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FINAL EXAMINATION IN ADMINISTRATIVE LAW (Law 323)

TIME: 3½ hours

First Semester 1954-55

Professor Sullivan

1. Sam Piet filed an application with the City Council of X for a license to operate a junk yard. The license was denied under an ordinance which provided: "The City Council may grant licenses to operate junk yards for a fee of \$25 per year." The application set out that the business was to be operated on a plot of ground adjacent to a steel mill. It was shown that steel scrap and slag were stored on the steel mill property. Following the denial of the license, the Council passed an ordinance that provided that no license applications would be granted for junk yards unless they were accompanied by the license fee and affidavits from which the Council could determine that the applicant was of good moral character. Sam Piet, without knowledge of the new ordinance, again asked for the license and it was refused. He then filed a petition for a writ of mandamus to compel the issuance of the license. What result? Why?

2. A, B and C, policemen in the City of Chicago, were dismissed by the police department for mistreatment of prisoners. In a hearing before the Civil Service Commission of the City, there was evidence that the policemen had stopped Jim Orms for the purpose of giving him a ticket for illegal parking. After moving the car to a lawful parking space, Orms got out of the car and was talking to another person, when A came up and told him that he was ignorant and he (A) was going to run Orms in. B and C then came over, at which time A told Orms that he was under arrest and that he was taking him to the police station in the squad car. Orms said that he had done nothing to justify arrest and would not go along. Orms and another man testified that at this point, A, B and C seized him, forced him into the squad car, hit him on the head, and in general roughed him up severely. A, B and C testified that they used only the force necessary to take Orms to the station. Dr. X testified that he had examined Orms the next day and that he found many evidences of bruises and abrasions on the head and body of Orms.

The Commission found cause for discharge and A, B and C sought review. The Civil Service Act for Chicago provides that review shall be according to the Uniform Administrative Review Act. What result? Describe the procedure and the power of the court on review.

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3. Congress passed a joint resolution stating that it was concerned with the operation of resale price maintenance laws and their effect on interstate commerce. It therefore directed the Federal Trade Commission to conduct an investigation on the subject and to report back to the Congress within one year. The F.T.C. was given power to subpoena whatever records were essential to the performance of its function. The F.T.C. directed a subpoena to the General Electric Company, demanding the production in Washington of all records of the company which related to sales of all its products to all of its dealers, including all information on price maintenance for the past five years. General Electric resisted the subpoena on the ground that these records were necessary to the conduct of its business and that the demand was too broad.

F.T.C. applied to the U.S.D.C. for an order directing General Electric to comply. What result? Why?

4. Mary Smith had been licensed under a state statute of X to operate a school of beauty culture. These licenses were issued for one-year periods, subject to annual renewals. At the end of the second year of operation of the school, the license was not renewed and the State Board gave the following reasons for the refusal to renew: "1. Failure to adhere to schedule. 2. Allowing students to work on the public before being properly trained. 3. Not meeting sanitary requirements." Mary had invested several thousand dollars in her equipment and had advertised extensively. Mary then sought to enjoin the Board from interfering with her continued operation of the school. What result? Why?

5. State Y has a comprehensive Unemployment Compensation Statute. The act provides that compensation benefits will be denied to persons who leave work "voluntarily to marry or because of marital, parental or filial obligations." It authorized the Director of the Division of Unemployment Compensation to waive this provision of the statute "for good cause shown." After the Director had waived the provision and authorized compensation, the last employer of the person compensated sought court review in accordance with the applicable statute. What should the court decide? Explain.

6. Congress passed a statute providing a method of crop insurance to insure against loss resulting from drought. The Federal Crop Insurance Corp. was given authority to administer the program and "to insure on such terms and conditions as it may determine, but such terms shall not be inconsistent with this act." On February 5, 1945, the Corporation promulgated regulations and they were published in the Federal Register on February 7, 1945. Andy Farmer of Wyoming applied for crop insurance on 460 acres of wheat, 400 acres of which was spring wheat reseeded on winter wheat acreage. Andy reported this to his county committee but it was not stated in the formal application for insurance. The county committee recommended to the regional office that the insurance be approved. This was done. The drought destroyed the crop and Andy filed a claim under the insurance coverage. The Corporation defended on the ground that the published regulations expressly stated that reseeded acreage was not eligible for insurance. The corporation refused to pay and Andy filed suit for the amount of the loss. What result? Why?

