is restrained by the Interstate Commerce Act may file a petition in the appropriate District Court of the United States asking the court to determine whether the provision is constitutional as applied to the petitioner, whereupon it shall be the duty of the court to determine the matter, with a right of appeal to the Supreme Court if the District Court determines the provision to be valid.

3. The Constitution of the United States provides that no person shall be compelled in any

criminal case to be a witness against himself, and that no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. A woman born and residing in New York, on trial for felony in an Ohio court, was in violation of the constitution of Ohio compelled to be a witness against herself, and thereupon convicted and imprisoned. Which, if any, of the provisions recited above have been violated?

4. A was crippled by the negligence of a co-employee. He sued the employer. Before the trial, the legislature granted A's wife a divorce, provided that in future trials the fellow servant rule should not be available as a defence, nor a verdict be rendered on the uncorroborated testimony of a plaintiff, and that the trial of A's case should be postponed to certain cases in which the state had an interest. Which of these acts are valid as regards A?

5. A state statute required all common innkeepers whose inns had accommodations for a hundred guests to serve a meal to any traveler who requested it for not more than fifty cents. Discuss its validity.

6. An act of Congress declared that any advertising sign twenty feet long or ten feet wide painted on the wall of a building on a street bor-

dering on a public park in the City of Washington so as to be visible from the park should be deemed a public nuisance, and subject to abatement as such. Discuss its validity.

7. A telephone company did business both interstate and local in several states. Part of its property was used solely in interstate business. By the law of one of the states all public service companies were taxed on the value, as a unit, of their property tangible and intangible within the state. The company's property was assessed by estimating from the market prices of its stocks and bonds and its gross and net receipts, the value of its entire property and business throughout the country as a going concern, and then taking the proportion of that value which the gross receipts and mileage within the state bore to the gross receipts and mileage in all the states. The law made the assessors' valuation, fixed after hearing, conclusive. The company had a fair hearing, but is prepared to show an overvaluation, and moreover contends that the laws and the assessment are unconstitutional. What, if any, relief may it obtain?

8. Assume that an act of Congress directs the Collectors of ports to deport aliens of Chinese descent who attempt to enter the United States, and to imprison for three days all persons attempting to smuggle goods into the United States and confiscate the goods. Ju Toy, who claims to have been born in Chicago, of alien Chinese parents,

attempts to enter the United States at Boston, and to smuggle in a diamond worth fifty dollars. The Collector, after a hearing, determines in good faith on conflicting evidence that Ju Toy was born of alien Chinese parents in China and is guilty of attempting to smuggle the diamond. He confiscates the diamond, and, as the act provides, delivers Ju Toy to the U. S. marshal to be imprisoned three days and then deported. If Ju Toy can show he was born in Chicago, and never changed his citizenship, may he obtain relief through the courts from (1) the confiscation, (2) imprisonment, (3) deportation?

9. An Illinois statute provides that all property in the state on the first day of May shall be assessed and taxed. On that day there arrived and docked in the Chicago River a vessel whose forward hold was filled with grain she had brought from Fort William, Canada, and her after hold with grain she had brought from Duluth. Vessel and cargo belonged to a merchant of Duluth, who intended to keep the grain on board at the dock until sold. What part of the property is taxable? How would you answer if the Canadian and Minnesota grain were mixed in the same hold?

10. A State law provided that foreign corporations doing business in the State should thereafter pay an annual license fee equal to one-tenth of one per cent of the gross receipts for the preceding year of their total business wherever carried on. Discuss the validity of these provisions as applied

(1) to a corporation of another State organized to sell cigars at retail which desires to enter the State for business;

(2) to a like corporation already doing a cigar business in the State in stores which it owns and under a license from the State not limited as to time;

(3) to a foreign packing house corporation which wants to enter the State to carry on an interstate and intrastate business in the shipment and sale of meat.



## Examination in Criminal Law.

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February, 1914.

PROFESSOR GREEN.

1. A pickpocket put his hand into another man's pocket and seized a silver dollar which he carefully raised almost to the top of the pocket when it slipped from his fingers and dropped back. Of what crime, if any, is he guilty?

2. A statute made it a misdemeanor to fish for trout before May 1. On April 30, X, believing, because he looked at an old calendar, that it was May 1, went to a stream full of trout, adjusted his rod and made one cast, when he was arrested. Is he guilty of an offence? Would it make a difference if he knew it was April, but believed from looking in the last edition of the statutes that the season for trout fishing began in April, the law extending the closed season through April having been recently passed and not yet published? Would it make a difference if there were no trout in the stream?

3. In a trial for selling liquor within four miles of the State University at Urbana, it appeared that the State's Attorney who instituted the prosecution, suspecting that defendant was selling liquor illegally, sent an agent to ask defendant to sell him some liquor and that the sale charged

was thereupon made to the agent. Is this a defence? If the agent were a minor, but defendant reasonably believed him to be of full age, could he be punished for selling liquor to a minor?

4. Two room-mates got drunk. One made a great and unnecessary noise in his room which seriously disturbed the other inhabitants of the house; the other threw bottles into the street to the alarm of passers by, What, if any, crimes have been committed?

5. As the President of the United States and the British Ambassador were traveling through Illinois in a motor car, A to frighten them tossed into the car what looked like a dynamite bomb but was a harmless piece of wood. They were in no danger of being hit by the wood, but were put in fear of being hurt by an explosion. Is A subject to prosecution by the State or by the United States, and for what offence or offences?

6. A surgeon, to get a fee, falsely and fraudulently told a patient that it was necessary to remove his appendix. The patient told him to do so, and the surgeon performed the operation. Is he guilty of a criminal assault and battery?

7. A statute provided that whoever sold impure milk should be fined five dollars. A milk dealer, in the belief it was pure, sold milk into which his enemy had put poison. The buyer drank the milk and died of the poison. Of what, if any, crimes is the dealer guilty?



8. A's dog and B's dog, of equal value, got into a fight. One dog or the other was sure to be killed, and A killed B's dog to save his own, but, being angry at the dog and at B, killed it with unnecessary cruelty. Then B, angry at A and at A's dog, threw a stone at A, but unintentionally hit and killed A's dog. He threw another stone at A, and unintentionally hit C. What crimes?

9. A was drunk in a saloon. A's wife entered the saloon with B, her father, to take A home. C, also drunk, spoke to her words of gross insult. A, angry at the insult, struck C with his fist. C, angry at the blow, attacked A with a knife. B shot C in necessary defence of A, inflicting a wound which would prove fatal in a few hours. C fell to the ground unable to move. A, still angry, and solely because he was drunk thinking himself in imminent danger of being killed by C, shot C and killed him instantly. What crimes have been committed?

10. X is on trial for assault and battery. There is conflicting evidence as to whether he was insane, and as to the nature and extent of his insanity. What do you think should be on principle the test of his punishability as affected by insanity? To what effect are the decisions on the subject?

11. There has been a criminal homicide. People are discussing whether it is murder or only manslaughter, and you are asked to explain the difference between the two so that they may understand it and tell in any case of criminal homicide where they know the facts whether it is manslaughter or murder.



## Examination in Evidence.

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PROFESSOR HALE.

First Semester 1913-14.

(Give reasons for every answer.)

### PART I.

1. Enumerate the various circumstances under which the court may be called upon to consider questions of fact in a trial before a jury. In so doing does the court usurp the function of the jury?

2. Indicate the different ways in which a jury may come into a knowledge of facts to be considered in reaching its verdict, otherwise than through the testimony of witnesses.

3. X is suing for injuries sustained in a collision with a train. Between five and ten minutes after the accident X said to Y that the train was running at least thirty miles an hour at the time it struck him. The speed limit fixed by statute at this point was twenty miles an hour.

Counsel for the defendant company objected to this testimony by Y on the following specific grounds:

1. It was hearsay.
2. No excuse was given for not calling X.
3. It was a mere expression of opinion by X.

Are any or all of these objections sufficient to exclude the evidence as offered through Y?

4. A is claiming to inherit as an heir of Y. It is admitted that B was the mother of A, but in order to establish her right to the property A must show that X was the mother of Y and that X and B were sisters. To establish these facts and thus make complete the line of descent, A offers a declaration of Y to the effect that X was her mother and that X and B were sisters.

It was objected, first, that it was not shown by evidence *dehors* the declaration that Y was related to A and, second, that this was a recent matter and it was not shown that other living relatives could not be found to testify. Should the declaration of Y have been received?

5. A is indicted for the murder of B by placing arsenic in a cup of tea, drunk by deceased while an inmate of A's house. At the trial, evidence is offered by the prosecution (1) that six other persons who partook of the tea on the same occasion were taken ill with the same symptoms, (2) that in the cup habitually used by the deceased while in A's house an arsenious deposit had been noticed on three previous occasions in the same week. Is this evidence admissible?

6. (a) A desires to introduce in evidence a deed from X to Y. In what way or ways may the deed be authenticated?

(b) In what different ways may a signature to a letter be proved?

7. A in an action against B for a breach of contract, alleged that the contract was in writing and set out the terms thereof in his declaration. B put in a general denial.

A took the stand in his own behalf and offered to testify to the terms of the contract. Counsel for B objected that no proper foundation had been laid. A thereupon stated that he did not have the original contract; that it had been left with B. In response to a further question, A testified that he had a carbon copy of the contract in his office. Counsel for B then objected on the ground, first, that no notice to produce the original had been served on B, and second, that the carbon copy should be produced in preference to the oral testimony.

Both objections were sustained. Were the rulings correct?

8. Defendant signed a contract with the X Advertising Co. for advertising at the rate of \$10 per insertion. In an action on this contract defendant seeks to show that the real contract was for a less amount; that the written contract was signed as worded at the request of the X Advertising Co. so that it might be used as an inducement to others to contract for advertising at the rate indicated in this contract. This evidence was objected to by the X Advertising Co. What should the ruling have been?

9. X executed a will containing, among others, the following provision, "I devise my house in Champaign, Illinois, to John William Smith, the son of Israel Smith. Israel Smith had a son by that name who had died a number of years before and also a younger son named John Robert Smith, who claimed as devisee.

The testator, X, had in fact two houses in Champaign, in one of which he made his home and the other of which he leased.

To support his claim as devisee and also to the home place, which was more valuable than the other, John Robert Smith offered a letter written to him by the testator in which it was stated that he was to have the testator's home upon his death.

Was the letter admissible for either purpose?

## Examination in Equity.

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February, 1914.

PROFESSOR POMEROY.

I. Give three instances of specific performance where the subject matter is a chattel, or a chose in action, explaining carefully in each case why the legal remedy is inadequate.

II. Describe fully the interests, in equity, of the mortgagor and mortgagee respectively (English doctrine).

To whom did each interest pass on the death of the party?

Did equity recognize at all the common law rights of the mortgagee?

III. A father agrees to settle Blackacre on A, his prospective son-in-law, on the latter's marriage. The marriage takes place, and A takes possession of Blackacre. Show how the two general tests, for determining whether a given act of part performance takes an oral contract out of the statute of frauds in equity, apply to the above facts.

Would the marriage alone be a sufficient act of part performance? Why?

IV. A steam railroad is constructed, under authority from a city, down the middle of a street, the street being owned by the city. The opera-

tion of the railroad constitutes a nuisance to A, an owner of property abutting on the street, and diminishes the value of his property. The cases studied present two different views as to A's remedy in equity against the railroad company.

State these two views fully—the reasons for them, and the results. Which is the Illinois law?

V. A owned a house in a choice residence suburb. There was a gentleman's agreement (not a contract) among the residents that an owner on moving away would sell out only to a person of good reputation, acceptable to the other residents. B contracted with A to purchase A's house for a residence, paying its full value, and representing that he (B) was a person of unblemished reputation. As a matter of fact B had served a term in prison in a distant State for an infamous crime. This fact coming to light, A refused to convey to B. It appears that A will suffer no pecuniary damage by conveying to B, but will suffer considerable social persecution at the hands of his former neighbors; the value of the property of the former neighbors would also be somewhat diminished if B should take up his residence in A's house.

Can B have specific performance?

Discuss.

VI. Brown, on June 1, 1913, sold 10 acres to White for \$1,000, Brown retaining the legal title. White paid \$400 cash and gave his note for the balance, payable December 1, 1913. In Novem-



ber, 1913, Brown sold and conveyed the legal title to Gray, who took with notice of the prior sale to White. On December 10, 1913, Brown transferred the purchase money note for value to Green, who knew nothing of the sale to Gray. The note is still unpaid.

What are the rights and remedies in equity of Gray and Green against White, and of White against Gray and Green?

Explain fully.

VII. Explain fully, with an illustration, what is meant by equitable waste.

VIII. B was the priest and spiritual adviser of A, who had no near relatives. While A was ill, but not in expectation of death, A stated to B his desire to make to B a gift of one-third of A's property. B remonstrated and explained to A that A would probably recover and then might repent of his generosity; but A insisted on making the gift. B finally yielded and brought in an attorney, C, to draw up the requisite deed. C held no private conversation with A and offered no advice on the subject of the gift. A executed and delivered to B deeds of one-third of his property. On his recovery, A sues to set aside the gift.

Should he succeed? Reasons fully. Suppose C had given him advice?

IX. B owns lots adjoining A's house on three sides in a city suburb. B contracted with A not to cut down the shade trees on his lots which close-

ly surrounded A's house, during A's ownership. B's lot having, by the growth of the city, become very valuable for building purposes, B is about to cut down the trees to make room for a building. A sues for an injunction. B offers to show as a defense, that his lots are valueless to him if the trees are allowed to remain, and that A's house will be much more healthful if the trees are removed.

Discuss.

X. A owns an undivided quarter of Blackacre, as tenant in common with B. C holds a mortgage for \$8,000 on Blackacre. A wishes to relieve his interest from the burden of the mortgage, but B declines to contribute his proportion, and C declines to accept less than \$8,000.

What course should A pursue in order to secure payment of B's share?

## Examination in Insurance.

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January, 1914.

PROFESSOR GREEN.

1. A took out three life policies. The first provided that it should be void in case of suicide; the second that it should be enforceable in case of suicide; the third said nothing about suicide. He took out a fourth policy against death by accident. Ten years after, he committed suicide, sane. The company defends as to each policy on the grounds; first, that the death was not within the meaning of its promise; second, that if it were, the promise was in so far void as against public policy. What are the merits of the defences? How would you answer, if A took his life intentionally, but while so insane as not to be able to judge rationally as to his act?

2. B, insured against bodily injury caused by external, violent and accidental means, by wearing new shoes abraded the skin of his foot and thereby contracted blood poisoning. Discuss the insurer's liability.

3. A tenant insured against fire a building he had built on leased ground under an agreement by which he was entitled to remove it the end of the term. Just before the lease was up, the building was destroyed by fire. Its value before the fire, based on cost of rebuilding less depreciation, was

\$1000. But the expense of removing it or of pulling it down would have exceeded \$1000, and the landlord would not have renewed the lease or bought the building, because he had contracted with a future tenant to build anew. What is the insurer's liability?

4. A steamboat company's sole business consists in carrying passengers to an island amusement park owned and operated by another company. The steamboat company will suffer a heavy loss in business if the buildings of the amusement park burn, and wishes to insure against this loss. May it do so, and how should the policy read?

5. P was a lawyer, his brother was a banker. P applied for policies for himself and brother in a life insurance company, which as he knew had especially low rates for bankers. By mistake he signed in his own name the application blank he had prepared for his brother which stated that the applicant was a banker, and the brother signed the other blank which stated that the applicant was a lawyer. P's policy was issued at a lower rate than the other in reliance on the statement that he was a banker. In actions on the policies, the judge told the jury that if bankers and lawyers were equally good risks, the misstatements furnished no ground of defence, and the jury found for the plaintiff in each case. Is there ground for reversal?

6. X took out insurance against burglars on "goods contained in my brick building at No. 105

Second Street, occupied as a dwelling." X did at that time occupy as his dwelling a house whose outer walls were brick, but whose partitions and roof were of wood, which had formerly been known as No. 105 Second Street, but the street names and numbers had recently been changed by city ordinance, the house was known when the policy was issued as No. 240 Fifth Street and there was no building at new No. 105 Second Street. During the currency of the policy, X went to Europe leaving the house vacant and insufficiently secured so that burglars easily broke in and stole goods of great value. Has he a claim under the policy?

7. An applicant for life insurance in answer to a question in the application blank wrote in good faith in the blank that his father died of appendicitis. The father really died of a bungling operation performed in the mistaken belief that he had appendicitis. The blank stated that the policy would be void if any statement in the blank was untrue. Has the insurance company a good defence? How would you answer if instead of the application blank saying that the policy would be void, the policy said that the insured warranted the truth of all statements in the application?

8. A, by falsely and fraudulently saying that B, a stranger, was his debtor, and had consented to have A insure his life, obtained a policy on B's life "incontestable after two years for any cause whatever." After two years B died. The company defends on the grounds of misrepresenta-

tion, fraud, lack of insurable interest, and lack of B's consent. Which, if any, of the defenses are good?

9. A policy of fire insurance contained these words — "It is agreed that this policy shall be void if at the time it is issued there is other insurance on the premises, that this document expresses the whole and true agreement and that no parol evidence shall be received to modify its terms." The insured as the policy was handed to him said, "This will do me no good as there is other insurance," and the company thereupon said, "It will be valid in spite of the insurance, as we waive the clause about other insurance." Is the policy enforceable?

10. C insured his life for \$100,000 and paid the premiums for some years. The policy provided that it was to become void if assigned. C assigned it without the assent of the company to D who notified the company of the assignment and paid the premiums thereafter. On C's death, the company sets up lack of insurable interest and breach of condition. Are the defences good?

## Examination in Illinois Procedure.

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DEAN HARKER.

1. A, a resident of Champaign county, brought suit in tort in the circuit court against B, a resident of Champaign county, and C, a resident of Macon county. Writs directed to the sheriff of Champaign county and the sheriff of Macon county, were served and the declaration was filed ten days before the September term, 1913. B plead to the declaration by traverse. C did not plead and was defaulted. Upon the application of B, the cause was continued until the January term of court, 1914. On the 8th of January, a trial was had, resulting in a verdict for the defendant. The evidence showed that C was guilty, but that B was not. Thereupon the attorney for A introduced evidence as against the defaulted defendant C, and the court rendered judgment against him. C now moves to vacate the judgment, set aside the default and dismiss the case.

What should be the order of the court? Why?

2. A brings suit against B in the circuit court and obtains service more than ten days before the return day. He fails to file declaration ten days before the term of court at which the summons was made returnable. On motion of B, the cause is continued at the cost of A until the next term of court. Five days before the commencement of the next term of court, A files declaration. There is a general rule requiring defendants in all law cases to plead or demur to the declaration by Tuesday of the first week. B did not plead to the declaration, and on Wednesday a default was taken against him. On evidence heard, the court rendered a judgment against him. Five days afterwards B moved court to vacate judgment, set aside the default, and dismiss the suit.

What should be the judgment and why?

3. Draft a declaration in ejectment for John Doe, claiming in fee against Richard Roe, for lot 4, block 2, in the Seminary addition to the city of Urbana, Illinois.

4. Where the plaintiff has recovered judgment in ejectment against the defendant, how may he recover the value of the rents for the four or five years during which the defendant kept him from possession of the property?

5. Under what conditions may an unsuccessful defendant in ejectment suit be compensated for valuable improvements placed upon lands in



question during the time which he held possession in good faith?

Give in their order the necessary steps to be taken by him.

6. John Doe, the owner of Lot 4, Block 6, in in the Scott Addition to the City of Champaign, is indebted to James Martin in the sum of \$4000 for a stock of goods purchased. He has already moved a part of them to the State of Indiana, and is preparing to remove the balance of the goods there, and also to take up his residence in the State of Indiana. Draft all papers necessary to subject the real estate mentioned and personal property still remaining in Illinois to judgment and execution sale.

7. How may service upon a non-resident be obtained in a bill of equity for the partition of lands? How may service be had upon the unknown heirs of a deceased tenant in common with the complainant? Under what conditions will the court render a decree ordering a sale of the premises?

8. James Brown, the father of Thomas Brown, a child seven years of age, desires the custody of his child, which is now in the custody of William Atwood, a brother of his deceased wife. The custody of the child was awarded to the wife in a decree for divorce granted to her in 1908. The wife died in June, 1913. Draft petition for writ of habeas corpus.

9. State the distinction which is observed by the Supreme Court of Illinois upon the question of reviewing by writ of error the order of a judge in vacation or a court in term time in a case where the petitioner seeks release from a criminal mittimus and one where the petitioner seeks the custody of his minor child.

10. James Brown, a student in the Law Department of the University of Illinois, who has attended the University for the period of four years, has paid all fees and tuition required of him and in addition to earning 30 credits in arts and science, has passed in all law courses amounting to 84 credits, is denied a degree solely upon the ground that his grades are less than 75 in subjects aggregating three-fourths of his work. The Law Faculty refuses to recommend him for a degree, the University Senate sustains the action of the Law Faculty and the Board of Trustees sustains the action of the Law Faculty and the University Senate. State your opinion as to how he should proceed toward compelling the conferring of the degree. What are your views upon the subject of his being entitled to it?

## Examination in Mortgages.

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PROFESSOR POMEROY.

February, 1914.

I. Define or describe equitable liens, showing their points of difference from, and resemblance to mortgages and common law liens. State three examples of an equitable lien.

II. M mortgaged Blackacre to A on January 2 to secure \$1,000 then loaned, and such loans, not exceeding \$1,000, as A might thereafter make to M. This mortgage was recorded. On January 10 M mortgaged Blackacre to B to secure \$900 then loaned. On January 20 A advanced \$800 to M under the first mortgage.

Blackacre yielded \$2,200 on foreclosure. How should this fund be distributed on the suppositions (1) that A had actual notice of B's mortgage before January 20; (2) that A had no actual notice of B's mortgage but the latter was recorded before January 20? Reasons.

III. How will you determine the validity of the following agreements, A being mortgagor of Blackacre and B mortgagee? Reasons fully.

(1) An option to purchase Blackacre given by A to B at the time of the execution of the mortgage.

(2) A similar option given for a valuable consideration by A to B a month later.

(3) A covenant in the mortgage restricting A in his use of Blackacre.

IV. Smith conveyed a tract to Jones January 2 but the deed was not recorded until April 1. Meanwhile Smith conveyed the same tract to Brown on February 1. Brown took with actual notice of Jones's deed, but went into possession and recorded his deed on March 1. On May 1 Brown sold and conveyed the tract to White. Which has the better title, Jones or White? Discuss.

V. A mortgaged a tract to B for \$2,500; the mortgage was recorded. Subsequently A sold the tract in five lots, at different dates, in the order 1, 2, 3, 4, 5, to P, Q, R, S and T, respectively. Lot 1 was sold to P "subject to" the mortgage; in the deed of lot 3 R "assumed payment" of the mortgage debt; the other lots were sold with warranty against incumbrances. B, with notice of these sales, released lot 4 from the mortgage. Each lot is worth \$600. A and R being insolvent how should the burden of the mortgage be apportioned among these lots? Reasons.

VI. Smith mortgaged Blackacre and Whiteacre to A by one instrument; this mortgage was recorded. Smith afterwards mortgaged Blackacre to B; this mortgage was also recorded. Later Smith mortgaged Whiteacre to C. Blackacre is insufficient to pay the first two mortgages;

Blackacre and Whiteacre together are insufficient to pay all three mortgages.

What are the rights of B and C? Discuss. Suppose Smith had mortgaged the two lots to A at one time but by separate instruments?

VII. Smith made a mortgage of land to Jones to secure two notes; one for \$1,500, falling due June 1, 1913; the other for \$1,000, falling due September 1, 1913. On March 1, 1913, Jones assigned the \$1,000 note to Brown; on May 1, 1913, Jones assigned the \$1,500 note to White. The land sold on foreclosure for \$2,000.

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

VIII. Smith made a mortgage of three lots to Jones; the mortgage was recorded. Later, Smith leased the three lots to A, B, and C, respectively. On January 15, the mortgage debt being payable, Jones served notice on A and B to pay to him the rents falling due on February 1; but served no notice on C. On February 1 Smith demanded the rent from A and B. A paid his rent to Jones. B refused to pay to Jones but paid to Smith. Smith now sues A for his rent. Jones sues B for his rent and C in ejectment. What results? Reasons.

IX. A, owing B \$5,000, evidenced by a promissory note, on January 2, 1900, executed and delivered to B a deed to Blackacre which was then

worth \$9000; at the same time B surrendered the note to A. The deed covenanted that if at any time within five years A should pay to B \$5,000 with interest from January 2, 1900, B would reconvey the land to A. A remained in possession and in receipt of the rents and profits. On January 2, 1905, the land having sunk in value to \$5,000, B demanded payment of that sum with interest from A, and on his refusal began suit to foreclose, asserting that the transaction of January 2, 1905, was a mortgage. This A denies. On what does the question depend and what is the bearing on the question of each of the facts herein mentioned?

X. Brown, having made a mortgage of three lots of equal value to Black for \$3,000, sold two of the lots to Gray, who assumed two-thirds of the mortgage debt. The mortgage being now due, Brown desires to have the mortgage released from his lot on payment of \$1,000 with interest. Black refuses to do this and Gray declines to contribute his share. How shall Brown proceed?

## Examination in Partnership.

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PROFESSOR HALE.

First Semester 1913-14.

(Give reasons for every answer.)

1. A was engaged in the wholesale machinery business. He became acquainted with B, an expert travelling salesman who had been working for a rival house, and made B the following offer, viz.: "If you will come and work with me and let me have \$5000 with which to do some extensive advertising, I will give you exclusive charge of the selling part of the business, advance you \$200 per month to live on and give you 20 per cent of the net profits of the business at the end of the year." A said further, "If business keeps up as it has your share will amount to at least \$10,000." B accepted the offer. For two years the business prospered. The third year, during a financial panic, the business failed. X, a creditor, sued A and B as partners. What judgment? Why?

2. Twenty citizens of the town of X purchased all of the stock of the X company, a supposed corporation. P, a creditor of the X company, files an action against all of the holders of the stock as partners, alleging among other things that the organizers of the company had failed in two important particulars to comply with provisions of the statute relating to the formations of

corporations. The defendants demurred to the declaration. What judgment?

3. (a) State the law as to the liability of a married woman who enters into partnership with her husband; with a stranger. Give reasons. (b) What are the rights and liabilities of an infant who forms a partnership with an adult?

4. (a) What events ipso facto work a dissolution of a partnership? (b) A and B enter into a partnership agreement to continue for three years. Under what circumstances may A secure a dissolution of the firm before the expiration of the three years?

5. (a) A petition alleged a co-partnership agreement between plaintiff and defendant; that prior to this agreement defendant and one X had been co-partners; that on X's death defendant represented that he could procure the interest of deceased (X) at what it had cost X; that he represented to plaintiff that it cost \$2,000 and plaintiff paid defendant this amount; that this was \$500 in excess of the amount paid by defendant for X's interest. Plaintiff prayed judgment against defendant for this excess. Defendant demurred on the ground that the court of law had no jurisdiction. What judgment? Why?

(b) A, B and C, as partners, were engaged in the wholesale meat business. A, B and X, as partners, were in the retail meat business. The wholesale firm sold meat to the retail firm to the



amount of \$1,000. This bill has not been paid. How can the creditor firm enforce payment of this claim? Is the creditor firm entitled, at all events, to the entire \$1,000?

6. A and B made an oral agreement for a partnership to carry on the business of buying and selling real estate. A owned at the time lot 1 and B owned lot 2. It was agreed that these should constitute part of the capital of the firm. Thereafter A bought lot 3 and agreed that it should also be contributed to the firm. In addition A and B each put \$1,000 in cash into the firm treasury. With a portion of this lot 4 was purchased; the deed being taken in the name of B.

In a controversy between creditors of A and B as partners and individual creditors of A and B, which will prevail as to the property in question?

7. (a) A and B are partners in the grocery business. A borrows \$500 from the X bank, signs a note for the amount in the firm name and absconds. When the note is due the bank sues A and B as partners. Has B any defense?

(b) A and B are in partnership. A dies. (1) What effect will a promise by B to pay a firm debt, against which the Statute of Limitations has run, have upon the liability of the firm assets and the estate of A for the amount of the debt? (2) What effect does an admission by the surviving partners have as to the existence and amount of a firm debt?

8. A, B and C were in partnership in the cattle business and owned 500 head of cattle. The firm was indebted to K in the sum of \$500. A sold his interest to B. Thereafter B sold to X. Then C sold to Y. Subsequent to the sale by C, K sued A, B and C and attached some of the cattle. X and Y now sue in replevin for the cattle thus seized. (1) What judgment? Why? (2) Would the result be the same if the attachment had been levied prior to the sale by C?

## Examination in Personal Property.

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(Cover all points involved and give reasons fully.)

PROFESSOR VERNIER.

1. A stole B's watch. A lost the watch in C's store. D, a clerk, found it and turned it over to C. C hid the watch in a secret drawer of his desk and told D that the watch had been claimed by the owner. C died and his effects were sold at auction. E bought the desk and all contents. F, in repairing the desk, discovered the watch. The watch is claimed by D, E, F and C's administrator. In the absence of claim by the owner, who is entitled to it?

2. The statute of limitations in the State of X provides that the right to recover personal property or its value shall be barred unless suit is brought within five years. A stole B's horse. (a) After keeping the horse for five years A moved to the State of Y where the period of limitation is six years. What are B's rights in an action of replevin brought within six years in the State of Y? (b) Assume that after A kept the horse five years in the State of X the statute of limitations was repealed. Should B succeed in an action of replevin against A in the State of X? (c) Assume that A, after keeping the horse for five years in the State of X, gives B a writing waiving the benefit of the statute but later refused to give up

the horse on demand. Should B succeed in an action of replevin against A in the State of X?

3. A stole B's cow. Assume that the period of limitation is five years.

(a) Assume that the cow gave birth to a calf at the end of two years. After the lapse of six years B brought replevin for the cow and the calf. What judgment? (b) Assume that A sold the cow and calf to C after the birth of the calf. Should B be permitted to replevy the cow and calf six years after the original theft? (c) Assume that A, after stealing the cow, concealed it in a hidden enclosure in the woods on a remote farm and that B, though making diligent search, first discovered it at the end of six years when he retook it. Should A be permitted to replevy the cow of B?

4. A converted B's automobile. B sued A in trover and obtained a judgment for \$1,000.

(a) Assume that A then sold the automobile to C for \$1,500. May B replevy the automobile of C? (b) Assume that B, after obtaining his judgment against A for \$1,000, peaceably retook the automobile. May A recover the automobile or its value, either before or after he satisfies the judgment? (c) May B, after obtaining his judgment against A in trover, recover his automobile in replevin?

5. (a) A, with many helpers, was hunting deer upon public land. He succeeded in driving

fifteen deer into a large trap enclosed on three sides. A and his helpers were preparing to enclose the gap on the fourth side with the intention of capturing the deer alive when B, another hunter, fired, killing three of the deer and causing six more to rush from the trap. B carried away the deer he had killed over the protest of A. What are A's rights against B?

(b) A was hunting on B's land by B's permission. He had been forbidden to hunt on C's farm adjoining. A started a rabbit on B's land, followed it onto C's land and killed it there. C picked up the rabbit before A reached it. Who is entitled to the rabbit?

6. A, knowing he had no right to do so felled on B's land timber worth \$200. A cut the trees into logs, hauled them to his mill and made them into lumber worth \$400. C bought this lumber in good faith and made it into fine furniture worth \$6,000. What are B's rights against A and C? Discuss fully.

7. A, a traveling salesman for B, was in the possession of two cases of jewelry samples belonging to B. B, for good cause, discharged A by letter and instructed him to return the samples at once by express. Instead of doing so A went to Chicago and put up at C's hotel incurring a bill of \$150. A, with C's permission, removed a dozen fine watches from one of the sample cases and pledged them to D for a loan of \$200. A then disappeared. B demanded the two sample cases

of C and the watches of D. D refused. C consented to give up one sample case. C then discovered that the remaining case contained less than he had thought and demanded that D give up the twelve watches held on pledge. D also refused this demand. Discuss the rights of B, C and D.

8. A, a wilful trespasser, cut logs on B's land and mixed them with logs on his own land. The logs were of the same kind and approximately of equal value, log for log. B discovered the mixed pile of logs but was unable to say how many belonged to him. He realized, however, that not all the logs belonged to him. What portion should B be permitted to seize? What are A's rights, if any? If A has any rights how should he proceed to protect them?

## Examination in Torts.

PROFESSOR HALE.

First Semester 1913-14.

(Give reasons for every answer.)

1. A called B up over the telephone and falsely told her that her house was on fire. B fled immediately in terror and, as a result of the excitement, suffered a nervous collapse and was ill for several weeks.

B sues A for the injury sustained, claiming to recover in the first count of her declaration as for an *assault* and in the second count of her declaration for a *trespass upon the case*. A demurs to both counts. Should the demurrer be sustained or overruled as to either or both counts?

2. A went to B, a dentist, to have his teeth examined and to have such of them cared for as might need attention. B falsely told A that a certain tooth was badly decayed and should be extracted. A instructed B to proceed and B thereupon extracted the tooth in question. A learned later that the tooth was sound and sued B for battery. What judgment? Why?

3. (a) In what different ways (in general) may a person be imprisoned?

(b) A, the custodian of the Law Library (in this building) locked the door when he left for the dinner hour. B was in the consultation room, but

A did not know that anyone was there. B sues A for false imprisonment. What judgment? Why?

4. A clipped a button from an overcoat, which B was wearing, and threw it into the fire. B at the time was standing on his own land and A reached over the fence in order to accomplish his purpose. What remedy or remedies, if more than one, has B against A?

5. A hired a horse from B to ride to a neighboring town. After leaving B's stable, A changed his mind and hitched the horse to a buggy and drove to the place in question. This change was made without B's knowledge. The horse was in no respect damaged. Upon A's return B refused to take the horse back and sued A for conversion.

What judgment?

6. B stole a horse from A and sold it to C, an innocent purchaser. C, in turn, while ignorant of B's theft, pledged the horse to D who was also ignorant of the theft.

What are A's rights against B?

Against C? Against D?

7. (a) A, a servant girl, applied to B for a position. B inquired of X, a former employer of A, as to whether A was a desirable servant. X replied that A was immoral. A sues X for slander. What different possible defenses may be open to X? Explain fully.

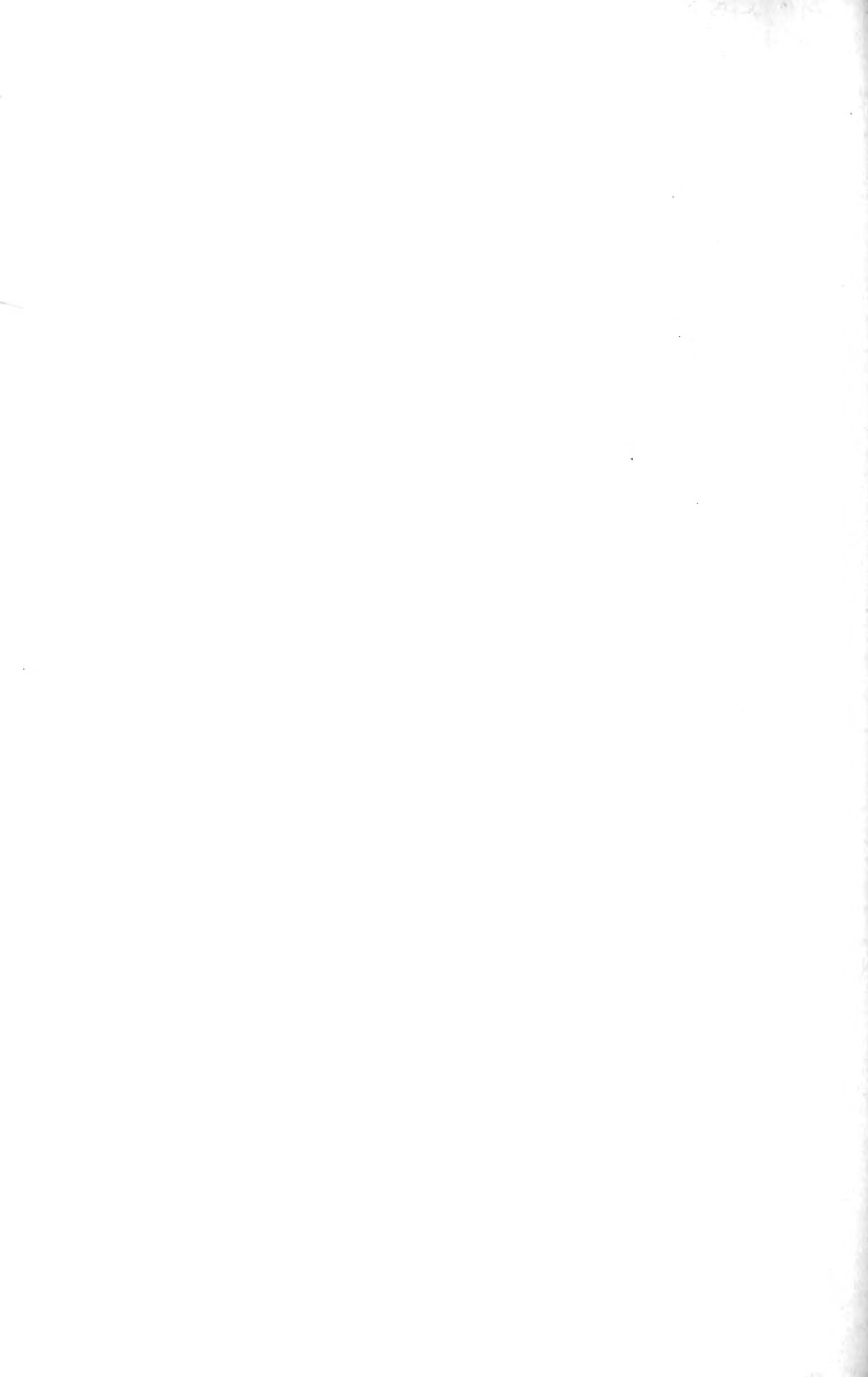


(b) What is the liability of a judge for false defamatory statements?

(c) What is the liability of a witness for false defamatory statements made in the course of a trial?

8. (a) What must the plaintiff allege and prove in order to recover in an action for malicious prosecution?

(b) A and B were political rivals. X came to A and told him that B had attempted to buy his, X's, vote in a previous election. A, in order to bring about B's defeat in the pending election, lodged a complaint against B with the State's attorney. The matter was laid before the grand jury, but that body refused to indict B. B then sued A for malicious prosecution. What judgment? Why?



## Examination in Wills.

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February, 1914.

PROFESSOR POMEROY.

1. (a) Define undue influence.

(b) Discuss presumption of invalidity of legacy to a person occupying a fiduciary relation to testator.

2. In which of the following cases is the will revoked? A throws his will into the fire with intent to destroy it, but only a corner, on which there is no writing, is scorched. B throws his will, inclosed in an envelope, into the fire, with intent to destroy the will, but only the envelope is scorched. C throws his will into the fire but changes his mind and pulls the document out before it is so far burned as to be illegible. D, a widower, makes a will in favor of his children, then marries, and dies after his second wife, leaving no issue by her. Reasons in each case. If Illinois law differs from common law, state both.

3. (a) Give, in substance, the Illinois statute relating to the survival of causes of action.

(b) 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.

4. T's will read: "I give my house in Urbana to A, the furniture in my house to B, \$5000 to C, \$5000 payable out of my Illinois Central Stock to D, and the residue of my real and personal property to E." The inventory of T's estate showed that it consisted of a house in Urbana, worth \$10,000, furniture therein worth \$5000, lots in Champaign worth \$10,000 and Illinois Central stock worth \$15,000. How shall the estate be distributed if the debts and expenses of administration are \$10,000? If they are \$15,000? Reasons.

5. T's will read. "I give A \$15,000 from my Illinois Central stock, B my house in Urbana, C \$5,000, and the residue of my personal property to D. A was T's mother, B a sister, and D the only son of a deceased brother: T left no widow or other near relative. The inventory of the estate showed that it consisted of the house in Urbana, worth \$20,000 but subject to a \$10,000 mortgage of which T assumed payment when he bought the premises; lots in Champaign worth \$20,000, Illinois Central stock worth \$10,000, and cash amounting to \$20,000. How should the estate be distributed if there are no debts other than the mortgage? If such debts are \$20,000?"

6. Testator made a will in 1913 and a second will, revoking the first, in 1914. In June 1915 a statute went into effect declaring that the destruction of a revoking will should not have the effect of reviving an earlier will. In July 1915 testator destroyed the second will. It is proved that he

had never heard of the statute of June, 1915, and that he wished his will of 1913 to stand. Should the first will be probated, or the second, or both, or neither? Reasons

7. Mention two respects in which a gift *causa mortis* differs, in its requisites or effects from a gift *inter vivos*; and two respects other than its being oral in which it differs from a will.

8. What is the effect, under Illinois statutes, where one of the two witnesses of A's will is (a) a legatee under the will, who would be an heir of A if A had died intestate; (b) A's wife; (c) the wife of the person named in the will as executor. Reasons in each case.



LINE 13-A

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UNIVERSITY OF ILLINOIS

**UNIVERSITY OF ILLINOIS BULLETIN**

ISSUED WEEKLY

VOL. XI.

MAY 25, 1914

No. 39.

Entered as second-class matter December 11, 1912, at the postoffice at Urbana, Illinois, under the Act of August 24, 1912.

**Law Examinations**



**PAPERS USED AT THE**

**SECOND SEMESTER EXAMINATIONS**

**1913-14**

**IN THE**

**COLLEGE OF LAW**

**OF THE**

**UNIVERSITY OF ILLINOIS**



**PUBLISHED BY THE UNIVERSITY OF ILLINOIS  
URBANA**

# UNIVERSITY OF ILLINOIS

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## Examination in Carriers.

PROFESSOR GREEN.

I. A university which had built a new library building contracted orally with a drayman who was accustomed to take business from any one who applied for his services to move the books from the old to the new building, a distance of a quarter of a mile, at a dollar a wagon load, the books to be taken from the shelves of the old and deposited on the floor of the new building, and the drayman not to be liable for negligence of his servants. By negligence of his servants in driving a wagon, books in the wagon were damaged. Is the drayman liable?

II. A common carrier was known to have a lower rate for cotton goods than for lace. A shipper of a box of lace handkerchiefs, fraudulently obtained the lower rate by saying it was a box of cotton handkerchiefs. The handkerchiefs were destroyed in transit by fire without the carrier's fault, and would have been destroyed in the same way if the carrier had known they were lace. The freight had not been paid. What is the carrier's liability.

III. A common carrier by steamboat between St. Louis and New Orleans and intermediate points received goods at St. Louis to be carried to Memphis and there delivered "with liberty to call at any ports in any order." The captain on this occasion, did not call at Memphis on the way down, but at New Orleans set the goods apart to be landed at Memphis on the

way back. But on the way back the boat was struck by lightning and burned with all her cargo. Is the carrier liable?

IV. A contracted to sell and ship to B 400 full weight bales of cotton. He induced a compress company to divide 200 bales and make them into 400 bales, apparently of full but really of half weight, and to certify them as full weight. He then shipped them to B under the contract, tendering to the carrier for signature a bill of lading to A's order for 400 full weight bales. The carrier signed the bill, reasonably relying on A's statement, the certificate and the appearance of the bales, but it could have weighed the bales and then would have found out the truth. A sent the bill of lading to B, who paid the contract price in reliance upon it, and received the cotton. What are B's rights against the carrier?

V. A lost a wallet marked with his name and address which contained a large sum of money. B found it, wrapped it up, addressed the package to A, marked it "collect," and delivered it to an express company. A few minutes later, he determined to try to get it back and keep it, so he induced the express company to re-deliver it to him by telling them he had given them the wrong package by mistake. As B was well known and of good repute, they had no reason to doubt his word. B kept the money. Is the express company liable to A in contract? In tort?

How would you answer if the express company had given B a bill of lading by which they undertook to deliver the package to B's order, and B had surrendered the bill of lading undorsed?

VI. While the Wabash railroad was operated by receivers, A, at St. Louis, entered a Wabash train for Danville, with a train ticket for Danville and a Pullman ticket for Berth 12. He showed both tickets to the Pullman and train conductors as he entered to make sure that he was on the right car and train. When the conductors came to collect the tickets, A could not find them, and to avoid being ejected from the train by the train conductor and from the Pullman by the Pullman conductor, he had to pay cash for his fare and berth. Has he a cause of action, for what and against whom?

VII. X, an Illinois student, was a son of Y, a well known Chicago financier. A, employed by the express company at Champaign, went to Chicago, and by telling a dealer who had heard of Y but not of X, that he was X, the son of Y, induced the dealer to send on credit a hundred dollars worth of goods to Champaign addressed to X. A returned to Champaign, called up Y by telephone, imitating X's style of speech, said he was X and asked Y to send him a hundred dollars in bills by express to get him out of a scrape. Y, supposing he had talked with his son, sent the money by express addressed to X. A intercepted the goods and the money as they came to his hands in the course of his employment with the express company, and appropriated them to his own use. Is the express company liable; if so, to whom, and in what form of action?

VIII. A horse was shipped by railroad from Chicago to St. Louis under a bill of lading which said: "It is agreed that the value of the horse is \$200." The horse was worth \$300 and was killed by the negligence of the railroad's employees. What is the railroad's liability?