7. The X Chemical Company was engaged in the manufacture of a liquid chemical which it sought to ship by railroad tank car. The railroad refused to furnish cars for this service. (This was not an explosive and it was not inherently dangerous.) The Company then began an action in the circuit court of the county in which the factory was located to compel the carrier to discharge its common-law duty. Decide the case and give reasons.

8. The Industrial Commission of State X has statutory authority to award compensation if it determines that a disability results from an injury which arises out of and in the course of employment. After a full hearing at which conflicting evidence was introduced, the trial examiner found as follows:
"1. That the evidence is insufficient to show that claimant sustained an accidental personal injury arising out of and in the course of his employment with the respondent employer and therefore the petition for an award is dismissed."
This decision was adopted by the Commission. The employee then began an action to set aside the decision. What result? Why?

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9. The Bee Line Motor Bus Company filed a petition for a certificate of convenience and necessity to transport passengers along a route parallel to the Rough and Rumble Railroad Company. The Railroad appeared as a protestant and offered evidence in opposition to the certificate. The president of the railroad testified that the company was losing money on its passenger business along this line. He offered in evidence statistical data to show the number of passengers, fares, etc. Over objection from the railroad, several witnesses were permitted to testify that they had heard people say that they desired bus service between the towns in question and that they would travel by bus if the service was available. The trial examiner after the conclusion of the hearing consulted the railroad's annual reports on file with the Commission and concluded that the railroad would not be hurt by the competition from the bus company. The B. of R. T., a railroad union, sought to intervene in the proceeding but its petition was denied. After the decision of the trial examiner had been affirmed by the Commerce Commission, both the railroad and the B. of R. T. sought review in the proper court by the correct method. Decide the case and give reasons.

FINAL EXAMINATION IN ADMINISTRATIVE LAW (LAW 323)

Summer 1955

Professor Cohn

Time: 4 hours

1. A state statute provides that the license of a physician may be revoked after notice and hearing for "professional misconduct." At such a hearing, the state agency produced a woman who testified that, while pregnant, she had sought the services of Dr. Jones for the purpose of having him effect an abortion. Over objection, she was permitted to testify that she had been directed to Dr. Jones by two women, whose names she was not at liberty to disclose, who had told her that Dr. Jones was "a specialist and available for such cases." She also testified that Dr. Jones told her that he was not then prepared to handle her case but that he could turn her over to "a man who could do a competent job" if she so desired; and that upon her inquiring whether this man was a doctor, Dr. Jones told her he was a doctor but was not presently licensed to practice medicine.

Dr. Jones in his testimony flatly contradicted the testimony of the woman, stating that when approached by her he firmly rejected her plea for his services. He denied that he offered to refer her to an unlicensed doctor, stating that all he had said was, "If you want this job done, you will have to go elsewhere." He further testified that he had never performed an abortion and had never been involved in any charges of engaging in such practice.

At the conclusion of the hearing, the agency directed one of its special investigators to check fully on Dr. Jones' history. The agency records disclosed that Dr. Jones had been admitted to practice initially in the State of X and that he had secured his license in the state of the proceeding on the basis of reciprocity. Inquiry at the licensing agency of the State of X produced the information that Dr. Jones had twice been indicted and tried in that state for performing abortions but that in each instance he had been acquitted, and that by reason thereof the licensing agency of the State of X had not instituted proceedings to revoke Dr. Jones' license. All of this information was submitted in affidavit form to the agency which had conducted the hearing.

Shortly thereafter, the agency entered an order revoking Dr. Jones' license. The order was supplemented by findings of fact which recited the evidence in the record made before the agency and the affidavit evidence secured by the investigator

The statute provided that the agency "may grant a rehearing before the same agency upon application by the party within 30 days after the entry of an order of revocation," and further provided that a judicial review of the agency order of revocation could be had by any person aggrieved or adversely affected by the agency decision. Before the expiration of the 30-day period, Dr. Jones, joined by Doctors Smith and Brown, with whom he was associated in practice under the firm name, "Jones Clinic," filed suit to enjoin the enforcement of the order, alleging that both the statute and the procedure culminating in the order were unconstitutional. The State moved to dismiss. Discuss fully all constitutional and procedural issues raised by the foregoing facts and give decision.