IX. State briefly the law of Illinois, before and after the passage of the uniform bills of lading act, as to the evidence necessary to prove the shipper's assent to stipulations in a common carrier's bill of lading exempting him from loss by fire.

X. In 1914, the Illinois Central railroad company issued a bill of lading for goods shipped from Chicago to Champaign which contained this provision: "The shipper is hereby notified that the carrier will not be liable for more than \$50, unless the value of the goods is stated." The shipper read the bill of lading and put it in his pocket saying nothing. The goods worth \$100, were destroyed by fire without fault. What is the railroad's liability?

**Examination in Common Law Pleading.**

DEAN HARKER.

I. Name and define each of the actions "ex contractu," and each of the actions "ex delicto."

II. A, finding B's horse running at large, took possession of the animal and published notice of the fact. Unable to ascertain the owner through that means, he sold the horse to C and spent the money. Mention all the remedies open to B.

III. To A's declaration in case for slander, B, the defendant has filed a plea of not guilty and also plead by confession and avoidance matter obnoxious to a demurrer. Upon the argument of the demurrer, B points out that the declaration is substantially defective and asks that the demurrer be carried back to the declaration. What should be the ruling of the court? Why?

IV. A, while a passenger on a railroad train, was injured by a flying stone from the right of way where a contractor was engaged in blasting and removing rock for the railroad company. To recover damages for his injury he began suit against the company and the contractor. In the first count of his declaration he declared against the two defendants jointly, in the second against the company alone, and in the third against the contractor alone. To the declaration the defendant demurred and urged a misjoinder of counts, but the

court overruled the demurrer. Express your views as to the correctness of the ruling.

V. After the court in the case stated in question IV had overruled the demurrer the defendants plead not guilty, and a trial was had before a jury. At the conclusion of the plaintiff's evidence, the defendants moved for a nonsuit because of misjoinder of counts. But the court overruled the motion and the defendants, standing upon their motion and declining to introduce evidence, a verdict was rendered against them for \$3,000. They now move in arrest of judgment. State your views as to what should be the ruling of the court.

VI. To the plaintiff's declaration in assumpsit to recover for the violation of a building contract, the defendant in one plea set up as a bar the Statute of Limitations and also the defense that the contract had been cancelled by mutual agreement. To the plea the plaintiff replied to the cancellation by confession and avoidance. The matter set up in the replication was subject to general demurrer and for that reason the defendant demurred. Upon the argument, the plaintiff asked that the demurrer be carried back to the special plea. Was the special plea subject to demurrer and what should the court do with reference to carrying the demurrer interposed to the replication back to the plea?

VII. James Brown executed his bond in the sum of \$5,000, with Walter Jones and Eli Smith as securities, condition for his faithful performance as collector of notes belonging to the Singer Sewing Machine Company, a corporation. Draft a declaration in debt to the September Term, 1914, of

the Circuit Court of Champaign county to recover \$2,000 for collections made by Brown and embezzled.

VIII. State the methods whereby a special finding of a jury may be obtained.

IX. Under what conditions may a valid judgment be entered against a general verdict where special findings have been rendered?

X. State the difference between a motion for a new trial and a motion in arrest of judgment.

**Examination in Conflict of Laws.**

PROFESSOR DECKER.

I. King, an attorney, was a native of Illinois and practiced his profession at Peoria. He was advised by his physician that he could not expect to live long if he continued in this climate. He thereupon closed his practice, stored his household goods, and went with his wife and infant son to Colorado, expecting to stay there permanently if the climate agreed with him and he could find a suitable professional opening. They spent several months at different resorts and finally took a rented house in Denver for the winter. He also formed a partnership with a Denver attorney and resumed the practice of his profession, but with the understanding that he was to be free to quit at any time if he found the altitude did not agree with him. The next spring he had a bad hemorrhage of the lungs and decided to go to southern California, where he expected to make a permanent home. He died en route in the state of Nevada. He left real property in Illinois, and also a considerable personal estate. There was no will.

Assuming that the laws of inheritance and distribution of all of the states named differed as to the respective shares and interests in both real and personal property of the widow and children of a person dying intestate, by the law of which state should the rights of Mrs. King and her son to King's estate be determined?

II. Hicks sued the C. & N. W. R. R. Co. in Wisconsin for damages to timber on his land in Michigan, alleged to have



been caused by a fire due to sparks from one of the defendant's locomotives. By the law of Michigan, proof that the fire originated within 100 feet of the right of way of a railroad is prima facie proof that the fire was caused by sparks. In Wisconsin there was no such law. Plaintiff proved his ownership of the land, the fact of the fire and that it originated within 100 feet from defendant's right of way, the damage done and then offered to prove the Michigan statute.

(a) How may it be proven, if admissible?

(b) Is it admissible if proper objections are made?

(c) Should a plea to the jurisdiction of the court in this case be upheld?

III. B sues A in New York to recover one-half of the amount of a judgment recovered and collected by A, as attorney for B, in a suit against X, also in New York. A had paid over to B one-half of the amount recovered, but kept the rest as his fee. A defends by proving a contract between himself and B, made in Maine, by which B had agreed with A, in consideration of A's agreement to prosecute the suit against X, that A should retain half of the proceeds if successful. B rebuts by proving a statute of Maine providing "that any person agreeing to prosecute or defend a suit at law or in equity upon shares" should be criminally punished. In New York such a contract could be lawfully made.

Decide the case.

IV. Mrs. Smith is prosecuted for bigamy in Illinois, on a charge that she married Smith in Chicago, while already the lawful wife of Jones. The latter also lives in Chicago, where the defendant resided with him until she went to Ne-

vada, as hereafter related. The defendant offers in evidence the record of a divorce proceeding brought by her against Jones in Nevada, which record contained the bill, alleging residence in Nevada for six months (the statutory period), and acts of extreme cruelty committed by Jones against her in Illinois; a return of service by publication for which proper foundation had been laid; findings of fact in favor of the plaintiff and a decree of absolute divorce based thereon.

Would it be error for the Illinois Court to exclude this record provided the following facts in addition to the foregoing were proven:

(a) That the defendant did not leave her husband in Illinois until only three months before the filing of the bill in Nevada?

(b) That the defendant had actually resided in Nevada for six months before filing her bill, but left immediately after obtaining the decree, returned to Chicago and married Smith in accordance with an agreement between her and Smith made before she went to Nevada?

(c) That the defendant left Jones for a good cause, went to Nevada with a bona fide intent to make it her home, and had resided there for two years after the decree was obtained before she met Smith?

After answering the above, note which, if any, of your answers would be modified if the record had shown that Jones had filed a personal appearance in the divorce suit.

V. A Missouri statute gives a right of action for death and authorizes the recovery of punitive in addition to compensatory damages, with no limit. Kansas has a similar statute but

limits the recovery to \$5,000 and is silent as to punitive damages. By the common law of Kansas, punitive damages cannot be recovered in any case. In Missouri the administrator is to sue for the benefit of the widow; in Kansas the widow may sue in her own name. X is killed in Missouri by the negligence of the defendant and under circumstances making punitive damages recoverable under the rulings of the Missouri courts. Will an action lie in Kansas and if so, by whom and how much can be recovered?

VI. X, an agent of Y, sent a telegram from Dubuque, Iowa, to Y at St. Louis, Mo., stating that he had an offer of \$1,300 for a lot belonging to Y and asking if he should sell. As delivered to Y, the telegram read \$1,900, instead of \$1,300, and Y immediately wired X to sell. The latter, having a power of attorney from Y, sold for \$1,300 and executed a deed to the purchaser. Y sues the telegraph company and it pleads a term of the contract to the effect that it should not be liable for mistakes in unrepeatable messages, this term having been printed on the blank used by X in sending the first message. X offers to show in evidence that by the law of Iowa, this stipulation is void as to mistakes due to negligence. The suit is in Missouri, whose courts hold such stipulations valid. Is the evidence competent and material?

VII. Fairbanks, a citizen of Ohio, sued the Ill. Cent. R. R. Co., an Illinois corporation, in New York city for \$1,000 claimed as attorney fees, and obtained service on Brown, treasurer of the company, who was in New York to attend the grand opera. The New York law authorized service on foreign corporations by service on any officer thereof within the state. Mason, a Chicago merchant, in the city to buy goods, was also

served as garnishee defendant, and appeared and disclosed an indebtedness to the railroad of \$500 for freight. The railroad did not appear and judgment against it was taken by default for \$1,000. Judgment was also rendered against Mason for \$500, which he paid.

(a) If Fairbanks sues the railroad in Illinois for the balance of the judgment against it, has the company a good defense?

(b) If the railroad sues Mason in Illinois, for the freight, has he a good defense?

VIII. A made in New York a contract in writing with B to sell and deliver to B in France certain goods. C later in consideration of this agreement promised B in N. Y. by parole to be surety for performance by A. A failed to perform. B sues C in Massachusetts, getting proper service. Both contracts provide that their terms and validity shall be settled by the law of France. At the trial the following facts were admitted: That by the law of France, past consideration such as that in this cause is sufficient, but not by the law of N. Y. or Mass.: That the statute of frauds applying to contracts of suretyship is in force in both N. Y. and Mass., but in the former such contracts are declared to be void, if not in writing, while in Mass. the statute says, "No action shall be brought:" in France such contracts are good though oral; that by N. Y. law a surety need not be requested to perform, but by French law he must be. Upon these facts C moves for a non-suit on the grounds.

(a) That there is no contract shown.

(b) That the contract, if any, is unenforceable because oral.

(c) That the action is prematurely brought, no request for performance by C having been shown.

Should the non-suit be granted on any or all of the above grounds?

**Examination in Contracts.**

PROFESSOR DECKER.

I. A, B and C made a note to X reading, "We promise to pay."

(a) Suppose A dies and M is appointed his administrator. Will an action lie, if proper defenses are made against M, B and C? Against B and C? Against M alone?

(b) Suppose X, before A's death, had executed a release to A from all liability on the note, but reserving his rights and remedies against B and C. He later sues B and C. Have they any defense?

II. The Wabash R. R. Co. was under contract with the Globe Baggage Co. to give it, in consideration for a cash payment to be made yearly in advance, the exclusive right to solicit patronage from passengers on its trains coming into Chicago, and among other things agreed to carry the solocitors of the baggage company of whom Smith was one, to and from suburban points free of charge.

(a) Suppose a conductor, in violation of the contract, put Smith off a train, because he refused to pay fare. Has Smith a cause of action against the railroad?

(b) Suppose that prior to this incident, the Globe company had sold its business to the Parmelee Co., a rival concern, including all contracts with the railroads, that the Parmelee Company was continuing the business without knowledge of the railroad company, and had continued Smith in its employ. Would the Parmelee company have a cause of action?

III. Is either of the following promises enforceable if made orally and assuming that the act requested is performed?

(a) Brown calls a doctor to attend an unconscious man who has been struck by an automobile in front of Brown's residence, telling the doctor: "Do what you can for him and I will pay you if he does not."

(b) Kraft tells Hill that if the latter will tear up a note which he holds against Kraft's son, he (Kraft) will pay Hill the amount of the debt as soon as he is able.

IV. Assuming that the promise stated in III (b) is made in proper form, what allegations must Hill make in a suit thereon, and what proof must he offer, to entitle him to recover thereon?

V. Jones, of Champaign, Ill., was appointed Minister to Brazil. Before leaving he called on White, a local real estate dealer, and informed White that he expected to be away for three or four years at least, and wanted some one to look after the renting of his residence while he was away and to sell it, if possible. It was finally agreed between them that during Jones' absence White was to have the exclusive renting and sale of the property, for which he was to receive certain commissions, and in further consideration, White agreed to look after the property, see that it was kept in repair, lawn and grounds kept up, etc., so long as it remained unsold. White made a memorandum of this agreement in the presence of Jones.

(a) Suppose that two years later Jones sold the property to Brown through another agent and wrote White a letter informing him of the fact, and asking him for a final settlement

of the rents "in accordance with our agreement." If White sues Jones for a breach of his contract would the Statute of Frauds be a good defense?

(b) Suppose White had sold the property to Brown and signed a written contract with him as agent for Jones. Would this contract bind Jones?

VI. (a) Give a short outline of the development of the law of assignment of choses in action from early common law down to the present day in Illinois.

(b) R gave S a check for \$1,000 on the M bank, at which R had a deposit of \$5,000. Before S presented the check, R died and T was appointed his administrator. R's estate is insolvent. The bank files a bill of interpleader against S and T to ascertain which of them is entitled to the amount of the check. Decide the case.

VII. On January 15, 1913, X ordered from Y, a manufacturer of fireworks, a bill of its goods amounting to \$500, deliverable by June 15, payment 30 days after delivery. Y immediately accepted the offer. On May 1, the city council of X's city passed a "sane Fourth" ordinance, prohibiting the use of fireworks or the sale of the same within the city. On May 2, X, who was a retailer, countermanded his order. Is this a breach of contract?

VIII. Suppose the same facts as in question VII, except that no ordinance was passed. Also that Y refused to accept the countermand and shipped the goods to X, who refused to take them from the freight house, and they were eventually sold by the railroad for the amount of the freight bill.



- (a) What remedy, if any, has Y against X?
- (b) What is the earliest date that an action would lie?

IX. French agreed to build a house for Green for \$5,000, to be paid in five installments of \$1,000 each, the first three at stated intervals during construction, the fourth on completion of the house and the fifth three months later. Each payment was to be made only on the presentation of a certificate of "the architect," stating that the work was "properly done in strict accordance with the drawings and specifications," and "that he considers the payments properly due." The first three payments were made without objection on simple orders from Jones, the supervising architect. When the house was completed, Jones gave a certificate in accordance with the contract and Green made the fourth payment. Two weeks later Jones was killed. Green moved into the house and began to notice defects in the interior finish. He called in Smith, another architect, who examined the house and found defects which he estimated would cost \$300 to correct according to contract. When the fifth payment came due, Green refused to pay until French obtained a certificate from Smith, and Smith refused a certificate until the defects were corrected. French immediately sued Green.

At the trial Green's attorney contended that Green was not bound to pay until a certificate in accordance with the contract was produced.

French's attorney contended (a) that the certificate of Jones when the house was completed sufficiently complied with the contract; (b) that if not, then he was excused from getting a further certificate by reason of the death of Jones;

and (c) that in any event he was entitled to recover with deductions for the cost of repairing the defects.

Give judgment.

X. A, an army contractor, made a contract with B for 100 tons of hay at \$15 a ton to be delivered the following month. B had no hay on hand at the time, but could have bought it to fill the contract at \$12 per ton from surrounding farmers, had not A, who needed more hay, placed similar orders with C, D and E. The supply of hay in the locality being limited, B could not fill his contract without paying \$24 a ton on account of the competition of C, D and E. A knew, when he made these contracts, of their probable effect, but his object was to get hay which he needed. B refused to fulfill his contract and sued A, who brought a cross action against B. How should these actions be decided?

**Examination in Domestic Relations.**

(In answering questions state common law rule first, and then indicate any change under Illinois or other modern statutes. Give reasons fully in all cases.)

**PROFESSOR VERNIER.**

I. M promised to marry F. In a suit for breach of promise he offered the following defenses:

(a) That he was married to W at the time of the promise and suit.

(b) That F was afflicted with consumption in an incurable form at the time of the promise. M, however, admits that he knew of this.

(c) That the promise was oral.

(d) That he declared his love for F in the presence of her mother and obtained her mother's consent, but that F remained silent.

Under what circumstances, if any, are these defenses good?

II. In which, if any, of the following cases will a court annul a marriage on account of fraud?

(a) The woman represents that she has always been chaste, whereas she was in fact a prostitute.

(b) The woman falsely states that she has no divorced husband living and the man belongs to a church by whose tenets such a marriage is forbidden and declared invalid.

(c) The woman falsely states that she is pregnant by her future husband.

(d) The woman falsely states that she has not had an attack of epilepsy for eight years.

III. (a) A father sent his sixteen year old son to a neighboring town to go to school. The son soon left school without his father's knowledge and obtained employment in D's factory. He received \$100 in wages, gave receipts for same and spent the money. The father on learning the facts sued D for the wages. Should he recover?

(b) The son then refused to go to school. The father told him he must either go to school or shift for himself. The son unable to earn enough money to feed, clothe and shelter himself, incurred a bill of \$25 for clothes and \$40 for board, which he had charged to his father. Is the father liable?

IV. Plaintiff W, married H. Defendant D, a former sweetheart of the husband, H, actively sought to alienate H's affections. D finally induced H to abandon W. Thereafter D and H lived together in adultery. W brought two suits against D, (1) for alienation of affections; (2) for criminal conversation. May she maintain either action?

V. H sued W for divorce under a statute allowing a divorce for "wilful desertion without reasonable cause for two years." Should H be granted a decree if—

(a) W deserted H and after remaining away one year became insane and was then confined in an asylum for two more years?

(b) H and W lived in England and W refused to accompany H when he emigrated to America?

(c) W refused to speak to H for three years or occupy the same room with him?

VI. H and W finding that it was impossible to live together in harmony, entered into a separation agreement, by which they agreed to live apart and H "in consideration of the foregoing agreement" agreed to pay W \$50 per month, as long as W lived free from such misconduct as would justify a divorce. H paid this sum for two years and then refused until payments for six months were in arrears. May W recover the money due under the agreement?

VII. (a) D's ten year old son threw a stone through plaintiff's window, damaging the window to the extent of \$10 and injuring the plaintiff's eight year old daughter. Is D liable for either injury? If so, to whom?

(b) D then severely punished his son with a heavy strap. Under what circumstances, if any, is the son entitled to redress, (1) in a civil suit; (2) by criminal action?

VIII. (a) Defendant sold morphine to plaintiff's husband, in spite of her repeated protests, until by its use he became mentally unbalanced.

(b) Defendant negligently ran into plaintiff's husband with an automobile.

May plaintiff recover for loss of consortium in either case?

**Examination in Corporations.**

PROFESSOR GREEN.

I. Ten students incorporated the College Publishing Company with a capital of \$500, divided into ten shares. Each took one share and paid \$25 dollars into the treasury. After the organization was completed the money was returned to the contributors. In the company's name, an office was orally hired and a contract made with a firm of printers for printing a college daily. The paper was published for a college year. The business was carried on with entire informality, no directors' meetings being held, and at the end of each week the money received from subscribers and advertisers, less incidental expenses, was divided among the students who had worked for the paper in proportion to the estimated importance of their respective services, without declaration of dividends and without regard to the ownership of stock. The whole amount so divided was \$2,000. At the end of the year the sums due for printing and office hire amounted to \$1,000. What are the creditors' rights?

II. An Illinois statute provides that a corporation for profit shall be organized by a meeting of the subscribers to be held after ten days notice, and that if the corporation does business without complying with the act, its directors shall be personally liable for its debts. In the organization of a corporation for profit, the subscribers unanimously waived notice of the meeting and held the meeting immediately thereafter. If the company proceeds to business, are the directors liable for its debts?

III. The directors of an Illinois railroad company which has surplus funds, believing that its shares are selling below their true value, resolve to invest the funds in its shares. May the purchase be prevented by a stockholder whose motive in opposing arise; from his being short of the stock on the market? May it be prevented by the attorney general? By the majority at a stockholders' meeting?

IV. An Illinois manufacturing corporation, thinking that it would be profitable to build houses and rent them to its workmen, bought land for the purpose, but after the execution and delivery of the deed refused to pay the purchase price. What are the rights of the grantor?

V. An attempt was made in good faith to organize a corporation to sell intoxicating liquor in the city of Decatur. By inadvertence the Secretary of State issued a certificate of incorporation although, as the commissioners report showed, only nine-tenths of the stock had been subscribed. Thereafter Decatur went dry. The directors afterward made a call for the payment of subscriptions in full. A subscriber refused to pay on the grounds that (1) the stock was not fully subscribed, (2) there was no de jure corporation, (3) the corporation was not ready to do business because it could not get a license, (4) the prosecution of the business had become illegal and the subscribers were not bound to supply money to carry it on. Which of these grounds are good?

VI. The directors of a theatre company believed that it would be profitable to run a saloon in connection with the theatre and sell drinks between the acts, but doubted its power under its charter to do so. So they organized a separate com-

pany to run the saloon, leased to it a part of the theatre building and invested the theatre company's money in its stock. The city voted dry and the stock became worthless. The theatre company, under new management sues its former directors who made the investment to hold them for the resulting loss. It is admitted that they acted in good faith, but, since the city was likely to go dry, imprudently. Are they liable and why?

VII. A corporation whose capital stock was divided into 1 000 shares of which A owned 100, declared on May 1, a dividend of ten dollars a share payable June 1, and deposited in a bank \$10,000 to pay the dividend. May 2, a destructive fire rendered it and the bank insolvent. May 3, A assigned his shares to B, and B's name was entered on the company's books as shareholder. At that time neither A nor B had heard of the declaration of a dividend, and, in view of the fire, neither anticipated any dividend. The bank can pay its creditors only 50 per cent of their claims; the corporation owes \$10,000 exclusive of the claim of its shareholders for the dividend, and has assets of \$6,000 exclusive of its claim against the bank. What are the respective rights of A, B and the general creditors?

VIII. Explain the theory of a stockholder's right to sustain in a court of equity a suit founded on a right of action existing in the corporation.

IX. A owning 100 shares in the X company agreed to sell them to B. By the by-laws, printed on the stock certificates, the shares were transferable only on the books of the company. B paid the purchase money and A gave him the following writing, "For value received I hereby assign to B my hundred shares in the X Co.—A." B presented this docu-



ment to the company and requested a transfer on the books, but the company refused to make it because he did not present the certificate. Afterwards A undertook to sell the same shares to C, who, in ignorance of the dealings with B, paid for them and obtained the certificate with an assignment by A duly endorsed thereon. On C's presenting the certificate, the company entered his name on the books, and paid him a dividend. May B sue the company for converting his shares? May he compel them to enter his name on the books? If the company strike C's name from the books, has C a cause of action against them?

X. In the organization of a business corporation A subscribed for stock under an agreement that he should not be called upon to pay more than half its face value. He sold it to B, who knew the facts. The company became insolvent. What rights have its creditors against A and B, the stock being still only half paid up?

**Examination in Equity.**

PROFESSOR POMEROY.

I. Certain jewelry, once the property of a testator, is claimed by A as a gift made by the testator in his lifetime to A. The jewelry has come into the possession of the executor with the other assets of the estate. B, the residuary legatee, denies the gifts, and claims that the jewelry should be distributed to him. A threatens suit against the executor, who now brings his bill of interpleader against A and B. Do these facts present a case for interpleader? Reason.

II. C conveyed to B; the deed was recorded; at the same time B contracted in writing that C might remain in possession and repurchase the land within a year; this contract was not recorded. Four months later, C being still in possession, B conveyed the land to A. Has A notice of C's contract to repurchase? Reasons, pro and con, Illinois law.

III. C takes a mortgage from B, which recites that it secures \$5,000; and leaves it for record with the proper clerk in the registry office. By mistake of the clerk, it is copied in the records as securing \$500. Later, B deeds the land to A, who buys on the faith of the record, and has no actual notice of the true amount secured by the mortgage; A duly records his deed. Does A take subject to a mortgage of \$5000 or of \$500? Reasons, pro and con.

IV. A sold Blackacre to B; the deed was recorded. Later C recovered judgment against A, levied execution on Blackacre as A's property, purchased it at sheriff's sale and put

the sheriff's deed on record. B, being in possession of Black-acre, sues to cancel the sheriff's deed as a cloud on his title.

Four different tests are applied by the courts of different states to decide the question whether the deed is a cloud on B's title. State and explain these four tests.

V. A contracted in writing to sell a farm to B, reserving to A his family burying ground thereon. Later, the contract was abandoned, and A offered orally to sell the farm to C; which offer C accepted. A drew up, executed and delivered the deed to C, but by mistake omitted the reservation of the burying ground. What relief, if any, may A have on the above facts, if the court further finds:

(a) That the deed was intended by A and C to conform to the contract between A and B, and C, before delivery, noticed that it did not so conform? or,

(b) That the bargain between A and C was not based on the first contract, but that C, when he accepted A's offer, suspected that A did not mean to convey the burial lot? or,

(c) That the bargain between A and C was not based on the first contract; that C did not know of the existence of the burial lot until after the conveyance; that the burial lot is of little or no value to C but of great value to A?

VI. A claims to be the trustee of certain real property formerly belonging to the Country Club, an unincorporated association. He brings his bill, asking that O, trustee of the Athletic Club, and P, trustee of the Golf Club, each claiming to be the successor to the Country Club, interplead for the rents and profits of this property; and that O, who has been in receipt of these rents and profits, account for them. O an-

swers, setting up legal title to the property, claiming to be the rightful trustee, and asserting that A has no title.

Can A's bill be maintained either as a bill of interpleader or a bill in the nature of a bill of interpleader? Reasons.

VIII. (a) A bill is brought to cancel 10 non-negotiable notes held by as many defendants, all the notes purporting to have been made by the complainant, and all alleged by him to have been forged by the same person. Is this a good case for a bill of peace? Reasons.

(b) Give an instance of a bill of peace, properly brought by or on behalf of numerous complainants, no one of whom, suing alone on his own behalf could have relief in equity.

VIII. (a) Mention three classes of cases in which courts of equity may relieve from mistakes of law.

(b) Give an example (facts real or imagined) of reformation for mistake of law.

IX. Describe and illustrate the nature of a receiver's office, and of his possession of the property put in his charge, by showing the effect (a) of the seizure of such property for taxes, (b) of bringing a suit against the receiver by a person who claims the property as his own.

**Examination in Equity Pleading.**

DEAN HARKER.

I. Jane Brown filed a bill for divorce in the Circuit Court of Champaign County, Illinois, and procured service upon her husband, Willis Brown, by notice and copy of bill, delivered to him at Davenport, Iowa, his place of residence. The defendant failing to appear and answer, a default was entered, and on a hearing of evidence offered by the complainant, the court rendered a decree for divorce upon the ground of desertion and awarded complainant alimony at the rate of \$400 per annum, payable quarterly. The decree was declared to be a lien upon any real estate in Champaign county belonging to the defendant, and it was provided that complainant should have execution for unpaid alimony and for costs of the suit.

Defendant did not pay the costs or any part of the alimony. Two years after the entry of the decree, the defendant, through the death and will of his father, inherited a vacant lot in Urbana, and an automobile. Complainant has sued out an execution which the sheriff has levied upon the property mentioned. Is the levy valid and may the sheriff lawfully sell the real estate and the automobile to satisfy the cost of the divorce suit and the overdue alimony of \$800?

II. Draft a bill for divorce on the facts recited in question I and make complete service by copy of bill, etc., to the January Term, 1912.

III. What is the office of a bill of interpleader? Of a supplemental bill? Of a cross-bill? Of a bill of review?

IV. In a suit in equity the wife of the complainant was introduced as a witness before the master to whom the cause had been referred for proofs and findings. Attorneys for the defendant made no objection to her as a witness before the master and cross examined her. To the master's finding in favor of the complainant, the defendant excepted solely upon the ground that it was against the weight of the evidence; but the master overruled the exception and reported his finding to the court. The defendant renewed his exception before the court and upon the argument urged the incompetency of the wife as a witness and asked the court to decide the case upon the evidence with the testimony of the wife eliminated. It was the first objection to her competency. To prove the facts testified to by her she was incompetent. The facts were admissible if presented through a competent witness and were sufficient to support a decree for complainant. With her testimony eliminated the finding should be for the defendant. State your views upon what the ruling and finding of the court should be.

V. On October 4, 1912, William Robey died intestate seized in fee of an undivided  $\frac{3}{4}$  of lots 2, 4 and 6, in block 3, Seminary Addition to the City of Urbana. He left surviving a widow, Jane Robey, the owner of the other  $\frac{1}{4}$  of said lots, and the following named children: John Robey, Eli Robey, and Mary Robey. Mary Robey is 14 years old. The others are adults.

Draft a bill for John Robey, under which the interests and equities may be decreed and three commissioners appointed to make partition.

VI. In February, 1914, after giving notice, obtained a temporary injunction from the master, restraining the sheriff

from selling property levied upon by virtue of an execution in favor of B against C. The sheriff and B, in their joint answer, traversed the allegations in the bill. Upon trial before the court it is shown that by reason of certain acts agreed upon and performed by B and C after the service of the notice but before the granting of the injunction, the situation so far as the allegations in the bill are concerned is altered. Assuming that the complainant is still entitled to a restraining decree, what course should be pursued and why?

VII. A has a judgment against B, who has fraudulently conveyed lands owned by him in the county to X. He also has a judgment against C, who owns no real estate, but has made a fraudulent transfer of a stock of hardware to X. Mention the steps that should be taken in each case to uncover the fraud and subject the property to judicial sale.

VIII. On June 3, 1912, Henry Ware borrowed of James Hobbs, for a term of one year, \$800, to be secured by a promissory note, with interest at 6 per cent from date, and a mortgage on lots 3 and 5 in block 4, in Scott's Addition to the City of Champaign, Illinois. Note and mortgage were executed and delivered, but no part of the debt has been paid. It is now discovered that in drafting the mortgage, the property was erroneously described as lots 3 and 4, in block 5. Draft necessary bill in behalf of Hobbs.

IX. To the complainant's bill, the defendant has filed a plea which the complainant does not believe presents a legal defense. How may the complainant obtain the judgment of the court upon that question?

X. Assuming that you represent the complainant, state under what conditions you would accept to an answer; when you would move to have the case set for hearing on the bill and answer; when you would file a replication and ask that the cause be referred to the master in chancery for proofs and finding.



### Examination in Future Interests.

(In every case in addition to a decision with reasons, name all the future interests involved, stating whether vested, contingent, legal, equitable, arising under the statute of uses, wills, etc.)

#### PROFESSOR VERNIER.

I. A devised a valuable tract of land to the Seamens' Friend Society of Boston to be held by the society and its successors forever, "but if said society or its successors shall at any time in the future cease to be devoted to the aid of indigent and disabled seamen, said land shall go to Y and his heirs." A died in 1850. In 1890 the society dissolved and sold the land to X in fee. The land is now claimed by the purchaser, X, who is in possession, by the heirs of Y and the heirs of A. Who is entitled, and why?

II. State the rule in Shelley's case. Is it a fixed rule of law or a rule for construing intent? Does it apply to any of the following?

(a) Life estate to A by will, remainder to A's heirs in fee by a codicil.

(b) Devise to trustees and their heirs in trust for A for life, then in trust for A's heirs forever.

(c) Devise to trustees for A for life, and at his death to convey the legal title to A's heirs.

(d) Devise to A for life, remainder in fee to the heirs of A and B.

(e) Devise to A for life, remainder to the heirs of A's body.

III. A leased a lot and three-story brick building to B for 25 years. B, the lessee, covenanted: that he would insure the building for \$25,000 and keep it insured for that amount; that he would not assign or sublet without the written assent of the lessor. It was further provided that on breach of any covenant contained in the lease, it should "determine and become utterly void." The lease also provided, that receipt of rent should not be deemed a waiver of any breach of covenant, and that any consent to assign or sublet should be limited to the assignment or subletting specified in the written assent. A right of entry was reserved for breach of any covenant.

What are the rights of the parties if—

(a) B failed to insure and A, with knowledge of the facts, received four quarters rent?

(b) B assigned the lease to X with A's consent in writing and X later assigned to Y without consent of A?

IV. A by deed granted as follows:

(a) His term for 99 years to B for life. B died five years later.

(b) His statuary and oil paintings to B for life, remainder to the Boston Art Gallery forever.

(c) Another term for 99 years to B for life, remainder to C and his heirs.

Assume that he makes the same disposition of the above interests by will. Discuss the nature of all interests created, whether vested, contingent, legal, equitable, etc.

V. A leased land to the B hospital for 40 years, and covenanted for himself, his heirs and assigns, that the hospital

and its successors should have the right to buy the land at any time during the term on giving six months notice and paying \$5,000. A died one year later. Ten years later the hospital gave the required notice, tendered \$5,000 and demanded a deed from X, the heir of A. X refused to convey. What are the rights of the B hospital, if any?

VI. Is it correct to say that the rule against perpetuities does not apply to a charity? Which of the following, if any, violate the rule?

(a) Testator wills: "I give to the trustees for the time being of the London Missionary Society 42,000 pounds Russian 5 per cent stock. I also commit to their keeping the keys of my family vault at Highgate Cemetery, the same to be kept in good repair and to be rebuilt when it shall require: failing to comply with this request, the money left is to go to the Newgate School of London."

(b) The same as above, except that the gift over is to B and his heirs.

(c) To trustees for B and his heirs on similar condition as to repair, etc., of testator's tomb, with a gift over in trust for C and his heirs on failure of B to comply with the terms of the trust.

VII. Testator made his will in 1840 and died in 1850. He owned, among other things, two slaves and an estate in land for the lives of X, Y and Z. X died before the testator died, Y died in 1855 and Z died in 1870. Testator disposed of the above property as follows: "To A for life, to B for life, remainder to B's issue, and in default of issue remainder to C

and his heirs. A, B and C survived the testator. Discuss the nature and validity of the above dispositions.

VIII. Testator made his will in 1835 and devised real estate to A for life, remainder in fee to all the children of A, living at A's death and who then or thereafter should attain the age of 25. If all die under 25, then to X and his heirs. A died in 1837, leaving children as follows: B aged 5, C aged 8 and D aged 12. Testator died in 1845. Discuss the validity of all the gifts.

Would your answer be the same, if all the facts remained the same, except that 35 were the age used instead of 25?

**Examination in Municipal Corporations.**

PROFESSOR POMEROY.

I. An owner of unimproved property within the city limits of Urbana, platted it in three tracts, A, B and C, and recorded the plats, complying with all the statutory formalities for dedication of streets, except that the plat of tract A was not acknowledged as required by the statute. The lots in these tracts were all sold off by the owner, and the streets therein as platted were all constantly used by the purchasers of lots and by the public. The city council by formal vote accepted tract A; it made no formal acceptance of tracts B and C; but it caused sewers to be laid in the streets of tract B and the streets of tract B to be brought to grade. The city took no action whatever regarding tract C. Who owns the fee of the streets in tracts A, B, and C, and is the city under any duty of street repair with respect to these streets?

II. A city, having express power by its charter to suppress nuisances and to regulate certain specified trades (including barbers and peddlers) passed ordinances (a) prohibiting all slaughter houses within the city limits, (b) prohibiting all peddling, (c) prohibiting the keeping open of any barber shop between the hours of 6 p. m. and 7 a. m. Discuss the validity of these ordinances.

III. Discuss on principle whether a city has implied power to borrow money, giving arguments pro and con. How does Illinois stand on this question?

IV. A certain city has express power to maintain parks and cemeteries, and power to purchase and hold such land as is convenient or necessary for municipal purposes. It received a devise in fee simple of a fruit farm of 1,000 acres located 200 miles from the city; this farm it continues to operate, making a profit thereby. It has now contracted to buy a tract of 50 acres adjoining the farm for the purpose of raising shrubs and flowers for planting in the city park; also, it has contracted to buy two tracts just outside the city limits, one of 100 acres for a city cemetery, and the other of 2 acres for the purpose of establishing a cannery to handle the fruit raised on its farm. Tax payers question the power of the city to operate the farm, and to make these three purchases of land. Discuss the question on principle and in the light of the authorities.

V. An act provided that cities of a certain population might, by popular election, adopt the "commission form" of municipal government. State three objections which have been raised against the constitutionality of such legislation, and the arguments by which these objections have been met.

VI. In 1910 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 1915 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 the debts of A by B, C or D. Plaintiff, owning bonds issued by A in 1908, sued B, C and D thereon in 1918. Could he recover against any or all? What became of the public real property owned by A?

VII. (a) State and illustrate three propositions relating to the liability of cities for defects in sewers.

(b) Give two examples (exclusive of injuries from unsafe streets) of torts committed in the exercise of or in connection with the city's public governmental functions, for which the city should be held liable.

VIII. On what theory (if at all) may an owner of property abutting on a street recover damages from an elevated railroad built in the street under the authority of the city and of the legislature, (a) the fee in the street being in the abutting owner; (b) the fee in the street being in the city. State in each case the law of New York and the law of Illinois.

**Examination in Real Property I.**

MR. PILLSBURY.

I. Name and describe the estates granted or attempted to be granted in the following conveyances. Discuss their validity.

(a) To A and his heirs, but if A should ever leave England, this conveyance to become void.

(b) To the University of Illinois in a fee simple so long as the land shall continue to be used for educational purposes.

II. In 1500, A, tenant in fee simple of Blackacre, gave livery of seisin of Blackacre to B, a bachelor, remainder to his widow, remainder to his first born son and the heirs of the body of such son, remainder to C. In 1510, B, gave livery of seisin of Blackacre to D and his heirs. Define the estates in, and rights concerning, Blackacre after this feoffment by B.

III. Discuss briefly the law of dower and curtesy (1) at common law, (2) as it is in Illinois today.

IV. Land was conveyed to A, B, C and D as joint tenants. A conveyed his interest to B. B made a will devising all his lands to C. Then B died. Then C died. Who has what interests in the land?

V. After the passage of the Statute of Uses, A, tenant in fee simple of Blackacre, orally agreed with B, in considera-



tion of \$100 then paid by B to secure said agreement in its entirety, to hold Blackacre to the use of B for life, and then to the use of his widow for life, and then to the use of B's first born son and the heirs of his body, and then to the use of B's daughters and the heirs of their bodies, and then to the use of the heirs of B. B was a bachelor at the time. B was not related to A by blood or marriage. Assume the Statute of Enrollments not to be in force. What estates, if any, were thereby created in Blackacre?

VI. A, in consideration of \$100 bargains and sells land

(a) To B and his heirs, but if B ever loses his citizenship, to C and his heirs.

(b) To B for life, and five days after his death to C in fee.

(c) To B in fee upon the death of A.

Discuss the nature and validity of these conveyances at the present time, contrasting your results with those which would have required before the Statute of Uses.

VII. A, by bargain and sale deed, conveys land to B, "in trust for White and Smith forever." X in some unknown manner comes into possession of the land. White and Smith bring ejectment against X. Can they recover? Would the result be the same in Illinois? If they cannot succeed in ejectment, how can the land be restored to them?

VIII. The First Church of Champaign purchased a piano, which was screwed down to the floor of the Sunday School room to prevent children from moving it around. It was the only piano in the room and was used for all religious exercises held in the room. The church also purchased an expensive

pipe organ, which was set up back of the pulpit in the main auditorium. The pipe organ was not fastened to the floor, walls or ceiling, but was nevertheless built so as to be an integral part of the architectural scheme of the front of the auditorium.

Are the piano and pipe organ real or personal property, and why?

IX. Littleton owned in fee simple Blackacre, Greenacre and Whiteacre. On each he built a brick house and also a chicken-coop, the latter supported by timbers that rested on stones that lay upon the surface of the earth. Each house contained a furnace, a kitchen range, book shelves, fitted to the wall, and gas fixtures. Littleton mortgaged Blackacre, sold Greenacre, and died owning Whiteacre. By reason of such mortgage, sale and death, whether testate or intestate, what were the rights to such building and contents?

X. The owner of land leased it to a tenant for years. There was an open mine on the land. The tenant exhausted the coal obtainable from the original shafts and levels, then pursued the vein still farther and exhausted it, and finally opened and exhausted a new mine. What are the rights of the parties?

**Examination in Real Property II.**

MR. PILLSBURY.

I. In 1842 Acton, the owner of a large tract of land on the highway, sold the rear portion called the "Cow Pasture," which did not in any place abut on any highway, to Richards: and by his deed granted to Richards, his heirs, and assigns, "as appurtenant to the land conveyed, a right of way over my remaining land to said highway from the parcel of land hereby conveyed, which is called "Cow Pasture." At this time the "Cow Pasture" was wild land; and, for many years after, the way was used only for the passage of cattle and wood carts. In 1855, Richards purchased other land adjoining "Cow Pasture" over which he could pass to the highway; and, from 1855 to 1879, neither Richards nor his heirs ever used the way for any purpose. In 1876 Richard's heirs, Richards being dead, told the owner of the Acton land that they did not care to use the way as it was more convenient to go over their own land. In 1880, the heirs of Richards conveyed "Cow Pasture" to the Strong Foundry Company, which at once erected thereon large iron furnaces and began to clear out and cut away the trees and undergrowth which had sprung up in the old right of way and to use said way for hauling materials and supplies to their foundry and for their employees to pass over in going to and from work. Blundenn, who now owns the Acton lot, brings a bill in equity against the Foundry Company to enjoin its use of the way, the cutting down of his trees, and the continued trespasses on his land. What result? Discuss fully and give reasons.

II. A for thirty years has been accustomed to keep in repair the fence between his land and the farm of B adjoining, but was not bound by any legal instrument so to do. B has always been quite willing that A should make all repairs and has frequently pointed out to A places which needed repair. Some hunters driving across the fields tear down a portion of the fence, and two days later, but before A has noticed the break, B's cattle stray into A's land, eat the foliage of a certain poisonous tree situated some distance from the fence, and are killed. B sues for damages. What result?

III. King, a coal dealer, demises by lease under seal, to Sugden, a dwelling house in Chicago for the term of ten years; and in said lease Sugden covenants for himself and his executors and administrators (1) that he and his assigns will reside on the premises during said term, (2) that he and his assigns will connect said house with the public sewer by a drain to be built within three years, and (3) that he and his assigns will during their term buy all their coal of King. After four years, Sugden assigns his term to Bell, who lives in New York and does not buy coal of King; and neither Sugden nor Bell has connected the house with the sewer. At this time King dies, leaving Webb as his sole heir. What rights, if any, has Webb against Sugden or Bell?

IV. A, owning 5 adjoining lots, cuts off the rear 50 feet of each lot, and on the land thus obtained sets out trees, shrubbery and a lawn, etc., for a private park. The remainder of four of these lots he sells to B, C, D and E respectively, retaining the fifth for his own residence. In the deed to each lot, prepared and executed by A alone, it is recited that the grantee shall have full liberty to use the park for himself and his

household, and that the grantee agrees to pay annually one-fifth of the cost of keeping up the park. Each grantee records his deed and for twenty years pays his share of the upkeep of the park, and of the taxes on the park as well. Twenty-five years later A dies, devising his lot and the park to X. E sells his lot to Y, who knows nothing of the covenants. Y now refuses to pay his share of the upkeep or of the taxes on the park. Can X compel him to do either, in law or equity? Discuss fully all possible grounds upon which recovery might be had.

V. For the purpose of building, a landowner carefully excavated within his boundaries, with the result that an adjoining owner was injured thus: part of the surface of his land fell into the excavation; part of his cultivated shrubbery fell likewise; part of his uncultivated trees fell; and the wall of his house cracked. What are the rights of the parties?

VI. Plaintiff for over twenty years has owned and operated a mill on Crooked River. This river has three principal sources of supply, viz: (a) Turtle Brook, a natural water course; (b) rainwater, which, running off the hillsides in no defined channels collects in swamps at the foot of the hills and from the swamps overflows into the river; and (c) underground springs. The City of Oxford, for the purpose of establishing a water supply for its inhabitants, purchases (a) about two acres of land on the bank of Turtle Brook; and (b) a large extent of all the hill slopes in the vicinity. On the two acre tract, the city sinks a deep well, into which practically all of the underground water flows; and it also taps Turtle Brook by a tunnel and draws a large amount of water directly from this source. Around the hill slopes, the city constructs ditches in which all the rainwater falling on these several

slopes is collected. All the water collected from these several sources is pumped into the city reservoir and from there distributed about the city. By reason of these acts of the city, the amount of water which reaches Crooked River is so diminished that plaintiff finds it impossible to operate his mill. Has he any remedy against the city for any or all of its acts? Discuss fully and give reasons.

VII. A owned riparian land and to the thread of the river, including an island between his bank and the thread of the river. B disseised A of the island in 1880. In 1890 the channel of the river was dredged, and the soil from the bed of the river was placed upon the shore of the island, increasing its area by 10 acres. In 1901 A brings ejectment to recover the island. B sets up title under the 20 year statute of limitations. How should the case be decided?

VIII. A, an insane person, owned a piece of land. B owned adjoining land and from day to day B and the members of his family crossed A's land to B's along a beaten path. B said on several occasions that he had never asked permission to use the path, but he had no doubt that the owners would have no objection. After 5 years, A died. His heir, C, was four years old. When he became 26 years old, he brought trespass against B for his use of the way. Neither A's committee, nor C nor C's guardian knew of B's use until within a year before the suit was brought. Judgment for whom?

**Examination in Sales.**

PROFESSOR HALE.

I. Y advanced to X, a farmer, \$1,000. In consideration of \$500 of this amount X gave Y a bill of sale to all the corn to be raised on Blackacre during the two ensuing years. This bill of sale was executed July 1. As security for the other \$500 which was considered a loan and for which X gave his note to Y, X executed a chattel mortgage also dated July 1, covering the cattle then on X's farm, and also such cattle as might later be added by breeding or by purchase. X's original herd was increased by the birth of 10 calves. July 15, X bought 10 valuable dairy cows. October 1, X sold the farm and all the stock to A.

(a) What right has Y to the corn raised on Blackacre during the two years following?

(b) What right has X to the 10 calves and to the 10 dairy cows, provided the note is not paid when due, assuming the calves to have been born in October and November following the date of the mortgage?