2. In 1950 Congress enacted the Defense Production Act to meet the crisis of the Korean conflict. The Act authorized the President to impose price and wage controls and to administer such controls through an independent agency to be created by him. This act was modeled substantially after the Wage Stabilization Act of 1942,

a vital wartime measure, under which prices and wages were rigidly controlled. The 1950 Act gave the President broad powers to promulgate regulations and to delegate the powers conferred upon him. Under this Act he issued an Executive Order, Part IV of which created a new agency known as the Economic Stabilization Agency, headed by an Administrator to whom the President delegated responsibility for wage stabilization. The order created within such agency a Wage Stabilization Board with functions to be determined by the Administrator. The Administrator delegated to that Board his functions of wage stabilization. On January 26, 1951, the Administrator by a General Order froze wages generally at the levels prevailing on January 25, 1951. (Note: The problem does not involve the issue of delegation or sub-delegation.)

Section 405 of the Act was as follows:

"No employer shall pay, and no employee shall receive, any wage, salary, or other compensation in contravention of any regulation or order promulgated by the President. The President shall also prescribe the extent to which any wage, salary, or compensation payment made in contravention of any such regulation or order shall be disregarded by the executive department and other governmental agencies in determining the costs or expenses of any employer for the purpose of any other law or regulation."

Under this provision, as under a comparable provision of the Wage Stabilization Act of 1942, salary payments in violation of salary ceilings could be disallowed as business expenses for income tax purposes.

Both the 1950 Act and the predecessor 1942 Wage Stabilization Act were silent as to the establishment of administrative procedures to hear, determine, and enforce charges of violation. Section 706 of the 1950 Act provided as follows:

"Whenever in the judgment of the President any person has engaged in or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this Act, he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision."

A similar provision had been in the 1942 Wage Stabilization Act.

Notwithstanding the absence of provisions expressly authorizing the establishment of administrative procedures, the Wage Stabilization Board in June 1951 established a National Enforcement Commission and authorized the establishment of Regional Enforcement Commissions. The Regional Commissions were authorized to make determinations of wage violations and the disallowance of specific wage payments under Section 405. Hearings were to be held before an Enforcement Commissioner with authority merely to recommend findings to a Regional Enforcement Commission, whose decision was subject to review by the National Enforcement Commission. Similar procedures had been established by regulation under the 1942 Act. These had never been challenged. That Act was repealed in 1945 after the termination of the war.

In February 1952 the Wage Stabilization Board filed a complaint with the National Enforcement Commission alleging that X Corporation, between June 1, 1951, and January 1, 1952, had paid wage increases in violation of the wage freeze order of January 26, 1951, to the extent of \$750,000. The National Enforcement

Commissioner appointed an Enforcement Commissioner to hear the evidence and to recommend to the Regional Enforcement Commission a determination of the issues of the proceeding. The Enforcement Commissioner set the hearing for February 15, 1952. On February 10 X Corporation filed suit in the United States District Court for an injunction to restrain the Board, the National Enforcement Commission, officials of the Regional Enforcement Commission, and the Enforcement Commissioner from proceeding with the hearing. Only the Regional officials and the Enforcement Commissioner were served. The X Corporation alleged as a basis for the requested relief that the price order of January 26, 1951, had been promulgated without notice or hearing to the affected industries (Note: Neither the Act nor the regulations provided for notice or hearing); the administrative procedure established by the regulations was wholly unauthorized by the law; and that after the hearing was conducted, it would suffer irreparable damage through loss of bank credit because of the large potential liability. The District Court granted the restraining order and interlocutory injunction. After a hearing the injunction was made permanent. On appeal, the Court of Appeals affirmed. The Supreme Court grants certiorari.

Discuss all issues raised by the X Corporation and any others that may be relevant and give decision.

3. A made an application for the construction of a standard radio broadcast station in Bloomington, Illinois. An application for a similar station had been made by B, the station to be constructed in Springfield, Illinois. Both applications were for the same frequency. Although neither station would render service to the other community, the simultaneous operation of the two stations would cause mutually destructive interference. The hearings upon both applications were joined by the Federal Communications Commission.