II. A went to B's store to purchase a suit of clothes. After trying on several suits he expressed himself as satisfied with a certain suit, except for the fact that the sleeves were too long. B took measurements for the alterations. A said: "Fix it up, and I'll call for it in a week." B said: "All right." It was understood that the suit was not to be taken until paid for. The next day the store was accidentally burned and the suit was destroyed. B sues A for the price of the suit. What judgment?

III. A went to B's farm to purchase some hogs. In one pen were 20 hogs of the same age and size. A said he would take 10 at \$5 apiece. B accepted the offer. A was to have one month in which to pay for the hogs. Five of the hogs were immediately placed in A's wagon. While they were trying to catch the sixth one, A's team ran away, killing the five that had been placed in the wagon. A claims that he is entitled to 10 more hogs in fulfillment of the contract. B claims that A is entitled to only 5 more. Which contention is correct?

IV. A in Champaign ordered a car load of flour from B in St. Paul. It was agreed that A was to pay the freight. B shipped the flour, taking a bill of lading to himself or order, which he indorsed in blank, attached to bill of exchange payable at sight drawn on A, and sent to a bank in Champaign with instructions to turn it (the bill of lading) over to A upon receiving payment of the bill of exchange covering the purchase price of the flour. The bank in turn mailed the bill of lading and bill of exchange to A asking him to send his check by return mail. A refused to pay the bill and also refused to return the bill of lading.

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

(b) Suppose, in addition to the foregoing facts, that A transferred the bill of lading to C as security for a past debt. Under such circumstances what would be the rights of B against C?

(c) Suppose that before the bill of lading reached A the goods had been destroyed, upon whom would the loss fall, B or A?



V. (a) A was riding down the street in his automobile. He met B. B offered A \$1,000 for the car. A accepted the offer. B gave A his check for the \$1,000. B said, "Drive the car around to my garage and leave it there." A said: "All right." Before A reached the garage, the car was seized under a writ of attachment issued in an action brought by C against A and was later sold under execution. C sues the attaching officer for conversion. What judgment?

(b) Suppose before reaching the garage A had sold the machine to X. What would be the rights of X as against C to the car?

VI. Late in the season of 1913, A contracted with B for the purchase of a 1914 model Overland automobile. When the new cars arrived A refused to take one. What are B's rights against A?

VII. (a) Under what circumstances does a vendor have a lien for the purchase price of a chattel?

(b) A sells and ships goods to B, under a bill of lading running to B or order. This bill of lading is forwarded to B. Before the goods reach their destination B goes insolvent. What steps may A take to secure payment? Assume further facts which may affect the results and the extent to which the results may be affected thereby

VIII. A purchased of B four tires for his automobile to be used in a race. During the race one of tires burst because it was not heavy enough for such purposes. The tires were good ones considering their weight.

(a) Under what circumstances, if any, will A have a cause of action against B?

(b) Would it make any difference in your answer if the breaking of the tire were due to the fact that the rubber was in a state of decay?

**Examination in Suretyship.**

PROFESSOR DECKER.

I. P desires to borrow \$1,000 from C and offers S as a surety. State at least four different forms of contract which the parties may make to accomplish this purpose and explain how they differ as to the rights of C against S.

II. The Globe Construction Co., a Michigan corporation, contracted with the city of Pittsburgh, Pa., to pave certain streets in that city and gave a bond, with S and T as sureties, for the faithful performance of the contract. The company defaulted and the city sues S and T. A statute of Pennsylvania forbids any foreign corporation from doing business within the state without first complying with certain requirements, and provides a penalty by fine or imprisonment against any person, agent or officer of such a corporation who shall transact any business for it within the state, if such requirements have not been complied with. S and T plead that the Globe Construction Co. had not complied with this statute. Is the defense good?

III. P, S and T gave a note to C for a debt owed by P to the amount of \$5,000. The note was secured by two mortgages, one given by P on Whiteacre, and one given by S on Blackacre. The note is due and T alone is solvent. Advise him as to his rights and liabilities and the best course to pursue for his protection.

IV. Jones sold his grocery business to Smith, including his book accounts, among which was one of \$50 owed by White. Smith objected to taking this account but did so after Jones had said: "It is as good as gold, and if you cannot collect it, you can look to me." Smith made several duns on White without success and now sues Jones.

(a) Is the Statute of Frauds available to Jones as a defense?

(b) Has Jones any other defense?

(c) If Jones pays, has he an action for indemnity against White?

V. Smith and Jones were sureties on White's note to Franks for \$1,000, due March 1, 1895. On May 1, 1895, Smith paid Franks \$500 on the note and Jones paid \$300. The balance, with accrued interest was paid on June 1, 1897, by White, who took up the note.

What are Smith's rights against Jones and White respectively on May 15, 1901, if the transaction was in Illinois?

VI. Green signed a note from Bliss to Kern, relying on Bliss's promise that he would get Ford to sign as a co-surety and would not otherwise deliver the note. Ford refused to sign and unknown to Green, Bliss got James to sign instead and delivered the note to Kern who received it without knowledge of Bliss's promise to Green.

(a) James paid the note and sues Green for contribution. Give judgment.

(b) Would your judgment be altered if, instead of a note, the contract had been a bond in the body of

which Ford's name appeared as a surety when Green signed, but was afterwards erased by Bliss without the knowledge of any of the other parties, and the name of James substituted?

VII. A, as principal, and B and C as sureties, were joint makers on a note for \$3,000 to X. In a suit against all three, property of B worth more than the amount of the note was attached and he gave a statutory bond, with M and N as sureties, for the release of the property. X obtained judgment against A, B and C and later sued M on the attachment bond, recovering from him the full amount of the judgment, including costs of both suits. At the time of the judgment against A, B and C, C owned a farm worth \$4,000 above encumbrances and exemptions. What rights has M against C, if any?

VIII. Stone, who had already signed as surety a bond on which Mason was principal, induced Burns to sign as co-surety, orally promising to indemnify him against loss. Mason defaulted and Burns had to pay. What are his rights against Stone?

Suppose Jones, a stranger to the instrument, had made the promise of indemnity, could Burns hold Jones to the promise?

IX. P owed C \$1,000 for which C demanded security. P drew two notes for \$500 each, identical in their terms, and got M to sign one as co-maker with himself, and N the other. These notes he delivered to C, together with a chattel mortgage on property of his own worth about \$500.

(a) When the notes are due, suppose P pays C \$500, takes up the note signed by M, and gets P to surrender the chattel mortgage. Does this transaction affect C's rights against N on the other note?

(b) If N pays his note, will he be entitled to contribution from M?

X. Discuss the following as defenses of the surety:

(a) Release of the principal by the creditor.

(b) Extension of time to the principal by the creditor.

(c) Right to set-off of claim of the principal against the creditor.

**Examination in Torts.**

PROFESSOR HALE.

I. A sold his farm to B for \$10,000. The farm was located in California. A had lived on it a great many years. B was a resident of Illinois and had never seen the farm. In a letter written to B during the negotiations, A made the following statements:

(1) "The farm is worth not less than \$15,000, but I am very much in need of money so I am willing to sell it for \$10,000 cash." (The farm was not worth to exceed \$5,000. A had repeatedly on previous occasions offered it for \$6,000 but had not been able to secure that price. A neighboring farm of the same kind and size had been recently sold for \$5,000. A knew this.)

(2) "The farm contains 150 acres." (The farm contained 125 acres. A had never had the land surveyed but had been told by his father, who owned the farm before A that it contained 125 acres. A believed this to be the size of the farm.)

(3) "I have sold \$2,000 worth of fruit from the farm every year for the last five years." (A had never sold more than \$500 worth of fruit from the farm in any one year.)

(a) Which, if any, of the statements made will sustain an action for deceit, assuming additional facts to be as indicated?

(b) If B can recover, what will be the measure of his recovery?

II. A, while attempting to cross the street, was run over by B. Omitting the question of contributory negligence, how should the jury be instructed to enable them to determine whether A was negligent, assuming: (1) that A was a normal adult; (2) that A was blind; (3) that A was a child 6 years of age.

III. A was running a wood-saw, propelled by steam, on his premises near a highway. B came to the premises to provoke a quarrel. A ordered B to leave. B refused. A started the machine so suddenly that the belt flew off, striking B, who stood near it, as a result of which B suffered the loss of an eye. B sues A for the damage sustained. What judgment?

IV. Suppose in the previous case that during the noon hour, X, a small boy, came onto the premises, and, while playing with the saw, was injured. X sues A. Assuming that X was not guilty of contributory negligence, what judgment?

V. A horse belonging to X was grazing in X's pasture. B, a small boy, set X's dog after the horse, causing the horse to stampede and leap the fence into Y's field, where it was followed and still pursued by the dog. At the end of the chase, Y, while attempting to catch the horse, for the purpose of removing it, was severely kicked. The animal had never before been known to offer to injure any one, nor had the dog been in the habit of chasing stock. It further appears that the fence between X and Y was reasonably adequate. What are the rights of X against Y?

VI. X was the owner of a powder mill, located two miles from town. Through no fault of X, an explosion occurred. Y,



who happened to be hunting in that vicinity at the time, was injured by a missile hurled against him by the force of the explosion.

Y sues X. What judgment?

VII. A was driving from his farm to the neighboring town. Between his farm and the town was a bridge, which was in an unsafe condition. A knew that the bridge was unsafe, but decided to cross in preference to going a somewhat longer but safer way. A thought it less dangerous than it really was. A had one of his children, B, a child 7 years old, with him. X, a stranger, who knew nothing of the condition of the bridge, was also riding with A at A's invitation. The bridge fell, injuring A, B and X.

(a) A sues for injuries to himself.

(b) A sues for loss of the child's services.

(c) An action is brought on behalf of the child for injuries sustained by the child.

(d) X sues for injuries sustained by him.

Assuming that the defendant county was negligent in maintaining the bridge in such condition, what judgment should be given in each case?

VIII. The X R. R. Co. did not have its engines properly equipped with spark protectors. Y, who owned a farm adjacent to the tracks of the company, had noticed upon several occasions, fires in the fields near the tracks, and knew that the company was not taking proper precautions to guard against fires. Thereafter Y built two stacks of hay on his land not more than 50 feet from the company's right of way. Ten days

later the stacks were set on fire by sparks from a passing engine and burned. One of the stacks could have been saved, however, by a reasonable effort on Y's part, after the fire was discovered. What are Y's rights against the X R. R. Co.?

IX. A owed B a sum of money. A was in the employ of X. B told A that he would cause him to lose his position if he did not pay the bill. A refused to pay. B thereupon went to X and threatened to withdraw his patronage from X unless X should discharge A. A was working by the day. At the close of the next day, X told A that he need not return to work thereafter. A sues B. What judgment?

X. Under what circumstances is A liable in tort to B for causing C to break a contract existing between B and C?

**Examination in Trusts.**

## PROFESSOR VERNIER.

I. (a) Plaintiff obtained a letter of credit from the D Bank and agreed in return to deposit his salary in the bank as it fell due. The D Bank failed with its books showing a large balance of deposits in excess of drafts.

(b) Plaintiff, an administrator, deposited funds in the D Bank and took the following receipt: "To be held until vouchers are received from heirs: then same to be forwarded by bank draft." The D Bank failed.

In each of the above cases plaintiff sued to recover ahead of general depositors. Should he succeed?

(c) The D Bank allowed a guardian to deposit to his personal account a check, which to the knowledge of the bank represented guardianship funds. The guardian later checked out the entire amount and absconded. Plaintiff, surety on the guardian's bond after making good the loss sued the D Bank to recover the amount of the deposit. Should he succeed?

II. T held real estate in trust for C. C mortgaged his interest to X for \$5,000. Neither X or C notified T. C then borrowed \$5,000 of T and mortgaged his interest to T as security. Finally C mortgaged his interest to Y for \$5,000. Y did not know of the two preceding mortgages but notified T at once. When all the facts became known, the land was sold by consent of all the parties and the proceeds, \$12,000, paid into court. In the absence of a registry system, what are the rights of X, T and Y?

III. A bequeathed \$100,00 to T in trust to pay the income to C, A's son, "until he shall reach the age of 40 years but without power of anticipation or alienation and free from the claims of creditors; if prior to that time he shall not have been adjudged a bankrupt, then to pay over the principal to him; if, however, he shall have been adjudged bankrupt, then to continue to pay him the interest for life subject to the same restrictions, and at his death to divide the principal as C may by his will appoint and in default of appointment to my next of kin then living."

Discuss the validity of the trust.

IV. Mary Smith taught in the city schools. At the end of the year she received a warrant for \$150 to cover the salary due her. The warrant was payable to "the order of Mary Smith." A month after school closed Miss Smith married William Jones. Jones after the marriage and without consulting his wife, assigned the warrant to Henry Brown. Brown did not attempt to collect the warrant until after the death of William Jones, a month later. Who is entitled to the \$150 in a jurisdiction where the common law governs the property rights of husband and wife?

Distinguish a trust of a chose in action from an assignment of a chose in action.

V. Plaintiff conveyed land to defendant, his father, upon an oral agreement by the father to hold it in trust for the son. The father later repudiated the agreement. Has the son any redress?

Would your answer be the same if the conveyance and oral trust were part of scheme to defraud the son's creditors?

VI. (a) A depositor in defendant's private bank directed defendant to set aside \$600 of the deposit for transmission to a bank in a foreign country. Defendant agreed to do so, and entered in the depositor's pass book the withdrawal of \$600 and made an entry of the amount of the balance, and gave the depositor a receipt for \$600 for transmission to the foreign bank. Defendant never transmitted any money, but converted \$600 of the bank funds to his own use. He was indicted for embezzlement and convicted. Is the conviction right?

(b) Analyze a debt and a trust, pointing out any differences that may occur to you.

VII. W was accustomed to ship hogs to his agent, A, with instructions to sell and deposit the proceeds with the D Bank to be applied to a debt W owed the bank. By mistake of the carrier a consignment of hogs belonging to plaintiff was sent to A in W's name. The hogs were sold and the agent, in ignorance of plaintiff's ownership, deposited the proceeds as usual in the D bank. The D bank applied them to W's debt. W then became bankrupt. The plaintiff, learning of the mistake, sued the D bank to recover the amount represented by the sale of his hogs. Should he recover?

VIII. Land was devised to T in trust with directions to sell the same and invest the proceeds and pay the income to testator's wife, W, for life, and at her death to hold in trust for his son, C. T sold the land which was unproductive for \$50,000, and invested it as follows: \$5,000 in his private business, \$10,000 in Consolidated Gas Co. bonds, \$10,000 in Illinois Central Railroad stock, \$10,000 in first mortgages at 6

per cent, \$10,000 in a bank in his own name, \$5,000 in a negotiable note signed by a then responsible business man. W died and C, who is of age, wished to put an end to the trust. The bank in which \$10,000 was deposited failed, although it had been considered eminently sound. The signer of the note lost also by the bank failure and was unable to pay his note. The stock and bonds depreciated. The private business was highly successful.

What are C's rights upon a settlement with the trustee?

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**UNIVERSITY OF ILLINOIS BULLETIN**

ISSUED WEEKLY

**VOL. XII.**

**FEBRUARY 8, 1915**

**No. 23**

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[Entered as second-class matter December 11, 1912, at the postoffice at Urbana, Illinois, under the Act of August 24, 1912]

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**LAW EXAMINATIONS**

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**PAPERS USED AT THE**

**FIRST SEMESTER EXAMINATIONS**

**1914-1915**

**IN THE**

**COLLEGE OF LAW**

**OF THE**

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## EXAMINATION IN AGENCY.

(Please give reasons in full)

Chas. E. Carpenter.

I. J. Turner a youth of nineteen years, wrote Adams, a youth of eighteen, asking Adams to find a buyer for his, J. Turner's land. Adams sold and conveyed the land to John Gill. After he came of age, J. Turner wrote John Gill a letter in which he stated that he affirmed the sale. Later J. Turner made a conveyance of the land to Albert Hill. Who owns the land, John Gill or Albert Hill?

II. The defendant Brown was employed by the defendant Vanderveers to keep trespassers off Brown committed a severe battery upon him with a culb. The court charged the jury that if the servant committed the battery in the course of his duty to put trespassers off, the master was liable even though the battery was wanton or vindictive. Was the instruction correct?

III. A baker loaned his team and driver to a butcher for a day. While delivering meat for the butcher the driver seeing a rival of the baker delivering bread and thinking to benefit the baker, his master, runs against his opponent's wagon and damages it. Is the baker liable? Is the butcher liable?

IV. P. places A. in charge of his store with authority to buy such goods as are needed to keep up the stock, and upon P's credit to issue notes in payment of the goods thus bought. A. buys a thousand dollars worth of goods of T, telling T they are needed to keep up the stock and gives T, P's note for three months in payment. In fact not more than \$500 worth of the bill of goods purchased were needed to keep up the stock. Is P liable on the note?

V. P places A in charge of his store with authority to buy goods upon P's credit and to issue P's note in payment. A's authority was embodied in a written power of attorney which stipulated that A was not to incur debts exceeding in amount at any one time the sum of \$2,000. This power was shown to T and T sold to A on P's credit \$1,000 worth of goods relying on A's statement that there were no outstanding debts for goods purchased by A for P. In fact A had already incurred a \$1,500 debt to Y for goods purchased which was not yet paid, but which A honestly believed had been paid. Can T hold P on the \$1,000 note which A gives in payment of the goods purchased? Can T hold A liable?

VI. P and T are adjoining land owners and T has an open drain over P's land which P has covenanted with T to keep clean. P hires A to manage his farm. A piles brush near the drain and the next freshet washes some of the brush into

the drain. A sees the obstruction in the drain, but desiring to injure T, leaves it there. A few weeks later as a result of the obstruction T's land is flooded and a part of his crop ruined. Is A liable to T?

VII. Peters employs Adams to sell Peters' farm, X, on a commission. Adams had been previously employed by Parker to purchase land for him upon a commission. Adams tells Parker that Peters has employed him to sell his farm X, but does not disclose to Peters that Parker has employed him to purchase land. Adams sells and conveys X to Parker. Can Adams recover commissions from Peters? From Parker?

VIII. A who has no authority whatever from P and intending to make a contract with T on his own account, but A thinking that T would be unwilling to contract with him, represents to T that he is representing P and makes a contract with T in the name of P. P, after discovering the facts, ratifies A's act and sues A and gets judgment. While the judgment against A is still unsatisfied, T sues P. Can T recover against P?

IX. A cabinet maker left property in the control and possession of his agent with the power to sell and apply the proceeds to the security or payment of a note indorsed by the agent. After the agent received notice from the principal of the revocation of his authority to sell the goods, he sold

the goods to the defendant. The principal now seeks to recover the goods. What result?

Suppose the agent had sold the goods after the death of the principal, and after each knew of it. Could the principal's executor recover the goods?

X. An action was brought upon a mortgage and three notes. William Reed was employed by the Adams Express Company and executed a bond for the faithful performance of his duties to the company. Upon the bond plaintiffs were sureties. William absconded, charged with embezzling the company's money. The defendant, William's mother, permitted Patton to take to the plaintiffs the three notes and mortgage signed by her to be delivered up to the plaintiffs upon the express company agreeing not to prosecute her son William. Patton represented to the plaintiffs that the notes and mortgage were to be taken by them in consideration of their paying the debt of William to the company. Plaintiffs took the notes and mortgage on these terms. With evidence of these facts before it the court instructed the jury "if Patton acting without authority, but as a friend of both parties, or of either party, procured for the plaintiff the notes and mortgage sued on, and they accepted the same, they ratified all of Patton's acts in procuring said notes and mortgage, and the notes and mortgage were therefore void." Is this instruction correct?

Apart from the instruction should the defendant be held liable upon the facts stated?

## 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. Plaintiff signed an instrument in the following form:

\$440.00

Oct. 1, 1908.

Dec. 1, after date I promise to pay to the order of myself.....dollars at  
..... Value received.

Plaintiff then indorsed his name on the back in blank and delivered the instrument to S, who was an insurance agent, upon condition that nothing should be done with it until and unless plaintiff passed the medical examination. Plaintiff never presented himself for examination, but S fraudulently filled in the blank for the amount with "Four hundred and forty dollars" and the blank for the place of payment with "the United Empire Bank," which was plaintiff's bank. The note was then sold to the Colonial Bank, which presented it at maturity at the United Empire Bank, where it was paid and the amount taken out of plaintiff's account. Has plaintiff any redress against his bank?

2. Are the following instruments promissory notes in form?

(a) "John Mason, 14th. Feb., 1836, borrowed of Mary Ann Mason, his sister, the sum of \$25 in cash as per loan, in promise of payment of which I am truly thankful for, and shall never be forgotten by me,

Your affectionate brother,

John Mason. (\$25)."

April 20, 1910.

(b) "This is to show that I allow to give Millet James \$40.00 to be payed when kald for.

Ezra Pash."

(c). Discuss the terms "assignability" and "negotiability", indicating clearly the difference in meaning. In what sense, if any, does a negotiable instrument continue to be negotiable after maturity?

3. R. W. Beeson of Ft. Worth, Texas, wrote to William Bingham of Denver, Colorado, asking for a loan of \$1,000. Beeson signed the letter with the name "A. W. Hudson". Hudson was a responsible citizen of Ft. Worth, owning real estate in Denver. After a prolonged correspondence, Bingham, who was a broker, agreed to loan the money. Beeson forwarded a note for the amount, forging the name of A. W. Hudson as maker. Bingham in return sent a draft for \$1,000 payable to the order of A. W. Hudson to "A. W. Hudson,

Lock Box 81, Ft. Worth, Texas". Beeson had rented the box under this name and received the draft, which was drawn on the plaintiff, the Planters' Bank. Beeson indorsed the draft in the assumed name and cashed it at the defendant, First National Bank of Ft. Worth. On presentation plaintiff paid the amount of the draft to defendant. On discovery of the fraud plaintiff offered to return the draft and demanded a return of the money paid. Defendant refused and plaintiff brought this suit. Judgment?

4. Assumpsit on a promissory note for \$400 signed by defendant Dwight Roberts, payable to Daniel Whitney, or order, on demand, and indorsed by Whitney. Defendant pleaded the general issue and offered to produce evidence to show that the note was still the property of the payee, Whitney, who had been induced by fraud to indorse it to one William Forbes, and that plaintiff, Walter Prouty, had obtained the note from Forbes with full knowledge of the fraud on Whitney and for a small consideration. At the request of plaintiff the trial judge ruled that these facts if proved would constitute no defense to this action. Defendant offered no other evidence but excepted to verdict and judgment for plaintiff. Judgment on appeal?

5. (a). Assumpsit by John Scanlan against S. L. Keith and W. H. Kretzinger on the following note:

\$2400.00

Chicago, Mch. 3, 1880.

Ninety days after date, we promise to pay to the order of John Scanlan twenty four hundred dollars at the Third National Bank of Chicago, for value received, with interest at 7 per cent.

The note was signed underneath on the right side, "Sam'l. L. Keith, Pres't. Chicago Ready Roof'g. Co.," and underneath at the left side, "W. H. Kretzinger, Sec'y.," with the seal of the "Chicago Ready Roofing Company" attached. It was contended for the defense that this is on its face not the note of the defendants, but that if it is, parol evidence is admissible to show that the company alone is liable. Discuss both points.

(b) Assumpsit by L. M. Johnson against B. Frankland on the following note:

\$5500.00

Chicago, June 1, 1885.

On or before the first day of June, 1888, the Western Seaman's Friend Society agrees to pay to L. M. Johnson, or order, the sum of five thousand five hundred dollars with interest at the rate of six per cent per annum.

(Signed) B. Frankland, Gen'l. Sup't.

Same defense. Discuss both points.

If this note had been signed "Western Seaman's Friend Society by B. Frankland, Gen'l. Sup't.," would defendant be liable in this suit if it appeared that he had no authority to sign for the society?

6. Assumpsit by Bartlett, Frazier and Carington, running a grain elevator at Reddick, Ill-



inois, against the First National Bank of Chicago to recover \$12500, the amount of 135 drafts drawn by B, F and C by their agent R. L. Walsh upon themselves, payable on their face to the order of various farmers residing near Reddick and indorsed in these names by the agent Walsh. Walsh conducted the business rather loosely, but at first had no intention to defraud. Instead of paying the farmers by giving them the drafts, he would pay them in cash, then draw the drafts payable to them, indorse their names, and cash them at the State Bank of Reddick. The Reddick bank forwarded them to the First National of Chicago, which presented them and received payment from B, F and C. The 135 drafts in suit represent \$12500 for which no grain was received. Walsh converted this amount to his own use. The evidence showed that B, F and C were at first ignorant of their agent's loose way of doing business, that they instructed him to deliver the drafts to the farmers themselves, that they instructed the Reddick Bank not to cash drafts for Walsh when drawn in this form, but there was no evidence to show that the defendant bank was notified or had any knowledge of anything which should cause them to suspect the indorsements to be other than the genuine indorsements of the farmers to whom the drafts were payable. Plaintiffs B, F, and C sue to recover the amount paid on the drafts in suit on the theory that the payees named never indorsed them. Aside from any question of estoppel by negligence, how should the case be decided?

7. Are the following instruments negotiable?

(a) Thirty days after date, I agree to pay Wm. Peterson, or holder, the sum of \$40.

To J. Bell.

Across the face J. Bell wrote "Accepted, J. Bell", Comment on omissions, if any, and state whether instrument is a bill or a note.

(b) \$685.00 Boston, July 11, 1884.

I promise to pay George Taylor, or order, six hundred and eighty five dollars, ten days after the United States pays me the sum due me on the judgment rendered in the case of W. Jarvis against the United States in the Court of Claims, June 1, 1884.

With interest the same as Savings' Banks pay.

W. Jarvis.

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

9. Plaintiff Benjamin Walters borrowed \$3000 of Frank Knapp and as security for the loan delivered to Knapp a note for \$5000 payable to Benj. Walters, dated Sept. 3, 1891, due three years from date, and endorsed by Walters in blank. Sept. 10, 1894, Knapp borrowed \$4000 of the Clinton State Bank and as security fraudulently delivered the above note. The bank took the note in good faith believing Knapp was the owner. Plaintiff brings his bill to restrain the bank from collecting the note. Decree?

## EXAMINATION IN CARRIERS.

January, 1915.

Professor Green.

### PART I

1. A, the owner of a book, lent it to B. B returned it by express, charges paid, addressed to A. The express company, under the usual arrangement with the railroad company, put the book with other express matter in a railroad car and retained custody of it by an express messenger who rode in the car. Because of a defect in a railroad bridge, not discoverable by care, the car was wrecked and the book lost. Discuss the rights of A and of B to sue railroad and express company in tort and in contract.

2. C delivered to an express company for carriage a box that contained glass of exceptional value and fragility. There was nothing to inform the carrier of its contents and the carrier charged ordinary merchandise rates. The box was handled by the company's servants with care adequate for an ordinary box of its appearance but without the care that should have been taken had its contents been known. Consequently the glass was broken. If the character of the contents had been known, the rate would have been higher. Is the company liable? Would it have been liable if the box had been stolen?

3. A commercial drummer bought a railroad

ticket from Champaign to Danville and checked a suit case containing ordinary baggage and a trunk that contained samples by showing which he expected to make sales. The railroad company had no notice of their contents. A pickpocket stole the checks from the drummer and by presenting them at the station at Danville obtained delivery of both suit case and trunk. Neither carrier nor drummer failed to use due care. Discuss the railroad company's liability.

4. A shipped a horse and B a cow by railroad. Each animal was worth \$200. A agreed with the carrier that he would not hold it liable for more than \$100, even though the horse was killed by the negligence of its servants. B agreed with the carrier that the cow was not worth more than \$100. They knew that they got lower rates because of the agreements. The animals were killed in transit by negligence of the carrier's servants. Discuss its liability on principle.

5. If the shipments mentioned in the last question were for interstate carriage and made today, the Carmack amendment of 1910 to the Interstate Commerce Act being in force, what would be the railroad company's liability?

6. A bill of lading issued by a railroad company contained the following provision among others: "It is agreed that the carrier shall not be

liable for loss by fire." The shipper, as the carrier knew, knew that the document contained a contract of carriage, but did not know that it contained any limitation of liability, took it and put it in his pocket without reading it. What is the carrier's liability for loss by fire not caused by its fault? What do you think its liability ought to be?

7. A carload of ice was shipped by railroad in summer in a refrigerator car, especially adapted to carry ice. It was agreed that it was "to be carried without change of cars, the carrier not to be liable for loss by fire." The ordinary run was two days. On the first day's run, the track was blocked by unusual floods. It was plain there would be a delay of several days, and the carrier, unwilling to lose the use of the refrigerator car for so long, transferred the ice to an ordinary closed car. Afterward a fire broke out near this closed car. One fifth of the ice would have melted on the journey anyway. The delay alone would have caused another fifth to melt. The change of cars without delay or fire would have caused a fifth to melt. The fire caused a fifth to melt, but would have caused no appreciable loss if the ice had remained in the refrigerator car. So only one fifth of the ice reached its destination unmelted. What is the carrier's liability?

8. A contracted to sell 100 barrels of flour to B. He shipped the flour by common carrier, took a bill of lading to his order, drew a draft on B for the purchase price, discounted it at the bank. and . . .

livered to the bank the bill of lading duly endorsed, as security. B, however, paid directly to A. A notified the bank that he would take up the draft, and directed the carrier to deliver to B, without production of the bill of lading. The carrier delivered accordingly. A, however, by the embezzlement of a clerk, was rendered insolvent and could not take up the draft. Is the carrier liable to the bank in tort? In contract?

9. In response to P's signal, a street car was stopped at a street corner, and P, exercising due care, approached the car and was about to get on it, as a passenger when, owing to some negligence of the car company, a sign on the car fell upon him. Discuss the car company's liability.

10. The X railroad company, by agreement with the Y company, a connecting railroad, sold tickets which bore a coupon for each road, which coupon recited that it was good over that road. If the Y company refuses to honor a ticket in the hands of a purchaser, what, if any remedy has he against the X company?

## EXAMINATION IN CONSTITUTIONAL LAW

February, 1915.

Professor Green.

1. A state statute made it a misdemeanor punishable by fine for a person who had ever been convicted of perjury to practice law after the passage of the act. Is the act valid as applied to a lawyer who had been convicted and punished for perjury, and afterward licensed to practise, and was engaged in practise when the law was enacted? Is it valid as to such a lawyer if he was not punished, but his conviction was set aside on appeal as unwarranted by evidence?

2. A state statute made it a misdemeanor for employers in hiring or discharging workmen to discriminate against members of labor unions because of their membership. Discuss its constitutionality.

3. A state statute made it a misdemeanor to combine with others to raise the price in intrastate trade of commodities other than agricultural products, but provided that the act should not be construed to forbid combinations of workmen to raise wages. Discuss its constitutionality.

4. A state statute provided that unless corporations of other states doing business in the state should at the beginning of each year pay to the state a sum equal to one per cent of their total assets wherever situated, whether within or without the

state, their right to do business should cease. Is an insurance corporation of another state, which has long done business in the first state under a license indefinite as to time, entitled to continue doing business if it does not pay such sum? How would you answer if, instead of an insurance company, it were a corporation for teaching law by correspondence, which did business wholly by mail from the state where it was incorporated?

5. A state constitution vested legislative power in the legislature without provision for referring measures to popular vote. The legislature enacted that at the next general election it should be submitted to the voters whether a statute then in force which gave the right to vote to all male citizens twenty-one years old should be amended by striking out the word "male", and that, if a majority of the votes cast was found to be in favor of striking it out, the statute should thereupon be deemed to be amended accordingly. The election was held and a majority found to be in favor of the striking out. Have women a right to vote?

6. A state statute forbade the sale of milk without license from the local board of health. X, after hearing, was refused a license. He is prepared to show that he and his milk were and are unexceptionable and that the board refused him a license through incompetence. What are his rights? What would be his rights if he could show that the



board refused him a hearing and acted on hearsay evidence that his milk was unwholesome?.

7. Is an act of Congress valid which provides for condemning land for a public highway from Lincoln's birthplace in Kentucky to his burial place in Illinois?

8. Is an act of Congress which imposes a tax on oleomargarine valid if the tax is so heavy that it obviously will destroy the industry?

9. Are the following state statutes valid, if no acts of Congress conflict? An act which prohibits bringing into the state cattle which within six weeks have been in any locality in which foot and mouth disease was epidemic.

An act which provides that a freight rate on any commodity between two points in the state shall not exceed the rate on the same commodity to a further point over the same line, even though without the state; for example that the rate over the Alton railroad from Chicago to Alton shall not exceed the rate from Chicago through Alton to St. Louis.

10. Is a state general property tax valid as applied to articles brought from other states for sale and awaiting sale in the original package?

## EXAMINATION IN CONTRACTS.

Professor Decker.

1. M, a grocer of Champaign, wired N, a Chicago commission merchant: "Wire best price for Michigan potatoes by carload." N answered. "Can furnish at 90 cents cash, F. O. B. Chicago." M wired, "Can you not extend time of payment to 30 days?" Before he received a reply and on the same day M wired again: "You can send me three carloads of Michigan potatoes as per your telegram of this morning."

The price of potatoes had advanced two cents on the Chicago market and N refused to fill the order. Is he liable?

2. H, cashier of the Logan National Bank of Chicago, absconded and a reward of \$5,000 was offered by the bank for his arrest. Notice of the reward was published in the Chicago papers for about 30 days, and circulars were sent to the police of all the cities of this country and leading foreign cities. Ten years latter S, a detective of the New York police force, recognized H as he was landing from a steamer in that city, and caused his arrest. He was subsequently tried and convicted in the United States District Court at Chicago, the offense being punishable under the National Banking Act.

(a) Is S legally entitled to the reward? Discuss all possible defenses which might be reasonably open to the bank if sued for the reward.

(b) Would the liability of the bank be affected if, three months after the publication of the first notice it had published a second notice in the Chicago papers withdrawing the reward?

3. X on May 1st mailed a letter at Urbana, addressed to Y at Springfield, Ill., offering to sell a house and lot in Urbana and asking for a reply by return mail. Because of X's failure to put Y's street address on the envelope, the letter was not delivered to Y until the afternoon of May 3rd. Y immediately went to the office of the Western Union Telegraph Co. and at 5 p. m. handed the operator a message prepaid to be sent to X accepting the offer. This message was not delivered to X until 10 a. m. next day, which, however, was as early as a letter mailed the previous afternoon would have reached X. Not having heard from Y on the third, as he expected, X had contracted with Z to sell him the property an hour before getting Y's telegram.

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

4. (a) What is a contract under seal, how was it made and by what actions was it enforced at common law?

(b) To what extent has the common law relating to this form of contract and its incidents been changed in Illinois?

5. What was Slade's case and what was its

importance in the development of contractual remedies?

6. X owed P a bill of \$50 for repair work on X's automobile. Some time later X again ran his machine into P's garage for repairs and a further bill of \$20.00 was incurred. P thereupon refused to let X take the machine out of the shop until both bills were paid or X had given him some security. X thereupon got D to guarantee the payment of both accounts within 30 days and P released the machine. By the mechanics' lien law, P was entitled to hold the machine as security for the second bill, but had lost his lien as to the first bill.

(a) If X does not pay the account within 30 days, is D liable on his promise?

(b) Would it affect your answer if we were to assume that P honestly believed that he was legally entitled to hold the machine for both bills?

7. The board of trustees of a church desired to pay off an existing mortgage indebtedness of \$10,000 on the church property and to raise the additional sum of \$5,000 for repairs and additions. They passed separate subscription papers and A subscribed \$500 toward the first amount and \$250 toward the second. The full amounts were subscribed. The trustees have paid part of the mortgage debt from subscriptions collected and have let contracts for the repairs and additions to the sum

of \$5,000, and part of the work has been done. Nearly all of the subscribers have paid their subscriptions. All are past due and A refuses to pay. What is the liability according to the law of Illinois? Explain how the law of Illinois differs, if at all, from that of other jurisdictions on this state of facts.

8. A contracted to build a house for B for \$6,000 in accordance with certain plans and specifications which called for Duplex brick. About a week after the contract was made, B decided that he preferred Simplex brick and A agreed to make the substitution without extra charge. Later, but before A purchased the brick, Simplex brick rose sharply in price and A notified B that he could not afford to use them unless B would add \$200 to the contract price. B agreed and the house was built with Simplex brick. B now refuses to pay more than \$6,000. Is he liable for the additional \$200?

9. X and Y lived in adjoining houses which were very much alike. While both families were away on vacations, X wrote to P to paint his house in accordance with plans previously agreed upon. P's men by mistake painted Y's house two coats before they discovered their error. When Y came home and saw what had been done he said to P: "I guess the house needed paint all right and I like the color. Send me your bill and I will pay it." He later refused to pay. What is his liability?

10. A owed B a note of \$100 which was due. B wrote to A, saying that he needed the money and hoped that A would pay soon. A's father answered this letter, saying that A was sick and unable to pay at that time, but would pay as soon as he got to work again, and if B would wait patiently, he, (the father) would guarantee the payment. B waited for six months, during which time A had fully recovered from his illness, and then sued the father. He had never answered the father's letter. What legal defenses may the father reasonably urge in this suit and what is your judgment as to their validity?

## EXAMINATION IN CRIMINAL LAW.

(Discuss all points involved and give reasons fully)

Professor Vernier.

1. X, a negro woman, went to the police station of a Georgia town and complained that Y, another negro, had cursed her. On the following day an officer, without a warrant, went to arrest Y. Y seized a shotgun and fled. The officer shot at Y, wounding him slightly. People on the street joined in the chase, yelling, "Get him," "Shoot the nigger," etc. W, the leading pursuing citizen, had almost reached Y, when Y wheeled and shot him dead.

(a) Was the officer justified in shooting Y? If not of what crime was he guilty?

(b) On an indictment for the murder of W has Y any defense?

2. X and Y each wished to kill W and planned to do so on the same day but with no common design. X gave W a box of candy one piece of which contained poison. Y gave W an apple containing poison. W ate the apple and the candy but suffered no ill effects whatever, as the two poisons happened to neutralize each other. A week later W heard of what X and Y had done and was so frightened that he became seriously ill. X and Y were indicted for (a) an assault, (b) a battery. Should

they be convicted of either? Are they guilty of any other crime?

3. Vary the facts of the preceding case to this extent: X induced W to eat the poisoned candy in the morning. The poison in the candy would not have caused death for at least 24 hours. Y induced W to eat the poisoned apple in the afternoon of the same day. The poison in the apple was sufficient to cause death within an hour. The poisons did not neutralize each other as before. W died within 45 minutes. At the trial of X the court charged, "If the defendant with intent to kill W, induced him to eat candy containing poison which was certain to produce death within a day or so, and if at the time of W's death that poison was chemically acting upon W's bodily tissue, he is guilty of murder, although W's death was hastened and was immediately due to poison given by another acting independently". X was convicted and on appeal alleged that the above charge was erroneous. Judgment?

4. A statute makes it a finable offense "to sell, or offer for sale, milk which has been diluted with water, or to which any foreign substance has been added". D was indicted under this statute and it is proved that he sold milk containing chalk and water to B. Should he be excused if he can prove.:



(a) That the chalk and water were put into the milk by his servant without his knowledge and against his orders?

(b) That the chalk and water were added by a mischievous boy while D was temporarily absent from the wagon?

5. X, a farmer, and his hired hand D, while trimming a hedge, engaged in a political discussion. D made some sarcastic remark about the farmer's favorite, which so enraged the farmer that he started after D with a hedge knife. D saw that the farmer was enraged, and believed that his life was in danger. The farmer was still some distance away and D could easily have escaped. Instead of retreating D told the farmer to stop, and when X continued to advance in the same manner, D drew a revolver and killed X. Of what crime, if any is D guilty?

6. (a) A statute made it a criminal offense to extort money from another by putting in fear. D, in order to obtain money from W, threatened to falsely accuse her of a serious crime. W gave the money demanded, not under the influence of fear, but for the purpose of prosecuting D. Is D guilty of the offense named in the statute, or of an attempt, or should he go free?

(b) D believing that he was under the lawful age, voted at an election. In fact he was of voting age. Is he guilty of an attempt to vote unlawfully?

7. X entered a train and took a seat with G, a stranger. S, also a stranger to X came in later, wearing a badge and, falsely pretending to be a baggage-master, told G that he must pay excess charges of \$5 on his baggage. G in reality had no baggage on the train, but was an accomplice of S. G, however, offered his check for \$5 in payment of the pretended charge. S said he could accept only cash. G then turned to X and asked him to cash the check and hold it until the next town was reached, when the money would be returned. X handed \$5 to S. G and S then rushed from the train taking both the money and the check. Should G and S be indicted for larceny or for obtaining money under false pretences?

8. X killed D. The killing is admitted, but X wishes to show that he killed D while laboring under an insane delusion to the effect that D was trying to marry X's mother against her consent. A statute required insanity to be specially pleaded. To an indictment for murder X pleaded not guilty on the ground of insanity. Under what circumstances, if any, could this be a good defense on the above facts. State the rule in *McNaghten's* case as to insane delusions and insanity in general. what do you think of the rule and why? Who should have the burden of proof as to the issue of insanity?

9. X, Y and Z are playing ball in the city streets contrary to a city ordinance, attaching a

fine of \$5 to \$25 to the offense. X is pitching, Z catching and Y batting. They are aged 6, 16 and 13 years, respectively. Y bats the ball through a neighboring window, and a piece of glass strikes a child playing on the floor, cutting the child, who bleeds to death. All three are indicted for (a) maliciously breaking a window, (b) for manslaughter. Should any of them be convicted on either charge?

10. H married W, H at the time having a wife still living. He was indicted for bigamy under the ordinary bigamy statute. Has he any defense under the following states of fact?

(a) He knew his first wife was living and that there was a law against bigamy, but remarried because of his religious belief.

(b) Assume the facts to be the same as in (a) but add that H. believed the bigamy statute to be unconstitutional and that he had been so informed by a practicing lawyer.

(c) Assume that H remarried because he bona fide believed that his first wife had obtained a divorce; that she had in fact obtained a divorce in another state and that the divorce decree was void owing to a lack of jurisdiction in the court granting it.

(d) Assume that H remarried six months after he heard that his first wife had died in a shipwreck. that the wife was in fact alive, having been picked up unconscious by a passing tramp steamer, so that she was unable to communicate with her husband until after his second marriage, and that under the facts H was reasonable in believing that his first wife was dead.

## EXAMINATION IN DAMAGES.

Professor Decker.

1. A suffered personal injuries in a wreck on B's railroad caused by the negligence of B's employees. He called a physician who made an examination, said that A's knee was sprained but no bones broken, and advised certain treatment. A followed the treatment but did not regain the use of his leg, and after three months consulted a specialist, who found that a bone had been broken and had grown together in the wrong position. A then underwent an operation in which the bone was re-broken and properly set, but when it finally healed, it was one inch shorter than before the injury, causing a permanent lameness.

In an action by A against B, can A recover damages for the permanent lameness? Frame an instruction to the jury on this point in behalf of the plaintiff to which the defendant could not successfully object, making it as favorable to the plaintiff as possible.

2. Supposing a verdict of \$10,000 were rendered in the foregoing case, which B thinks is excessive, may he raise the question, and if so, how? Should relief be granted? What is meant by a *re-mittitur*?

3. Suppose A had been a bookkeeper until a few days before the accident, but had given up that

work and had just entered the employ of the New York Life Insurance Co. as a solicitor of insurance, being on his way, at the time of the accident, to take up his new line of work. Can he recover for loss of time, and if so, how should that loss be estimated?

4. What are A's rights in the foregoing case as to the recovery of

(a) The cost of doctors' services, providing it were shown that the first physician to treat A refused to make a bill after he learned of his mistake in diagnosis, and the specialist charged \$300, which A had paid.

(b) The cost of nursing, providing it were shown that A had been nursed by his wife.

(c) The cost of his attorney's fee in this suit.

5. Could punitive or exemplary damages be recovered by A in this suit? Discuss the general question briefly as to the nature of such damages and when they are allowable.

6-7. In the spring of 1914, P was building a large hotel in the city of Champaign, the contracts for which called for the completion of the building by September 1. On May 1 P went to Grand Rapids, Michigan, and there contracted with D, a furniture manufacturer, for all of the furniture for the hotel, much of which was to be of a special design.

D was informed of the time that the building was to be completed and of the fact that the University was located in Champaign and that there was a special demand for hotel accommodations at about that time of year. With this knowledge, D promised to deliver the furniture not later than September 1st, but failed to do so. The furniture began to come in small lots about September 15th, but did not all arrive until November 20th. The office and dining-room furniture, which was specially designed, was the last to arrive. If the furniture had been delivered as agreed, the hotel could have been open for business by September 15th, but under the circumstances, it was not opened till December 1.

Supposing that P were to sue D for breach of his contract and the trial were to occur in May, 1915, by what principles should the damages of P be determined? In answering you may assume any further facts peculiar to actual local conditions as to market for furniture, etc., as you may deem necessary.

8. Supposing that P, in the prior question, had in August, 1914, contracted with X, Y and Z, as clerk, housekeeper and chef of the hotel respectively, each for a year commencing September 15th, and had paid them their salaries accordingly, though their services were of no value to him until the hotel was opened. Would P be entitled to recover the amount of the salaries so paid in his suit against D?