The trial examiner recommended that B's application be granted and A's denied. His findings were to the effect that a need existed in each community for a new station, but that B was better able financially to serve Springfield than A was to serve Bloomington, although A's ability to serve Bloomington was also found adequate.

A filed exceptions to the examiner's initial hearing and after oral argument the Commission issued its final decision, overruling the examiner and granting A's application and denying B's. The Commission's findings of fact were to the effect that both applicants were qualified and that both communities were equally in need of another standard station. The crucial factor in the Commission's decision was that Springfield already had three standard stations while Bloomington had only one. It construed its obligation under these circumstances to be controlled by Section 307 of the Communications Act which reads as follows:

"In considering applications for licenses . . . , the Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same."

The Court of Appeals reversed. In its review of the record, it determined that the Commission's finding that "the ability of the applicants to serve their respective communities was about equal" (a finding which overruled the examiner's findings) was erroneous. The Court construed Section 307 to require the Commission to evaluate the relative abilities of the applicants to serve in the public

interest and that if one applicant had a greater ability to serve than the other, the former's application must be granted. The Court also held that the findings of the examiner on this issue could not be overruled by the Commission unless they were "clearly erroneous" and that on the record no such conclusion could be reached.

The Commission's findings also took "official notice" (derived from its records and not disclosed to B) that the existing licensee of the standard radio station in Bloomington had then pending with the Commission an application to discontinue service because of financial difficulties. The Court of Appeals held that this evidence was improperly utilized and could not be used in support of the finding of need.

The Supreme Court grants certiorari. Discuss the issues and give decision.

4. In Wilson & Co. v. National Labor Relations Board, 126 Fed. 2d 114, the Court of Appeals for the Seventh Circuit sustained a Board finding that the employer dominated a company union. In its opinion the Court said,

"We have recognized that findings must be sustained, even when they are contrary to the great weight of the evidence, and we have ignored . . . the shocking injustices which such findings, opposed to the overwhelming weight of evidence, produce."

In National Labor Relations Board v. Columbia Products Corp., 141 Fed. 2d 687, the Court of Appeals for the Second Circuit sustained a Board finding that an employee had been unfairly discharged. The opinion stated,

"Though it may strain our credulity, if it does not quite break it down, we must accept it (the finding)."

Both cases antedated Universal Camera Corp. v. National Labor Relations Board, 340 U.S. 474. Explain the principle of Universal Camera and its effect, if any, upon the conceptions of judicial review stated in the above excerpts.

FINAL EXAMINATION IN ADMINISTRATIVE LAW (Law 323)

TIME: 3 1/2 hours

First Semester 1955-56

Professor Sullivan

1. Congress passed a joint resolution stating that it was concerned with the operation of resale price maintenance laws and their effect on interstate commerce. It therefore directed the Federal Trade Commission to conduct an investigation on the subject and to report back to the Congress within one year. The F.T.C. was given power to subpoena whatever records were essential to the performance of its function. The F.T.C. directed a subpoena to the General Electric Company, demanding the production in Washington of all records of the company which related to sales of all its products to all of its dealers, including all information on price maintenance for the past five years. General Electric resisted the subpoena on the ground that these records were necessary to the conduct of its business and that the demand was too broad.

F.T.C. applied to the U.S.D.C. for an order directing General Electric to comply. What result? Why?

2. State Y has a comprehensive Unemployment Compensation Statute. The act provides that compensation benefits will be denied to persons who leave work "voluntarily to marry or because of marital, parental or filial obligations." It authorized the Director of the Division of Unemployment Compensation to waive this provision of the statute "for good cause shown." After the Director had waived the provision and authorized compensation, the last employer of the person compensated sought court review in accordance with the applicable statute. What should the court decide? Explain.

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3. The X Chemical Company was engaged in the manufacture of a liquid chemical which it sought to ship by railroad tank car. The railroad refused to furnish cars for this service. (This was not an explosive and it was not inherently dangerous.) The Company then began an action in the circuit court of the county in which the factory was located to compel the carrier to discharge its common-law duty. Decide the case and give reasons. (Assume that the carrier at common law is under a duty to furnish cars.)