9. A recovered a judgment against B and placed an execution in the hands of C, a sheriff, for service. C levied on a horse which he found in B's possession. X sued C in trover and established his title to the horse. What is the measure of X's damage?

Suppose C should offer evidence at the trial to the effect that he sold the horse at execution sale and that X bought it for \$75. Is this evidence admissible? Explain.

10. A and B owned land on opposite sides of a stream. A drove piles on his side of the stream so as to deflect the current and cause it to wash away land on B's side. B sues A for damages and proves at the trial that about 500 cubic yards had been washed away at the time suit was begun; and over A's objection, is permitted to show that about 500 yards more had washed away after suit begun but before trial. After verdict for plaintiff, A moves for new trial because of error in admitting said evidence. Should the motion be granted?

## EXAMINATION IN EQUITY.

Professor Pomeroy.

(February 1915.)

I. Shaw leased to Harper; the lease gave Harper the option to purchase the premises at the expiration of the lease, the price to be fixed by valuers, one appointed by Shaw and one by Harper; the valuers, in case of disagreement, to choose a referee. Harper gave the required notice of his desire to purchase, and named Godkin as the valuer on his part; Shaw refuses to appoint a valuer or convey on any terms. Harper now sues Shaw for specific performance; asking that Shaw be compelled to appoint a valuer; or, in the alternative, that the court fix the price of the property and decree conveyance. Should he succeed? State reasons fully.

II. Miller held an unrecorded first mortgage on a tract of land belonging to Babcock. Babcock sought to effect a loan from Andrews, offering the land as security. Andrews, having no definite reason to suspect that the land was already encumbered asked Babcock whether there was any mortgage or lien on the land. Babcock replied, "Miller did hold a mortgage on it, but the mortgage has been paid off and discharged". Andrews thereupon made the loan and took the mortgage without further inquiry. Was he affected with notice of Miller's mortgage? Reasons.



III. A contracted to sell Blackacre to B, who went into possession and gave his negotiable note for the price, payable a year from date. Later, but within the year, A sold and conveyed Blackacre to C, who had no information regarding B's contract, and paid full value; and a month later, but within the year, A transferred the purchase money note for value to D, who knew nothing of the sale to C. The note is still unpaid.

What are the rights and remedies in equity, if any, of C and D. against B, and of B against C and D? Explain fully.

IV. In the three following cases, B, with A's consent goes into possession of land orally sold by A to B.

(a) B makes no payment on the price, and no improvements. What reasons for considering the taking possession an act of part performance sufficient to take the contract out of the statute of frauds? Is it so considered in England? In the United States generally? In Illinois?

(b) B makes a part payment of the price, but no improvements.

(c) B makes valuable improvements, but no payment on the price.

In (b) and (c), are B's acts sufficient part performance in England? In the United States generally? In Illinois?

V. B made a criminal charge against C, and obtained his arrest. A, the wife of C, not being under duress, gave B her promissory note for \$500, which B still holds, on the consideration that B should dismiss the charge against C. The note is not yet due. A now brings suit to cancel the note on the ground that it was given for an illegal consideration. What result? Explain.

VI. Hardship or unfairness as a defense to specific performance. State four propositions derived from the cases studied, and illustrate each proposition, briefly, by appropriate facts, real or fictitious.

VII. A contracted to sell a lot to B, the price being made payable in 10 installments of \$500 each, on fixed dates. The contract provided that time should be of the essence in all respects, and that if default should be made in the payment of any installment, the contract and all installments previously paid should be forfeited. B paid all installments promptly except the 10th, which he tendered one day late; his excuse being that he was too busy to attend to the payment on the day when it should have been made. A refused to accept the last installment, or to return the others. B sues for specific performance. Give arguments *pro* and *con*.

VIII. State four brief sets of facts, illustrating four different species of constructive trusts.

IX. Testator devised Blackacre to A in fee, and in case A should die without leaving lawful issue living at the time of his decease, then to B in fee. A is in possession of Blackacre under this devise; he is sixty years old, unmarried, and without issue. What waste on A's part may B enjoin, and what may he not enjoin? May B enjoin A from opening and working a coal mine on the premises?

X. The Victrola Company is engaged in the business of manufacturing and selling graphophones in England and America. It engaged the services of O and P in England and America respectively, each an inventor of unusual ability, to make inventions for the purpose of perfecting the V. Co's machines. O and P each contracted to give "the whole of his time" to the V. Co. for four years. The V. Co. also employs several hundred traveling salesmen in England and America at salaries of \$100 to \$200 per month. Each salesman is under contract not to accept employment from any other graphophone company within four years. Within the four years, O, P and numerous salesmen, breaking their contracts, left the V. Co. and began to work for a rival company. What relief, if any, may the V. Co. have in English courts of equity against O and the English salesmen, and in American courts of equity against P and the American salesmen?

## EXAMINATION IN ILLINOIS PROCEEDURE

Dean Harker.

1. "A" and "B" are partners in the grain business at Champaign. "A" resides at Milwaukee Wis., and "B" resides at Indianapolis, Ind. For several years after the business was started they both resided at Champaign. Neither has been in Champaign for several years but the business is conducted by "C" on a salary. "D", a resident of Chicago, asserts a claim against the firm which is disputed. Representing "D" where would you bring suit, and how would you obtain service?

2. "A" has brought suit in ejectment against "B" to recover lot 4 in Block 5 in the Forestry Heights Addition to the City of Urbana. "B" defends under a tax title which fails because the property was sold for delinquent taxes under a void judgment. Subsequent to obtaining his deed "B" in good faith, erected a residence on the lot. State the proceeding in detail through which he may obtain compensation for the improvement.

3. State the difference between reviewing a judgment of the circuit court for appeal and by writ of error. Representing a client who feels aggrieved by the judgment, state under what conditions you would advise an appeal and the conditions that would prompt you to advise a writ of error.

4. Draft a declaration for the First National Bank of Champaign upon a promisory note executed by James Brown to Walter Jones, endorsed by Walter Jones to the State Bank of Tolono, Ills., and endorsed by the State Bank to the plaintiff.

5. Draft a plea of non-assumpsit and a special plea of failure of consideration for a promisory note executed by Wm. Mott to Henry Rhea for \$200.00 in payment of a gasoline engine, the claim being that the engine failed to furnish fifteen horse power as guaranteed by Henry Rhea.

6. "A", late resident of Urbana, Ills., died, interstate, leaving a widow and four children as his only heirs at law. He died owning personal property in Champaign county valued at \$6000.00, real estate in Champaign county valued at \$10,000.00 and real estate in Worth county, Iowa valued at \$30,000.00. He left an indebtedness of \$20,000.00. Retained by the widow to conduct the Estate through the Probate court, mention each step that you would take in securing a proper and complete administration.

7. James Dodd, a former merchant in Champaign, Ills., closed out his stock of goods to Henry Dodd, a brother, and went to Los Angeles, Cal. Sept. 14, 1914. When he sold to his brother he was indebted to the Chicago Furnishing Co. a corporation in Chicago engaged in manufacturing and sel-

ling gents furnishing goods in the sum of \$1,250.00 for goods consigned to him August 15th 1914. He is the owner of a vacant lot described as lot 4, block 6 Railroad Addition to the City of Champaign, Ill. It is the contention of the Chicago Furnishing Co. that the sale to the brother was fraudulent. Prepare all the papers necessary to secure a judgment in *rem* against the real estate and the stock of goods.

8. May the order of the Circuit Court in recommitting a petitiouer in habeas corpus charged with a criminal offense be reviewed on writ of error?. State the views expressed by the Supreme Court upon the question.

9. How has the statute of Illinois modified the ancient practice in mandamus proceedings?

10. State the difference between the two kinds of certiorari known to the law in Illinois.

## EXAMINATION IN MORTGAGES.

Professor Pomeroy.

February 1915.

I. A sold certain machinery to B for use in B's mill, A retaining title to the machinery until paid for. On February 1st B mortgaged the mill with all its machinery and fixtures to C., to secure a note for \$10,000, which was more than the mill property without the machinery is worth. On that date a part of the machinery had been put in place and a part was stored in a shed; the latter part, however, was put in place within a month. By the law of the jurisdiction, the title of a conditional vendor of chattels is good even against a bona fide purchaser of the chattel. Can C, who was ignorant of A's title to the machinery, include the machinery in his foreclosure sale? Reasons.

II. On September 1, 1914, A leased a house to B for a year, the rents being payable quarterly, on December 1, March 1, etc. On Dec. 2 A mortgaged the premises to C; by the terms of the mortgage the mortgagee was entitled to immediate possession. On June 1, 1915, no rent having been paid for either of the three quarters, A demands the rent; B pays A for the first two quarters and promises to pay A the third quarter's rent within a week. On June 2, 1915, C demands of B all rents since the beginning of the lease; B, notwithstanding paid the third quarter's rent to A. Both A and C demanded rent on

September 1, 1915; on B's failure to pay either party, C sues B for all the rents for the year. B had knowledge of the mortgage as soon as it was made. What result? Reasons.

III. A mortgaged land to B to secure a negotiable note for \$1000, payable April 1st. On March 1st, B, for a valuable consideration, assigned the mortgage, with a forged note, to C. On May 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, 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 mortgage and upon the note? Reason. If Illinois law differs from the law of other jurisdictions, state both.

IV. M mortgaged lots 2 and 3 to B by the same mortgage, which was recorded. Later, he mortgaged lots 1 and 2 to C by a single mortgage, which was also recorded. Still later, he mortgaged lot 3 to D. On a foreclosure to which B, C and D were all parties, what lots should be sold, and how should the proceeds be divided? Analyze the situation carefully, showing the equities of the different parties.

V. Cook mortgaged to Rogers. On Cook's default, Rogers went into the possession of the premises, received rents and profits for a year, amount-



ing to \$800, expended \$200 for taxes, foreclosed, and sold the premises on foreclosure for an amount \$200 in excess of the principal, interest, and costs. Tompkins, a creditor of Cook's, now sues Cook and garnishes Rogers as a debtor of Cook's in the amount of \$800. Should T recover on his garnishment? Reasons in full.

VI. What are the two competing theories under which the mortgagee may hold personally liable the mortgagor's grantee who has assumed payment of the mortgage debt? Apply these two theories to the following facts.

A mortgaged to M. A then sold to B, who assumed the mortgage debt; later, B sold to C, who likewise assumed the debt. Later, and before M knew of these transfers, A released B from his liability. M foreclosed, the foreclosure sale resulting in a deficiency. Which of the parties, if any, may be held liable for the deficiency? Explain fully.

VII. A manufacturing company mortgaged its plant for \$1,200,000 to A, B and C, to secure three notes of equal amount. Later, it made a mortgage of \$200,000 to D. Still later, desiring to enlarge the plant, it mortgaged to E for \$500,000, A and B agreeing to postpone their claims to E's claim, while C declined to enter into such an agreement. On a foreclosure to which all were parties, it is asserted that on account of the agreement, mortgage claims should be paid in this order; 1st, C; 2nd, D; 3rd, E; 4th, A and B. Is this correct? How should

the foreclosure proceeds be divided (a) if they amount to \$1,500,000; (b) if they amount to \$900,000? Reasons.

VIII. When statute of limitations has run against a note secured by mortgage, is foreclosure barred? On what grounds do the two competing rules on this subject rest? What is the Illinois law on the subject? What is the effect, if any, on the running of the statute, of mortgagor's absence from the state?

IX. A mortgaged to B three adjoining lots, 1, 2, 3. Afterward he conveyed lot 1, the westerly of the three, to M; this deed was recorded; then lot 3, the easterly of the three, to N; this deed was not recorded; then lot 2, lying between 1 and 3 to O. The last deed described the lot as bounded on the east by the land of N and on the west by the land of M. On foreclosure, O claims that lot 3 should be sold before his own because he supposed when he bought that lot 3 still belonged to A.

State and explain principles involved.

X. A mortgaged to B a flour mill and an adjoining farm. Default being made, B took possession; he rented the farm to his friend C for (a) \$800; he operated the mill in person, at a net loss of (b) \$200. He spent (c) \$400 in repairing the roofs of the farm buildings, which were leaky, and (d) \$600 in putting in a furnace for heating the house, which previously had been heated by stoves. A fair rental for the mill would be (e) \$1000; for the farm without item (c) of repairs, would be (f) \$1000, with the repairs and without the furnace \$1200, and with both (g) \$1400. After B had been in possession one year, A seeks to redeem. Which of the items, (a, b, c, d, e, f, g,) should be deducted from, and which added to, the amount of the mortgage debt and interest? Reasons.

## EXAMINATION IN MUNICIPAL CORPORATIONS.

Professor Pomeroy.

(February 1915)

I. State, and illustrate briefly, four propositions derived from the cases studied, relating to the remedies of judgment creditors of a municipal corporation.

II. The city of X passed an ordinance giving to a railroad company the exclusive right to occupy two thirds of the width of a street with its tracks and buildings; and giving the company a similar right to occupy one half of a school lot. The ordinance was unauthorized by charter or statute. The company in reliance on the ordinance occupied the street and lot for forty years, making improvements worth \$300,000, and claiming adversely to the city. The city now sues for injunction to compel the removal of the company's tracks and buildings. The defendant pleads statute of limitations, prescription, and estoppel.

Argue the case in behalf of the city. How, in your opinion, would it be decided in Illinois?

III. A city had charter authority to buy and own necessary tools and materials for use in the improvement of its streets. A statute prohibited the storing of dynamite within the limits of incorporated cities. The city rented A's building in the

city for the expressed purpose of storing dynamite necessary for use in blasting streets, and agreed with A to use due care. Through the negligence of the city's employees A's building and the adjoining building of B were blown up and destroyed. A sues the city for the rental of the building and for breach of the city's contract to use due care. B sues the city in tort. Can either recover?

Reasons.

IV. In 1910 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 1915 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 the debts of A by B, C or D. Plaintiff, owning bonds issued by A in 1908, sued B, C and D thereon in 1918. Could he recover against any or all? What became of the public real property owned by A?

V. Discuss, on principle, the validity of ordinances compelling abutting property owners to remove snow from sidewalks in front of their premises.

VI. Rights of abutting owner who does not own the fee of the street, to damages for injuries to his property, (a) from a railroad in the street, built there under authority from legislature; (b) from a change of grade of the street. State the rules

in these two subjects. (1) in Illinois before 1870; (2) in New York to day; (3) in Illinois today.  
Reasons.

VII. Discuss the validity of an act of the legislature of Illinois erecting a designated territory in the state into a municipal corporation, without a vote of the inhabitants of the territory.

VIII. A was tried in the Circuit Court of Champaign county for the offense of keeping a public gambling house. He offered to prove, under a plea of former conviction that he had been duly convicted of the same offense under an ordinance of the city of Champaign. Should proof of the former conviction be allowed?

Discuss question fully, showing the various views that have been held of the situation where the same act is made an offense by statute and by ordinance. What is the Illinois holding?

IX. State, and illustrate briefly, three propositions relating to the liability of a city in assumpsit for services rendered, money or property received, etc., on an *ultra vires* contract.

X. Give two instances of liability of a city for "defect in plan" of a public work or improvement, and distinguish from cases holding city exempt from liability for "defect of plan".

## EXAMINATION IN PARTNERSHIP

First Semester 1914-15.

PROFESSOR HALE.

### I.

A, a boy 18 years of age, B a married woman, and C, an unmarried adult enter into a partnership agreement to continue for three years. Each contributes \$500 to the capital of the partnership. The firm owes debts amounting to \$1800. The capital is intact. What are the rights of the creditors of the firm in enforcing their rights?

### II.

A owned a store building, B had some money to invest, and C had had 10 years' experience in the mercantile business. It was agreed that A would furnish the building, B the money to buy a stock of merchandise and C would manage the business. For the use of the store A was to receive one third of the net profits, for the use of the money B was to receive one-third of the net profits, and C was to receive one-third of the net profits as salary. In the course of the business C purchased goods of X to the value of \$1000. This bill not being paid when due, X sues A, B and C as partners. What judgment?

### III.

(a) The X company, a partnership was en-

gaged in the wholesale grain business, and was composed of A and B. The Y company, a partnership, was engaged in the retail grain business and was composed of A and D. Grain was sold by the X company to the Y company on credit to the amount \$500. It was agreed that the bill would be paid in 30 days after the purchase. The 30 days have elapsed and the bill has not been paid. How may the X company realize upon its claim?

(b) A and B are in partnership. A sells a horse to the firm for \$100 to be paid for in 30 days. Can A compel payment of this claim when it is due? Suppose A assigns his claim to X, what are X's rights?

#### IV.

A and B had been engaged in a partnership business in Champaign under the name of the A B Company. A sold out to B and granted the right to B to continue business under the old firm name. Thereafter B bought goods of X, of whom the firm had for many years bought goods. The amount of this bill was \$500. B also bought \$500 worth of goods from Y, with whom the firm had never had any dealings.

(a) X sues A and B as partners. What judgment?

(b) Y sues A and B as partners. What judgment?

(c) Would your answer be any different in either case if the partnership business had been carried on under the name of the Acme Company?

## V.

Jones, Smith and Brown were engaged in the wholesale grocery business under the firm name of Jones, Smith & Co. Smith and Brown sold their interest including the good will to Jones, who took Johnson and Davis into partnership with him and continued the business under the firm name of Jones, Smith & Co.. Smith and Brown associated with themselves another person by the name of Jones, who was not related to their former partner, and established a wholesale grocery business under the firm name of Jones, Smith & Co., the business being conducted in a building next door to that of the original firm, and the front of the building, including the sign, being painted in the same general style as that of the original building. The new firm advertised its business in the newspapers and by circulars sent out to retail grocers, many of whom had been customers of the old firm. Does either firm have any cause for complaint against the other?

## VI.

X, Y and Z, having dissolved the partnership which had existed between them, X undertook to settle up the firm business, and in the course of doing so reached a settlement with A by which it was



agreed that the firm was indebted to A to the amount of \$1,000; he also made a part payment on a debt of the firm to B which at the time of payment was barred by the statute of limitations. Can either A or B in an action against the firm take advantage of X's settlement or part payment?

### VII.

A and B were partners in the butcher business, doing business under the firm name, Boston Meat Co. With money which they had contributed to the firm they purchased Blackacre and built thereon a slaughter-house and used it in connection with their business. With profits accumulated in the business they purchased Whitacre for speculation. They also kept on hand a herd of fifty beef cattle. All the cattle were purchased under a bill of sale to the Boston Meat Co.

Blackacre and Whitacre were each conveyed to A and B.

A died. What part of this property may be used in paying firm debts and how may the results be accomplished?

### VIII.

A, B and C were in partnership. A conveyed his interest to X, B conveyed his interest to Y and C conveyed his interest to Z; each conveyance being made for the purpose of satisfying a personal debt. At the time of these conveyances the firm owned property of the value of \$6,000 and owed debts amounting to \$10,000.

(a) What may the firm creditors do in such a case?

(b) Would your answer be the same if the conveyances had been made after proceedings for a dissolution of the partnership were instituted?

## EXAMINATION IN PERSONAL PROPERTY

Professor Green.

1. What is a chose in action. Give examples.
2. If A wrongfully takes and detains B's goods, what remedies has B?
3. A had a gold watch chain. B had another chain just like it. A accidentally broke B's chain, and B, to get even, broke two links from A's chain, took them to a jeweler along with his own chain and had the jeweler in mending the chain incorporate A's links so that no one could tell which links they were. A carried off the whole chain from the jeweler's. What are B's rights?
4. A, B and C each had in his pocket a coin of unknown denomination. A stole the coins of B and C and put them in his pocket without noticing what they were. He then went to D's soft drink emporium and bought a ten cent drink. Finding he had two quarters and a fifty cent piece, he paid one of the quarters to D, who put it on a shelf by itself and gave A a nickle and a dime in change. What rights in the various coins have A, B, C and D?
5. A landlord leased his farm for three years to a tenant who agreed in the lease not to remove from the farm manure made from fodder grown upon the farm. The tenant fed some of his cattle on fodder grown on the farm and others on pur-

chased fodder. The manure was all alike and he mixed it in a single heap. When the lease was up he left the farm, but the landlord prevented him from taking away any of the manure. May he sue the landlord in trover?

6. A lent B a book to read free of charge, and B took it away. C asked A for the book, and A said, "I hereby make you a present of it; it is yours". He then handed to C a note to B which read, "I have given the book to C; deliver it to him. (signed) A." C showed the note to B and demanded the book, but B refused to give it up. C sued B in trover. What decision?

7. A, in consideration of money paid by B, signed and delivered to B a written assignment of the following claims:

- (a) a claim against X for damages for assault;
- (b) a claim against Y for damages for converting A's horse;
- (c) a debt owed by Z for board and lodging.

Explain what rights, if any, B gets by the assignment and how he may enforce them.

8. P, who already owed money to a laundryman for washing, sent him a bundle of clothes to wash at the prices printed in the laundry list. When they were ready, P called for them, but having with

him only half enough money to pay for them, tendered what he had and asked for the clothes, or at least as many of them as his money would pay for. The laundryman said, "I will not let you have a single piece unless you pay for all this washing and also what you owe for previous washing." What are P's rights?

9. Write a brief account of the law about either wild animals, wreck, or estrays. Answer as to one only.

10. Explain briefly how one may acquire title to personal property by gift, how by judgment in an action in rem, and how by satisfaction of judgment in trespass or trover. Answer as to each.

## EXAMINATION IN REAL PROPERTY.

(Please give reasons in full)

Chas. E. Carpenter.

### I.

A owned Blackacre which adjoined the two woodlots X and Y owned by B. For more than 20 yrs. A had been taking all the timber he needed to use on Blackacre from the lots X and Y. He took the timber under a claim of prescriptive right to all the timber growing on X and Y. A conveyed Blackacre to C (the right to take timber from X and Y not being mentioned in the deed) C then purchased lot X of B and assigned to D the right to take the wood from lot Y. Who has the right to take the wood growing upon Y: A, B, C or D?

### II.

(a) A and B are adjoining land owners. A has a large brick dwelling house on his land which stands close to the dividing line between A and B. B makes an excavation on his land but takes precaution to build a wall to furnish A's land lateral support. Because of this removal of lateral support A's land sinks causing damage to A's house.

A sues to recover for the damage thus done. What result?

(b) if B failed to give A notice that he was going to or had excavated or

(c) if B was negligent in making the excavation

or  
 (d) if C a trespasser without B's knowledge or assent made the excavation would you reach a different result as to A's right to recover from B?

### III.

A and B owned adjoining piece of land, X and Y. A had an aluminum factory on his land X which for twenty-five years poured out hydrogen-sulphide fumes and other noxious vapors over the land Y, in such manner that the health of anyone residing on Y would have been seriously impaired. Throughout the twenty-five years no one dwelt upon Y. B then conveyed Y to the C company which erected a hospital upon it. A continued to pollute the air in the same manner as before and great injury was caused to D and E, patients in the hospital. May D, E or C have an action against A?

### IV.

A, tenant in fee simple of Blackacre, granted to B and his heirs a right of way across Blackacre to "that parcel of land owned by B, commonly known as Whitaere, and now used as a sheep pasture." Thereafter A conveyed Blackacre to C and B conveyed Whitaere to D. For over twenty years from the time of the original grant, the way was used only to drive sheep to and from Whitaere. D now wishes to erect a factory upon Whitaere. Has he a right to use the way for the purpose of bringing in the materials to build such a factory?

## V.

The plaintiff was leasee of farm land adjoining a tract of land owned by the defendant. The plaintiff grew celery and water cress upon his land and irrigated the same with water taken from Spring Creek.

To supply water to a lake and artificial reservoir in a park on his land and also to supply water to a village near by, the defendant with A's permission constructed a pipe through A's land to Spring Creek and wells on his own land and maintained and operated a pumping station there. The defendant's operation of his pumping station lowered the flow of water in Spring Creek so much as to render the plaintiff's irrigation plant useless and lowered the underground water table on his land so greatly that plaintiff found his land unfit for the cultivation of celery and water cress. Plaintiff seeks damages and a perpetual injunction to restrain defendant from operating his pumping station.

What result?

## VI.

A, who was tenant for life of a tract of land on Jan. 1st. leased the land to B for 10 years reserving rent payable annually. B on the same day sublet the land to C for 5 years reserving rent to himself, the rent payable annually. At the end of one year B assigned his entire interest to A and A died on the first day of September of the second year after executing the lease to B. Is X the reversioner in

fee or A's executor entitled to the rent for the whole or a portion of the second year? Discuss the question from the standpoint of the common law prior to 1738, of the later English law and of the law in the states. How would it affect your answer if A was a tenant in fee instead of a tenant for life and X was his heir instead of a reversioner?

### VII.

A owned a tract of land of which he had never taken actual possession. About one third was woodland, and the remainder cleared land, B owned an adjoining tract and leased it to C from year to year. Neither A's nor B's land was enclosed. C thought that his lease covered A's land, and each year cultivated the cleared portion, and occasionally cut timber upon the woodland. After the lapse of 12 years B sold his land to D. The deed did not embrace A's land. C attorned to D, and C continued to use A's land for 10 years more. Neither B, D, nor C knew that C was using land which belonged to A. C died, and his heir claimed A's land as his own. Who is entitled to A's land.

### VIII.

A, tenant in fee simple of X (in Champaign) granted to B, tenant in fee simple of Y (not immediately adjoining X) a right to lay and maintain a drain across A for the use of Y; and A covenanted drain across X for the use of Y; and A covenanted for himself his heirs and assigns, to keep such drain



in repair. The grant and the covenant were recorded. A thereafter conveyed X to C and B conveyed Y to D. D erected upon Y much larger building than had formerly been upon it, and the amount of drainage passing through X was greatly increased. Is C bound to let D send his drainage across X? Is C bound to keep the drain in repair?

### IX.

A, B and C are adjoining riparian proprietors on a river 200 feet wide. An accretion, shaped like a half-moon, forms by imperceptible degrees in front of the three lots. It is fifty feet wide at the widest part. The land wears away by imperceptible degrees somewhat more on the other side of the river, so that the river is now two hundred and fifty feet wide in front of the lots. How would you divide the accretion between these three lots?

### X.

A owns lot X. B owns lot Y. C disseises A and occupies X adversely for 15 years. D then disseises C and occupies X adversely for more than five years longer. C and afterwards D use without right a roadway leading from X over Y to a highway. Each while in possession of X uses their roadway openly and continuously. After D has then used it for five years or more, D permits B to fence up the way and C brings an action for the obstruction. What result?

## EXAMINATION IN SALES.

(First Semester 1914-15)

PROFESSOR HALE.

N. B. Develop law and reasons fully.

### I.

A had certain standing timber on his land suitable for fine cabinet work. A was a skillful carpenter and had the nails, tools, etc., for cabinet work. B paid him \$100 for a desk to be made from this particular timber. B was to call for the desk as soon as it was finished. When the desk was completed A sold it to C. B claims the property from C. What decision?

### II.

B went to A's factory and ordered an automobile of a certain make and description to be paid for on delivery. B was to call for it in ten days. A had a car of the kind and description ordered set up, placed in a corner of the room by itself and marked for B. The next day B wrote A that he had changed his mind and did not wish the car. What remedy or remedies are open to A?

### III.

A in response to an order from B shipped certain goods by a common carrier to be delivered

to B upon payment of the purchase price and transportation charges. Upon the arrival of the goods, B with the consent of the carrier took them home, promising to pay for or return them the next day. B in fact had no intention of paying for the goods or of returning them. He sold the goods to X, a bona fide purchaser and refused to pay. What are A's rights against X?

## IV.

A told B he had a horse for sale. B looked at it, inquired the price, and was told \$250. B then questioned the character of the horse. It was thereupon agreed that B should take the horse home and try it, and, if satisfied should execute a note for the purchase money and give a chattel mortgage on the horse to secure the note. After a few days B expressed himself as satisfied with the horse but before the note and mortgage were given the horse died.

(a) Whose loss?

(b) Suppose the horse had not died but had been attached by X, a creditor of B and that A had sued X for conversion. What judgment?

## V.

The following is a memorandum of a transaction between A and B:

"B, bought of A Twenty five thousand bricks locat-

ed on my farm near Champaign at \$6 per thousand, \$150. This price to be F. O. B. cars Champaign, and consigned to B at Chicago.

Received payment.

(Signed) A.''

(1) Suppose before anything further transpires, A goes into bankruptcy. Is A's assignee in bankruptcy or B entitled to the brick?

(2) Suppose when half the bricks are loaded on the cars A goes into bankruptcy. Who is entitled to the bricks at that time on the cars?

## VI.

B in Chicago ordered a car load of corn of A in Champaign to be shipped F. O. B. Champaign. A shipped the corn, taking a bill of lading to A or order. A indorsed this bill of lading in blank, drew a bill of exchange on B for the purchase price, payable at sight to A or order, indorsed this bill of exchange in blank, handed both the bill of exchange and the bill of lading to his office boy, K, and requested him to deliver them to the X bank in Champaign and to request the bank to collect and place the amount collected to A's account.

(a) Instead of taking the bill of lading to the bank, K, sold it to C a bona fide purchaser, and absconded. The bill of exchange was paid by B when presented. C demanded the corn of the carrier when it reached Chicago. The carrier acting under orders from both A and B refused to deliver it. C sues the carrier for conversion. What judgment?

(b) Would your answer be the same or otherwise if K had lost the bill of lading and M had found it and sold it to C?

(c) Suppose K had delivered the bill of lading and the bill of exchange to the bank as directed and the corn had been destroyed between Champaign and Chicago and before the bill of lading and bill of exchange reached Chicago. Upon whom would the loss fall?

## VII.

February 1, B came to A and offered to purchase and A agreed to sell 1000 bushels of corn. The corn was in a separate bin and was inspected and approved by B. It was understood that B should call for the corn at any time he wished. B was to pay for the corn on April 1.

(1) Assume that a creditor of A attaches the corn before April 1 and before B calls for it. What are B's rights?

(2) Assume that B goes insolvent before April 1 and while the corn is still in A's possession. What are A's rights?

## VIII.

The X R. R. Co. ordered from the Y Locomotive Works an engine suitable for hill climbing, giving the grades over which it was to be worked and the weight of the load to be hauled. The engine sent was not of proper design for the purpose; and was in addition made in part of defective materials. What are the rights of the X R. R. Co. against the Y Locomotive works?

## EXAMINATION IN TORTS.

First Semester 1914-15.

PROFESSOR HALE.

N. B. Develop law and reasons fully in each answer.

### I.

A, with B's consent left his horse Blackie in B's stable. B had sold his own horse, Dobbin, to C. Blackie and Dobbin looked so very much alike that only a person very well acquainted with both could tell them apart. When C went to B's stable to get Dobbin he took by mistake A's horse Blackie. The choice was made by C only after careful investigation, and especially after inquiry of B as to which stall Dobbin was in, and B's directions which were wrong, were obeyed. A sues C in trespass. What should the result be?

### II.

In the foregoing case A without discovering the mistake, took Dobbin and pledged him to X, and Y upon A's request rode the horse to X's house and turned him over to X. Will trover for conversion lie against either A, X or Y?

### III.

A's team was tied to a public hitching fence in the town of X, which was several miles from A's

house. B unhitched the team, removed the harness and hid it. The search for the harness caused A a delay of two hours after the time of his intended departure for home.

(a) A sues B for false imprisonment.

(b) May A have any other action in the place of or in addition to the action of false imprisonment?

(c) Would your answer be any different in either case if A and B had been in the habit of playing pranks upon each other?

#### IV.

A points an unloaded gun at B. A thinks the gun is loaded. B knows it is not loaded. B sues A for assault. What judgment?

#### V.

A while lawfully hunting and while in the exercise of reasonable care fired at a bird. The shot glanced from the limb of a tree and struck B, companion of A. Is A liable in tort to B? Discuss fully.

#### VI.

A drove his automobile around a corner at an unreasonable rate of speed. By turning suddenly to one side he managed to escape running over B

by a margin of one foot. B was so greatly frightened that she became ill and suffered a miscarriage.

Is A liable to B in an action of assault or any other form of action? Discuss fully.

## VII.

A was engaged to be married to C, a sister of B. It appears that upon a certain occasion B had said that A was afflicted with syphilis.

(a) What facts should A include in his declaration to make out a prima facie case of slander against B?

(b) What different possible defenses would be open to B?

(c) Which of these defenses, if any, are open to reply by A and what would be the character of the facts essential to an effective reply?

## VIII.

A, a private citizen, went to B's house and told B to consider himself under arrest and to come with him. B, without offering any resistance, went with A to the police station where A turned B over to the police officers and signed a complaint charging B with having committed a breach of the peace. B was thereafter put on trial and acquitted. A's reason for having arrested and prosecuted B was that he had overheard a friend of his say that B had been in a fight the day before.

(a) Assume that B sues A for false imprisonment.

(b) Assume that B sues A for malicious prosecution. What judgment in each case?



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UNIVERSITY OF ILLINOIS BULLETIN

ISSUED WEEKLY

VOL. XII.

JULY 5, 1915

No. 44

[Entered as second-class matter December 11, 1912, at the postoffice at Urbana, Illinois, under the Act of August 24, 1912]

LAW EXAMINATIONS

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PAPERS USED AT THE

SECOND SEMESTER EXAMINATIONS

1914-1915

IN THE

COLLEGE OF LAW

OF THE

UNIVERSITY OF ILLINOIS

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Published by the University of Illinois

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# UNIVERSITY OF ILLINOIS

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## COLLEGE OF LAW

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### Examination in Bankruptcy.

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June, 1915.

PROFESSOR POMEROY.

#### PART FIRST.

I. (a) Smith signed Jones' promissory note as surety, June 1, 1914. Brown is the present holder of the note, and Jones has no defense. On Nov. 1st, 1914, Jones filed a petition in bankruptcy and was adjudged a bankrupt, Would Smith have had a provable claim under former bankruptcy statutes? How may he proceed under the act of 1898? Explain fully.

(b) Give two reasons why a claim for arrears of alimony was not affected by the discharge (before amendment of 1903.)

II. A proceeding under State insolvency law is instituted against a business college, a corporation, which had committed an act of bankruptcy and owed debts of \$1500. It was objected that as to this corporation the State insolvency law was superseded by the national bankruptcy act. Discuss this objection *pro* and *con*.

III. An oral contract is made and broken by the bankrupt between the filing of the petition and the adjudication. Is the claim for the breach provable? Reasons.

IV. (a) A made a general assignment for the benefit of creditors. Of his thirteen creditors, eleven accepted the assignment, two refused to accept. B, one of these two, filed a petition in bankruptcy against A within four months after the assignment. A asserts that under these circumstances a single creditor cannot file the petition. What result? Reasons.

(b) A sells goods to B and retains possession of the goods. What three views of the legal effect of this retention of possession, as between A and his creditors? Which is the Illinois view?

V. A, being indebted, conveyed to B land worth \$12,000. The deed recited that it was made in consideration of a prior indebtedness of \$7,000 and of services previously rendered by B as agent in the sale of A's goods. A had no other assets of value. In a suit by A's creditors, it appears that the \$7,000 indebtedness was genuine, but that B, though appointed A's agent, had never sold any goods. B claims that the deed should stand as security for the \$7,000. Discuss independently of the bankruptcy acts.

VI. A has an unliquidated claim against B for damages for B's tort.

(a) Is B's voluntary conveyance, whereby B becomes insolvent, a fraud on A?

(b) Can A join in a petition to have B adjudged bankrupt?

(c) Is A's claim provable in bankruptcy against B's trustee?

(d) If A becomes a bankrupt, can A's trustee enforce the claim against B?

VII. A was engaged in building a house for B from May 1 to July 1; B now being indebted to A for labor and material, A filed a mechanics' lien, under the laws of the State; B at that date was insolvent, and on October 30 a petition in bankruptcy was filed against B. Does A retain his lien? Reasons.

VIII. (a) On January 2, while A was insolvent, judgment was recovered on A's note without his knowledge, execution was levied, and property of A's sold on execution February 15th. On February 12 a petition in involuntary bankruptcy was brought against A. Has A committed an act of bankruptcy? Explain.

(b) State, briefly, the history of the section of the act of 1898 relating to the surrender of preferences, and its interpretation.

## Examination in Contracts.

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PROFESSOR DECKER.

1. John Smith desires to have the infant son of his nephew, Edward Smith, named after himself, and is willing to give \$10,000 to the young man when he comes of age in return for his being so named. The parents are willing, and you are requested to draft a writing to be signed by the said John Smith for the purpose of binding him to such an agreement. In drafting the instrument, adopt a form which will insure to the said John Smith, Jr., if possible, the right to sue and recover thereon in his own name in any jurisdiction following the English common law, and state your reasons for the form which you employ.

2. On March 1, 1914, A bought certain nursery stock from B, a nurseryman, for \$50, of which he paid \$10 down, and agreed to pay the balance in six months. B warranted the stock to be strong and thrifty and agreed to replace next season any which did not live. One-half of the stock died during the summer.

(a) Is B entitled to the payment of \$40 on September 1st.

(b) Would X be entitled to such payment if B had sold to him the nursery business, including all outstanding contracts, during the summer of 1914, and then left the State?

3. Smith owed Jones \$1,000 and Franks \$500. Being pressed for payment by Jones, he assigned to Jones a note and mortgage of Harris for the sum of \$1,500 with the oral understanding that Jones would sell them and out of the proceeds pay Franks \$500 and apply the remainder on the debt which was due to himself. Jones sold the note and mortgage for \$1,000 and kept the proceeds, sending Smith a receipt in full for his debt.

(a) Is this agreement affected by the Statute of Frauds?

(b) If in writing, what would be the rights of Smith and of Franks respectively against Jones?

4. Jones, who owned a house and lot in Urbana, put it into the hands of Peters, a real estate agent, to sell. Peters got an offer of a trade from one Grant of a lot in Champaign, with \$1,000 to boot. Jones examined a lot on West Church street, which Grant pointed out, and told Peters to notify Grant that he would trade. Peters accordingly sent the following letter to Grant:

“Urbana, Ill., May 1. 1915.

John Grant,  
Champaign, Ill.,

Dear Sir:—

Mr. Jones instructs me to say to you that he accepts your offer of your lot on Church street and \$1,000 in exchange for

his house and lot in Urbana, each party to give warranty deed and to furnish at once an abstract showing good merchantable title. Deal to be closed within ten days.

Wm. Peters."

To this Grant replied the next day in a note addressed to Peters:

"Your note of yesterday relating to trade with Jones is satisfactory to me. I enclose abstract herewith.

John Grant."

The abstract was for Lot 110 of the plat of Champaign, which was on West Church street, and was the lot shown to Jones. Grant also owned Lot 111 adjoining, which at the time Jones did not know. Jones owned only one house and lot in Urbana.

(a) Assuming that the above facts are proven, should a plea of the Statute of Frauds be sustained in an action for breach of this contract by Jones vs. Grant?

(b) Or in an action by Grant vs. Jones?

5. In addition to the foregoing facts, assume that Jones never furnished an abstract to Grant, but conveyed his house and lot on May 5th to Williams, and that Grant did nothing further in the matter until May 15th, when he commenced suit. Ignoring the question of the Statute of Frauds, is Grant entitled to recover?



6. A hired out to B for a year at a salary of \$1,200, payable in monthly installments of \$100. On the 15th of the third month, A was taken sick and later died. What are the rights of A's administrator and of B respectively, assuming that only the first month's salary had been paid?

How would your answer be changed, if at all, if it be assumed that A had quit B's employ without excuse on the 12th, three days before he was taken sick?

7. A contracted to purchase, and B to sell, B's entire apple crop for the season of 1914, deliveries to be made as the apples were harvested, and settlement to be made at the end of each week for the apples delivered during that week. A defaulted in payment at the end of the first week, during which 500 bushels had been delivered. B sent another load on Monday following, but as A did not pay, he then discontinued deliveries and notified A that he had decided to sell his apples elsewhere. A on the next day offered to pay and asked B to continue deliveries, assuring B that payment would be made promptly thereafter. B refused to deliver and A thereupon refused to pay for the apples delivered, and now sues for damages. B puts in a counter-claim for the price of the apples delivered. Decide the case.

8. Davis took out an accident insurance policy which contained among others the following

provisions: "No liability shall accrue under this policy unless the insured shall file a sworn statement of the nature and extent of the injury, within 30 days from the date thereof, signed by his attending physician, and accompanied by a statement by the physician that in his opinion the injury was accidental;" also, "This policy shall immediately become void if the insured shall enter or engage in the military service of any belligerent nation in time of war.'

(a) Is there any distinction to be drawn between these two provisions as to their effect upon the rights of the insured?

(b) What would be the effect of a refusal by the physician to make the statement required by the first provision?

9. A, a manufacturer of furniture, contracted with B to make and set up in B's bank by a certain day, a complete set of bank fixtures of special design. Just before the date of delivery, A's factory burned down from causes unknown, and the completed fixtures were consumed. A never rebuilt his factory and B ordered fixtures from C of the same design, at an increased cost of \$500. What are the respective rights of A and B?

Would your answer be the same if the failure of A to perform were due to strikes of his employees, instead of fire?

10. "Urbana, Ill., June 1, 1914.

"Ninety days after date we promise to pay to Frank Jones and Peter Smith the sum of (\$2,000) Two Thousand Dollars, with interest at six (6) per cent from date.

William Black,  
Theron Chase,  
Harlan Whitney,  
Alonzo Karcher."

On the back of the above instrument was indorsed, "I hereby assign all of my interest to Peter Smith." Signed, "Frank Jones."

Karcher died on July 15, 1914, and Frank Evans was appointed as his administrator. Subsequently Smith sues Black, Chase and Whitney.

Is there anything wrong with the parties plaintiff and defendant?

Could Evans be joined in this suit or sued alone?

## Examination In Conflict of Laws.

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(Give reasons in all cases.)

PROFESSOR VERNIER.

1. T, domiciled in East St. Louis, Illinois, executed a will at St. Louis, Mo., while ill in a St. Louis hospital. T recovered and became domiciled in Denver, Colo., where he later died. The will devised real estate in Illinois, Kan. and Okla. to A and bequeathed personal property in Illinois, and Mo. to B, and money in a N. Y. bank to C. The will was executed so as to satisfy the laws of Illinois, Colo. and N. Y., but did not comply with those of Okla., Kan. and Mo. Which of the legacies and devices are good, if any?

Which State would furnish the law to govern T's testamentary capacity?

2. (a) Suit by W, wife of H, against D for alienation of affections. H and W lived in N. Y., as did D. After D alienated H's affections H and D lived in adultery in N. Y. W then moved to Pa. intending to permanently reside there with her parents. This suit is brought in the Federal Court. D's sole defense is lack of diversity of citizenship. Judgment?

(b) H and W married and lived in Ohio. They separated by consent, and W moved to N. Y., intending to reside there permanently. She lived

in N. Y. for 26 years and died there in 1910. Her husband continued to reside in Ohio. W died intestate, owning nothing but personal property. Which law will control the distribution of her property?

3. D, domiciled in Illinois, owns the following property: land in Ohio, a mortgage on land in Wisconsin, personal property permanently used in connection with a store run by his agent in Wisconsin, shares of stock in a New Jersey corporation, and money on deposit in a New York bank.

State the proper place for taxing each of these interests.

4. P sued D for breach of contract in Mo., and obtained a judgement for \$5,000 damages. D was personally served with notice of suit in Mo. The contract was made and was to be performed in Miss., where D resided. After obtaining his judgment in Mo. P brought suit in Miss. on the judgment. D defended on the ground that the contract was illegal by Miss. law, and the Miss. court so finding, gave judgment for D. P carried the case to the United States Supreme Court. How should it be decided there?

5. (a) P filed a bill in Equity in Illinois to enjoin D from continually trespassing on P's land. The land is situated just across the border in Wisconsin. D is personally served in Illinois. Grant-

ing that this is a proper case for equity to act were the land in Illinois, what decree should be given?

(b) On the same state of facts assume that P asks for a decree ordering D to remove a structure, which D has erected on the Wisconsin land, and which constitutes a nuisance. What decree?

6. (a) P sues D in Minn. for trespass to realty. D is personally served in Minn. The land is in Wisconsin. Judgment?

(b) sues D in England on an alleged debt and recovers judgment for £300. Suit is brought in Illinois on this judgment. D sets up the following defense: That he is and has always been a citizen of Illinois; that he was served with process in England when on the point of taking a steamer home; that the service was so made and timed for the purpose of embarrassing him, and obtaining an unjust and unfair advantage of him by preventing a fair chance of defense without making a prolonged stay abroad. Plaintiff demurred. Judgment?

7. (a) P, the widow of H, sues D in Minn. for wrongful death of H. The cause of action arose in Montana. The Montana statute gave the widow a right to sue at any time within three years. The Minn. statute was similar except that suit was barred in two years. This suit was started between the second and third year after H's death. Judgment?

(b) Facts same as above, except that Montana statute allows two years and Minn. statute allows three years for bringing suit. Judgment?

8. A obtained a divorce from his wife R, in Illinois and within a year married C in Mo. A and C after a short trip returned to Illinois and lived here until C died. The marriage in Mo. was in ignorance of the Illinois statute forbidding divorced parties to marry within a year. Is A entitled to the property rights of a husband in C's real estate in Illinois?

(a) Under the Illinois statute as it now reads?

(b) If the Illinois statute forbids both parties to a divorce to marry within a year "in Illinois or elsewhere," and provides that such a marriage shall be absolutely void in Illinois?

(c) If the Illinois statute reads that a decree of divorce shall not terminate the marriage "until suit has been heard on appeal, or if no appeal be taken until the expiration of the period allowed for appeal," (which we will assume is one year?)

Would your answer differ if the marriage was celebrated in Mo. in order to evade the Illinois statute?

## Examination in Corporations.

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June, 1915.

PROFESSOR GREEN.

1. The stockholders of the Westfield Brick Company, desiring to form a new corporation with larger powers, incorporated the Westfield Tile Company, which issued its shares in exchange for the Brick company's shares. The Brick company paid all its debts and then conveyed all its property to the Tile company. The deed included a conveyance of its "franchises." The Brick company's business was thereupon discontinued, the terms for which its officers were elected expired, and no new officers were elected or meetings held. Afterward the soil of land of X subsided because of a pit the Brick company had formerly dug on its own adjoining land. The owner of land has an action for its subsidence against an adjoining owner whose digging has caused it, and the right of action comes into existence when the subsidence occurs. What are X's rights and how may he enforce them?

2. A statute conferred on railroad corporations power to condemn land for railroad purposes. A railroad corporation, which because of a slip in its organization proceedings was a de facto corporation only, carried through proceedings to condemn A's land for railroad purposes. A let



the proceedings go by default, refused to accept the amount awarded, and when the railroad entered to build its road sued in trespass the corporate officers who directed the entry. Should he recover?

3. The Board of Trustees of a state university were a body corporate. To ensure for the faculty and students adequate facilities for billiards, bowling and barbering, as well as supplies of candy, coca cola and chili con carni, the board took a conveyance from B of a building near the campus well stocked and equipped for such purposes and of its contents, and there conducted the various kinds of business above referred to. To secure the purchase price they gave B a mortgage on the books in the university library. The price was not paid when due. What are B's rights?

4. District Courts of the United States have jurisdiction of suits at common law and in equity between citizens of different states where the amount in controversy exceeds \$3000. A citizen of New York was a shareholder and director in a New Jersey corporation. He offered to sell it certain supplies needed in its business, and the board of directors, at a meeting which he did not attend, unanimously accepted the offer. The corporation however refused to carry out the contract, to his damage in the sum of \$5000. What are his rights against the corporation? May he enforce them in a district court of the United States?

5. A corporation owned land. D, owning ten of its thousand shares, offered \$10,000 for the land, and at a stockholders' meeting it was unan- imously voted that "D's offer is hereby accepted;" and the secretary gave D a memorandum of such acceptance sufficient to satisfy the statute of frauds. Next day the directors, at a meeting of the board, unanimously voted to accept an offer of \$11,000 then made by one of their own number with knowledge of the previous action of the stockholders, and the secretary pursuant to in- structions from the board executed and delivered to him a deed. In whom is the legal and in whom the equitable title to the land?

6. The stock of a trading corporation is di- vided into a thousand shares, all issued and out- standing, of which A, B and C have two hundred each. The company needs money and A is wil- ling to make a ten year loan, if he can during that time have control of the company so as to ensure a consistent management. Accordingly B and C convey their shares to A in trust for ten years to vote as he sees fit, and A, at the request of the board of directors, lends the money. Next year, B wants the vote on his former shares cast in a way different from that in which A wants to cast it, and the stockholders other than A, B and C, not having been parties to the agreement, object to any of the six hundred shares being voted at all. May the shares be voted, and who is entitled to determine how the vote shall be cast?

7. A corporation had authority to increase its stock by a two thirds vote of its shareholders. The stock was selling in the market at one half its par value. By a two thirds vote, the shareholders voted to increase the stock by a small amount and to sell the new issue at auction. It is admitted that it will sell considerably below par. Can a dissenting shareholder enjoin the sale?

8. The directors of corporation A refused without reason to declare a dividend though the company had made enormous profits.

The directors of corporation B declared a dividend but would not pay it.

The directors of C, an Illinois manufacturing corporation, whose factory was in Champaign, were about to cause the corporation to buy land in the city to put up houses to rent for profit to its workmen.

X is a shareholder in each company. What relief may he have, if any, against the directors' conduct, in what proceedings may he enforce it, and who are proper parties defendant?

9. A has sold and delivered goods to the X company and the price is due and unpaid. The company is insolvent. Y was one of the original subscribers to its stock. He did not pay his subscription but sold his shares to Z, who bought relying on Y's statement that they were fully paid.

When Z bought the subscription was overdue, and A had delivered the goods but the price for the goods was not then due. A asks you what to do. What shall you tell him?

10. Instead of any one or two of the questions numbered 6, 7, 8 or 9, you may, if you prefer, substitute a brief account of one or two of the following topics:

(a) The steps required in Illinois to incorporate a company for profit under the general incorporation law.

(b) The transfer of title to corporate shares.

(c) The liability of a promoter for profits.

(d) How a corporation may be dissolved and what the effect of dissolving it is.

## Examination in Common Law Pleading.

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June, 1915.

CHARLES E. CARPENTER.

(Discuss each point suggested or raised, give reasons in full but concisely, and omit irrelevant matter.)

1. B came on to A's premises and without A's assent or knowledge took A's horse and sold it to X. Enumerate and discuss the forms of actions in which A might have redress against X. Against B.

2. Trespass for entering the plaintiff's yard and fixing a spout there, so that the water came into the plaintiff's yard and rotted the walls of the plaintiff's house. The defendant pleaded not guilty to all except entering the plaintiff's yard and fixing the spout on his own, the defendant's, house; and as to that he justified, for that T. S. being seised in fee as well of the plaintiff's as of the defendant's house, by indenture conveyed the house and yard to the plaintiff, with an exception in the deed of the free use of the yard, etc., to the said T. S. and to all the tenants and occupiers of the defendant's house, which house was afterwards conveyed to the defendant; and averred that the spout so fixed was necessary for the use of the defendant's house and justified by virtue of the exception. Demurrer to the plea; judgment for whom?

If the plaintiff had brought trespass on the case instead of trespass would the matter set out in the plea have been a sufficient justification?

3. Declaration bad in substance. The defendant then entered two pleas, a plea of the general issue and a special plea. Demurrer to the special plea was sustained and the cause went to the jury on the general issue and a verdict was given for the plaintiff. Should the defendant move in arrest of judgment; if not, how should he proceed?

4. Count by A against X for a bicycle sold and delivered to X for \$50. Plea that X was an infant at the time of the sale. Replication that the goods were necessaries. Demurrer to the replication. The demurrer was overruled by the trial court and the defendant was given leave to plead over. Defendant refused to plead over and the court ordered an inquiry to be had before a jury to determine whether the bicycle was sold and delivered and to ascertain its value. Plaintiff contends that the demurrer admits these facts and refuses to introduce evidence and demands judgment for \$50. What result?

5. A declaration for trespass de bonis asportatis alleged the taking by the defendant X of certain goods the property of the said plaintiff. Plea, a justification because the goods were taken under the authority of one Carl to whom the said goods

belonged. Special demurrer on the ground that the plea amounts to the general issue. Judgment for whom?

6. X sold out his business to A and agreed not to carry on the same business within a certain limit. A brings an action of assumpsit for breach of the agreement by X in carrying on the same business within the prohibited locality. X pleads (1) that A did not perform his part of the agreement, but in such a manner as to make the plea bad in substance, (2) as a set off against anything A might recover, that A was indebted to the defendant in the sum of \$500. A demurs to the first plea, and replies to the second that he became a bankrupt and has procured his discharge from his debts. Upon the argument upon the demurrer X claims that the replication of bankruptcy made to the second plea shows that A had no right of action, but that it should have been brought by his assignee; that as this appeared from the record, judgment on the demurrer must go against A. Judgment for whom?

7. A declaration in assumpsit is defective in substance and the defendant pleads non-assumpsit also a plea in confession and avoidance. The plea in confession and avoidance is defective in substance and the defendant demurs to the plea. What should be the ruling of the court?

8. Action of covenant, the declaration alleging the making of a certain indenture whereby

the plaintiff leased a certain dwelling house to the defendant and wherein the defendant covenanted to keep the said premises in repair at his own expense during the entire term of 21 years. The breaches alleged were that the defendant did not keep the premises in repair during the said term but during all the said term suffered them to be and continue ruinous, prostrate, etc.

Plea to the breach, that the defendant did not during the said term of 21 years by the said indenture created, suffer or permit the said premises so demised for the term last aforefaid or any part thereof, to be or continue, nor were the same for or during all the said term ruinous, prostrate, etc., for the want of needful or proper reparation, etc., concluding to the country.

The plaintiffs demurred specially assigning for causes—that the traverse and denial contained in said plea are too large and informal. Joinder in demurrer. Judgment for whom?

Would you reach the same result if the demurrer had been general?

9. The plaintiff contracted with a city to build for it a concrete conduit and the plaintiff was not to be paid until the work was accepted by the city engineer. Plaintiff built the conduit but the engineer refused to accept it and the plaintiff sued the city. One count of the declaration was in special assumpsit on the contract, another count was for the value of the service rendered and ma-



terial furnished and a third was in debt for the contract price. Upon which of these counts should the plaintiff recover?

10. To an action of debt upon a bond the defendant pleaded two pleas—one non-est factum and the other that the bond was obtained by fraud of the plaintiff. Plaintiff moves the court to require the defendant to strike out one of his pleas upon the ground of their repugnancy. What result?

## Examination in Domestic Relations.

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(Give reasons in all cases. Indicate wherever modern statutes make important changes in the common law.)

PROFESSOR VERNIER.

1. H and W, a married couple, signed an instrument under seal, by which they agreed to live apart. H promised, "in consideration of the foregoing agreement" to pay W \$75 a month. It was also agreed that their nine year old son should remain in the custody of the mother and be taught her religious belief. At the time the father belonged to no church. He later joined church and requested that the son be taught his father's belief. W refused. H then demanded custody of the son, which W refused. H tried to obtain possession of the child secretly and by force, and failing in this he sought to obtain possession by writ of habeas corpus. Aside from inferences to be drawn from the facts stated, H and W are equally proper persons to have custody. How should the matter be decided?

If H neglects to pay the \$75 a month, has W any redress?

2. W sued H for divorce on the grounds of adultery. The husband was personally served within the State but did not appear. Should W be granted a divorce?

(a) If the only evidence is a written confession by H?

(b) If the only evidence is that of a prostitute?

(c) If it appears that W directed her attorney to hire detectives to procure evidence, and the detectives without authority hired a prostitute to lure the husband into an act of adultery?

3. (a) W sued H for divorce a vinculo on the ground of adultery and cruelty in a State where both must be shown to obtain such divorce. Standing alone each is ground for divorce a mensa et thoro. At the trial the following facts appeared: H committed adultery, and W left him on this account. H then persuaded her to return and live with him. Following this H was guilty of acts of cruelty. W left him again and brought this suit. Should a divorce a vinculo be granted?

(b) H sued W for divorce on the ground of adultery. She filed a cross bill asking divorce for his cruelty. The suit is in a State where both adultery and cruelty are grounds for absolute divorce. Each prove their allegations. What decree?

4. Plaintiff sued defendant for breach of promise to marry. May she recover on defendant's repudiation of his promise?

(a) If defendant promised to marry one year after the death of his wife, who was at the time incurably insane?

(b) If plaintiff is the sister of defendant's deceased wife and the promise was made by defendant at the death-bed of his wife and at her request?

(c) If defendant promised to marry one year after the death of his wife from whom he was then divorced?

Assume first that the above promises are written, second that they are oral.

5. (a) W represented to H before their marriage that she was worth \$25,000 and free from debt. In fact, she owed \$10,000 and owned only \$5,000 worth of property. Can H have the marriage annulled? Who is liable for W's debt?

(b) W married H and at the time of marriage owned the following property: (1) a house and lot in town, (2) a horse, buggy and household furniture, (3) a farm, (4) a 99 year leasehold in a business block, (5) a \$5,000 government bond, (6) \$10,000 on deposit in a bank, (7) clothing, jewelry, etc.

State what interest, if any, H obtained in the above property, (a) at the moment of marriage, (b) by any act during coverture, (c) at the death of W.

6 Suit by G against H for \$40 worth of groceries. The groceries were ordered by telephone by W, who asked that they be charged to H. G charged them to H, not knowing who H was. H is in fact the husband of W, but they are living apart.

Under what circumstances, if at all, may G recover in this suit?

7 A, a boy of 19 became engaged to B, a girl of 18. By statute the age of majority is 21 for males and 18 for females, but "males of 18 and females of 16 shall, with the consent of their parents, be capable of contracting marriage." A obtained the approval of his parents to marry B and made preparation to do so. Later he met C, a girl of 17 and married her. The marriage to C was without the consent of the parents of A and C.

May B recover of A in a suit for breach of promise to marry?

May the parents of A or C annul the marriage?

May either A or C annul the marriage?

8 A, a boy of 19, bought a horse and buggy of B, an adult. A paid B \$250 for the horse and buggy, which after one year's rough usage were worth about \$100. When A was 20 he offered to return the horse and buggy to B and demanded the return of the \$250. B refused and A on reaching 21 sues B for that amount. Judgment?

Would your answer be the same if A were seller instead of buyer and were suing to recover the horse and buggy after squandering the purchase price?

## Examination in Equity.

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June, 1915.

PROFESSOR POMEROY.

I. A manufactured a popular beverage called Coca-Cola. Later B began to manufacture and sell a beverage, similar in taste and appearance, which he called Ko-Kola. A sues to enjoin B from using this name. It is shown that A's beverage contains no trace of the drugs coca or cola, but does contain a slight quantity of caffeine, a stimulating substance much less deleterious to health than the above drugs. Should plaintiff succeed? Discuss questions suggested by these facts.

II. (a) A sold to B, for cash, a mortgage on C's land. Both A and B honestly believed that this was a first mortgage and fixed the price accordingly. In fact, there was a prior recorded first mortgage to the full value of the land which B, in searching the records, failed to discover. C is insolvent. Can B rescind? Reasons.

(b) B purchased A's half interest in a tract for \$1000, its fair value. Both A and B honestly supposed, relying on the advice of an attorney as to the legal effect of a deed in the chain of title, that the other half interest belonged to B; in fact, it belonged to A. If the truth had been known, the parties would have bargained for the sale of A's whole interest. Can B have reformation so that

his deed shall include the whole tract, on paying the fair value of the other half? Can B have rescission?

III. Smith deposited in the C bank of Champaign the sum of \$6,000, to be credited to the A bank of Oklahoma and to be remitted to the A bank on the A bank's request. The C bank promptly notified the A bank of the deposit. A week after the deposit the P bank of Oklahoma claimed the deposit from the C bank, asserting that the \$6,000 was the proceeds of the sale of certain cattle which Smith had mortgaged to the P bank and had wrongfully sold and converted. The next day the A bank demanded the \$6,000 from the C bank. The C bank now brings interpleader against the A bank and the P bank.

Explain whether or not these facts satisfy the four "elements" or conditions which are essential for the maintenance of a bill of interpleader.

IV. A obtained a deed to Lot 1 from B, the former owner, in 1912. D in 1911 recorded a contract by C to convey Lot 1 to D. A seeks to have this contract cancelled and removed from the record as a cloud on A's title, stating that C claimed the right to make the contract under a pretended power of attorney from A which had no existence.

D demurred, and the lower court sustained the demurrer. Criticize this ruling.

V. 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.

VI. A, a corporation promoter, issued a circular making various representations regarding the B Co. and soliciting the public to purchase notes issued by the B Co. A hundred persons read this circular and loaned money to the B Co. on its notes. The B Co. became insolvent and paid 25 cents on the dollar on its notes. M, N and O sue A in equity in behalf of themselves and the rest of the hundred holders of the notes, alleging that A's representations were false and fraudulent, and claiming damages for each note holder in the amount of 75 per cent of the face value of his note. A demurs on the ground that the plaintiffs' legal remedy by separate suits for damages is adequate, and that equity has no jurisdiction. Discuss fully.

VII. (a) Mention three classes of cases in which courts of equity may relieve from mistakes of law.

(b) Give an example (facts real or imagined) of reformation for mistake of law.

VIII. (a) What is marshalling of securities?

(b) For what three purposes may a creditor's suit be brought?



## Examination in Evidence.

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June, 1915.

PROFESSOR HALE.

1. (a) What is hearsay evidence and what are the objections to it?

(b) Give two illustrations of statements made by X to Y which would not be considered hearsay if testified to by Y.

2. A was indicted and tried for burglary. X testified that one night about 11 o'clock A pried open the door to his (X's) "bungalow" and took a certain sum of money. Counsel for defendant moved for a directed verdict on the ground that the State had offered no evidence that defendant had entered a "dwelling house." What judgment?

3. A sued B for breach of contract. Both A and B testified. Judgment was given for B. The case was reversed on appeal and sent back for a new trial. Before the second trial A died and his administrator was substituted as plaintiff. On the second trial, K, a juror at the previous trial, was called as a witness on behalf of the plaintiff and asked if he could state the testimony given by A on the former trial. He replied that he could state it in substance. Counsel for B entered the following objections, each of which was overruled:

(1) The testimony offered was hearsay.

(2) Witness must give A's exact language.

(3) Witness, having acted as a juror on the previous trial, is not a competent witness.

4. A is on trial for the murder of B. Which, if any, of the following circumstances (considered separately) would justify the court in excluding a confession by A?

(1) The State's attorney said to A, "It will be better for you if you tell the truth."

(2) The warden told A, who was a morphine fiend, that he would get him some morphine if he would confess.

5. The G Company sued B for gas supplied at B's residence during the year 1914. To prove the quantity of gas supplied, the company offered in evidence a book in which the accounts with its customers were regularly kept. M, the office manager of the company, testified that the record in the book was made by X, the company's book-keeper, from memoranda turned in by Y and Z, the company's meter-readers. M further testified that X was dead.

B objected to the introduction of the book in evidence. What should the ruling have been?

6. A warranted that a suit of clothes which he sold to B was "all wool." B sued A for a

breach of this warranty, contending that the cloth was one-half cotton.

B offered as a witness a tailor to testify to the character of the cloth.

A objected to the testimony offered, on two grounds:

(1) That the suit was the best evidence of its quality, and

(2) That a witness must state facts and not his opinion and that this witness was offering to state his opinion.

Was either objection valid?

7. A and B were in partnership. On dissolution the following agreement was executed:

"A has this day sold all his interest in the firm, the A. B. Company, to B for the sum of \$500, receipt of which is hereby acknowledged by A. Said firm is hereby dissolved and B will assume all liabilities and have all accounts."

B is suing A for damages for breach of an alleged oral agreement, made at the time of the dissolution of the partnership, not to enter business in competition with B. A objects to proof of this oral agreement. What ruling?

8. A's will was worded as follows:

"I devise to the Board of Foreign Missions my farm, being the south east quarter of section 5, township 15, range 10 west."

(a) The Baptist Board of Foreign Missions and the Presbyterian Board of Foreign Missions are each claiming the property under this will.

The following evidence is offered, (1) that the deceased was a member of the Baptist church, and (2) that he said to his lawyer before drawing his will, "I shall give the Presbyterians something for I have never given them anything."

Is any of this evidence admissible?

(b) It also appears that the testator did not and never had owned the south east quarter of section 5, township 15, range 10 west, but that he did own the south east quarter of section 15, township 5, range 10 west.

May evidence be received to apply the will to the land owned, or must it fail?

## Examination in Equity Pleading.

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DEAN HARKER.

1. How do the rules of Equity Pleading under the statute and decisions in Illinois differ from the rules of Common Law Pleading?

2. What do you understand by the terms "Necessary and Indispensable Parties," "Necessary but Dispensable Parties" and "Unnecessary Parties?" Give an example of each.

3. Mention the different kinds of original bill and define each.

4. How does a plea differ from an answer? How may the sufficiency of the one or the other as a defense to the bill be raised?

5. In a bill filed by A against B, the widow of X, and C, D and E, the children and heirs of X, to enforce a lien upon certain land owned by X in his life-time, a default was entered against all the defendants, they failing to answer. A decree *pro confesso* was entered and that was followed by proofs and a final decree declaring a lien and ordering a sale. Personal service was had upon all the defendants and a guardian *ad litem* was appointed for D, a girl 16 years old, and E, a boy 19 years old, but he failed to answer.

The land was sold under the decree and A became the purchaser. D and E have now attained their majority. Assuming that the bill and decree are fully supported by the proofs on file, have D and E any remedy, and if so, how may it be enforced?

6. A, a relative of B, (insane) files a bill as next friend of B, charging that C, the defendant, is in control of the business and property of B under a power of attorney made by B while in an unsound state of mind, that the business is being improperly conducted and the property dissipated, and that if not restrained C will ruin the business and waste the property. The bill prays for a cancellation of the power of attorney upon the ground that B at the time of entering into it was of unsound mind, that C be enjoined from further control of the property and that a receiver be appointed to take charge of the same.

C by demurrer questions the right of A to sue and resists the appointment of a receiver. What should be the ruling of the court, and why?

7. Draft a bill for the specific performance of a contract entered into on the 4th of December, 1914, whereby John Doe agreed to convey lots 4 and 5 in block 6, Coler's addition to the city of Urbana, State of Illinois, to James Brown on Brown paying to Doe on the 4th of March, 1915, the sum of three thousand dollars.

Attach to the bill as an exhibit a copy of the written contract made on the 4th of December, 1914.

8. To A's bill for the specific performance of a contract to transfer and assign shares of stock in a certain corporation B, the defendant, answered that the contract was mutually cancelled before the day fixed for the transfer for the consideration of one hundred dollars paid by him to A. To the answer A filed a replication and the cause was referred to the Master in Chancery to take the evidence and report. When the parties appeared before the Master the defendant admitted the contract and then introduced evidence showing a cancellation of it as set up in the answer. The complainant then introduced evidence (over the defendant's objection) showing that he was induced to agree to the cancellation by the false and fraudulent statement of defendant, that the Attorney General had filed a petition to dissolve the corporation. When the cause came on for hearing before the court, the defendant renewed his objection and moved the exclusion of the testimony relating to the false statement concerning the petition of the Attorney General. What should be the ground of objection and what the ruling of the court?

9. To the bill of Robert Allen, filed in the Circuit Court of Champaign county, to compel the specific performance of a contract made with Otis Brown for the sale and transfer of thirty shares of stock of the Urbana Lumber Company, draft an answer, admitting the contract, but setting up by way of avoidance a cancellation of the contract by mutual consent and for a valuable consideration.

10. To A's bill asking specific relief on three separate matters growing out of the same transaction, B, the defendant, demurred as to one matter and on the following day answered the other two matters and prayed a dismissal of the bill. A, thereupon, moved that the demurrer be stricken from the files upon the ground that by filing answer the defendant had waived all right of demurrer. State a proper ruling on the motion.



## Examination in Public Utilities.

June, 1915.

PROFESSOR GREEN.

(Answer three questions out of the first five and three out of the second five. State your reasons briefly for all answers.)

1. The A company is an incorporated cemetery association with power of eminent domain; the B company has a statutory monopoly of driving logs on a river, but is forbidden to charge more than enough to pay expenses; the C company collects news throughout the United States and supplies it to newspapers at a fixed price per year; the D company owns the water power of falls capable of producing ten thousand horse power of electricity, and supplies it to manufacturers; the E company operates the only grain elevator in a small town; the F company, the only stockyards in a large city; the G company, a pipe line carrying oil fifty miles from an oil field to the nearest railroad; the H company, a theatre; the I company, a cheap lodging house; the J company, an undertaking business. Each company holds itself out as ready to serve all applicants in its line of business so far as its facilities extend. At common law, which of them will be liable for wantonly refusing service?

2. A common carrier of passengers by steamboat made a regulation excluding from its wharf

the vehicles of all public hackmen except those of a certain cab company which gave excellent service. A passenger who was to arrive by the next boat telegraphed to another public hackman to meet him on the wharf and drive him to a hotel. Against the orders of the steamboat company, the hackman drove upon the wharf and met the passenger. The steamboat company sued him in trespass. What decision?

3. A applied to a telephone company to put a telephone in his office, and tendered pay for a year in advance. The company refused to install a telephone for the following reasons:

(a) He had a telephone of a competing company, and each company had a rule not to serve a subscriber of the other.

(b) He did not intend to use the instrument for sending or receiving messages, but only to impress his customers by the fact that he had two telephones.

(c) His business was the fraudulent selling of worthless mining stocks, and if he used the telephone at all, it would be to defraud.

(d) He was and for six months had been indebted to the company for previous telephone service, and his instrument had been taken out two months before because he would not pay for it.

(c) When he formerly had a telephone he persisted in letting his neighbors use it, against the rules of the company of which he had notice.

Which, if any, of these reasons justify the company's refusal?

4. The Big Four railroad runs two passenger trains a day in each direction between Danville and Champaign, thirty-four miles apart, which stop about every five miles at intermediate towns whose population varies from two thousand to two hundred. An electric railroad maintains an hourly service between the same points and makes the same stops. Discuss briefly the Big Four's right to discontinue stopping its passenger trains at these intermediate towns, if because of the electric railroad's competition it no longer pays to stop.

5. A had a grain elevator and cattle pens connected by his private siding with the tracks of a railroad company. So, at a point a quarter of a mile farther down the tracks, had B. For each the company was in the habit of delivering upon the siding cars of cattle and of grain in bulk. The railroad agreed with A to make his siding the sole place for the delivery of grain to the public, and with B to make his siding the sole place for the delivery of cattle to the public, each agreeing to give the public access for that purpose, and then notified A as to cattle and B as to grain that it would no longer deliver to him at his siding, but

would do so at the other's siding. A and B each wishes to hold the railroad to its agreement with himself and objects to its carrying out its agreement with the other. What are their rights at common law?

6. A and B published newspapers at Chicago. C published a newspaper at St. Louis. Their morning editions sold in competition at Springfield. The Alton railroad, running between Chicago and St. Louis by way of Springfield, at A's request and on his guarantee that the revenue from it would reach a named amount, put on an early passenger train from Chicago to Springfield which reached Springfield earlier than any other train, and agreed to carry on it A's paper and no other. B demanded that the train carry his paper, too, there being room enough. C demanded that the railroad under a like guarantee from him run an early train from St. Louis to Springfield, a shorter distance, so as to bring his paper to Springfield as early as A's. The railroad would not comply with either demand. What are the rights of A and B.

7. A boy of 18, travelling by railroad for the first time, showed his ticket to the brakeman. The train was in motion and a gust of wind blew it out of his hands and off the train. At the next station, the conductor, though informed by the brakeman of the facts, ejected the boy, who had no money, for non-payment of fare. What is the

railroad's liability? How would you answer, if the railroad charged two cents a mile for tickets but three cents for cash fares, and the boy, unable to buy a ticket because the ticket office was closed, tendered fare in money at two cents a mile, that being all he had?

8. What are the important points of difference in the provisions about reasonable rates between the interstate commerce act as it was originally passed and as it has been modified by later enactments?

9. A company was incorporated to build and operate a public toll bridge across a river at its narrowest point. In building, the bridge was damaged by a flood and had to be built over. For this reason and because labor and materials were then high, its actual and reasonable cost was double what it would have cost a short time later to replace it. The traffic became too large for the bridge to accomodate and another company built another toll bridge which, as the river was wider there, cost twice the actual and therefore four times the replacement cost of the former bridge. The expenses of operating and maintaing the two bridges are the same and they do an equal business, so that if they charge the same tolls the first bridge will make on its actual cost twice and on its replacement cost four times as much as the second. A statute requires the public utilities commission to fix reasonable tolls. How shall it

determine what each may charge? To what point may the legislature reduce the tolls of each?

10. An Illinois statute forbids a common carrier to grant any preference or advantage as to rates to any corporation or person, or to establish any unreasonable difference as to rates between localities. The Interstate Commerce act forbids a common carrier to charge one person or corporation more than another for like service under similar conditions or to give any person or locality an unreasonable preference over any other. Assume that the Illinois Central's ordinary rate on corn from Champaign to Chicago is the same as the Chicago and Eastern Illinois' ordinary rate from Danville to Chicago, an equal distance; but that on corn coming to Champaign from Danville over the Big Four and destined to Chicago, the Illinois Central makes a rate from Champaign less than its ordinary rate by the amount of the Big Four's reasonable freight charge, while on corn that comes from Danville over the Wabash the Illinois Central makes no reduction. Discuss the legality of the Illinois Central's differences in rates. What would you say if each city was in a different State?

## Examination in Quasi Contracts.

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(Give reasons in all cases.)

PROFESSOR VERNIER.

1. D, a Champaign merchant, sent his agent to P, the manager of a student boarding club, to collect a bill of \$60 which D claimed was due for groceries furnished the previous year. P, on presentment of the bill exclaimed, "I have an idea that I paid that bill last June." The agent asked P to show his receipt or cancelled check. P replied that he had left his receipts and cancelled checks for the past year at home when he had gone there for the summer vacation. The agent insisted that the bill was due, and P finally paid, saying, "I have a notion that I paid this bill last June and if I find the receipt or check I'll make you return the money." The agent made no reply. D received the money, after which P discovered the receipt for the bill at home. What are P's rights, if any, if D refuses to restore the money?

2. D claiming to have a patent on a certain device, gave P by license in the ordinary form the exclusive right to make and sell the device in Illinois for five years. After operating under the license for two years, P discovered that D's patent was void. P brings this suit to recover \$2500 royalty paid to D. Can he recover?

Suppose that D assigned all his rights under the patent to P for \$2500 and it was discovered

as before that the patent was void. In a suit to recover the \$25000 would your answer be the same?

3. P contracted to supply D, a meat dealer, with ice for one year, the contract specifying the number of tons to be delivered each month and the price per ton each month. No payment was to be made until the end of the year. After performing satisfactorily for six months, P was forced to cease deliveries, because all the ice producers combined and refused to sell to P, who had no plant of his own. Can P recover for the ice already delivered to D? If you decide that he can, state accurately the rule of damages to govern the amount of recovery.

Would your answer be the same if P ceased to deliver after six months because he found a better market for his ice elsewhere?

4. P contracted in writing with the official board of the D church to erect a church building in accordance with certain plans and specifications. The building when completed varied materially from the plans and specifications. The ceiling was lower, the windows more numerous and smaller, and the seats narrower. The seats were also made of different but better material than that specified. P was negligent but acted in good faith. The building is reasonably adapted for use as a church. Can P recover anything? If so, state the rule of damages.



Would your answer be the same, if the completed building departed materially from the plans and specifications, but the departures were in the nature of improvements?

5. D in the usual course of business became indorsee for value of a check for \$100 drawn on the P Bank. D presented the check to the P Bank, which paid it and charged it to the account of M, whose name appeared thereon as drawer. M's name had been forged. The P Bank on discovery of the forgery made prompt demand on D for the return of the \$100. On D's refusal P brought this suit. Judgment?

Would your answer be the same if M's signature were genuine but the check had been raised from \$10 to \$100?

6. B owed D \$50. D was pressing for payment, when B informed D that he would arrange to have P supply D with \$50 worth of coal in satisfaction of the debt. D agreed to this. B then went to P and told P that D wanted \$50 worth of coal delivered. P, supposing that B was D's agent, delivered the coal to D and charged it to D. However P did not send a statement to D for the coal until most of it had been consumed. It was customary for P to wait a month or so before sending statements to customers who were financially responsible. D refused to pay for the coal. B has disappeared. What are P's rights, if any, against D.

## Real Property [Conveyancing.]

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June, 1915.

CHARLES E. CARPENTER.

### PART I.

1. The plaintiff leased a lot to the defendant for a term of five years. The defendant agreed to pay the rent and taxes and not to assign or underlet without the written consent of the plaintiff. The defendant entered into possession and occupied the premises for two years, paying the rent and taxes promptly. At the end of two years the defendant assigned the remainder of the term to A with the written assent of the plaintiff. The plaintiff collected the rent from A for one year then the payment of rent fell in arrear and A left at the end of his second year, and the premises have remained vacant ever since. The plaintiff after five years from the beginning of the term of the defendant sues the defendant for the rent for the last two years of his five year term. What result? *Bailey vs. Wells*, 8 Wis., 33.

2. J. D. was the owner in fee of the nw  $\frac{1}{4}$  of the ne  $\frac{1}{4}$  of sec. 19 town 6 range 2 in Fayette county, Ill.

J. D. died leaving as his heirs A & B. A & B went into possession and agreed to divide the land equally between them, and A then deeded to B all his interest in the east  $\frac{1}{2}$  of the nw  $\frac{1}{4}$  of the ne

$\frac{1}{4}$  of the said section, and B deeded to A all his interest in the west  $\frac{1}{2}$  of the nw  $\frac{1}{4}$  of the ne  $\frac{1}{4}$  of said section. They borrowed an old surveyor's chain with two links missing and measured off from the east side of the 40 acres what they considered one half. They then erected a fence along the line thus ascertained and A occupied the portion west of the fence, and B the portion east of the fence for ten years. A conveyed to the plaintiff and B to the defendant and the plaintiff discovering that the true line was several rods beyond the fence on the part occupied by the defendant brought an action of ejectment for the strip. What result?

3. J. L. owned a large tract of land and a street was laid out over it called Tidmarsh street. Plaintiff, heir of J. L., conveyed to the defendant a tract bordering on the street describing the boundary on said street as follows: "154 feet more or less to Tidmarsh street, thence southeasterly, along the northerly side of the said Tidmarsh street 401 feet more or less to Twelfth street." Tidmarsh street was vacated by authority of law a few years later, and the defendant went into possession up to the center line of said street and the plaintiff now brings ejectment for the strip. What result?

4. The plaintiff leased to the defendant a house and lot for the term of 13 months, from April 1, 1888, for the agreed rent of \$540.00 per annum, payable in equal installments of \$45 in advance,

on the first day of each month. The defendant entered and occupied the premises during the term, and after its expiration held over and continued in possession, and paid rent to the plaintiff, in accordance with the terms of the lease up to and including the month of November, 1889. Several days prior to Oct. 30, 1889, the defendant served upon the plaintiff written notice that he would vacate the premises on Nov. 30th next ensuing. In pursuance of this notice he vacated the premises and has not since that time occupied them or paid rent. Plaintiff now brings action to recover rent from Dec. 1, 1889, to May 1, 1890. What result?

5. A made a deed to B of his farm Lakeview; he signed, sealed and acknowledged the instrument and gave it to S who was attorney for A and B instructing S not to deliver the deed to B until B paid him \$10,000. B requested S to record it so a desirable sale could be effected. B promised S to deposit stock with him, S, which B represented to be of the value of \$20,000, to secure the payment of the purchase price if S would record the deed. S recorded the deed and B deposited the stock. B sold the land to C who did not know A had not been paid. The stock was worth about \$9,000. Who has title to Lakeview?

6. (a) In 1880, X who claimed title to a vacant piece of land called Plumb Thicket, but who really had no title to it, made a deed of it containing covenants of seisin and warranty and quiet enjoy-

ment to A. A the next day made a quit claim deed of it to C who immediately went into possession, but in 1900 was ousted by the rightful owner. What are C's rights against X?

(b) Suppose in the preceding case X had acquired the title in Plum Thicket in 1890 and C had brought ejectment against the one who ousted him. What judgment?

7. Plaintiff brings his bill to protect his right in an easement. The plaintiff and defendant bought a double house of Mrs. Mabey. They went together and bought on the same day arranging to divide the premises equally through the partition wall. Each house was supplied with water from a well in the rear by pipes connecting with pumps in each kitchen. Neither the plaintiff nor defendant or Mrs. Mabey knew where the well was. The defendant gave \$10 for the choice of houses and chose the one upon which the well was though he did not know this or choose his side on that account. When he discovered the common well was on his side he disconnected the plaintiff's pipe. Is there any remedy open to the plaintiff?

8. John Doe lives in Milwaukee, Wis., and owns a store building in Danville, Ill. He authorizes John Smith, of Danville, to look after and to lease the premises and to collect and remit the rents. Smith calls on you, as attorney, to draw up a lease of the premises to Richard Roe with all the clauses that are advisable to be inserted for the protection of the lessor. (a) Draw the lease and have it appear to be executed ready for recording. (b) Give reasons for the clauses inserted for the lessor's protection.

## Examination in Real Property.

June, 1915.

CHARLES E. CARPENTER.

(Discuss each point raised, give reasons in full but concisely and omit irrelevant matter.)

1. In 1285 A was seised in fee simple of Blackacre which contained 3000 acres; he enfeoffed B and C of 1000 acres each. B in 1300 made a feoffment of all his land to D and his heirs. In 1310 D died and E, D's heir entered. In 1325 C died without heirs and E committed treason. What is the state of the title?

2. A, seised in fee of land, conveys it to B, C and D and their heirs. B then conveys to C and C dies; then later D dies. Who has title now? Discuss the question under (a) common law; (b) modern statutes.

3. What is the state of the title in each of the following:

(A) A, seised in fee of Blackacre, enfeoffed B and his heirs of it:

(a) to the use of C and his heirs;

(b) to the use of C;

- (c) to the use of the feoffor;
- (d) without declaring any use.

(B) A, seised in fee of Blackacre, bargains and sells it for a consideration to B and his heirs:

- (a) to the use of C and his heirs;
- (b) to the use of C;
- (c) to the use of A;

(d) What would be the situation if the bargain and sale were to B and his heirs without declaration of the use?

4. In 1536 A, tenant in fee simple of Blackacre, while standing on Blackacre, said to his son, B: "Stand forth, B, and I will give you Blackacre so soon as I die and you marry, to have and to hold for your life, then C shall have it for his life, and then D and his heirs forever." B paid 100£ in consideration of the conveyance. What was the state of the title in Blackacre after this transaction?

5. A, seised in fee simple of Blackacre, covenanted with B, his brother, to stand seised of it for the use of B for 10 years, then to the use of C and D and their heirs, if C married. Before B's term of 10 years expired C married and D died. Who has title?

6. X enfeoffed A for life, B for life and remainder to C and his heirs. B during A's life granted to D for life and A attorned. What is the state of the title after the death of A and B, but before D's death?

7. A owns a farm in fee worth about \$5000. He gives B a mortgage on the land to secure a loan of \$3000 which B makes to A under an agreement that A is to use the money in the purchase of an engine and machinery for his canning factory which he agrees to attach to the land so as to further increase B's security. A buys a \$4000 engine from C, giving him a chattel mortgage on the engine for the rest of the purchase price. A affixed the engine to the land in a permanent manner and B's mortgage coming due, and A being in default, B brings suit to foreclose the mortgage and joins C as a party. The land has depreciated so that it will not bring more than \$3500 with the engine and machinery. Who will prevail as to the engine?

8. B, who was in possession of land under a contract to purchase from the plaintiff, allowed the defendant to erect thereon a small building and to put in it certain heavy machinery which was screwed to the floor and a clock which was screwed to the wall. B agreed with the defendant that the building and contents should be regarded as personality and removable at the defendant's will. The contract for the purchase of the land



was rescinded by the plaintiff and the defendant is now proceeding to remove the building, machinery and clock from the land and the plaintiff brings a bill to enjoin him. What result?

9. A leased a store to B for a term to continue so long as C (A's son) should not desire to occupy the premises. B let the premises fall out of repair. C later desired to occupy the premises and B gave up the possession to A. Is B liable to A for having let the premises fall out of repair?

10. A was tenant for life, B for years and C at will, of X. Each 10 years previously had planted an apple orchard and this spring a crop of corn. In July, before either crop was ready to be gathered, A died, B's term for years expired, and X terminated C's term. In each instance who can take the crop when it is ready to be gathered?

## Examination in Suretyship.

PROFESSOR DECKER.

1. A purchased B's business including accounts having a book value of \$5,000, of which B agreed that "\$4,000 shall be realized, without charging for the personal services of A or other costs of collection, except those incurred in suits."

(a) Would this agreement be enforceable against B, if oral, assuming that only \$3,000 was realized on the accounts?

(b) If in writing, what principles should be applied to the construction of the agreement, and what is your conclusion as to the nature and extent of A's rights thereunder?

2. B was picked up unconscious after an automobile accident and carried into the house of C, who called X, a physician, to attend B, and told X: "If B does not pay you, I will." X's bill was for \$50, of which \$25 was for an operation performed on B's head before he became conscious, and the balance was for treatment afterwards. B has never paid any part of the bill and X now sues C, who pleads the statute of frauds. Decide the case.

3. S wrote on the back of a note from P to C for \$200 the following: "I hereby guarantee the payment of the within note," and signed his name.

If sued by C one year after the maturity of the note, which, if any, of the following defences would be legally available to him:

(a) That C had not sued P or notified S of P's default.

(b) That P was a minor.

(c) That C owed P \$100 for goods sold and delivered which P had a good right to set-off against the note?

(d) That the note was given for a horse sold by C to P, but which X had since replevied and proven to have been his at the time of the sale?

(e) That P had tendered to C the amount of the note when it came due, but C had told P that he did not need the money then but would let him know when he needed it, after which P later became bankrupt?

4. S became surety for P on a bond to C, which was also secured by a mortgage on Black-acre, property of P.

(a) What would be the effect on S's liability if C should release the mortgage without compensation?

(b) Would S have any remedy if C still held the mortgage but refused to foreclose it and commenced suit at law against S on the bond?

5. P, who was employed by C as cashier in his store, was discovered to be short in his accounts and admitted that he had taken money to play on the races. P's father made good the amount and C agreed to give P a further chance if he would give a bond for the faithful performance of his duties. The bond was drawn by C's attorney who handed it to P for the purpose of getting two sureties. P forged the name of his father and then got an uncle who knew nothing of the circumstances, to sign.

Has the uncle any defense, if sued on the bond for further embezzlements by P, arising either from the forgery of the father's name, or from the other facts stated?

6. A, a guardian, without authority of court, loaned money of his ward to X, and took a mortgage on X's home as security. X made a second mortgage to Y. X was insolvent and the mortgaged property so deteriorated that it was not sufficient to pay both mortgages. On a settlement of the guardianship estate, A was ordered to account for the money loaned and S, the surety on his guardianship bond, finally paid the amount to A's ward. What are S's rights as against A, X and Y respectively?

7. P was sued by C who recovered a judgment of \$4,000, from which P appealed to the Appellate Court, giving an appeal bond with S as surety. The judgment being affirmed, P again ap-

pealed to the Supreme court, giving a new bond with T as surety. Both bonds were conditioned for the payment of the judgment, with costs of appeal if the judgment was affirmed. If the Supreme court affirmed the judgment, what are the rights of C against S and T, and what are the rights of S and T between themselves?

8. Discuss the operation of the statute of limitations as affecting the surety's rights of indemnity, subrogation and contribution.

9. A and B were sureties on the bond of X as county treasurer. X was a defaulter to the amount of \$5,000, which A and B paid in equal parts. X afterwards gave A a mortgage on his homestead as a partial security for the amount so paid by A, on which A afterwards realized by foreclosure the sum of \$1,500. B now sues in equity for an accounting and to recover one-half of the amount so realized. Decide the case.

10. S gave C a continuing guaranty of any account for goods which P might purchase from C, not to exceed \$2,000. P was later adjudicated a bankrupt, at which time he owed C for goods the sum of \$4,000. C proved the claim for the full amount and received a dividend of 50 per cent. He now sues S on his guaranty contract, and claimed the right to recover \$2,000. S admits his liability for \$1,000 and tenders that amount. Which is right?

## Examination in Torts.

June, 1915.

PROFESSOR HALE.

1. (a) A in order to induce B to marry her son, told B that her son owned the farm on which she and her son were living. A knew that her son did not own the farm. After the marriage B discovered the falsity of A's statement and sued A for deceit. What judgment?

(b) What constitutes bad faith in the law of deceit?

2. A was driving down a narrow street of a city, asleep. B observed that A was asleep and could thereafter have avoided a collision by turning into a side street. B was unreasonably slow in thus turning out and a collision occurred, resulting in damage to both A and B.

(a) Each sues the other. What judgment in each case?

(b) What would your answer be if it appeared that B was negligently paying no heed and because of this failed to discover A before the collision?

3. A and B went out riding together in a row boat. B fell out. A was unreasonably slow in

throwing a rope to him with a life buoy attached. As a result, B drowned. Action is brought against A for B's death. What judgment?

4. The X Manufacturing Company manufactured and sold to the Y Railroad Company, a locomotive. While going at an ordinary rate of speed the boiler exploded, causing a wreck. A, a passenger, was seriously injured. The explosion was due to the use of defective materials in the process of manufacture. The X Company knew that the materials were of doubtful strength but thought there was a chance of their holding.

Discuss (1) the liability of the X Manufacturing Company and (2) the liability of the Y Railroad Company to A, the injured passenger.

5. A and his child C, six years of age, went riding with B in B's automobile as B's guests. They were approaching a railroad crossing just as the gates were being lowered to permit a train to pass. The watchman without proper regard to the nearness of the train held the gates a moment and motioned to B to cross. Both A and B observed the danger. A said to B, "We can make it." B attempted to cross. A collision occurred in which both A and C were injured.

(a) Action by A against the Railroad Company.

(b) Action by C, by his next friend, against the Railroad Company.

What judgment in each case?

6. A asked B if he might go swimming in a lake on B's premises. B knew that there were dangerous quicksands in the lake but did not tell A. A mired in the quicksands and was drowned. An action is brought by A's personal representative against B for A's death. What judgment.