4. Sam Piet filed an application with the City Council of X for a license to operate a junk yard. The license was denied under an ordinance which provided: "The City Council may grant licenses to operate junk yards for a fee of \$25 per year." The application set out that the business was to be operated on a plot of ground adjacent to a steel mill. It was shown that steel scrap and slag were stored on the steel mill property. Following the denial of the license, the Council passed an ordinance that provided that no license applications would be granted for junk yards unless they were accompanied by the license fee and affidavits from which the Council could determine that the applicant was of good moral character. Sam Piet, without knowledge of the new ordinance, again asked for the license and it was refused. He then filed a petition for a writ of mandamus to compel the issuance of the license. What result? Why?

5. A, B and C, policemen in the City of Chicago, were dismissed by the police department for mistreatment of prisoners. In a hearing before the Civil Service Commission of the City, there was evidence that the policemen had stopped Jim Orms for the purpose of giving him a ticket for illegal parking. After moving the car to a lawful parking space, Orms got out of the car and was talking to another person, when A came up and told him that he was ignorant and he (A) was going to run Orms in. B and C then came over, at which time A told Orms that he was under arrest and that he was taking him to the police station in the squad car. Orms said that he had done nothing to justify arrest and would not go along. Orms and another man testified that at this point, A, B and C seized him, forced him into the squad car, hit him on the head, and in general roughed him up severely. A, B and C testified that they used only the force necessary to take Orms to the station. Dr. X testified that he had examined Orms the next day and that he found many evidences of bruises and abrasions on the head and body of Orms.

The Commission found cause for discharge and A, B and C sought review. The Civil Service Act for Chicago provides that review shall be according to the Uniform Administrative Review Act. What result? Describe the procedure and the power of the court on review.

6. The Bee Line Motor Bus Company filed a petition for a certificate of convenience and necessity to transport passengers along a route parallel to the Rough and Rumble Railroad Company. The Railroad appeared as a protestant and offered evidence in opposition to the certificate. The president of the railroad testified that the company was losing money on its passenger business along this line. He offered in evidence statistical data to show the number of passengers, fares, etc. Over objection from the railroad, several witnesses were permitted to testify that they had heard people say that they desired bus service between the towns in question and that they would travel by bus if the service was available. The trial examiner after the conclusion of the hearing consulted the railroad's annual reports on file with the Commission and concluded that the railroad would not be hurt by the competition from the bus company. The B. of R. T., a railroad

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union, sought to intervene in the proceeding but its petition was denied. After the decision of the trial examiner had been affirmed by the Commerce Commission, both the railroad and the B. of R. T. sought review in the proper court by the correct method. Decide the case and give reasons.

7. The Director of the Department of Public Health in Illinois is authorized to license nursing homes. These licenses may be revoked for cause. Mrs. Jones was the operator of a nursing home in X-ville within the state. In the mail on October 11, 1954, she received a letter signed by the Director's rubber stamp telling her that her license was to be "revoked for cause." A hearing was to be held on October 18, 1954, at the Office of the Director in Springfield, at which time she might produce evidence to show why her license should not be revoked. She appeared on the day in question at 11:00 a.m. and was first met with the statement of the assistant director that he had called this case at 9:00 a.m. and, since Mrs. Jones was not present, he had entered a default judgment against her. She had brought with her a physician who regularly treated the patients at her home, who said he had come to represent her. The assistant director refused to hear him in this representative capacity, so Mrs. Jones hurriedly called a local lawyer who arrived at 1:30 p.m. and moved to reopen the proceeding. This motion was granted and Mrs. Jones was permitted to tell her story. The Department then read into the record the report of an investigator who had visited the home, but the individual who had made the report was not placed on the stand. None of the testimony was under oath. Mrs. Jones' efforts were unrewarded and the order of revocation was entered.

Discuss the procedural questions presented by this statement of facts and decide each issue.

8. The Industrial Commission of State X has statutory authority to award compensation if it determines that a disability results from an injury which arises out of and in the course of employment. After a full hearing at which conflicting evidence was introduced, the trial examiner found as follows: "1. That the evidence is insufficient to show that claimant sustained an accidental personal injury arising out of and in the course of his employment with the respondent employer and therefore the petition for an award is dismissed." This decision was adopted by the Commission. The employee then began an action to set aside the decision. What result? Why?