7. A had a large gasoline tank on his premises in a thickly populated part of the city, in which he stored gasoline for his automobile. A fire which was accidentally started in a neighboring house was without A's fault communicated to A's garage and from there to the gasoline tank. An explosion followed which damaged B's house a short distance away.

B sues A. What judgment?

8. Temperton is a dealer in building materials. Myers is a builder who refuses to discharge a non-union employee who is employed by the day, at the request of X and Y, union officials. The object in securing the discharge of the non-union employee is to unionize the work. The union then requests Temperton to cease selling materials to Myers. Temperton refuses this request. Thereupon the union officials, X and Y, notify Brentano another builder who has been accustomed to buy materials of Temperton, that the union will refuse to work upon any material purchased of Temperton. In consequence of this notice, Brentano ceases to purchase materials of Temperton, a result desired by the union.



(a) Temperton sues X and Y, the union officials, for the loss of Brentano's custom.

(b) Suppose Myers because of a threat on the part of X and Y to call a strike of his union employees had refused to continue the non-union employee, A, in his employ. What would have been A's rights against X and Y?

## Examination in Trusts.

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(Give reasons in all cases.)

PROFESSOR VERNIER.

### PART I.

1. F devised land worth \$100,000 to T in trust to pay the net income to "my son S during life, free from the control and claims of creditors and not to be anticipated by assignment or otherwise." S became bankrupt. He had mortgaged his interest in half the land to A to secure a loan of \$5,000. B had a judgment against S on another claim. He also owed smaller sums to C, D and E. What are the rights, if any, of A, B, C, D and E?

2. A contracted to erect a \$25,000 building for B. To secure performance of the contract A executed a bond, and in addition deposited \$5,000 in the C bank. It was agreed in writing between A, B and the C bank that the bank should pay B for any breach of contract such part of the \$5,000 as B should be damaged, the damage to be determined by a board of arbitrators. A completed the building to B's satisfaction, but meanwhile the the C bank had failed, paying fifty cents on the dollar. What are A's rights against the bank?

Would your answer differ if the bank had agreed to pay A 4 per cent interest if the money were left a year and A had demanded the money

at the end of six months after satisfactory completion of the building, and also after the bank had failed as above?

3. (a) A contracted orally to sell land to B. A then contracted in writing to sell the same land to C. A finally conveyed the land to B, who at the time of conveyance knew of the contract with C. What are C's rights, if any, against B?

(b) A named B executor of his will and directed him after the payment of debts and specific legacies, to convert the residue of the estate into money and invest the same for the benefit of his niece C, paying her the net income during life and distributing the same among her lawful heirs at her death. B gave bond as executor with D as surety. Ten years after B began to serve he lost part of the funds in speculation. Is D liable for this loss?

4. (a) T made his will, naming C as sole beneficiary. Learning that T was about to cancel the will and name B as beneficiary, C murdered T. Assume that if T died intestate the property would go to A. On proof of these facts, who is entitled to the property?

(b) H is the heir of A. H murdered A from motives of revenge and not to secure his property. If H had died before A, the property would have gone to B and C. On proof of these facts who is entitled to A's property?

5. A insured his life for \$5,000 in the B Insurance Co. A later executed a voluntary deed to C by which he assigned all his interest in the policy to C in trust for D, and covenanted to keep up the premiums. The deed was delivered to C, who consented to act as trustee, but A retained the policy. Neither D nor the B Insurance Co. were notified. Later A surrendered the policy and received \$3,000, its surrender value. D then learned the above facts. What remedy, if any, has he against A, the B Insurance Co and C?

6. (a) May the following act as express trustees: the State, an alien, a married woman, an infant, a near relative of the cestui? Discuss briefly.

(b) A will devised real estate "in trust for C" but did not name a trustee. How may the trust be established, if at all?

(c) T holds land, personal property and stock in trust for C. If D wrongfully seizes the land and converts the personal property, how can the cestui be protected? Who is entitled to vote on the stock? Who is liable for taxes on the trust property?

7. X held \$10,000 worth of stock in trust for Y. Y assigned one fourth of his interest to A for value. A did not notify X of the assignment. Later Y purported to assign all his interest in the same stock to B, who bought without inquiry as to

previous encumbrances. B at once notified X. X died and W was appointed trustee and received the certificate of stock and the other trust papers. B's notice was not received, having been lost. Y made a third assignment to C, who first inquired of W and was informed that Y's interest was unencumbered. The assignment to C, like that to B, was total. C notified W. State the order of priority of A, B and C and discuss fully.

Would your answer be the same if the property held in trust were real estate and the question arose in a jurisdiction having no recording system?

8. A devised real estate to B in trust for A's son C, to be converted into money, invested in bonds and mortgages and the income to be paid to C annually. Other property was devised to B in trust for C with instructions to convert it into money and to pay it to C as follows: \$5,000 when C attained the age of 21, \$10,000 when he became 25, \$10,000 at the age of 30 and the residue with the accumulated income at the age of 35. C was 18 years old at the death of A. The directions of the will were complied with until C became 24. He then decided that he would like to have full control of the property, in order to enter the manufacturing business. He therefore filed a bill against B to end the trust. C is the sole cestui. Should he succeed?

## Examination in Wills.

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June, 1915.

PROFESSOR POMEROY.

I. Testator's will contained a devise of Black-acre to A and a legacy of \$1000 to A, both of which were void. C is the residuary legatee, and D the sole surviving child of A. Who takes the devise and legacy under common law and Illinois law? Reasons.

II. 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.

III. (a) Give in substance the first half of § 2 of the Illinois Wills Act, viz: the part relating to the acknowledgment, execution and attestation of wills. State the substance of three holdings of Illinois cases on the question, what is a sufficient acknowledgment.

(b) Does a residuary devise abate for payment of debts before a specific devise? State reasons fully.

IV. (a) A's will read, as originally executed, "I give my farm to my son John, \$1000 to my niece Mary, and the rest of my property to my daughter Ann." When the will was found after

his death, the words "my farm to my son John" had been cancelled with a stroke of the pen. There is no direct evidence concerning the cancellation, but it is proved that the will had been in A's custody continuously from its execution. Who takes the farm? Discuss fully.

(b) In which of the following cases is the will revoked? B throws his will into the fire with intent to destroy it, but only a corner, on which there is no writing, is scorched. C throws his will into the fire, but changes his mind and pulls the document out before it is so far burned as to be illegible. Reasons.

V. (a) Smith and Jones were business rivals. For a number of months each maliciously annoyed and intimidated the customers of the other with the result that the business of Jones and Smith was greatly injured; but neither party gained in any way by reason of the injury suffered by the other. Each party, therefore, had a cause of action against the other. Smith died. The executor of Smith sues Jones for Jones's tort, and Jones sues the executor of Smith for Smith's tort. Can either or both recover at common law or in Illinois? Reasons.

(b) A was injured by the negligence of the B railroad company, and two months later died of his injuries. A's wife and children were dependent upon him for support. His executor now sues the B company. Can he recover, (1) under the English law; (2) under the Illinois law? If he can recover, what damages? Reasons in full.

VI. Testator's will read, "I bequeath my house and the furniture therein to A, \$1000 to B, \$500 to C, and the balance of my personal estate to D." The assets that came to the executor's hands consisted of the furniture, worth \$500, and cash to the amount of \$1200. The house was worth \$4000. Testator also owned at the time of his death an unimproved lot worth \$2000. How should the estate be distributed if there are no debts or expenses? If the debts and expenses are \$1200? If they are \$2400? If they are \$3700? Reasons.

VII. A, a widow, made her will in 1913, leaving all her estate to B, her only son. In August, 1914, her son being then in Europe, she received news that he had been killed in attempting to escape from Germany. She immediately executed a codicil to her will, in these words: "Since I have heard that my son is dead, I revoke my bequest to him and leave all my property to my nephew C." A died a few days later in the belief that her son was dead. As a matter of fact he was alive, and claims the estate. Who takes: B or C? Reasons. Give two other illustrations of the general principle involved.

VIII. State five of the Illinois rules of descent, giving facts illustrating four of the five rules.



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**UNIVERSITY OF ILLINOIS BULLETIN**

ISSUED WEEKLY

**VOL. ~~XII~~  
XIII**

**FEBRUARY 7, 1916**

**No. 23**

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[Entered as second-class matter December 11, 1912, at the postoffice at Urbana, Illinois, under the Act of August 24, 1912]

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**LAW EXAMINATIONS**

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PAPERS USED AT THE

**FIRST SEMESTER EXAMINATIONS**

**1915-1916**

IN THE

**COLLEGE OF LAW**

OF THE

**UNIVERSITY OF ILLINOIS**

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## EXAMINATION IN AGENCY

CHAS. E. CARPENTER

I. A made an oral contract to sell B land for \$15500. A later made out a contract under seal which he signed but left a blank for the amount of the purchase price. He orally instructed B to fill up the blank for \$15500. B in A's presence filled up the blank for \$5500. A sues B for the purchase price \$15500. May he recover?

II. An automobile and a chauffeur are hired from a garage by the hour. Is it the proprietor or the hirer who is liable for the chauffeur's negligence from the garage to the hirer's home, or while hirer is being conveyed from home to his destination, or while the automobile is going thence to the garage? Is it of consequence that the accident happens through the hirer's insisting that the chauffeur must proceed at a pace beyond the speed limit?

III. The defendants were the owners of the Victor hotel and they employed one Humble to manage it for them. Humble's name was over the door. The

plaintiff contracted with Humble to sell five automobiles for the use of the hotel. The plaintiff never heard of the defendants. Humble refused to take the automobiles when tendered and plaintiff now sues the defendant to recover damages for breach of the contract to purchase the automobiles? What result?

IV. The plaintiff was a cabinet maker and the defendants timber merchants. Youngman was employed by the defendants to sell their timber on commission. Youngman knowing that a certain mahogany log was defective in the interior represented to the plaintiff that it was perfectly sound and sold it to him for 3s per foot. The plaintiff called for the log, removed it to his premises and sawed it up before discovering the defect. The log was in fact not worth more than 1s, 3d per foot. The plaintiff brings an action of deceit against the defendant? What result?

V. The defendant bought a horse from one Seaver for \$65.00 and agreed that if the horse sold for more than \$65.00 he would divide the profit with Seaver. Defendant then had \$80 of plaintiff's money in his pocket with which to buy that horse and was to buy it as cheaply as possible and receive one dollar for his

services. Defendant told Seaver he had sold the horse for \$80.00 and gave Seaver \$7.50, keeping \$7.50 for himself. Plaintiff wishes to know of you what his rights are.

VI. Adams, without authority, makes a contract to sell Peter's land to Tidd. The next day Firth obtains a judgment against Peters and has the judgment entered as a lien upon Peters' land. Later Peters ratifies the contract made by Adams and seeks to compel Tidd to accept a conveyance of the land. Can he?

VII. A cabinet maker left property in the control and possession of his agent with the power to sell and apply the proceeds to the security or payment of a note indorsed by the agent. After the agent received notice of the revocation of his authority and communicated such notice to the defendant, he sold the property to the defendant. Did the defendant get a good title? Suppose the agent had died and his executor had sold the property to the defendant. Would the defendant then have got a good title?

VIII. P authorizes A to buy hay of T upon P's credit. T refuses to have anything to do with P. A,

therefore, intending to buy for P, buys the hay of T upon his own, A's, credit. While T is still looking to A for payment and is without knowledge of P's interest in the transaction, P pays A for the hay. A not having paid, T sues A but before judgment brings an action against P for the price of the hay. Has P any defense to the action?

## EXAMINATION IN BILLS AND NOTES

PROFESSOR VERNIER

1. Defendant D signed a printed blank check, filled in the blanks except those for the amount and payee and locked it in a drawer in his desk. He gave the key to a clerk with directions to use the check during defendant's absence if told to do so by letter or telegram. P, a porter in defendant's office, broke open the desk, stole the check, filled in his own name as payee and two hundred dollars as the amount, and indorsed it to B, who gave value in good faith. B cashed the check at the drawee bank. May the drawee bank charge this two hundred dollars to D's account?

If the drawee bank had dishonored the check could B recover the two hundred dollars of D, after making proper presentment and giving due notice of dishonor?

2. Is the following instrument negotiable?

§275.00                      Winchester, Ind., Jan. 20, 1890.

June, 1, 1890, for value received, we jointly and severally promise to pay to the order of Galbraith Bros. the sum of Two Hundred and Seventy-five dollars, negotiable and payable at the Randolph County Bank of

Winchester, Indiana, with interest at the rate of 8 per cent per annum from date, without any relief whatever from valuation and appraisement laws. And the drawers and indorsers severally waive all defenses on the ground of any extension of time of its payment that may be given by its holders to them or any of them.

Benjamin E. Frazee,

William Frazee.

3. Assumpsit by the Chicago Trust and Savings Bank against Siegel, Cooper & Co., on the following instrument:

\$300.00

Chicago, March 5, 1887

On July 1, 1887, we promise to pay D. Dalziel or order, the sum of three hundred dollars, for the privilege of one framed advertising sign, size 20x22 inches, one end of each of one hundred and fifty street cars of the North Chicago City Railway Co. for a term of three months, from May 15, 1887.

Siegel, Cooper & Co.

On the day of execution, Dalziel, the payee, indorsed to the plaintiff bank for value. Before the time for advertising arrived Dalziel lost his right to use the cars for advertising and the privilege was never fur-



nished. The defense is failure of consideration. Is it good against plaintiff?

4. Is the following instrument negotiable in form?

\$1500.00

Denver, March 1, 1912

Pay to the order of S. B. Allison, Fifteen Hundred dollars on account of contract between you and the Smith Milling Co., and charge to our account, on ledger B.

Smith Milling Co.

To J. J. Lightner,  
Denver, Colo.

5. Replevin by William Hobbs against Samuel A. Brown to recover 10 coupons valued at \$25 each. The coupons while owned by Hobbs had been attached to bonds issued by the Adams Express Co., and had been detached by a thief and sold to Defendant Brown, who bought them in good faith and for value. The coupons were payable to bearer and were negotiable in form, unless made not so by the following stipulation: "Payable only out of the assets of this company, which is an unincorporated joint stock association." Judgment?

6. Suit by P, payee of two notes, against the maker, M. M admits his signature but in defense sets up the following facts: That the notes when signed by him were blank as to amount and payee; that he gave these blank notes to his agent A, with authority to see X and Y, and if satisfactory to X and Y, to make them payees of the notes and to fill in the notes for whatever amount M owed X and Y, which in neither case exceeded \$300; that A, disregarding his authority filled in the first note for \$500, made P, payee, and gave it to P in its completed form in payment of a debt due from A to P: that A gave the second note to P for a loan of \$500, P filling in his own name as payee and the amount at \$500 in A's presence. M does not deny P's good faith in either case. Should he recover?

7. Plaintiff, as indorsee of a bill of exchange, sues defendant as acceptor. The bill was drawn in the ordinary form, but there was no acceptance upon the face of the bill. Should plaintiff recover:

(a.) If he puts in evidence a written promise of defendant to accept the bill, such promise being dated before the bill was drawn?

(b.) If the word accepted is written across the

back of the bill in defendant's handwriting, but with no signature?

(c.) If plaintiff proves that previous to taking the bill he called defendant by telephone and defendant orally promised to accept the next day?

8. M is the maker of a note payable to P or order, dated and executed in Chicago, Jan. 31, 1905, payable one month from date. The note is indorsed by P, A, B, C, and D, in the order named. E is the holder at maturity. State in detail the steps E must take to fix the liability of all prior parties under the following circumstances:

M resides in Chicago, where the note is dated, but is engaged in business in Pullman. At the time the note falls due he is attending the session of the legislature (as a member) at Springfield. P lives and does business in Chicago. A and B live in Peoria but have no fixed place of business. C and D live and do business in Urbana, where E also resides.

9. (a.) M signed a promissory note for \$500 payable to the order of P. The consideration between P and M has failed. P indorsed specially to A, who

took for value in good faith. A indorsed to B who took by way of gift. B, who held the note at maturity, was induced to indorse to C by fraud of C. C, after maturity, indorsed to D, who took for value in good faith. May B recover possession of the note from D?

(b.) In a suit on the note by D has M any defense?

EXAMINATION IN CONSTITUTIONAL LAW  
PROFESSOR GREEN

1. A Louisiana statute required railway companies to provide equal but separate accommodations for white and colored passengers, and made it a misdemeanor for any passenger to insist upon going into a coach reserved for persons of the other race. A colored passenger was prosecuted for violating the statute. Is he subject to punishment?

2. An Illinois statute provided that corporations of other states doing business in Illinois should be charged the same license fees as those which their own states exacted of Illinois corporations. When the law was passed a Pennsylvania corporation was doing a business of life insurance in Illinois under a license for a year. The year now being up, it contends that, although Pennsylvania exacts heavier license fees from Illinois corporations than any other state does, Illinois cannot require it to pay a heavier license fee, as a condition of doing business for the future, than Illinois exacts from life insurance companies of other states, because to do so would deny to it the equal protection of the laws

and deprive it of property without due process of law, and also that the statute is void as an attempt by the legislature of Illinois to delegate legislative power to other states. Are these contentions sound?

3. It has been said that the due process clause in the fourteenth amendment was intended and should have been construed to restrict only the power of the states over procedure, and should not have been so construed as to restrict their power to alter substantive rights. What is your opinion?

4. In the case of *Ju Toy*, a man of Chinese descent, who attempted to enter the United States at San Francisco was detained to enforce an order made after hearing by the Collector of the port for his exclusion upon the ground of alienage. He petitioned for a writ of habeas corpus to obtain his release, that he might enter the country, and satisfied the court that he was a United States citizen. What was the decision? Explain its reason and scope.

5. After repeated decisions of the highest court of a state that bonds issued pursuant to a certain statute were valid, a city of the state made such an issue of

bonds, and the state court, overruling its former decisions, so construed the state constitution as to make the statute and the bonds void. A citizen of another state, who had bought a bond in reliance upon the earlier decisions, sued the city upon it in a United States court. Will the United States court construe the state constitution according to the earlier decisions, according to the latest decision, or according to its own opinion? What principle do you think should control the decision of the United States court?

6. A state senate by resolution directed a committee of its members to investigate the management of the state normal schools. By state statute committees of the house or senate were given power to summon and examine witnesses. X, summoned by the committee as a witness, refused to attend, and after hearing him, the senate pronounced him guilty of contempt and committed him to jail. He brings habeas corpus proceedings alleging that the senate has not judicial power and that its sentence to imprisonment for an offence not committed in its presence is void. What decision?

7. Discuss the power of Congress in time of peace to issue treasury notes in small denominations and make

them legal tender in payment of private debt.

8. Is an act of Congress which taxes incomes in general valid as applied to income from bonds of the city of Champaign? Is an act of Congress which taxes inheritances in general valid as applied to bonds of the city of Champaign?

9. A sold in Illinois two casks of oleomargarine artificially colored to look like butter which he had brought for the purpose of so selling them, one from Canada and the other from New York. What is the validity as applied to these sales of an Illinois statute taxing at a cent a pound the sale of oleomargarine so colored? Of a statute forbidding the sale of oleomargarine so colored? Forbidding the sale of all oleomargarine?

10. A bill introduced into Congress provides for a federal commission whose duty it shall be to examine moving picture films submitted to the commission, and to license those which are not immoral. It forbids under penalty transporting in interstate commerce an unlicensed film, or altering, except by elimination, a licensed one. Discuss its constitutionality.



CONTRACTS  
PROFESSOR DECKER

1. At a farm auction, it was announced in advance that no bids could be withdrawn, and that every article put up would be sold without reserve to the highest bidder.

(a.) Jones bid \$50 for a corn-husker, but afterwards notified the auctioneer that he withdrew the bid. The husker was nevertheless knocked down to Jones, whose bid was the highest. Is he liable for the price?

(b.) Suppose that instead of Jones withdrawing, the auctioneer had withdrawn the husker after Jones' bid. What are Jones' rights?

2. D had been looking at automobiles in P's garage. He liked the looks of a certain machine and B told him to take it out and try it and if he did not bring it back by evening, he, P, would consider it sold. D took the machine out, drove it into the country and did not get back until next day. He then returned the machine to P's garage and said he would not take it. Whose machine is it?

3. X offered to sell a certain horse to Y and

told him that he would keep the offer open for a week. Two days later Y saw M driving the horse and was told by a friend that M had bought the horse from X. Y immediately went to X and said that he had decided to accept X's offer and tendered the price of the horse. X refused the money, having in fact sold the horse to M. What are Y's rights?

4. D, a Chicago wholesaler, on the 10th wrote to P, a salesman then in New York, as follows: "Our southern representative has been taken sick and we need a good man for his territory at once. We are willing to pay \$2,500 a year and expenses to the right man. Would you like the job? If so, let me hear from you without delay." P received this letter on the morning of the 12th, and on the same evening he wired D: "Yes, I accept position. Leave for Chicago tomorrow." This message was delayed by a blizzard and had not reached D when P called on him in Chicago on the 15th. At that time D informed P that he had not intended his letter as an offer, but that he was too late anyway, as he had hired X the day before. P claims a contract. Which is right?

5. X sent his son for Christmas a note for \$1,000

payable in 60 days, and in a letter accompanying the note, he said: "Now you can buy that automobile which you have been wanting so long." The son promptly contracted with a dealer for an automobile to cost \$1,200, payable \$200 down, and the balance payable February 25th, intending to use the proceeds of the note. The son then wrote and thanked his father for the note and told him what he had done, to which X made no objection.

(a.) If X does not pay the note, will he be liable in an action thereon by the son?

(b.) If the son had indorsed the note to the dealer, at the same time that he paid the \$200 in payment for the machine, would X be liable in an action on the note by the dealer?

6. Roe and Doe, managers of the Star Lecture Course, after some correspondence, entered into the following agreement: "W. F. Byron agrees, subject to the proviso hereinafter contained, to deliver a lecture at the University Auditorium at Urbana, Ill., on the evening of the 5th day of January, 1916, on the subject, 'The Dove of Peace.'

"Roe and Doe, Managers of the Star Lecture

Course, hereby agree to pay the said W. F. Byron the sum of \$200 immediately after said lecture as compensation therefor.

“Provided, however, that if the said W. F. Byron shall find that other duties will make it impossible for him to meet the above engagement, he may cancel this agreement at any time prior to December 15, 1915, by giving written notice of his intention so to do.”

This agreement was originally signed by Mr. Byron and afterwards by Roe and Doe on the 15th of October, 1915.

(a.) Would Roe and Doe be liable for breach of contract if they should deny Mr. Byron the right to lecture at the time agreed upon?

(b.) Would it alter your answer if they had notified Mr. Byron on December 1, 1915, that they had decided that his lecture would not be popular and that he could consider the engagement cancelled?

7. A ordered a suit of clothes from his tailor, B, without agreement as to the price.

(a.) Suppose B delivered the clothes with a bill for \$40 and A puts the clothes on and wears them. What would be the extent of A's liability? How should

B sue if A fails to pay?

(b.) Suppose B delivers the clothes without a bill, but later sends one for \$40 after A has worn the clothes. A refuses to pay, claiming \$40 is too much. Same questions as above?

(c.) Add to facts in (b) that A and B finally agree on \$35 and A promises to pay that amount in 30 days. In the meantime the clothes wear poorly and it appears they are not worth more than \$20. There was no warranty of quality. Is A bound by his promise?

8. Discuss the doctrine of moral consideration briefly.

9. Smith holds Jones' note for \$100, bearing 6 per cent interest, due January 2, 1916. On that day Jones paid Smith \$25 and told Smith that he would pay the balance within the next 30 days if Smith would agree not to press the claim for that length of time. Smith agreed provided that Jones would get a surety. Peters, at Jones' request, guaranteed the payment by Jones according to agreement.

(a.) What is the earliest date that Smith will have a right to sue Jones?

(b.) Is there any consideration for Peters' promise?

10. X, an importer, agreed with Y, a cloth manufacturer, to furnish Y with all the dyes that he needed in his business for the year 1914, and Y agreed to buy at certain prices agreed upon. Because of the war, the price of dyes began to soar and in September, X notified Y that he could not furnish any more dyes at the contract price, and would furnish no more at all unless Y would agree to pay the market price. Y agreed to this and X then shipped another consignment of dyes. At which price is X entitled to payment?

## EXAMINATION IN CRIMINAL LAW

PROFESSOR VERNIER

1. Producing an abortion is made a felony by a statute reading: "Whoever, by means of any instrument, medicine, drug, or other means whatever, causes or attempts to cause any woman to abort or miscarry, unless the same be done as necessary for the preservation of the mother's life, shall be punished, etc." M, believing that she is pregnant, induces D to administer drugs for the purpose of causing an abortion. The drugs used cause M's death and it is ascertained that M was not pregnant. Of what crime, or crimes, if any, is D guilty?

2. Defendants, three Chinese, are indicted for conspiracy to bring other Chinese into the United States contrary to law. The plan was originally suggested to defendants by government detectives who wished to place the principal defendant in a position where he would be willing to disclose the names of other Chinese believed to be at the head of the business of importing Chinese into this country contrary to law. Defendants were reluctant to engage in the enterprise, but were in-

duced to act by a promise of governmental protection. The only authority given the detectives was to ascertain who were engaged in illegal importation of Chinese and make arrests. This indictment was found when defendants refused to reveal the names of any others engaged in importing Chinese. Are defendants guilty under this state of facts?

3. (a) D is indicted in Illinois for the murder of A. Should he be convicted on the following state of facts? D gave A poison at Gary, Indiana, which caused A to become unconscious. D, believing that A was dead, in order to conceal the body, boxed it up and took it to Chicago, where he cut it up and burned it. Assume that A did not die until his head was cut off in Chicago.

(b). D, standing in Illinois near the Indiana line, shoots at A who is standing in Indiana. A is taken to Rochester, Minnesota, for an operation and dies there. Where should D be indicted for murder? If he is indicted in Indiana, is D subject to extradition from Illinois?

4. Is D guilty of rape at common law under the



following states of fact? Is D guilty of any other crime?

(a.) A permits D to have carnal intercourse with her in the mistaken belief that he is her husband H.

(b.) A is a woman 20 years old. D, a physician induces her to permit carnal intercourse by him, by representing that this is medical treatment to which her father has consented, and that in order to save her life, it is necessary to submit to this or permit an operation which might and probably would result fatally. The above representation is wholly false, but is believed by A.

(c.) D is a boy of 13 and has forcible intercourse with A, a girl of 18. A does not consent.

5. Is D criminally responsible for the death of A under the following states of fact? If so, how?

(a.) D committed assault and battery on B. B's mother, A, seeing the fight and suffering from a weak heart, died of shock within a few minutes.

(b.) D commits assault and battery on A. A is knocked from the sidewalk onto the street where an automobile runs over and kills him.

(c.) D shoots A, inflicting a wound not necessarily mortal. A dies from scarlet fever negligently communicated by the physician called to attend A's wound.

6. (a.) D, the proprietor of a saloon in a city which has voted dry, opens a restaurant and serves soft drinks. A manufacturer induces him to undertake the sale of a new drink, alleged to resemble beer except that it is not intoxicating. To be safe, D prepares to have a bottle analyzed before beginning sale. He tells his former bar-tender B not to begin selling until D telephones the result of the analysis. A few hours later, C, a practical joker, imitating D's voice, telephones B,—“Go ahead, the analysis is all right.” B thereupon begins the sale of the new drink, which is in fact intoxicating as the analysis proves. B and D are both indicted for selling intoxicating liquor in dry territory. Have they any defense?

(b). D sold liquor to a minor in a state having a statute reading, “Whoever, by himself, or his agent or servant, shall sell or give intoxicating liquor to any minor without the written order of his parent, guardian or family physician, shall for each offense be fin-

ed, etc." D's defense is that he sold in good faith, reasonably believing the minor to be of age. Assuming that D did sell in good faith and that it was reasonable to mistake the minor for an adult, is the defense good?

7. Is D guilty of manslaughter in the following cases?

(a.) A statute makes racing on the public highways a finable offense. D, while racing on the public highway with B runs over and kills A.

(b.) A statute makes it a finable offense to pass a toll-gate without paying. D attempts to drive by a toll-gate without paying. A, the keeper, lowers the bar. D's horse is frightened by being driven against the bar, plunges aside and kills A.

(c.) A statute makes it a misdemeanor to carry concealed weapons. D, while violating this statute, engages in a friendly scuffle with A. D and A fall and the weapon is discharged, killing A.

8. D, rooming in the same house with A, plans to poison A. D buys a liquid poison, which he places in a medicine cabinet until an opportunity offers to use it safely. The opportunity occurs one night when A is

sick and asks D to bring him a glass of water. D, in his haste, mistakes a bottle of mild emetic for the bottle of poison, places a spoonful of the former in A's glass of water and gives it to A. A is made slightly ill but suffers no permanent injury. Of what crime, if any, is D guilty?

9. A handed D, a barber, a five dollar bill in payment for a shave and hair-cut. The latter secured the change and then decided to deceive A. He gave A four dollars only in change, instead of the proper amount—four dollars and sixty cents. Of what crime, if any, is D guilty?

10. Should D the servant of M be convicted of larceny under the following states of fact?

(a) M hands D a parcel to be delivered to W. D keeps it.

(b). D delivers the parcel to W and receives \$10 in return, which he keeps.

(c) D delivers the parcel and is given a load of wood to be hauled back to M in M's wagon. On the way back D sells the wood for \$10 and keeps the money.

## DAMAGES

PROFESSOR DECKER

1. What is meant by a remittitur? When is it proper and what criticism has been directed toward the practice? Illustrate.

2. A agreed to sell and B agreed to buy Black-acre for the sum of \$5,000, and as part of the contract stipulated that if either party failed to perform, he should pay to the other the sum of \$500 as liquidated damages. A refused to complete the purchase because his wife did not like the property. B sues and seeks to recover the amount stipulated. Is he entitled to that amount, assuming that experts would testify that the property was worth not less than \$4800? Would the fact that the stipulation is made to work both ways affect the question involved?

3. (a.) P holds D's note for \$1,000, payable in one year from date, "with interest at six per cent." Assuming that all parties reside in Illinois, how much interest can P recover in a suit on the note, if judgment is entered one year after maturity?

(b.) Would your answer be affected if the note contained the following stipulation: "If not paid when due, then this note shall bear 20 per cent interest until paid"?

4. By his father's will, P was left two portraits, one of his father and the other of his mother, which he very highly prized, but which would neither have had a salable value of more than \$5. One of these pictures was destroyed by the negligence of the servants of the X railroad, which had received them for shipment as "pictures," without asking their value. The other was stolen during transit. P offered a reward for the return of the stolen picture of \$50, which he subsequently paid to a pawn-broker, who had obtained the picture from the thief and restored it to P. In an action on the case against the X railroad, what elements of damage may P recover, and how should they be measured? Would a verdict for \$500 be excessive?

5. Smith owned a house and lot which he occupied as a residence on the east side of Urbana. Brown owned a low lot adjoining on which he maintained a pigpen in a filthy condition, so that the stench was very

offensive to Smith and his family. On the other side of Smith's lot the Urbana Electric Co. erected a large powerhouse, the machinery in which caused a very noticeable vibration of the ground for some distance around it. Smith brings separate suits against Brown and the Electric Co. and in each case seeks to introduce evidence of the decrease in the value of his land because of the acts of the defendant. Is such evidence admissible in either or both cases?

6. P owned a coal mine near Danville, Ill. In May, 1914, he contracted with the Board of Education of Chicago to supply it with coal for all of its school buildings for a year, at \$2.60 per ton, F. O. B. Chicago, deliveries to be made in specified quantities, commencing with 1,000 tons in September, and continuing through the winter. In June, 1914, P made a contract with the Chicago & Eastern R. R. Co., which operated a line from Danville to Chicago, by which that company agreed to furnish P with not less than 50 cars per month at the pit mouth to be loaded with coal for Chicago, commencing in September and continuing till March following. The railroad supplied only 20 cars in September and as a result P could not meet the re-

quirements of his contract with the Board of Education, which rescinded it. The existence of this contract was known to the railroad on September 1st, but not before. The railroad furnished 80 cars in October and afterwards conformed to its contract. The wholesale price of coal in Chicago during September was \$2.50 per ton. In October it was \$2.40 per ton, and so continued for the balance of the winter. What damages is P entitled to recover from the railroad?

7. On April 1, 1915, Jones hired out in New York to Smith, master of a merchant steamer, to sail as first mate for six months between the port of New York and neutral Atlantic ports, with a salary of \$150 per month. On the first voyage, the ship put in at Liverpool and was there chartered by the English government to serve as a supply ship between London and the Dardennelles. Jones protested that he would not serve and went ashore to see the American consul. He was arrested by British officers as a deserter, confined for two days and then discharged. In the meantime the ship had sailed, carrying off part of his clothes. He remained in England for a month to see the sights and then took passage to New



York as a common seaman, though he could have obtained a job as an officer on an English ship at \$200.00 per month. In New York he was idle for two months, though he searched diligently for a job as first mate of an American or other neutral ship. He then took a job as second mate of a vessel in the American traffic with a salary of \$100 per month. To what elements of damages is he entitled from Smith, and how should they be estimated?

8. X sold and conveyed Blackacre to Y by full warranty deed, for the sum of \$5,000. Y was evicted by S, whose title was prior to and superior to X's. The property was worth \$5,500. How much could Y recover from X in an action for breach of the covenant of warranty?

9. D agreed to let to P 20 cows and 20 sows for a term of three years. P agreed to conduct a dairy business and feed the skim milk to the sows and their offspring. P was to have the cream and P and D were to share equally the increase of the hogs. If D breaks this agreement, what will be the extent of his liability to P?

## EXAMINATION IN EQUITY

PROFESSOR POMEROY

I. 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.

II. State the rule of *Mayor vs. Emmons*, i. e., the exceptional case where specific performance of a building contract is decreed. Show how a similar rule applies to the case where a railroad company buys a right of way from A and agrees to maintain a "first class station" for A's use.

III. The Wabash Railroad, in extending its line from Champaign to Gibson City, has received a permit from the city of Champaign to lay its tracks in North State street. A, owning a house and lot fronting on North State street, also owns the fee of the adjacent

part of the street to its middle line. The W. R. R. Co. is laying its track in the middle of North State street, in front of A's premises, without A's permission, and without bringing a condemnation suit against A. A now sues the W. R. R. Co. to enjoin the laying of the track. Should A succeed? On what grounds? Show whether or not A's legal remedies are adequate.

IV. Clark, a physician in Chicago, sold his practice to Brown, and agreed not to engage in the practice of his profession in Cook county. Clark, in connection with this contract, executed a bond for its performance, with a stipulation for \$50 as "liquidated damages" for each and every breach. Clark having committed several breaches of the contract, Brown sues to enjoin him from further breaches. Clark asserts that Brown's remedy at law is adequate. Discuss.

V. In 1895 the city council of Douglas granted the Arizona telephone company a franchise to operate telephones in that city for thirty years, the company agreeing that \$3 per month should be the maximum rate for business telephones during the continuance of the franchise. The city at the same time by a separate

contract rented to the company for fifteen years a building for its central station at \$100 per month, with an option to renew the lease on the same terms. In 1910 the company raised its rates for business telephones to \$5 per month; and the city refused to renew the lease for less than \$200 per month. The company sues the city for specific performance and the city sues the company to enjoin it from raising its rates. The city defends on the ground that by the growth of the city the rental value of the building has more than doubled. The company defends on the ground that its subscribers have increased four fold, and proves that its operating expenses have much more than quadrupled; it being a peculiarity of the telephone business than an increase in business involves more than a proportional increase in operating expenses. What results? Discuss.

VI. (a.) Is specific performance usually granted of a contract for the sale of a patent? Why?

(b.) Why does a court of equity take jurisdiction of a vendor's suit for specific performance?

VII. A contracts to sell a tract of land to B. A's title to a portion of the land is defective. (a.) When

may A force B to take the land with a deduction from the purchase price? (b.) When may B compel A to convey, B paying the full purchase price? (c.) When may B compel A to convey for less than the purchase price? (d.) In the last two cases, suppose the defect in the title consists of the possibility that A's wife may survive A and claim dower in the land?

VIII. Explain fully, with an illustration, what is meant by "equitable waste."

IX. A is mortgagor, B, mortgagee, C, A's grantee of the mortgaged premises, who has assumed payment of the mortgage debt. Explain the relationship of these three parties, showing: (a) what remedies B has for the collection of the debt, and why; (b) the effect of an extension of the time for payment given by B to C; (c) the effect of payment of the debt by A.

X. Show whether each of the six elements requisite to constitute an estoppel is contained in the following case:

Brown sold and conveyed a house and lot to his daughter Jane for her residence, the purchase price be-

ing stated by the deed to be unpaid. The deed was recorded. Brown stated to Gray, a grocer, "I have given the house to Jane so that she can have all the credit she needs for household supplies." Gray, relying on this statement as to Jane's ownership, sold her a large bill of goods on credit; got judgment against her, and levied execution on the land. Brown asserts that his grantor's lien is superior to the judgment lien. Gray replies that as against him Brown is estopped to set up a grantor's lien.

## EXAMINATION IN INSURANCE

PROFESSOR GREEN

1. In *Taylor v. Dunbar* meat insured against sea peril was damaged by delay on the voyage caused by a storm of unusual violence. In *Montoya v. London Assurance Co.* the flavor of tobacco insured against sea peril was spoilt by rotten hides stowed near it. The hides rotted because wet by sea water shipped on the voyage in a storm. In each case the court talked about the proximate cause of the loss. What was decided as to the underwriters' liability? Comment upon or explain the application of the doctrine of proximate cause.

2. A insured against damage by fire the furniture contained in his dwelling house. A fire broke out next door and A, fearing it would spread to his house and damage the furniture, reasonably hired a boy for \$2 to help him carry it to a place of safety. It was raining at the time. The fire was easily put out, and the furniture if left alone would not have been harmed. A tried to recover from his insurer the \$2 paid to the boy, the damage to the furniture by rain, and the value of some of the furniture which the boy stole. What, if any-

thing, may he recover for?

3. A policy against death by accident provides that it shall not cover death resulting from gas. Will the company be liable in case of death from the concussion of an accidental explosion of gas? In case of death from gas intentionally inhaled at a dentist's? In case of death from inhaling while asleep illuminating gas accidentally turned on?

4. A owned land worth \$1000 and a house on it worth \$5000. He insured the house against fire for \$4000. Then he mortgaged house and land to B to secure a debt of \$4000 which he owed to B. B insured the house for \$5000 in a different company. C intentionally set fire to the house and it was totally destroyed. Neither policy said anything about the interest of the insured. For how much is each company liable? To what extent, if any, is each entitled to subrogation?

5. A insured his house in Urbana with the X fire insurance company. The Y company thereafter agreed with the X company to reinsure all its risks in Urbana. A's house burned. The X company is insolvent and



can pay only a small percentage of the claims against it. What is the X company's liability to A? What is the Y company's liability to A? What is the Y company's liability to the X company?

6. A owed \$1000 to B who was incurably ill. C, B's son and only next of kin, with A's consent insured A's life for \$1200 for the purpose of protecting himself against loss of the debt. B died. A paid the debt to B's administrator, D. C thereafter assigned the policy for value to E. A died. Is the insurance company liable; for how much; and to whom?

7. A, absent from home, received an anonymous letter threatening to burn down his house. In alarm he telegraphed to his brother to procure insurance at once. The brother procured insurance as agent of A. He mistakenly told the company, in answer to their question that the house was heated by stoves only and not by furnace. In fact it was heated by furnace only, a safer method. The house burned by a fire which caught from the furnace. Is the company liable?

8. A took out a policy of life insurance with the

X company, in which it was stated that the application was a part of the policy. In the application A stated over his signature by filling blanks in a printed form that he had not applied to any other company for insurance, and that he had never had tuberculosis. In fact he had applied to another company and had been examined and accepted by it, but had decided to insure with the X company instead. He had for several years had tuberculosis of the lungs, but had been told by his doctor and believed that it was only chronic bronchitis. He died of tuberculosis. Is the policy enforceable and why?

9. A policy provided that it should be void if there were prior insurance. There was prior insurance. In an action on the policy, the insured offered to show that he informed the company of the prior insurance just before making the contract and that he did not know the policy contained a clause against it until after the loss. Is the evidence relevant?

10. The owner of goods insured against fire sold a half interest in them to A and at the same time indorsed on the policy, "Pay one half the loss to A," sign-

ed it and delivered the policy to A, who presented it to the insurance company and asked them to assent. The company wrote underneath the indorsement "Assented to by the company." The goods were burned. For what, if any part of the loss is the company liable and to whom?

## EXAMINATION IN MORTGAGES

PROFESSOR POMEROY

I. A son entered into an agreement in writing with his father, whereby the son agreed to spend \$500 in building a house on the father's farm, and the father agreed that if he should sell the farm, out of the money arising from the sale \$500 should be payable to the son, with interest from the time the house was completed; or in case the father should die without devising the farm to the son, that \$500 should be paid the son out of the estate. The son complied with his part of the contract, and five years later, no interest having been paid, and the farm not having been sold, he sues his father to foreclose the equitable lien which, he maintains, arose from the contract. Should he succeed? Discuss.

II. A mortgaged a house to B on January 2nd, 1915, to secure a note falling due January 2nd, 1916, for \$3000, the fair value of the house being \$5000. The mortgage contained a clause giving B an option to purchase the equity of redemption on or before Jan. 2nd, 1916 for \$2000. On December 15, 1915, B gave

notice of his intent to exercise this option. On January 2nd, 1916, A tendered B the principal and interest due on the note, and B tendered to A \$2000; each tender was refused. A now sues to redeem from the mortgage and B brings a cross bill for specific performance. What result? Reasons.

III. A mortgaged a tract of land to B for \$1200. Subsequently A divided the tract into four lots and sold them, by warranty deed, in the order 1, 2, 3, 4, to P. Q. R. and S respectively. Each of the purchasers, Q. R. and S. had notice, at the time of his purchase, of the sale of the lots previously sold. P and S. each recorded his deed immediately, but B never had actual notice of the sales to them. Q and R each failed to record his deed, but B had actual notice of the sales to Q. and R. Later, B released R's lot (No. 3) from the mortgage. B now forecloses. Lot No. 1 will sell at foreclosure sale for \$700, each of the others for \$500. In what order should they be sold? State reasons fully.

IV. A mortgaged lots 1 and 2 to B in one instrument; this mortgage was recorded. A afterwards mortgaged lot 1 to C; this mortgage was also recorded.

Later A mortgaged lot 2 to D. Lot 1 is insufficient to pay both B's and C's mortgages; lots 1 and 2 together are insufficient to pay all three mortgages. What are the rights of C and D? Discuss fully.

V. A on April 2nd 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, October 1, etc. On September 2 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 1 A had served a similar notice on C. Ten days later C paid the April and July rents to A, 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? Explain fully.

VI. A sold certain machinery to B for use in B's mill, A retaining title to the machinery until paid for. On February 1st B mortgaged the mill with all its machinery and fixtures to C, to secure a note for \$10,000, which was more than the mill without the machinery was worth. On that date a part of the machinery

had been put in place and a part was stored in a shed on the premises; the latter part, however, was put in place within a month. By the law of the jurisdiction, the title of a conditional vendor of chattels is good even against a bone fide purchaser of the chattel. Can C, who was ignorant of A's title to the machinery, include it in his foreclosure sale? Reasons.

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 assuming 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. On January 3rd, 1916, Smith, having an oral contract to purchase Blackacre from Jones, who held the recorded fee-simple title, executed a mortgage of Blackacre, with full warranties, to Brown, which was recorded on the same day. On January 4th, Smith received from Jones his conveyance in fee simple of Blackacre, which was recorded on the same day. On

January 5th Smith mortgaged Blackacre to Gray, who had no notice of Brown's mortgage, unless the record thereof was constructive notice. Does Gray, who recorded his mortgage immediately take in subordination to Brown's mortgage? Discuss.

IX. On Jan. 2, 1915, Smith purchased Blackacre the money being furnished by Jones, and received title. On January 3rd Smith mortgaged to Brown, who took his mortgage in good faith without knowledge of Jones's equity. In April Jones began suit to have a resulting trust declared in the land, making Smith and Brown parties. On July 2nd, Brown's mortgage being due, Gray advanced to Smith the money to pay it off, and, that being done, received from Smith a mortgage to secure the amount so advanced. In September a decree in Jones' suit was rendered in his favor. On Oct. 2nd, White, with knowledge that Gray's mortgage had been given in substitution for the previous mortgage to Brown, advanced to Smith the money to pay off the Gray mortgage, which was done. Has White any right as against Jones? Discuss.

X. T mortgaged Blackacre to A on January



2nd to secure \$1000 then loaned, and such loans, not exceeding \$1000, as A might thereafter make to T. This mortgage was recorded. On Jan. 10th T mortgaged Blackacre to B to secure \$900 then loaned. On January 20th A advanced \$800 to T under the first mortgage.

Blackacre yielded \$2200 on foreclosure. How should this fund be distributed on the suppositions: (1) that A had actual notice of B's mortgage before Jan. 20; (2) that A had no actual notice of B's mortgage but the latter was recorded before Jan. 20? Reasons.

## EXAMINATION IN PARTNERSHIP

PROFESSOR HALE

1. A and B agreed that A should buy a farm with his own money, take title in his own name and own the farm; that B should buy the necessary stock and implements for farming, should own the same, and should furnish all the labor and carry on the farm, and that the crops should be equally divided.

A and B also made another agreement as to another farm in all respects the same, except that the crops should be sold and the net proceeds divided after paying to A a certain stipulated rent for the farm, and to B a certain sum for the use of his farm implements.

In the first agreement A and B described themselves as partners, but in the second agreement nothing was said on the subject. Was there a partnership in either or both cases?

2. X, a member of the firm of X, Y, and Z, without the knowledge or consent of his co-partners, but acting on behalf of the firm, obtained goods from the plaintiff by fraudulent misrepresentations, sold them, pocketed the proceeds, and absconded. Plaintiff sued

only Y, who pleaded the nonjoinder of X and Z. Was the plea good?

3. A, B, C, D, E, and F, each owned 2 acres of land and had laid out his tract into city lots. They incorporated for the purpose of grading and paving the streets. A, B and C were elected directors of the company, which was called the Parkland Improvement company. One thousand dollars worth of paving material was purchased of X, who dealt with the company on the assumption that it was a corporation. The law under which the incorporation was attempted has been declared unconstitutional and the debt to X remains unpaid. How may X proceed to realize upon his claim?

4. A and B were in partnership. The firm is bankrupt and A and B are bankrupt. How shall the separate property be distributed provided:

(a.) The firm assets are sufficient to pay firm creditors 10 cents on the dollar and the individual assets are sufficient to pay individual creditors 80 cents on the dollar.

(b.) The firm property will be exhausted in paying the costs of the bankruptcy proceedings.

5. A and B were in partnership in a mercantile business in the town of X under the name of the A Co. A sold all his interest in the partnership to B. What privileges does this transfer give to B in the future conduct of the business and what restrictions are imposed upon A? Give reasons for rules laid down.

6. A and B formed a partnership for the practice of law. A without B's knowledge or consent ordered of the X book company in the firm name the following books:

Shearman & Redfield on Negligence \$10.00, Wigmore on Evidence \$32.00 and the Lives of the Lord Chancellors of England, \$25.00.

B denied all liability on this order.

(a.) In an action by the X Book company against A and B as partners, what judgment?

(b.) Suppose A had borrowed \$60 from the Y Bank to pay for the books and executed in the name of the firm a note in favor of the bank for that amount, what rights would the bank have on this note?

7. A, B and C were in partnership engaged in the business of raising cattle for the market. They owned as partners one thousand acres of land and one thousand

head of cattle. X, Y and Z, individual creditors of A, B and C, respectively, each in turn had the interest of his debtor in the partnership seized under execution and sold. X, Y and Z also each bought in the interest he had seized. Thereafter K, a creditor of the partnership levied upon and bought in the entire holdings of the partnership. What are the rights of X, Y, Z and K to the property?

8. A and B were in partnership. In the conduct of the business debts to the amount of \$2000 were incurred. The partnership assets amounted to \$500. Also at this time A owed personal creditors \$1000 and had individual assets of the value of \$800; and B owed personal debts to the amount of \$500 and had individual assets of the value of \$100. A thereupon conveyed all his interest in the partnership business to B and B agreed to assume and pay the firm debts.

Assuming that the Court of Bankruptcy takes charge of the affairs of the firm and individuals while in this condition and that the rights of the various claimants are properly presented what disposition shall be made of the assets among firm and individual creditors?

## EXAMINATION IN ILL. PROCEDURE

DEAN HARKER

1. State the difference between personal service in a suit at law and service by publication; how long service of summons must be had before the term of court to which it is made returnable; how long before service by publication must be had; the difference between the judgments that may be rendered on default in case of personal service and in case of service by publication.

2. A brought suit against B for the September term, 1903, of the Peoria County Circuit Court. Service was not obtained for that term and an alias summons issued on the 10th of October, 1903. It was returned by the sheriff as follows, "Served this writ on the within named defendant by reading the same to him this 20th day of October, 1903." At the November term, 1903, a default was entered against the defendant and a judgment rendered against the plaintiff for \$4000. The summons commanded the sheriff to summon the defendant to appear "before the Circuit Court of Peoria County on the first day of the term thereof, to be holden at the court house in the city of

Peoria, on the second Monday of September next," etc. In January, 1904, an execution issued from the judgment and on it a city block belonging to B was sold to A for the amount of the judgment and costs. There being no redemption, a deed was issued to A in June, 1905.

The judgment record recites that B was personally served with summons, but there is no summons among the papers, excepting the summons to the September term, 1903, which was returned not served.

State the proceedings necessary for B to have the judgment vacated and the sheriff's deed to A set aside.

3. A, a resident of Champaign Co., Ill., died intestate without issue. She left surviving no children, but she left living a husband B, who, for the last twelve years has lived at the soldiers' home in Washington, D. C. The only other relatives left surviving are C, a brother residing at Cairo, Ill., and a sister residing at Peoria, Ill.

State who has the first right to administer, and give in detail all of the steps necessary to a complete administration of A's estate. She died seized of lots 4 and 5, in block 6, of Scott's Addition to Champaign,

and owning \$1200 worth of personal property. She left debts amounting to \$1800.

4. A railroad company constructed a dam which caused the water in a stream to back up a distance of one mile and cover 40 acres of B's land. The water is used exclusively by the railroad company. The dam structure is permanent and B is thereby deprived of the use of his land. He sues the railroad company in ejectment. How should the company plead? What should be the finding and judgment?

5. A leased a business house to B for a period of two years. The lease contained certain conditions with reference to keeping a steam heating plant in the building and plumbing in repair. The lease provided that a failure to perform condition would void the lease. B, after he had occupied the premises a year refused to have repaired a certain damage that had been done by the freezing of a water pipe. The effect of the defective water pipe was to flood and injure an adjacent building belonging to A. State what remedies are open to A and what course of proceedings you, as the attorney of A, would adopt.



6. Asa Watts recovered a judgment against John Brown in ejectment for the s $\frac{1}{2}$  of the se $\frac{1}{4}$  of sec. 21, tp. 19, R. 8 E., in Champaign county, Ill. Brown had been in possession of the premises adversely for a period of two years under a tax title that was held by the court to be worthless. Prepare a declaration in ejectment as of the September term, 1915, of the Champaign County Circuit Court. Judgment in ejectment being rendered on the 20th day of January, 1916, prepare proper suggestions for rents and profits.

7. James Smith rented of the Urbana Motor Co., a corporation conducting an automobile livery, an automobile for the purpose of making a trip to Bloomington. He promised to return the automobile in two days. He did not return to Urbana, but sold the automobile to William Carr, a resident of Monticello, and then absconded. The agent of the motor company, six days after the machine was rented, learned that it was in the possession of Carr. Carr retains it and claims he is an innocent purchaser of the machine, and refused to part with it. Prepare all necessary papers in an action of replevin.

8. Charles Brown took up his residence in the

state of Colorado in 1903, leaving his wife and a small infant son one year of age, with the intention of subsequently moving his wife and child to Colorado. In 1904, he wrote to his wife to join him in Colorado. She did so, but found that he had no home, no occupation, and no means of support. She returned to her home in Decatur, Illinois, and two years later filed a bill for divorce upon the ground of desertion. A few weeks afterwards she died, before obtaining a decree. The child was adopted by William Brown, the wife's father, at Decatur, Illinois. The proceedings for adoption were begun in the County Court of Macon county. No personal service was had upon the father of the child, but there was service by publication. The affidavit upon which notice was given was fatally defective. Brown now returns to Illinois and desires the custody of the child. The order of adoption shows that the defendant was properly served by publication but the defective affidavit is on file. Employed by Brown, state the proceedings you would adopt.

9. What are the functions of the following named writs?

Certiorari,

Habeas Corpus,

Injunction,

Mandamus,

Quo Warranto,

State a concrete case under each.

10. A, owning 160 acres of land in Champaign County, in 1880 set off one acre in the southwest corner for a grave yard, and within three years from that date buried a wife and child there. He allowed neighbors to use the ground for that purpose to the end that some 15 or 20 bodies were buried in it before 1890, when he conveyed the entire tract to B, who ten years later conveyed to C. In 1915 C conveyed to D. During the time it was owned by B and C the one acre was used as a public burial place by the neighborhood, although there was no reservation in any of the deeds. Both B and C joined with the neighbors in planting shrubbery and in otherwise ornamenting the yard.

After D acquired it he forbid any further use of the yard by the public, nailed up the gate leading from it to the highway, and began cultivating the ground. X and Y, residents of the neighborhood, having the re-

mains of friends buried in the grave yard, seek to enjoin D.

State the averments that should appear in the bill and the reasons for sustaining it on demurrer.

EXAMINATION IN PERSONAL PROPERTY  
PROFESSOR GREEN

1. A lent his bicycle to B for a week. When the week was up, A demanded the bicycle and B refused to let him have it, claiming it as his own. A has heard of trespass, trover, detinue, replevin and bills in equity, and asks you to tell him which of these remedies he may use, and what relief, if any, each will give him. What shall you say?

2. A steamship was sunk in a storm on Lake Michigan, and all on board perished. Her cargo of general merchandise was washed ashore on land belonging to the city of Chicago. On the same day an aeroplane fell to earth at the same place and its pilot was killed. The city kept the cargo and the aeroplane for two years, the owners being unknown. Then X claimed each, and proved he was owner at the time of loss. The state also claimed. What disposition should be made of the cargo? Of the aeroplane?

3. A had grain in his barn. B stole it and made alcohol of it. An act of Congress taxes making alcohol,

and provides that the United States government may confiscate and sell alcohol made without paying the tax. B sold and delivered half the alcohol to C. Then the United States government confiscated the rest because no tax was paid, and sold it also to C. D obtained judgment against C on a debt and the sheriff levied on all the alcohol and sold it to satisfy the judgment. A claims the alcohol from the purchaser from the sheriff. To whom does it belong?

4. A shoe manufacturer recently bought a quantity of leather and made it into shoes. It now turns out that the leather was stolen. Whose are the shoes?

5. A by mistake cut trees on B's land, and sold and delivered the logs to C, who made them into lumber worth twice the logs. B got judgment against A in an action for trespass to land in which the damages included the value of the severed trees. Then finding the lumber, B took it from C. Then A paid to B the amount of the judgment. Thereupon C sued B for trespass in taking the lumber. What judgment?

6. S had a ring which he kept in a safe. On his death bed, intending to give the ring to his friend T, he handed T a key, saying, "This is the key to my safe where you will find my ring, which ring I hereby give you; go and take it." S then became unconscious. T went at once to the safe, but S had given him a wrong key by mistake, and he could not get the ring. S died without regaining consciousness. Whose is the ring?

7. What is a lien? How does a general lien differ from a special lien?

8. A borrowed a dress suit of B to take to a distant city and wear to a dance. After the dance he took it with him to a public inn where he lodged for the night. Next morning, as he had spilt ice cream on it at the dance, he handed it to the innkeeper to be cleaned. The innkeeper cleaned it thinking it belonged to A. A left without paying. B demanded his dress suit of the innkeeper who refused to let him have it unless B paid both for the cleaning and for A's lodging. What, if anything, must B pay to get the suit?

9. X borrowed of Y \$1000 for three months,

pledging his automobile as security. Y, a month later, borrowed \$1000 of Z and delivered the automobile to Z as security. X, without tendering the \$1000, immediately demanded the automobile from Z and on Z's refusal to give it up brought trover. What judgment?

10. C kept tame pigeons in a pigeon house. They often flew to the land of D, his neighbor, to feed. D set a trap there and caught them. Blackbirds nested on D's land and molested C's crops. C shot them on his own land. C demands the pigeons from D. D demands the dead blackbirds from C. What are their rights?



## EXAMINATIONS IN REAL PROPERTY

CHAS. E. CARPENTER

I. The plaintiff was a riparian owner of land. The defendant owned non-riparian land further up stream and lying back of riparian land owned by X the plaintiff's neighbor. The defendant with the permission of X had constructed a conduit to take water from the stream for irrigating his land. The defendant also sunk wells from which he pumped great quantities of water which normally would have percolated under the land of X and the plaintiff to the stream. The defendant was making a wasteful use of both the water taken from the stream and the percolating water and it deprived the plaintiff of sufficient water supply in the stream to run his mill continuously and it also lowered the underground water table on the plaintiff's land so as to render it unfit for the growing of celery and water cress, the principal use made of the plaintiff's land. What relief is the plaintiff entitled to against the defendant?

II. A, who has recently purchased a new automobile, has space on the rear of his lot for a garage but there is

no way of access to the rear of his lot over his own land. A asks B if he may build an ornamental cement way to and from his proposed garage over the rear of B's lot. B tells A that he may. A builds an expensive garage and a beautiful passageway out over B's lot. After A uses the way for one year B refuses to let A continue using the way and builds over the end of the way next to A's lot a garage on his own lot and makes use of the old way for his own garage. Has A any remedy against B either in law or equity? Discuss fully?

III. (a.) A is tenant for life of Blackacre and C has the reversion in fee. A makes a lease of Blackacre for 10 years to B reserving an annual rent of \$1,000, payable monthly in advance. Two years and five and one-half months after the beginning of B's term, A dies. B's rent being 6 months in arrears. Who is entitled to the unpaid rent?

(b.) Suppose instead of A's dying he surrendered his term to C, the reversioner. What rent could C collect from B?

IV. A made a lease in writing and under seal to B of certain premises for 10 years at a rent of \$1000

per annum. Two years later A orally agreed to reduce the rent to \$850 per year and B occupied and paid rent at the rate of \$850 a year for two years. B then abandoned the premises and A secured a new tenant at the rate of \$750 per year for 12 years. At the date for the termination of the original lease for 10 years, A sues B. What should be the form of action and to what relief is A entitled?

V. The plaintiff is a babe three months old dutifully living with his parents on a farm adjoining the defendant's premises. The defendants maintain a soap factory on their premises and the noxious fumes from it seriously injure the plaintiff's health. What remedy has the plaintiff? Discuss fully.

VI. A owns tracts of land X and Y. To supply water to tract X he has used for many years a pipe lying deeply under the surface of Y. A conveys Y to B not mentioning the pipe under Y and describing the western boundary of Y as "a line 40 rods from and parallel to the center of Newton road." A and B then erect a fence as the dividing line between X and Y, 35 rods from the center of Newton Road. A occupied tract X

and up to the fence for 10 years and then conveyed X to C describing the eastern boundary of X as "a line paralld to and 40 rods west of the center line of Newton road." C occupied X and to the fence for 10 years. D who has recently taken a conveyance of Y discovers the existence of the pipe line and the mistake in the location of the division fence. What are the rights of the respective parties?

VII. A signed, sealed, acknowledged and recorded a deed of his farm to B and gave the deed to S, his (A's) attorney, instructing S not to deliver the deed to B until B paid S the full purchase price. C on the strength of the recorded title took a deed of the land from B paying him cash. A being unable to satisfy a judgment for the purchase price obtained against B brings an ejection against C. What result?

VIII. (a.) In 1880 X conveyed land to A by a deed containing the usual covenants. X had previously given a mortgage of the land to Y who brought foreclosure proceedings against the land in 1885. While this suit was pending A by quit claim deed conveyed to B. In 1900 B is evicted by the rightful owner of the premises. Upon what covenants may B recover against

X? Against A? Has A any remedy against X?

(b). Suppose instead of B being evicted X in 1900 acquires title to the land and then B bring an action on the covenants against X. What result?

EXAMINATION IN SALES  
PROFESSOR HALE

1. A owned an apple orchard. In January B advanced to A \$500 under an agreement that the apples raised that year on the north half of the orchard should belong to B. A also had facilities for making cider. In order to secure a loan of \$200 from C he executed a mortgage on all the cider to be made from the apples grown on the south half of the orchard. In October of that year after the apples had been harvested and the cider made, but before either B or C had taken possession of the apples or cider, A became bankrupt and X, A's assignee in bankruptcy took possession of all the apples and all the cider.

(a) B brings an action of replevin for the apples.

(b) C, (the mortgage debt being due) brings an action of replevin for the cider.

2. A went to B's store and ordered a dollar's worth of sugar. B showed A several barrels containing sugar of different kinds and grades and A decided upon the sugar in barrel number one. A requested that B deliver the sugar the next morning which would be

Sunday. After A left the store, B weighed and wrapped the sugar and wrote A's name on the package. The sugar was delivered the next morning, (i. e. on Sunday) in accordance with A's request.

B has been indicted for the violation of a statute prohibiting the sale of goods on Sunday. Has B violated this statute?

3. B purchased from A an automobile, paying \$500 down and agreeing to pay the balance of \$1500 in monthly installments of \$100 each. It was also agreed that B was to have immediate possession of the car but that in case of default all payments previously made should be forfeited and the car should be immediately surrendered up to A. At the end of 10 months, during which B had kept up his payments with regularity, the car was destroyed without any fault on B's part. Five months later A sued B for \$500 the balance due on the contract. What judgment?

4. B in Champaign, ordered from A, a wholesaler, in Chicago, a car load of pianos to be paid for against a bill of lading. A shipped the pianos and took a bill of lading to himself or order. He thereupon drew a bill of exchange on B and indorsing the bill of ex-

change and bill of lading in blank took them to the X bank to secure a loan. The loan was refused. On his way back to his office, the documents were lost. C found them and took them to the Y bank and secured a loan of \$2000. Upon B's refusal to pay the bill of exchange, Y secured possession of the pianos from the railroad company when they reached Champaign. A now brings an action of replevin against Y for the pianos. What judgment?

5. A in response to an order from B shipped a carload of potatoes. It was agreed that they were to be at the risk of B while in transit and that B was to accept a bill of exchange against a bill of lading. A took a bill of lading to his own order. A few days later A called up his bank over the telephone and asked for a loan, saying that he would transfer the bill of lading covering a car load of potatoes as security, and requested that the sum be placed to his credit, to which the bank agreed. A then requested the bank to send a messenger for the papers. One X overheard this conversation and went immediately to A's office and falsely represented that he was from the bank. A thereupon indorsed the documents in blank and handed them to X. Upon



the arrival of the goods at their destination, X secured possession of them and stored them at the K warehouse taking a warehouse receipt to himself or order. This warehouse receipt he indorsed and sold to C, a bona fide purchaser.

Who is entitled the potatoes, A. B. or C?

6. A shipped goods to B, at B's expense and risk, under a straight bill of lading to B, it being agreed that B was to pay for the goods within sixty days from the date of shipment. Ten days after the shipment and while the goods were still enroute B became bankrupt. The carrier at A's request redelivered the goods to A. A immediately resold them for \$700. The contract price was \$500.

Has B's assignee in bankruptcy any remedy against A?

7. B in Boston negotiated with A in New York for the purchase of a quantity of hides. When the deal was closed B paid A the purchase price. Thereafter A went to X and by fraudulent representations induced X to turn over to him two certain lots of hides. Lot number one he assumed to be purchasing for himself and

lot number two for one C. Neither lot was paid for. A immediately shipped lot number one to B taking a bill of lading to the order of B and mailing it to B.

A also shipped lot number two to Boston taking a bill of lading to his own order. This bill he indorsed and sold to D for cash.

(a) As between B and X which is entitled to lot number one?

(b) As between D and X which is entitled to lot number two?

8. By written contract A agreed to sell, and B to buy a certain lot of potatoes, being all the potatoes stored in a certain warehouse. At the time the bargain was made a sample of the potatoes was shown to B. Unknown to the parties the potatoes at the time of the bargain, though they appeared in good condition, had started "second growth" to such an extent as to be unfit for human food, although they could be used for the manufacture of starch. The bulk and the sample were alike in this respect. What are the rights of the parties?

## EXAMINATION IN TORTS

PROFESSOR HALE

1. A and B were standing near X, conversing, A with his back toward X and B facing X. X with the intention of frightening A, for whom he had great dislike, aimed and fired his revolver at a tree a few feet away from A. A was startled by the sudden report but did not discover until later why the revolver had been discharged. B, who observed X aim and fire the revolver, and who knew that X had at one time threatened to shoot A, thought that X was attempting to kill A. B was thereby so alarmed that she fainted and was ill for several weeks thereafter. X realized that B would be alarmed but did not care.

(1) A sues X for assault. What judgment? Why?

(2) Has B any cause of action against X? Why?

2. A saw a person standing on the street corner whom he thought to be his old friend X. A and X had been in the habit of playing practical jokes on each other. A decided in a spirit of fun to reach through a nearby open window with his cane and knock X's hat

awry. Just after he loosened the hat a sudden gust of wind carried it away and against the eye of M who happened to be passing, causing considerable injury to M's eye. It turned out that the wearer of the hat was not A's old friend X, but a total stranger, B. What are B's rights against A? What are M's rights against A?

3. A threw a stone and struck B's horse which was standing on B's land. B consults you as to his rights against A. How would you advise him?

4. A requested B to pick up a piece of iron and hand it to him. A knew that the iron was hot enough to burn B badly. B did not know that the iron was hot. B took hold of the iron and was seriously burned. What are B's rights against A?

5. A stole a horse, Blackie by name, from X and left it at B's stable. Later A sold the horse to C and promised that he would have it delivered to C at C's home which was in a neighboring town. A few days later A learned that D wished to hire an extra horse to haul a heavy load to the town where C lived. A let

him use Blackie for a charge of \$5 and instructed D to leave Blackie with C. C in turn pledged Blackie to E. Discuss in turn X's rights against B, C, D and E, assuming that none of them knew of the theft by A.

6. (a) A met B on the street and said to him: "You are the most despised man in this city, by your vicious oppression of your employees you are causing more suffering than any other person in this country. My friend X, in whom I have the greatest confidence, says he is well acquainted with you, and he has informed me to this effect."

(b) A week later A wrote this same statement on a postal card and mailed it to B.

Give your opinion as to B's rights against A under each set of circumstances.

7. (a) A was a witness testifying in court. J, the judge, said to him, "Young man, you are committing perjury."

(b) Shortly thereafter A applied to X for a position in X's bank. X went to see J, told J that A had applied for a position in the bank and asked J if A would be a desirable employee. J replied, "He is very dishon-

est; he committed perjury in my court." Whereupon X refused to employ him.

Assuming J's statements to be false is he liable to A in an action of slander in either (a) or (b)?

8. X's house had been robbed. Y learned some facts which led him to believe that A had committed the robbery. Y being an intimate friend of X, wrote X that A was the robber. X immediately swore out a warrant for A's arrest on the charge of robbery. A was later tried and acquitted. It appears that X before causing A's arrest was overheard to say: "I have been looking for a long time for a chance to get even with A; this is my chance."

(a) A sues Y for slander.

(b) A sues X for malicious prosecution. What judgment in each case? Why?

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# UNIVERSITY OF ILLINOIS BULLETIN

ISSUED WEEKLY

VOL. XIII

JULY 17, 1916

No. 46

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[Entered as second-class matter December 11, 1912, at the postoffice at Urbana, Illinois, under the Act of August 24, 1912]

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## LAW EXAMINATIONS

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PAPERS USED AT THE

SECOND SEMESTER EXAMINATIONS

1915-1916

SEP 1 9 1916

IN THE

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### DEGREES

The course of study extends through three years; it covers a wide range of subjects, in part elective and in part required, including all subjects required by the rules of the Supreme Court of the State of Illinois for admission to the bar, and upon the successful completion of the course the degree of Bachelor of Law (LL. B.) or the degree of Doctor of Law (J. D.) (depending upon the preliminary education and the grade of work done in the law courses) is conferred.

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### INFORMATION

For the printed announcement of the courses, entrance, requirements, dates of examinations, requirements for graduation, etc., and for other information, address Secretary of the College of Law, University of Illinois, or C. M. McConn, Registrar, Urbana, Illinois.



## EXAMINATION IN AGENCY

CHAS. E. CARPENTER

1. One Iglehart, at a public auction sold the land of one Dodge and the crops growing on it, also certain machinery standing in a machine shed on the premises to one Walters. Iglehart made out a memorandum of the sale and signed his own name to it. Dodge stood by and watched Iglehart make out and sign the memorandum without objecting. Dodge contends he is not bound by the contract and Walters consults you as counsel as to his rights. Could Dodge compel Walters to perform the contract?

2. A, B, C, D, and E, the retail grocers of Champaign, Ill., contract with Adams to deliver their groceries for them. Adams has six men to make the deliveries and each has a distinct district of the city to cover. A driver on each trip, delivers to the customers of all the grocers. Johnson while delivering groceries races on the street with an express wagon and injures a clerk of A who is crossing the street at the time. Who is liable for the injury?

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3. Peters has a beautiful park upon his land to which he admits the public for a small charge. A foot-bridge across a small stream running through the park has iron railings along either side. The railing on one side becomes weak in two places which we designate as X and Y. Peters employs Adams to strengthen the weak places. Adams inadequately strengthens the place X and after inspection fails to discover Y. While a group of picknickers are crossing the bridge the railing gives way at X and Y and Timothy is thrown off at point Y and Mike at point X. Is Adams liable to either or both of them? Is Peters?

4. The defendant purchased the plaintiff's wool. It was agreed that the plaintiff should deliver the wool at the store of one Hoyt, a merchant and that defendant would leave the money with Hoyt to pay for the wool. The defendant left the money at Hoyt's, and plaintiff delivered the wool and accepted in payment cash for a part of the price and a personal check of Hoyt for the balance. The check of Hoyt was dishonored and plaintiff sued the defendant for the balance of the purchase price, and obtained the judgment of the trial court.

Should the defendant appeal from the judgment? Is Hoyt liable to the plaintiff?

5. The plaintiff sold a bill of dry goods of \$500 to H. F. West on three months credit. West was in fact acting as agent of the defendant at the time and bought the goods for the defendant but did not disclose this fact to the plaintiff. West gave a note signed in his own name on receiving delivery of the goods. Later, the plaintiff purchased an automobile of H. T. West for \$1000, paying only \$500. Plaintiff now sues the defendant on the note and also for goods sold and delivered. May he recover? Can the defendant set off the amount of the debt the plaintiff owes West? Could plaintiff recover from West? Could West set off the debt plaintiff owed him? If West sued the plaintiff could the plaintiff set off the debt West owed the plaintiff?

6. James T. Howe was a conductor for the New York Central Railroad Company, charged with the duty of collecting and receiving fare from passengers. He was instructed by the company not to accept or receive in payment of fare any ticket which had indorsed upon it "good for six days only from date" after the time so

limited. He was required to exact payment of fare from any passenger presenting such ticket. A Mr. Hotchkin presented to the plaintiff a ticket of that description more than six days from its date. Mr. Howe refused to accept it and demanded fare and upon the refusal of Hotchkin to pay it, Mr. Howe stopped the train and put him off. Hotchkin later sued Howe and recovered a judgment and Mr. Howe gave his note in satisfaction of the judgment. Mr. Howe now sues the railroad company. Should he recover?

7. Slay owned a tract of land in Alabama valuable for the iron ore it was known to contain. He placed this land in the hands of Chambers for sale. Chambers agreed to undertake the sale of the land and promised to and did transport specimens of ore taken from the land to England for inspection there and he promised to and did advertise in at least one respectable paper in each of the cities of Birmingham and London. By way of compensation Chambers was to receive an undivided  $\frac{1}{4}$  interest in the proceeds of the sale when the land was sold and he was given the exclusive right to sell. When Chambers had about completed a sale to

one Wayne, Slay revoked his authority, but Chambers proceeded and completed the contract with Wayne. A few days later Slay conveyed the land to one Glidden for \$20,000.

Has Wayne any rights against either Slay or Chambers?

Is Chambers entitled to commissions from Slay and if so, how much?

8. Action for the value of services as a dentist rendered by the plaintiff to the defendant's infant daughter at the request of one Mrs. Beecher in whose custody the child had been temporarily placed by the parents. At the beginning of the year 1893 the plaintiff sent a bill to the defendant for these services, and received no answer, either in approval or dissent, and during the ensuing three years, or more, up to the time of the commencement of this action, several communications of his to the defendant, with regard to his claim met with no better response. The court held that a ratification was to be inferred from such silence. Is the holding correct?

## EXAMINATION IN CARRIERS

PROFESSOR GREEN

1. At a grade crossing of a steam railroad and an electric railroad, a train and an interurban car came into collision. A passenger in the interurban car and a traveling inspector employed by the railroad company who was riding on a pass on the train in the course of his employment, were injured. Each brought a suit for his injuries in which the two railroad companies were joined as defendants. Each plaintiff asks for a separate instruction to the jury as to each defendant that it was bound to use the highest degree of practicable care, and that there is a presumption that it did not do so. What rulings?

2. A lighterman, who professed to carry goods in his lighter from the shore to ships loading in the harbor for anyone who would deal with him, accepted goods to be carried to a certain ship so loading. On the way, the lighter was carried by a sudden gust of wind against a bridge. The bridge, because insufficiently built, collapsed, fell on the lighter and sank it with

the goods. Is the lighterman liable in tort? In contract?

3. The owner of a bull, wishing to send him by railroad to a cattle show, led him to the railroad station by a rope fastened to a ring in the bull's nose and delivered him to the railroad company by handing the rope to its employee. The employee put the bull into a box car and fastened him by the rope. The rope was sound but not strong enough to hold the bull. The bull was frightened by the starting of the train, broke the rope, broke through the closed door of the car, fell off and was injured. Discuss the carrier's liability.

4. A delivered to the American Express company a sealed package addressed to his agent at another town in the same state. The express company said at the time of shipment, "Take notice that the company will not be liable for loss by theft whatever the value of the package. Nor will it be liable for more than \$50 whatever the cause of loss unless you inform us that the package is worth more than \$50, and in that case the charge for carriage will be higher." A knew

the value was \$100, but said nothing and paid the rate demanded. Without the company's fault the package was stolen from the safe in its office at the town of destination, in which safe the company had put the package as soon as it arrived. Is the company liable and for how much?

5. In April, 1916, B, at Decatur sold a horse worth \$200 to C in Champaign and shipped it to C by railroad. Knowing that the railroad had a higher rate for horses worth over \$100, B said that the horse was worth only \$75 and that therefore he would agree that it wasn't worth over \$100. Thereupon the railroad gave him a bill of lading in which to B's knowledge was the following clause, "It is agreed that the horse is not worth over \$100," and charged the lower rate, which B paid. By the railroad's negligence, the horse was so injured in transit that it was practically worthless. C, at Champaign, presented the bill of lading indorsed to him, received the horse, and now sues the railroad in tort for negligently injuring his property. What, if any, damages? How would you answer if the shipment had been from St. Louis to Champaign?



6. In an action against a railroad company for breach of contract to carry goods with special dispatch from Chicago to New York in time to connect with a particular steamer for Europe, the breach being that the goods received only ordinary dispatch and arrived too late for the connection, the railroad's plea admitted making the agreement, and admitted the breach, but alleged that the goods were shipped at its regular schedule rate of freight, that the schedule contained no provision for special dispatch, that to have given special dispatch at the regular rate of freight would have been making a discrimination whereby an advantage was given to a particular shipper contrary to the Interstate Commerce act. Demurrer. What judgment?

7. X shipped goods by railroad from Chicago to New York agreeing to pay \$1 freight. He accepted a bill of lading which contained no restrictions on carrier's liability. The goods arrived damaged to the extent of \$5 by an incendiary fire. The carrier had used all possible care. By the rate schedule filed with the Interstate Commerce Commission, of which X had no knowledge, the rate on such goods when the

carrier's liability was unrestricted was \$3, and when it was agreed that the carrier should not be liable for fire the rate was \$2. No copy of the schedule was posted at the station at Chicago. What freight is due? What is the carrier's liability?

8. Flour shipped by railroad reached its destination at midnight, and was unloaded from the cars, and placed in the carrier's warehouse ready for the consignee to take it. At three a. m. it was destroyed by an incendiary fire. The carrier used all possible care. Is the carrier liable for the loss?

9. A common carrier ran weekly steamboats between St. Paul and St. Louis. A passenger for St. Louis duly checked his trunk at the St. Paul office, and took the boat; but the baggage master purposely and without excuse detained the trunk for the next week's steamboat. The next week's steamboat was wrecked by a tornado and the trunk was lost. It contained wearing apparel for personal use and also jewelry for sale at St. Louis. What is the carrier's liability?

10. X, at Urbana, delivered corn to a railroad and received a bill of lading by which the railroad undertook to deliver the corn at Indianapolis to X's order. Then X secretly retook the corn and fed it to his hogs. He then assumed to sell the corn to Y, who bought and paid on faith of the bill of lading which X indorsed and delivered to him. Y sues the railroad for not delivering the corn. Is it liable?

How would you answer if the railroad, reasonably believing X to be honest, had consented to his retaking the corn?

## EXAMINATION IN CONTRACTS

PROFESSOR DECKER

1. Jones solicited the job of painting Smith's house. Smith said the price was all right, but he did not know what kind of a workman Jones was. The latter then said he would guarantee satisfaction, and if the job did not suit Smith he need not pay for it. Smith let the contract to Jones on these terms and Jones painted the house. Smith said he was not satisfied and defended on that ground when sued for the price of the work.

Should Jones recover if he can prove that the work was done in a workmanlike manner and would satisfy a reasonable man?

2. M. F. & Co., on November 1, 1913, contracted with Smith to hire him as a department manager for three years, to begin December 1, 1913. Smith was taken sick in November, of which M. F. & Co. had notice, and did not report for duty till December 3, when he was informed that his services were not needed.

(a) What are his rights?

(b) Would it alter the case if the contract had contained a clause as follows: Time is of the essence of this contract? Explain.

(c) Suppose M. F. & Co. had notified Smith on November 15th, that it would not accept his services and he had commenced suit immediately for breach of the contract. Would the action lie?

3. A contracted to buy and B to sell on the installment plan a city residence. After the first installment was paid, but before A took possession, B dug up and carried away a lot of shrubs which were on the place. The cost of replacing the shrubs with new ones would not have exceeded \$50, but several years would be required to bring them to the same period of development as those carried away.

(a) Has A the right to rescind the contract?

(b) Can he rescind and recover damages both?

(c) What would be the effect on his legal rights if he were to enter into possession of the property with knowledge of B's depredation?

4. Brown contracted to sell and deliver to the

Home Telephone Co. 500 telephone poles at \$1.00 each. After delivering a load of 50 poles he asked for the pay therefor. The company refused to pay until all were delivered. Brown then refused to deliver any more and sued in *indebitatus assumpsit* for goods sold and delivered to the value of \$50.00. The company in its plea set out the terms of the contract as a complete defense to Brown's action and in addition claims damages for the failure to deliver the balance of the poles.

Decide the case.

5. A and B made a contract by which A was to furnish B, a tool manufacturer, with 1000 tons of tool steel to be delivered in monthly installments of 50 tons each, payment to be made at the end of each month. The first month's installment was apparently up to grade and was accepted and paid for. On working it up, however, the quality was found to be poor. The second installment was accepted and paid for, but notice was given to A of the poor quality of the prior shipment and that no more of that kind of steel would be accepted in the future. A promised to do better and shipped the third installment which reached B on the last day of

the month. He refused to pay for it until he had had time to test it, which required several days. On finding it no better, he told A that he would not pay for it and A need not ship any more as it would not be accepted. A nevertheless, sent a fourth shipment which he tendered to B and which was up to the contract grade, but B refused to receive it.

A sues B for breach of the entire contract and for the price of the third installment. B pleads the foregoing facts in defense. Decide the case.

6. Smith, who owned a creamery, entered into an agreement with a number of farmers, including Thorpe, to take all of their milk for a year, manufacture it in his creamery into butter and cheese, sell the product and pay each 50 per cent of the proceeds of milk so delivered. The parties operated successfully under the contract for six months and at a profit to the farmers of 10 per cent above what they could otherwise get for their milk. Then the creamery burned down with its contents, which included milk delivered by Thorpe worth \$50 on the market. Smith refused to rebuild or

to take any more milk. The fire was caused by lightning.

(a) Is Smith liable to Thorpe for the loss of the milk delivered?

(b) Is Smith liable to the farmers for not continuing the business for the rest of the year?

7. A, a contractor, was building a house for B. A owed C \$400 for lumber and gave C an order on B, as follows: "Please pay to C \$400 out of what may be due to me on the contract for building your house." Before C presented the order to B, X sued A on a note for \$1,000, and garnisheed B. There was then due A on the contract the sum of \$800. What are the respective rights of C and X against B, either at law or in equity?

8. Y borrowed \$50 from X and gave him an assignment of "all wages earned by me until the debt shall be paid in full." At the time Y was employed as a clerk for W, to whom X gave notice of the assignment. W promptly discharged Y. At the time he owed Y \$15 wages, but Y owed him a grocery bill of \$8. Y then



hired out to T, who was also notified of the assignment, but paid no attention to it and paid Y his wages as they matured in excess of \$50.

(a) What are the rights of X against W and T respectively?

(b) How should X have proceeded to enforce his rights in a law court in Illinois if this had happened 20 years ago? Would the same be true to-day?

9. X is owner of a farm subject to a mortgage to Y. X sells his farm to Z, who promises to assume and pay the mortgage debt to Y and also to pay M, X's daughter, the sum of \$1,000 on X's death. Before either Y or M knew of this transaction, Z conveyed the property back to X, who released him from his contract.

What are the rights of Y and M respectively against Z?

10. "We promise to pay to John Jones and William King the sum of One Hundred Dollars, one year after date, with interest at six per cent."

Dated May 1, 1914. Signed, Peter Smith, Frank Black and James Corwin.

(a) Is this instrument a negotiable instrument?

(b) What would be the effect of the death of Corwin on the rights and liabilities of the parties?

(c) Would a suit lie by John Jones against Peter Smith?

(d) Could Jones and King properly join Smith, Black and Corwin's administrator in one action?

(e) What would be the effect of a release by Jones alone, of Smith alone, after payment of \$50?

## EXAMINATION IN CORPORATIONS

PROFESSOR GREEN

1. The A corporation, whose shareholders were B, C and D, carried on a grocery business in a certain town. So did the firm of X, Y and Z. M bought out the business of each, both the corporation and the several members of the firm agreeing with M not to carry on the grocery business in the town for a year. Thereafter B, C and D formed a partnership and X and Y, joining with them their former employee P, formed a corporation. P contributed two per cent of the capital, but the amount was advanced to him by X and Y, on his agreement to hold his stock in trust for them. Both the partnership and corporation went into the grocery business in the town within the year. What, if any, remedy has M?

2. Adams Express company, a joint stock association, had statutory power to contract in the company name. The statute provided that all its members should be individually liable for its debts. The company issued bonds executed in the company name, which by their tenor were payable to bearer, but only payable

out of company assets. A bond so issued was stolen and bought without notice from the thief. The question arises whether the buyer has title against the former owner. It is contended that the bonds are not negotiable because payable only out of a limited fund, and that therefore the thief could not pass title. Discuss the question of negotiability.

3. A statute, which was unconstitutional because its subject was not expressed in its title, provided for the formation of business corporations. Certain persons attempted in good faith to form a business corporation but inadvertently omitted to state in the organization papers the location of the office, a statement which the statute prescribed. The company having carried on business for several months, sold goods to X through an agent who did not disclose his principal. The price fell due and the corporation sued X, who defended on the grounds (1) that there was no de facto corporation; (2) that at any rate its incorporation was defective, and he did not knowingly deal with it and so was not estopped to set up the defect. Are these defences good?

4. A manufacturing corporation established a pension fund for superannuated employees, laying aside a part of its surplus each year for a pension reserve. The reserve was invested partly in its own stock and partly in the stock of a railroad company. A stockholder of the manufacturing company is opposed to the maintenance of the fund, and to such investment of it, if maintained. How, if at all, may he enforce his wishes?

5. A corporation with power to make and sell railroad cars agreed with X in time of foreign war to furnish him a quantity of explosive shells. Y offered a higher price for shells, and the company broke its contract to supply X and delivered its shells to Y. X suffered loss in consequence. The war ended suddenly and Y refused to pay for the shells, which were still in his possession. What are the company's obligations to X and rights against Y?

6. A is sued on his subscription to the stock of a corporation formed in Illinois in 1916. The subscription was made on the books of the commissioners under

the statute. Others had subscribed after A in reliance on A's connection with the enterprise. A defends on the following grounds:

(a) He gave notice of withdrawal before the stock was all subscribed and before the certificate of incorporation was issued.

(b) He was induced to subscribe by fraudulent misrepresentations made by the commissioners when they solicited his subscription, and he gave notice of withdrawal as soon as he discovered the fraud.

(c) The corporation is not de jure.

(d) It was a written condition of his subscription that he should be elected a member of the first board of directors and he was not so elected.

(e) He was not notified that the directors had made a call for payment of subscriptions until after the suit was begun.

Which, if any, of these defences are good, if proved?

7. A hotel company needed money which it could advantageously borrow only from bankers who would not lend unless they were invested with the control of

the company for five years. In order that the company might obtain the loan, the holders of a majority of stock, in pursuance of an agreement with each other, transferred their shares to the bankers in trust for five years, the bankers to vote upon the shares as in the bankers' judgment the interests of the company should require. A minority shareholder wants to prevent the bankers voting. So does one whose shares are held by the bankers under the trust. May they prevent the bankers voting and how?

8. A newspaper corporation was capitalized at \$100,000. Its assets were \$150,000. Its debts were \$30,000. The directors declared and paid a cash dividend of \$100,000. The stockholders received the dividend believing it was all paid from surplus. A fire rendered the company insolvent. What, if any, remedy against stockholders or directors have creditors?

9. At a stockholders meeting a vote to buy land belonging to a stockholder is carried by that stockholder's vote. Can a minority stockholder enjoin the execution of the purchase?

10. A, who owns the majority of the stock of a corporation and controls its directors, has embezzled some of its funds. Y, a shareholder, asks you to explain to him his rights and to advise him how to protect his interests. What will you tell him?



## EXAMINATION IN EQUITY

PROFESSOR POMEROY

i. (a) Mention three classes of cases in which courts of equity may relieve from mistakes of law.

• (b) Give an example (facts real or imagined) of reformation for mistake of law.

2. A steam railroad is constructed, under authority from a city down the middle of a street, the street being owned by the city. The operation of the railroad constitutes a nuisance to A, an owner of property abutting on the street, and diminishes the value of his property. The cases studied present two different views as to A's remedy in equity against the railroad company.

State these two views fully—the reasons for them, and the results. Which is the Illinois law?

3. A conveyed to B, leaving \$3000 of the price still unpaid, but the deed did not show this. B conveyed to C for \$3500, of which \$2500 was still unpaid when C for the first time received notice of A's claim on the land. A sues to enforce his lien on the land,

which is now worth \$3000; C, on these facts, asserts the rights of a bona fide purchaser.

State and explain the different ways in which various courts treat C's defense, under these circumstances.

4. (a) When may an injunction, preliminary or final, preventive or mandatory, be had against a nuisance without first establishing the existence of the nuisance in a court of law?

(b) B mortgaged a tract to C; the mortgage was recorded: C went into possession of the tract, as he was permitted to do by the terms of the mortgage. Later B contracted in writing to sell the tract to C. This contract was not recorded. Still later B conveys the tract to A, who made no inquiries from C. Has A notice of the contract?

5. In each of the following cases state, with full reason, whether or not reformation may be had, and whether or not rescission may be had.

(a) Plaintiff bargained to sell to defendant his undivided interest in a certain tract. Plaintiff and defendant both supposed that plaintiff owned a one fourth

interest. Later, but before the deed passed, defendant learned that plaintiff owned a three-fourths interest in the tract, but did not communicate this knowledge to plaintiff. Plaintiff in accordance with his bargain, and in ignorance of the extent of his interest, made a deed to defendant releasing all his interest in the tract.

(b) A sold a house and lot to B, for \$5000, both parties supposing that the house, worth \$3000, was wholly on the lot; in fact, it projected ten feet over C's adjoining lot; this fact was not discovered until after conveyance. The house cannot be moved back, and C is threatening to demolish the projecting portion.

6. A, a corporation promoter, issued a circular making various representations regarding the B Co. and soliciting the public to purchase notes issued by the B Co. A hundred persons read this circular and loaned money to the B Co. on its notes. The B Co. became insolvent and paid 25 cents on the dollar on the notes. M, N and O sue A in equity on behalf of themselves and the rest of the hundred holders of the notes, alleging that A's representations were false and fraudulent, and claiming damages for each note holder in the amount

of 75 per cent of the face value of his note. A demurs on the ground that the plaintiffs' legal remedy by separate suits for damages is adequate, and that equity has no jurisdiction. Discuss fully.

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, who is in possession of Blackacre, 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' title. State and explain these four tests.

8. Certain jewelry once the property of a testator, is claimed by A as a gift made by the testator in his lifetime to A. The jewelry has come into the possession of the executor with the other assets of the estate. B, the residuary legatee, denies the gifts, and claims that the jewelry should be distributed to him. A threatens

suit against the executor, who now brings his bill of interpleader against A and B. Do these facts present a case for interpleader? Reason.

## EXAMINATION IN EVIDENCE

PROFESSOR HALE

1. In an action by A against B for personal injuries arising from the alleged negligence of B in the operation of his automobile, X testified that Y, B's chauffeur told him two weeks after the accident that he was not paying much attention to what he was doing when the accident happened. A verdict was given for A. The verdict was set aside and a new trial granted. Before the case could be tried again X died. On the new trial, K, a spectator at the first trial, was placed on the stand and asked to repeat the testimony of X given at the former trial. It was objected on behalf of B (1) that what K heard X say was hearsay; (2) that this was not the best evidence of what X had testified to since a court reporter had taken and extended the testimony given at the former trial.