9. I. M. Accurate, a certified public accountant, and O. H. Windy, an attorney admitted to practice before the Supreme Court of Illinois, both filed petitions for rate increases for motor carriers operating in interstate commerce. The Interstate Commerce Commission notified both representatives that they would have to be admitted to practice before the I.C.C. before the petitions could be validly filed. The I.C.C. directed Mr. Accurate to take the next regularly scheduled examination for admission to the bar of the Commission. It also directed Mr. Windy to file a certified copy of his admission to practice in Illinois with an affidavit by the Clerk of the Supreme Court that no action had been taken to revoke his license to practice and also to furnish evidence that he had studied specially interstate commerce law and procedure.

Both seek to enjoin the Commission from enforcing these requirements. What results? Why?

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10. The Interstate Commerce Commission was considering a change in the accounting systems of the carriers under its jurisdiction, a change which it could make "after a hearing." The Commission therefore caused notice of the hearing to be published in the Federal Register of October 10, 1951, and the hearing was set for November 12, 1951, at Washington, D. C. Notice was sent by ordinary mail to the Association of American Railroads, the Association of Motor Bus Operators, and the American Trucking Association, but no notice was given to any carrier. On the day set for the hearing, a great many persons wanted to be heard. The hearing lasted for two weeks, at which time the Commissioner who conducted the hearing stated that no more evidence would be received, although only a small fraction of those desiring to be heard had had an opportunity to testify. The Commissioner recommended to the whole Commission a new accounting procedure. The Commission without hearing argument or permitting the filing of briefs adopted the recommendations of the Commissioner who presided at the hearing. The X Railway, which had not been heard, now seeks to set aside the order on procedural grounds. What result? Why?

FINAL EXAMINATION IN AGENCY (Law 306)

Second Semester 1954-1955

Professor Frampton

This is a three-hour examination. There are six questions. Allocate 30 minutes to a question, except that the sixth question can be done in 15 to 20 minutes (giving you 10 to 15 minutes overtime on the other five questions combined).

Begin the answer to each question on a new page and place your book number and the question number on that page.

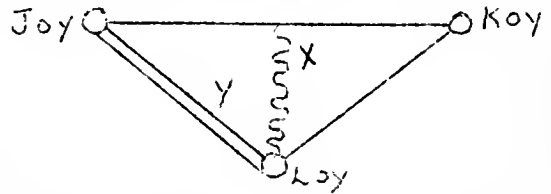
1. Sam Sun, president of Peoria Realty, Inc., opened a telegram on May 1, 1955, addressed to the company from Fred Finn, a resident of Florida, reading as follows: "Dear Sirs, You are to do what is necessary to unload my old house at 3 John Street, Peoria, Illinois, for at least \$30,000 and get the proceeds to me, less your customary commission, as soon as possible. Keys at Number 5." On May 3 Sun arranged with Florentine Landscape Associates, a partnership, to take one of their men for a day with all necessary tools to put the yard at Finn's house in decent shape. On May 4 Sun was at the house putting up a "For Sale" sign and showing Saul Stap, an employee of Florentine, what had to be done around the yard. Tom Tred showed up to look at the house, and Sun showed the house to Tred as Finn's house and told Tred it was a steal at \$40,000. Tred thereupon offered \$35,000 for the house. Sun accepted, and the two executed a form real estate contract accordingly, Sun signing "Sam Sun, Realtor." As they left the house, Tred was badly injured by a power mower operated by Stap. Informed by wire of the price, Finn wired Sun: "Deal off. Too quick a sale means too low a price." Sun shows this telegram to Tred, who is hospitalized with injuries from the mower, and Tred asks you what all of his rights are, against whom, and why.

2. The Prop Insurance Company took over a building in Noville on a mortgage foreclosure and hired Abe Axe to manage and operate it in his own name as a bowling alley until a suitable purchaser could be found. Prop gave Axe \$1,000 in cash for salaries and similar expenses, and arranged to have its regular purchasing agent obtain and send to Axe seats, pins and all equipment and supplies. Axe moved in, hired pin boys and attendants, took a five-year lease on a parking lot next door for the patrons, borrowed \$1,000 from the Noville Bank and Trust on a note secured by a chattel mortgage on the equipment sent him, and made a contract with the Noville News for weekly newspaper advertising for the coming year. He also bought on credit a cash register and, for his own use, a Packmobile automobile. At the end of the first month Axe takes off in his Packmobile with all cash, including receipts from the bowling alley. Advise Prop as to its liabilities.