(a) Was it error to overrule these objections?

(b) Was the evidence properly received at the former trial?

2. To prove the date of a storm a witness, A, pro-

duces a daily record of the weather which he has been for many years in the habit of keeping. A witness, B, produces a similar record kept by his father, now deceased. How, if at all, can these documents be used?

3. In a railroad collision several persons are seriously injured. In an action on behalf of one of the injured passengers, may X testify to statements of the injured person (a) as to his physical condition, (b) as to the cause of the collision?

4. John Doe and Mary, his wife, go out driving; the horse is frightened by a derrick left in the street by the defendant X Co.; the horse runs away, and John Doe is thrown out of the carriage, expiring shortly after he is taken to the hospital. In an action by the son as administrator for the death, the plaintiff offers to show (1) the habits of the deceased as a prudent driver, and (2) several prior instances, during the same week, of the frightening of horses by the same derrick. Should the evidence offered be received?

5. A sued B on a contract. B pleaded infancy.

To prove his age he offered the following extract from the dairy of his father: "June 1, 1900. Bought the first suit of clothes for my boy B, three years old today; price \$3; I am to pay the storekeeper in chickens." Is this admissible?

6. To prove that alterations were made prior to the execution of a will, proponent offered in evidence the original pencil draft of the will in the testator's handwriting containing the alterations, and also post testamentary declarations of the testator to the effect that the alterations were made before the will was executed. Would the court err in receiving the evidence over objection?

7. A shooting affray occurred between four persons, two on each side. A, who was on one side, and C, who was on the other, were mortally wounded and soon died. B is on trial for causing C's death and D is on trial for causing A's death. Shortly before his death A said, "It is hard to die by the hand of another and leave a family. I know D shot me, but I can stand it better because my bullet is taking C along with me."



May A's statement or any part of it be received in either case?

8. Testator bequeathed \$10,000 to the University Medical College at Rochester for medical research. There was no such institution at Rochester. But there was a corporation known as the "Mayo Foundation," which was carrying on research work at Rochester, and some negotiations had taken place relative to its affiliation with the College of Medicine of the University of Minnesota, located in Minneapolis. Both institutions claimed the legacy. The "Mayo Foundations," offered evidence that the testator had been operated upon at Rochester and that while there he expressed his desire to aid them financially in their research work. Is the evidence admissible?

*EXAMINATION IN FUTURE INTERESTS*

CHAS. E. CARPENTER

1. A written lease under seal with condition that on failure to pay the rent the lease shall be void. Rent is payable quarterly on the first days of January, April, July and October. The rent due on July 1 being unpaid, the landlord brings ejectment, and subsequently distrains for rent. The ejectment pending and the tenant still in occupation, the landlord on Oct. 1st demands a quarter's rent, and upon refusal brings covenant for the rent due according to the terms of the lease the first of October. Can he recover?

2. Whiteacre was devised to A for life, remainder to B for life, remainder to the heirs of A in equal shares. A died leaving two children C and D, and devising all his real estate to E. During B's life, D died unmarried and devising all his real estate to F. On B's death, who had the fee in Whiteacre under the Rule in Shelley's case?

3. Devise to A for life, on his death to B for life if he survive A, and on B's death to C and his heirs, but

if C dies without issue then to D and his heirs. State as to the estate of B. C and D respectively whether it is a remainder or an executory devise, and if a remainder whether it is vested or contingent.

4. A died leaving four sons, B, C, D and E, his heirs at law. He devised a parcel of land to B for life, and on his death to B's children but if he died without children, then to the testator's heirs. D died leaving an only child F, and devising his property to his wife G. Then B died, never having had any children, and devised his property to N college. Who is entitled to the land?

5. A devise of Blackacre by A to trustees to pay the rents and profits to B for life, and on B's death to convey the land in equal shares to such of B's children who should either before or after B's death reach 25. Except for the above mentioned devise A died intestate Jan. 1, 1886, and B Jan. 3, 1910. B at A's death and at his own death, had three children—C born Feb. 4, 1860, and D born February 4, 1880, and E born Mar. 7, 1884. C, D and E are now alive. The land has

never been conveyed by the trustees. To whom should they convey it?

6. A who died in 1870 devised land to B for life, and on B's death to such of B's issue as B should by will appoint, and in default of appointment to D and his heirs. B died in 1900 and by will appointed the land "to my children in equal shares for their respective lives and on the death of each, his or her share to go to his or her children equally." At B's death he had two children—a son E, born in 1868, and a daughter F, born in 1874. On B's death E had two children, G and H, and F had one child K. On B's death who had what estates in the land?

7. Devise of land to A for life, and on his death to such one or more of his children as he should by will appoint, and in default of appointment to the Royal Infirmary. A by will appointed the estate which was subject to the power to such uses as A's son C should appoint in writing. C appoints by will to D and dies shortly after A. Who gets the fund?

8. X bequeathed and devised property to A for life with remainder to the heirs of A's body. On the death of X, A had sons B and C living but D, a son, was born after X's death but before A's. By the law of Illinois who has the property on A's death?

EXAMINATION IN CONFLICT OF LAWS  
PROFESSOR VERNIER

1. (a.) T, domiciled in Florida, carried on a loaning business in Iowa through an agent there. The notes and mortgages securing the loans were kept in a bank in Illinois across the state line. Are they subject to tax in Iowa. If T died where are they subject to an inheritance tax?

(b) A resident of Massachusetts died in that state leaving in a New York safe deposit vault promissory notes made by residents of Virginia and Illinois. Are the notes taxable as "property within the state" under the New York transfer tax law?

2. Plaintiff worked in New Jersey for defendant under a contract made in New York, but contemplating work in either state. Which state will furnish the law to govern the tort liability? Assuming that the injury occurred after each state had adopted workmen's compensation laws, which compensation law will control?

3. A New York life insurance company issued a

policy in Indiana payable to a citizen of Pennsylvania. When the policy became payable the beneficiary sued the company in Pennsylvania, where the company also did business. A Pennsylvania statute provided that no foreign insurance company should do business in that state until it had filed an agreement with the state insurance commissioner to accept service through him. This company had never filed such an agreement. This suit is based on service on the state insurance commissioner. Judgment? Will your answer be the same if we assume that the cause of action arose in Pennsylvania?

4. H owes B \$300. Both live in Illinois where the debt was contracted. B owed C, a resident of Indiana \$500. H while visiting in Indiana was personally served in garnishment proceedings by C and agreed to pay C and did pay C the \$300 owed to B. On H's return to Illinois he was sued by B for the debt. H pleaded payment. Judgment? State and discuss several theories involved in this problem.

5. Where is the following property subject to an inheritance tax?

(a) A, domiciled in Illinois, dies leaving lands and chattels in Ohio and debts due from an Ohio creditor.

(b) A, domiciled in Ohio, dies leaving land and chattels in Illinois and debts due from Illinois citizens. A also owns stocks, notes and bonds of Indiana corporations and these are deposited in a Chicago bank for safe keeping.

6. Plaintiff, a fireman of the defendant railroad company, was injured in Ohio by the carelessness of the engineer. Plaintiff was domiciled in Ohio and the defendant company was incorporated in New Jersey. Suit was brought in the Federal court. Which state should furnish the law to govern the application of the fellow servant doctrine to this case?

7. Where is a minor son domiciled under the following states of fact?

(a) The father lives in Illinois but the son has run away and is living in Missouri where he intends to stay indefinitely.

(b) Facts same as above, except that the son who is under the age of consent for marriage, has married without his parents consent.



(c) Father lives in Illinois but the son is living in Michigan with his mother who has separated from the father, and is living with her parents.

(d). The father dies domiciled in Illinois. The mother marries again and moves with her husband to live in Ohio. The son remains in Illinois where he has a permanent job.

8. M, a married woman, domiciled in state A where a married woman cannot enter a partnership business without her husband's consent, entered into such business in state B where a married woman is not subject to this limitation on her right to contract. Is she liable for breach of the partnership contract in State B? In state A? The partnership contract was executed in state B.

Assume that the partnership is one to deal solely in land in State A, will your answer be the same?

EXAMINATION IN MUNICIPAL  
CORPORATIONS

PROFESSOR POMEROY

1. The constitution of the State of North Alaska provided that no city should become indebted in excess of two 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 statute required every city to keep a public record showing its total indebtedness. The city of Fairbanks, 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, payable to bearer, 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 North Alaska. The plaintiff a *bona fide* holder residing in Illinois, sued the city in a Federal court on one of these bonds. Shall 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.

2. (a) A suit is brought to test the validity of an ordinance. It appeared that the ordinance violated no provision of the state or federal constitutions. When will the court consider, and when will it decline to consider the question, whether the ordinance is "reasonable" or not?

(b) Give three examples from case book cases or from Illinois cases of ordinances held unreasonable; two of ordinances held reasonable.

3. State the generally accepted view as to the power of the legislature over the property of a municipality. Give an illustration of an extreme view in favor of such power, and an illustration of an extreme view restricting such power.

4. A city owned its waterworks system. (a) Can the city sell the system to a private corporation? (b) Can a judgment creditor of the city levy execution on

a part of the waterworks property? (c) Can the legislature take the waterworks from the city and give them to a private corporation? (d) or to a public State Water board? (e) Is the city responsible in damages because the size of the reservoir was insufficient to furnish an adequate supply of water for extinguishing a conflagration? (f) or because, owing to the negligence of its officers, a water main bursts, flooding the premises of plaintiff? Reasons, briefly, in each case.

5. The city of A, in 1890, issued valid bonds under a statute which stated that the city "may, if it deems advisable," levy and collect a special annual tax to pay interest accruing on the bonds. In 1910, by amendment to the state constitution, the annual tax rate of cities, for all purposes, was limited to one per cent. The full amount of the one per cent tax for 1915, has been collected and used for current expenses. The city has no money in its treasury, and no property liable to execution. Plaintiff has a claim for unpaid interest on bonds of the 1890 issue. What is his remedy? State reasons fully.

6. On what grounds is the liability of cities for personal injuries resulting from defects in streets and highways placed, in the states which assert such liability, and why is a distinction made between counties and cities in this matter? State also the arguments against such liability.

7. A city officer successfully defended himself, at an expense of \$1000, against proceedings brought by the city to remove him from office. Thereupon the legislature passed an act giving any city officer against whom a city has brought such proceedings unsuccessfully a cause of action against the city to recover the expenses, not exceeding \$1000, incurred by him in conducting his defense. The constitution of the state forbids a city to give its money or property to a private individual for private purposes. Argue pro and con the question of the validity of this act of the legislature.

8. A city was required by its charter to award all contracts involving more than \$200 to the lowest responsible bidder. The city of A advertised for bids for a certain piece of work, worth more than \$200; B was the

lowest bidder, and is undoubtedly responsible; but the city council voted to award the contract to C. What is B's remedy, if any? Explain.

## EXAMINATION IN EQUITY PLEADINGS

PROFESSOR HARKER

1. Name the written instruments used in the system of Illinois equity pleading. State the office which each performs.

2. State the essential differences in equity pleading under the Illinois chancery code, and in the federal courts under the recent rules of the United States Supreme court.

3. A, residing in another state, brings suit in the Federal court of a state which is the residence of the defendant and recovers judgment. Unable to obtain satisfaction of the judgment by the issue and levy of an execution, he garnishees notes held by B against C. C is the resident of a different state from that in which A recovered judgment against B. C begins suit on the chancery side of the docket of the same court in which judgment was rendered against B in favor of A, for the purpose of enjoining the garnishment proceedings. A appears and moves to dismiss. State what should be

the basis of his motion, and the particular manner in which it should be made.

4. A and B, heirs of C, file a bill in equity to cancel a deed executed by C in his lifetime to X. The deed was recorded after the death of C. The complainants seek to have the deed and its record canceled upon the ground that it was never delivered by C to X. The bill avers that the complainants have no personal knowledge of the execution of the deed, or the manner in which it was placed of record, but alleges that they have been informed that the deed was never actually delivered to X. State your views concerning the sufficiency of this averment in the bill.

5. The complainant, a resident and taxpayer of Urbana, Ill., files a bill to enjoin the collection of a personal tax extended for the year 1915 against engines and boilers used in a brick and tile factory, upon the ground that the boilers and engines are a part of real estate described as Block 6 in the Railroad Addition of Urbana. In his bill, he avers that he had paid personal taxes amounting to \$40.00, and has paid the real estate



tax against the property mentioned, amounting to \$150. The tax against the engines and the boilers is \$96. On demurrer to the bill, what should be the grounds urged by the tax collector, party defendant.

6. The defendant is engaged in the business of buying the growing fruit of apple orchards and shipping to market. On the 10th of September, 1915, he agreed with the complainant to purchase the growing fruit on the orchard of James Smith in Clay county, Ill., for \$2,000.00, if the same could be so procured, and that they should share equally in the profits of the purchase. At the same time he employed the complainant to purchase the apples of four or five other orchards in Clay county for that year, and agreed to pay him a commission of 5 per cent for such purchases. The fruit was so purchased. The complainant, treating the agreement concerning Smith's orchard as a partnership, has filed a bill for partnership settlement against the defendant. He also includes in his bill a claim for commission on \$8,000.00 for four other orchards purchased on commission.

The defendant answers, denying the partnership

agreement, and in the answer appears also a demurrer to the bill for want of jurisdiction. What should be the judgment of the court.

7. Draft a bill based upon the statement contained in question No. 6.

8. Draft a bill for the specific performance of a contract made by James Smith to John Brown for the conveyance of Lots 4 and 6 in Scott's addition to the City of Champaign, Ill., the agreement being dated the 4th of October, 1914, and requiring a conveyance of the property on the payment of \$4,000.00 within one year from that date.

9. The complainant procured from the master in chancery an order for a temporary injunction restraining the defendant from the construction of a dam that would have the effect to back up water upon the land of complainant. The injunction was granted without notice but the writ was properly served upon the defendant. The defendant proceeded to the erection of the dam notwithstanding the restraining order that had

been granted. Whereupon, the complainant, upon affidavit procured a writ of attachment against the defendant for contempt. Pending the contempt proceedings, the defendant filed an answer denying that the effect of damming the stream in question would be to overflow the land of the complainant, as alleged in the bill. The answer was under oath, although answer under oath had been waived in the bill. The complainant moves to strike the answer from the file, for the reason that the defendant has not yet purged himself of the contempt charged against him in the attachment proceedings. What should be the order of the court and why?

10. To the complainant's bill on which a temporary injunction has been granted, and which waives oath in the answer, the defendant answers denying the allegations in the bill and attaches his oath to the answer. A motion is made to dissolve the injunction. What office may the sworn answer perform in the proceeding?

## EXAMINATION IN REAL PROPERTY

CHAS. E. CARPENTER

1. In 1280 A seized in fee simple of Blackacre enfeoffed B his heirs of the north half of it. In 1295 B enfeoffed C and the heirs of his body of the north half of Blackacre. C in 1300 made a feoffment of the north half of Blackacre to D and his heirs. In 1310 D died without heirs. What is the state of the title to Blackacre?

2. X seized in fee simple makes the following feoffments: (1). A for 10 years then to B and his heirs if B marries. (2.) A for life. (3.) A in fee simple after X's death. What is the state of the title after each of these feoffments?

3. (a.) X seized in fee simple makes a feoffment to A and his heirs.

(1) to the use of B for life.

(2) to the use of B for ten years then to the use of C for life if C marries.

(3) to the use of B for 10 years, to the use of C for 10 years.

What is the state of the title in each?

(b) Suppose instead of a feoffment as in (a) a bargain and sale, what result in 1, 2 and 3?

4. In 1500, A, a bachelor, tenant in fee simple of Blackacre gave livery of seisin of Blackacre to B and the heirs of his body, remainder to A's first born son, remainder to C and the heirs of his body. In 1510 B gives livery of seisin to D for life. Define the estates in and rights concerning Blackacre after this feoffment by B.

5. A purchases land of B for \$5000, paying \$1,000 down and giving a purchase money mortgage for the balance. A affixes some additional machinery in the mill on the premises and gives S the seller of the machinery a chattel mortgage on it. The machinery added costs \$3000 and the chattel mortgage was for \$2000. After the premises have much depreciated in value C buys them for \$1000, subject to B's mortgage. B now brings an action to foreclose his mortgage making C and S parties defendant. How should the matter be settled in this equitable action?

6. A leased a factory to B for a term of five years and covenanted to extend the lease for a further period of five years, at B's request. B put in certain heavy machinery, which was screwed to the floor. He also put in a clock, which was screwed to the wall. A then transferred his reversion to C. B requested C to renew the lease. C refused, and, on the expiration of the five years, ejected B and took possession of the machinery, and the clock. What are B's rights at law?

7. A leased a store to B for a term to continue so long as C (A's son) should not desire to occupy the premises. B let the premises fall out of repair. C later desired to occupy the premises, and B gave up the possession to A. Is B liable to A for having let the premises fall out of repair?

8. The plaintiff's pear tree overhangs the defendant's land. As the pears ripened defendant picked a bushel of the pears without the plaintiff's assent. Later the plaintiff reaches over the dividing wall and picks a bushel of the pears and not being able to reach more goes onto the defendant's land and by use of a ladder set

on defendant's land picks another bushel of the pears. The defendant aggravated by this action of the plaintiff cuts off the limbs over-hanging his (the defendant's) land. What are the rights of the parties?

EXAMINATION IN DOMESTIC RELATIONS  
PROFESSOR VERNIER

1. A wife sues her husband for assault and battery and false imprisonment. Decision? Will your answer be the same if the wife brings the suit after she has obtained a divorce?

A wife sues her husband in replevin to recover personal property belonging to her and which her husband is wrongfully detaining. Judgment?

2. The defendant's minor son kicked the plaintiff, a minor, and injured him. Is defendant liable? Under what circumstances if any is the son liable? Assume that the defendant had notice that his son had kicked plaintiff on two previous occasions. Will your answer be the same?

3. Defendant induced plaintiff's husband to commit a crime and then secured his conviction and sentence to the penitentiary. Plaintiff sues for loss of her husband's consortium. The defendant was inspired by dislike of the husband. Would your answer be the same



if his purpose had been to revenge himself on the wife for some previous slight?

4. Defendant, a minor hired a motor-car of the plaintiff to drive to a certain destination. Defendant intentionally deviated from the agreed route and during the deviation the motor-car was wrecked by a collision with another car, defendant being entirely free from fault. Is the defendant liable in tort for conversion of the car? Is he liable in a contract action?

Would defendant, a minor, be liable to plaintiff in an action of deceit for inducing plaintiff to contract to sell a car to defendant in the belief that defendant was of age?

5. A husband and wife being unable to live together peacefully, the husband was on the point of deserting the wife, when they agreed to execute a deed of separation, in which it was mutually agreed that they should live apart, and he agreed to give her a weekly allowance. About a year later he ceased paying and left the state with another woman. Can the wife recover on the agreement to pay a weekly sum? After the

husband has been gone for the statutory period can she obtain a divorce on the ground of desertion? Can she obtain a divorce on the ground of adultery?

6. (a) Plaintiff sues for divorce on the ground of his wife's wilful desertion without reasonable cause. It appears that her only excuse for not living with him was that he insisted on living with his parents and that she could not live harmoniously with them. It did not appear, however, that her health suffered. Should the divorce be granted?

(b) Suit for breach of promise. In addition to the usual damages plaintiff claimed seduction, that she gave up a business in which she was engaged and that defendant had promised to convey to her a certain house and lot. Discuss these items and the question of damages in general. Assume that defendant dies before a verdict. Will the suit survive against defendant's personal representative? If so, what items of damage can be considered in this suit?

7. Plaintiff, while a minor, bought and paid for defendant's moving picture theatre. Soon after reach-

ing majority he tried to sell the theatre, but was unable to do so. Up to this time he did not know that any contracts of a minor were voidable. On learning this may he now rescind and recover the purchase price?

8. Plaintiff's husband was induced to leave her, as a result of advice given by defendant. Plaintiff sues for alienation of affections. Defendant without submitting any evidence asked that the suit be dismissed, because (1) a wife can not bring such a suit; (2) no malice was alleged or proved. Discuss the points raised. If such a suit will lie, state what justification, if any, defendant can set up.

## EXAMINATION IN SURETYSHIP

PROFESSOR DECKER

1. Jones sued Smith in assumpsit, alleging in his declaration that, "Whereas, at, etc. Smith was indebted to the plaintiff, Jones, in the sum of One Hundred Dollars, for goods theretofore sold and delivered by the plaintiff to Black, at the defendant's request; that thereupon the defendant promised to pay the plaintiff the said sum," etc.

The defendant demurs. Decide the case.

2. A, B and C were all co-makers of a note to the X bank for the sum of \$5,000, with interest at 6 per cent borrowed from the bank for A's account. On the back of the note appeared the following endorsements: "I guarantee the payment of the within note," signed by D; and "I guarantee that the within note is good," signed by E. These endorsements were placed on the note in the order stated before delivery to X.

Explain the nature of the liability of B, C D and E, respectively, on this instrument, and the rights of X against each, both in substance and in the method of pro-

cedure under the common law for the enforcement of those rights.

3. Referring to question 2, and supposing that X should surrender the note to E after payment by him of \$4,000, what would be the rights of E against A. B. C and D respectively?

Would B, if he had paid under the same circumstances, have the same rights as E? If not, how would his rights differ?

4. Referring again to question 2, suppose that A. at the maturity of the note, had gone to the bank and asked for an extension for thirty days, to which the proper officer of the bank agreed, and that E knew of this agreement and consented, but the other parties did not learn thereof until later, and never consented.

To what extent would these facts constitute a defence to B, C, D and E respectively, if sued by X?

5. Referring again to question 2, suppose that C had signed the note at the request of B and without

the knowledge of A, and had paid the note after maturity.

(a) Would these facts affect his right to reimbursement from A? Or from B?

(b) Would the added fact that B had orally promised to indemnify C affect B's liability to C?

6. X and Y were sureties on the bond of P to C, to secure the performance of a contract of P to build a house for C. Before the house was completed, but while P was still working thereon, X filed a petition in bankruptcy and was later duly discharged. C never made any claim against his bankrupt estate and no dividend was paid on the bond aforesaid. Some weeks later P defaulted on his building contract with C, and C, with other creditors, filed a petition to have P declared a bankrupt, which was done. C proved a claim of \$1,000 against P's estate, as damages for breach of the contract and received a dividend of \$200 thereon. Y later paid C \$800 in settlement of his liability on the bond and now consults you as to his rights against P and X, both of whom have since become able to pay, for indemnity and contribution respectively. How would you advise him?

7. Brown, having an endowment insurance policy on his life, payable to himself or his estate, pledged the same with Knight, his partner, as security for his debt to the partnership. After Brown's death, his widow persuaded Knight to surrender the policy to Brown's administrator, and in consideration thereof promised Knight that she would pay her husband's debt as soon as the estate was settled. Brown's estate was hopelessly insolvent, but the widow received her allowance in full out of the proceeds of the policy aforesaid. When sued by Knight on her promise, she pleaded the statute of frauds. Decide the case.

8. The statutes of Illinois provide that a public administrator give a bond approved by the court, "conditioned that he will faithfully perform all of the duties of his office"; also that the court may require him to give the usual bond required of other administrators, touching any particular estate in his charge. Supposing that, in pursuance of this statute, Jones had given a bond for \$5,000 as public administrator, with Skinner as surety; and later had given another bond as administrator of the estate of Moore, with Morgan as surety,

for the sum of \$10,000. He later embezzled \$5,000 of the assets of Moore's estate. If Morgan is sued on the bond signed by him and pays the loss, has he any right of contribution against Skinner?

9 Referring to the previous question, suppose that Morgan, after signing Jones' bond as administrator, had become suspicious of Jones and had desired to terminate his liability. Could he do so? Discuss briefly the right of a surety to terminate his liability.

10. Referring again to the same question, suppose that Jones and Morgan were sued jointly on the administrator's bond, and a joint judgment obtained against them. Jones, at this time owned a farm, which he later sold to Peters, who was ignorant of the judgment. Jones levied on the land and Peters contested, with the result that they subsequently compromised by Peters paying one-half the value of the land in return for a release of the land from the judgment lien. If the plaintiff subsequently levied on Morgan's land for the balance of the judgment, would he be entitled to any relief arising from the foregoing facts?



## EXAMINATION IN TORTS

PROFESSOR HALE

1. (a) A made a false statement as to a material existing fact with the intention of inducing B to act upon it. B did act upon it and suffered damage. The trial court instructed the jury that if A did not have reasonable grounds for believing the statement to be true judgment should be given for B. Verdict was rendered for B. A appeals. What would his assignment of error be and what should the decision on appeal be? Argue carefully the principle involved.

(b) X employed Y as his attorney to bring suit against C. The suit was lost. X desires to sue Y for deceit, telling you that Y secured the employment by fraudulently stating that he would win the suit. It appears that by reason of the defeat, X was damaged in the sum of \$1000. You are convinced that diligent attention on Y's part would have won the suit for X. How would you advise X as to his rights?

2. (a) X was run over by a street car operated by the Y street railway company. Assuming X to have

been free from contributory negligence, how should the jury be instructed to enable them properly to determine the company's liability.

(b) How would the case be affected if it appeared that by city ordinance the speed of street cars was limited to twelve miles an hour and the car that injured X was going fifteen miles an hour?

3. A borrowed B's automobile and took his family, consisting of his wife, and child of the age of six years for a ride. At a railroad crossing a collision occurred between the automobile and a train of the X company. Both A and the X company were negligent. All of the occupants were injured and the car was damaged. Separate actions were brought against the railroad company by B, by A's wife, and by A's child. What judgment in each case?

4. One night A left his horse standing in the street without tying it or leaving anyone to guard it. An explosion in a powder mill several blocks away frightened the horse causing it to run away. In attempting to turn a corner the vehicle struck a pile of lumber

which B had left in the street and was thrown through Y's store window. The street where the lumber was piled was very dark and no light had been placed on the lumber.

- (1) What are Y's rights against A?
- (2) What are Y's rights against B?

5. The X Electric Company conducted electricity to the city from its power plant, several miles out, over high voltage wires supported by skeleton towers, fifty feet high. Each tower was equipped with a ladder for workmen to use in making repairs. The towers stood on land belonging to the company and ran through a populated part of the country.

A, a boy eight years of age, climbed one of these towers, came in contact with the wire and was killed.

An action is brought against the electric company by A's estate. What judgment?

6. A pump standing near the front walk on A's premises got out of repair so that one attempting to use it was likely to be injured. B, a letter carrier when delivering mail at A's house attempted to use the pump and was

injured. A thereupon undertook to repair it, and while so engaged left the well open at night. That night C, a neighbor, with whom A had frequently visited back and forth, while coming to visit A, wandered a few feet from the walk, stepped into the unguarded opening and was injured.

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

(b) What are C's rights against A? Would it make any difference if C had been requested to come over for a social evening?

7. X placed in the attic of his house a tank for soft water. X lived on the second floor of his house and leased the ground floor to Y. The tank, which was used exclusively by X, had been guaranteed by the seller not to rust. By reason of a defect, however, it did rust through and while X was away from home the water leaked out, ran down into Y's closet and soiled Y's clothes. What are Y's rights against X?

8. A agrees to sell B a lot for \$1000. C offers A \$1200 for the lot and thereby induces A to sell the lot to him.

(a) Has B a cause of action against C?

(b) Would B have an action against C if the contract had been unenforceable because not in writing as required by the Statute of Frauds?

## EXAMINATION IN TRUSTS

PROFESSOR VERNIER

1. (a). The A bank gave a note, of which it was the indorsee, to the B Bank for collection, under an agreement that the latter should only be responsible for negligence in choosing its correspondents. The B bank forwarded the note to the C bank under a similar agreement. The C bank forwarded to the D bank, which in turn forwarded to the E bank, neither of these banks making any reservation as to liability. Through the negligence of the E bank in presenting the note for payment, the only indorser was released. The maker of the note was insolvent. What are the rights of the A bank against the D bank and the E bank?

(b) The plaintiff deposited at the defendant bank a check on another bank drawn to his order and indorsed in blank. The defendant entered the full amount to the plaintiff's credit subject to check. The plaintiff drew on his account, but at the time of the controversy had on deposit more than the amount of the check in question. A week after the deposit of the check in question the defendant bank sought to charge the amount to

the plaintiff's account, on the ground that the plaintiff's check had been lost in the mail. Should defendant bank be allowed to do so?

2. (a) At the close of the Balkan war the British Red Cross Society had on hand an unexpended balance from a special fund raised for the relief of the Balkan war sufferers. An originating summons was issued to determine whether it should be divided among the subscribers in proportion to their subscriptions, or whether the last subscribers should be paid in full. How should it be decided? Suppose X had contributed \$100 after the Red Cross Society had decided there was no further need for the fund. How should he be treated in the distribution of the balance?

(b) T deposited \$100 belonging to his cestui C in a bank account in T's name as trustee. He later deposited \$100 of his own money in this account. He still later withdrew \$100 and dissipated it. What are C's rights?

(c) T deposits \$100 belonging to his cestui C in an account in his name as trustee and later deposits \$100 belonging to his cestui D in the same account. As be-

fore he withdraws \$100 and dissipates it. What part of the money remaining should go to C and D?

3. Testator T bequeathed his personal property to his brother D, who had agreed to distribute it according to his brother's wishes as expressed in an unattested memorandum, which was not referred to in the will. The contents of the memorandum were not known to D until after T's death. The memorandum directed that the money be given to a charity, C. Advise D as to his rights and duties. Assuming that the only claimant for the property is C and that D is willing to pay it over to C, is D liable under an inheritance tax law, which exempts beneficial interests passing by will or intestacy to charities?

4. (a) A testator was induced not to change a will leaving property to A by A's promise to hold half of it for B. A's promise was oral. On the death of the testator A refused to carry out his promise. What are B's rights?

(b) A while perfectly solvent orally agreed to hold certain land in trust for B. A later suffered severe



financial reverses. However in fulfilment of his promise he conveyed the property in question to B, who had become of age and had requested a transfer. This transfer made A insolvent. His creditors bring an action to have the transfer set aside. How should it be decided?

5. S devised property to T in trust to pay the income to his son C for life, and thereafter to pay the income to his son's children until the eldest reached the age of 40, when the property was to be divided equally among the children then surviving. A further provision of the will directed that payments of principal and income should be made directly to the beneficiaries free of assignments and claims of creditors. Discuss the validity of the provisions. Assume that the provisions of the will are carried out and that C later dies and that D the eldest son reaches 40 and is the only child surviving. Assume that D is bankrupt, and that his assignee in bankruptcy claims D's share. Who is entitled?

6. (a) A testator directed in his will that the executors and trustees of his estate should employ his son as attorney for the estate at a fixed yearly salary. The executors and trustees refused to comply with this

direction. The son brings an action to compel the executors and trustees to employ him. Decision?

(b) Distinguish the trust and the debt relation,

7. A husband intending to kill a third person shot at him and unintentionally killed his own wife. He was convicted of manslaughter and now claims his share in the wife's property under the statute of distributions. Is he entitled? Would your answer be the same if he had intentionally killed his wife for the purpose of gaining her property?

8. T, holding real estate in trust for C, mortgaged the property to X, Y and Z, each taking the mortgage in ignorance of C's interest. Assume that the property is worth \$10,000 and that each mortgage was for \$4,000. In the absence of a recording system what are the rights of C, X Y and Z. Would your answer differ if Z, while still ignorant of C's interest, took an assignment for value of X's mortgage? Or if X died while his mortgage was unsatisfied leaving Z as sole heir, Z however knowing of C's interest at the death of X?

## EXAMINATION IN WILLS

PROFESSOR POMEROY

1. (a) Define undue influence.

(b) Discuss presumption of invalidity of legacy to a person occupying a fiduciary relation to testator.

2. Testator made a will in 1913 and a second will, revoking the first, in 1914. In June 1916, a statute went into effect declaring that the destruction of a revoking will should not have the effect of reviving an earlier will. In July, 1916, testator destroyed the second will. It is proved that he had never heard of the statute of June, 1916, and that he wished his will of 1913 to stand. Should the first will be probated, or the second, or both, or neither? Reasons.

3. (a) Testator's will read, "I bequeath my house and the furniture therein to A, \$1000 to B, \$500 to C, and the balance of my personal estate to D." The assets that came to the executor's hands consisted of the furniture, worth \$500, and cash to the amount of \$1,200. The house was worth \$4000. Testator also own-

ed at the time of his death an unimproved lot worth \$1500. How should the estate be distributed if there are no debts and expenses? If the debts and expenses are \$700? If they are \$2000? If they are \$3200? Explain.

(b) What reasons are asserted in support of the rule that the gift of a mixed residue charges general legacies upon the residuary land?

4. Testator in 1913 made a will devising the bulk of his estate to his son A. In 1914, having become estranged from A, he executed a codicil revoking the devise to A and devising the estate to B, a distant relative. In 1915, having become reconciled to A, he executed a second codicil, which, after making a change in executors, stated, "In all other respects I confirm my will." What result? Reasons.

5. T's will read, "I give to my sons, A, B and C, and my nephew D, each \$5000 and a one quarter interest in my farm; and the residue of my estate, real and personal, I devise and bequeath to the Burnham Hospital." A, B, C and D all died before T; A being child-

less, B having a child who died before A, and C and D each leaving a child who survived A. The personal property is sufficient to pay all debts and legacies in full. How shall the estate be distributed, at common law? Reasons for the common law rules. How shall it be distributed in Illinois? Why?

6. The statute requires a will to be signed by witnesses "in the presence of the testator." Define fully and accurately the meaning of this phrase. Suppose (1) the testator is lying on his back, unable to move; (2) the testator is blind.

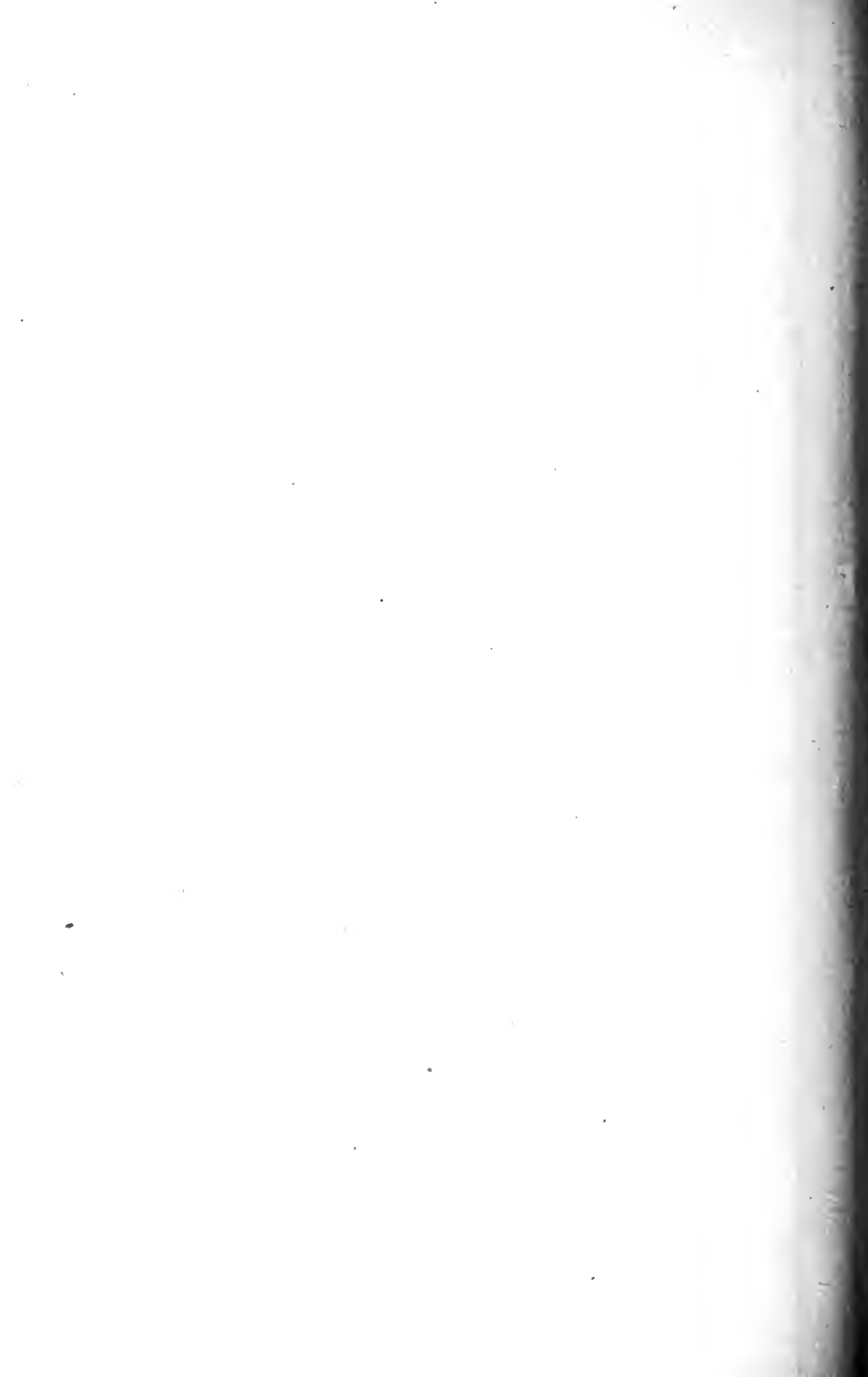
7. State three propositions, derived from cases studied, relating to executors *de son tort*, and illustrate each proposition with appropriate facts.

8. (a.) What is the general rule of the common law relating to the survival of claims against a decedent?

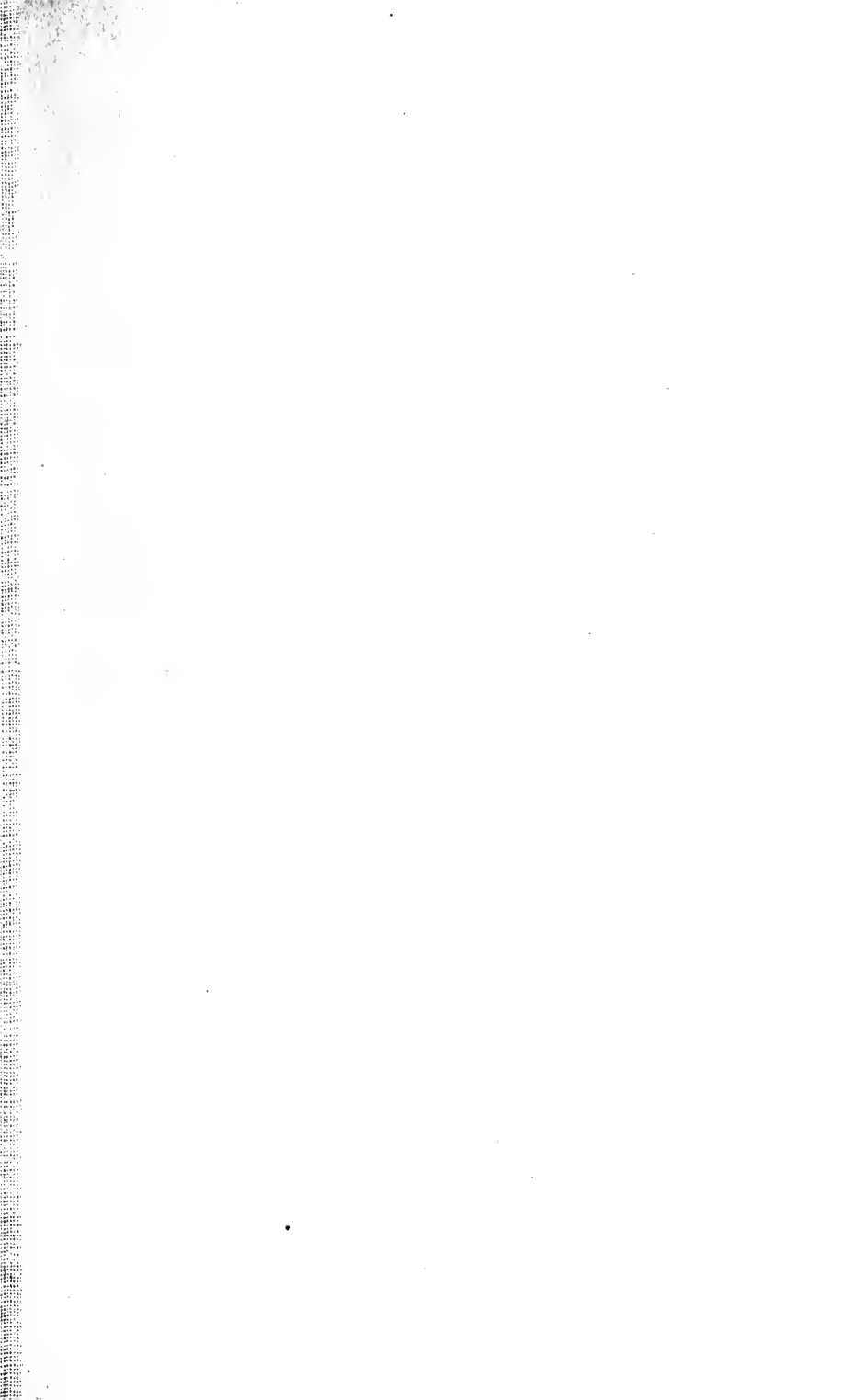
(b) A, on January 1st, was injured by the negligence of B; A suffered pain from the injury, incurred medical expense, and loss of business; B died February

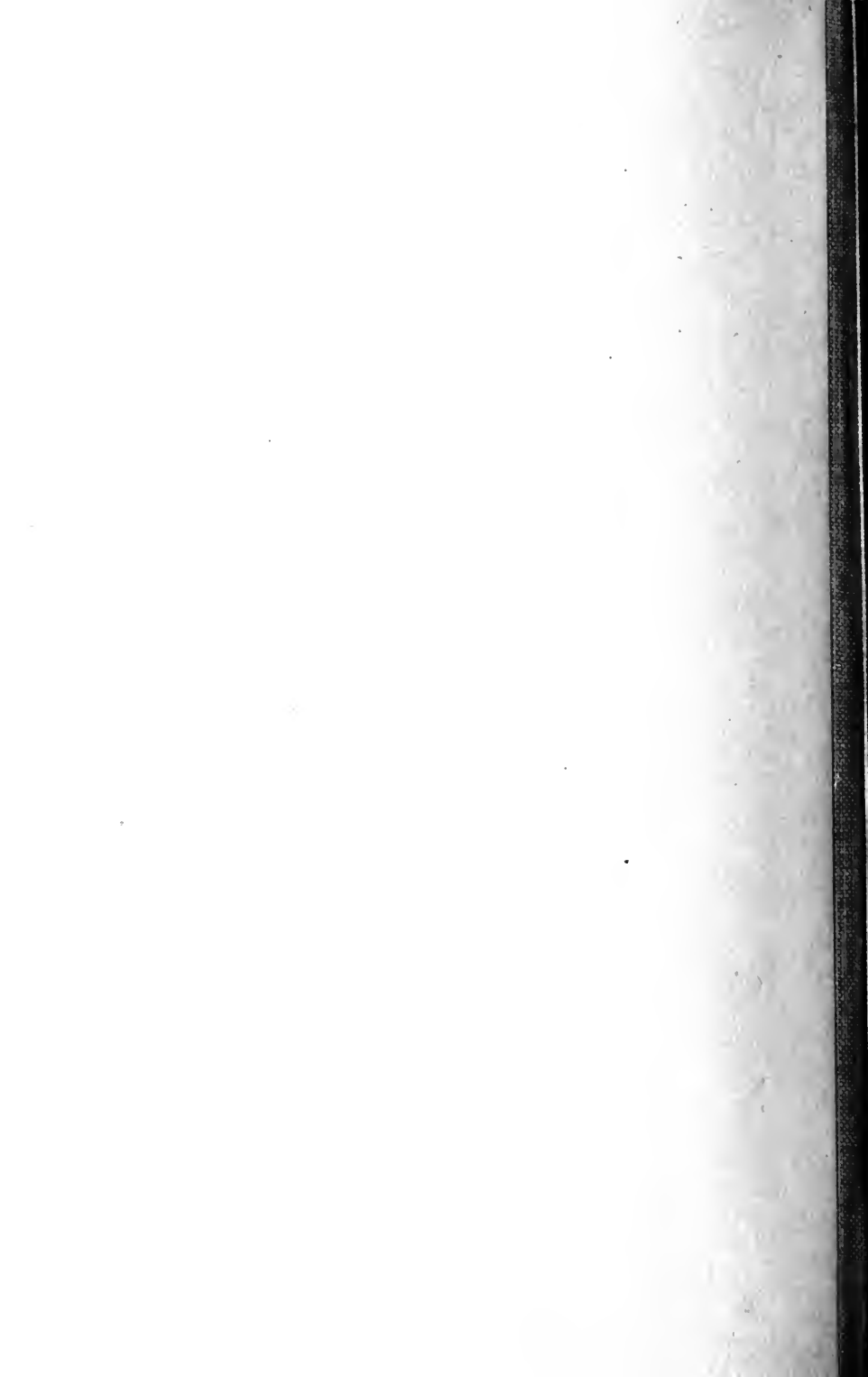
1st; A died of his injury March 1st. A's wife and children were dependent upon him for support. Can A's administrator recover from the administrator of B, and if so, what? Reasons. (Illinois law.)













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