3. Paul Pog, a farmer, of Notown, hired Art Ake on a weekly salary basis to protect Pog against a grain shortage by locating and purchasing for Pog enough grain for winter storage to fill Pog's two storage barns. Ake fell luckily on a little-known source of supply and discovered he could keep turning grain over at a nice profit, which he did, faithfully remitting the profits weekly, less his salary, to Pog, and thus drawing out the hiring period originally contemplated. After eight weeks of this activity he learned about profits to be made in soybean trading and began trading in them, pocketing the profits without Pog's knowledge. He continued to make and remit to Pog profits from the grain

trading. Ten weeks after the soybean trading had begun, Pog died and his widow qualified within a few days as his executrix and sole heiress. She tells you that she has just received the second of two weekly grain profits checks and has learned about the soy trading. She also tells you that a neighbor has told her about, although she herself has not seen, a newspaper story in the Notown Star quoting Ake as stating that he is continuing in the business of buying and selling feed of all kinds in association with the late Mr. Pog's widow. She says she has no idea how her husband ever got into this business and wants to know what her legal position is and what she should do.

4. Anthony Aff services the erection of prefabricated houses made by Pop, Inc., which has its offices at Joy (in accompanying diagram). Pop, Inc.'s employees are covered by a state Workmen's Compensation Act. Aff works on a commission basis, receiving a very small percentage on the erection of any house as to which he performs advisory services for Pop. His weekly drawing account against commissions is \$60. His commissions have never been less



than \$60 nor more than \$75. On April 15, having reported for work as usual in his own car at 7 a.m., he was sent out to service two jobs, one at Koy and one at Loy. He went east to Koy first and returned to Loy. After finishing at Loy at about 6:30 p.m., he started back for his nightly report at Pop, Inc.'s offices but in order to see the sunset on the lake he took Road X north, a winding dirt road, instead of Road Y northwest, a straight, paved dual highway. On Road X he relaxed a bit and while he was cupping his hands to light a cigarette, a lit match head flew into his eye and he ran his car off the road, injuring himself and Toby Tim, a poor artist who was painting the lake. Aff suggested that Tim go immediately to a hospital, promising that Pop would pay all the bills. Informed of this promise, Pop immediately wrote Tim: "Our commission agent Aff of course had no authority to assure you that we would pay all your bills without limitation and without regard to reasonableness, and we will not do so, at least without further study of the situation." Pop subsequently refused to pay any bills of Tim's.

- (1) On Aff's claim against Pop for compensation, write the opinion of the Workmen's Compensation Board; and
- (2) On Tim's action against Pop, write either the directed verdict of the court or the charge to the jury, whichever you think more appropriate in this situation.

5. Astor Alt, acting for the Pottstown Better Business Bureau (BBB), sold Tom Tuff for \$800 cash on delivery a dozen second-hand defective typewriters owned by BBB, falsely representing them to be in good condition. Alt told Porter Pod, president of BBB, that the sale price was \$600 and sent Pod \$600 less Alt's 10% commission of \$60, or \$540. When Tuff learned, after delivery, of the condition of the typewriters, he sued Alt for damages. In the course of pre-trial preparation Tuff learned for the first time that Alt was financially irresponsible and that the typewriters had belonged to BBB, and BBB learned that the sale price was \$800.

- (1) What may Tuff do?
- (2) What are Alt's liabilities, and to whom?

6. Tentative Draft No. 3, dated April 1, 1955, of the Restatement of Agency, contains the following proposed revision of Section 85 and the material thereunder (with omissions not relevant to this discussion):

"Section 85: PURPORTING TO ACT AS AGENT AS A REQUISITE FOR RATIFICATION.

"(1) . . . RATIFICATION DOES NOT RESULT FROM THE AFFIRMANCE OF A TRANSACTION WITH A THIRD PERSON UNLESS THE ONE ACTING PURPORTED TO BE, OR TO BE ACTING FOR, THE RATIFIER. . . .

"(b) Rationale. Where there is a transaction between the purported agent and the third person, one reason for allowing ratification to be effective as prior authorization is to give to the other party what the other expected to get in dealing with the agent. This reason would not exist where the other party does not intend to deal with the principal. It does exist, however, where the act was done by a purported agent and where the act or signature purported to be that of the principal. . . ."

Comment on the rationale.

FINAL EXAMINATION IN BILLS AND NOTES (Law 321)

Second Semester 1954-1955

Professor Warren

Essay Portion

Important: You will find a number in the upper right-hand corner of this page. This will be your examination number. A sheet will be passed around, listing each member of the class. Please write your examination number in the space after your name. Do not under any circumstances write your name on either the question sheet or the examination booklet.

Directions for the essay portion. You will have one hour for the essay section. It will count 20 points out of a total of 85 points on the examination. You are restricted to one examination booklet and you may write on only one side of a page. Write plainly; be concise.

1. M was once owner and operator of a prosperous coal mining business in Southern Illinois. In recent years, however, his business had slumped woefully, and he was driven to seek a loan from P. M talked over his needs with P, who agreed to lend him the money. P drew up a promissory note in such a manner that blanks were left which would make it easy for P to raise the sum of the note from its original amount of \$500. After he had given M the loan and M had signed the note, P raised the amount of the note to \$1500 and traded it to H in exchange for a negotiable instrument in which H promised to pay to the order of P \$1400. H knew that M was in a bad financial position when he took the note but he had no knowledge that the note had been altered, for it was not apparent from the face of the note that there had been an alteration.

The note M signed was payable to the order of P, the principal and interest to be paid in monthly installments over a period of three years. The note included the following clause:

"And the undersigned hereby authorizes any attorney of any court of record to appear for the undersigned after any installments of this note become due, and waive the service of process and confess a judgment against the undersigned in favor of the holder hereof, for the amount due hereon."

Since M had never learned to read and could only write his own name, he did not know that the note included this clause.

M failed to meet an installment payment and H took judgment on the note for \$1500. M now seeks to get the judgment set aside. P still has H's note in his possession. What arguments would M be likely to raise in this action, and how would an Illinois court deal with them in resolving this case?

FINAL EXAMINATION IN BILLS AND NOTES (Law 321)

Summer 1955

Professor Warren

Essay Portion

Important: You will find a number in the upper right-hand corner of this page. This will be your examination number. A sheet will be passed around, listing each member of the class. Please write your examination number in the space after your name. Do not write your name on either the question sheet or the examination booklet.

Directions: You will have one hour for the essay section. Please write on only one side of a page. WRITE PLAINLY.

I. Mary Hale was payroll clerk at Davy Crockett Enterprise's Koonskin Kap Division. The payroll procedure called for Mary to make out the payroll list and prepare the checks for the signature of Gladson, the treasurer of the company. Mary made out a check which purported to be the monthly pay check of Hume. The payee, Hume, actually no longer worked at the Koonskin Kap Division, having been transferred to the Buckskin Shirt & Blouse plant in another city. Mary wrote in the lower right-corner corner of the check: "Davy Crockett Enterprises, Koonskin Kap Division, James Gladson, Treasurer." She then wrote Hume's name on the back of the check, cashed the check at D Bank, on which the check was drawn, and went on a shopping spree in which she used up all the money she had gained from this check. Mary had no authority from the company to make out checks either in her own name or in the name of others. As soon as D Bank sent Crockett Enterprises a bank statement, the company discovered that the check was unauthorized. May D Bank properly charge the company's account for the amount of this check? Explain.

Assume that § 9 (3) of the NIL of the jurisdiction in which this suit is brought reads as follows: "The instrument is payable to bearer: (3) When it is payable to the order of a fictitious or non-existing person, and such fact was known to the person making it so payable."

II. P fraudulently induced M to issue to the order of P a demand promissory note, negotiable in form, in the amount of \$500. P discounted the note with A for \$350 and, at A's request, indorsed it "Pay to A in trust for B." A, an elderly man, often put the beneficial interest of property he acquired in the name of B, his only daughter, because he thought that this kept down the size of his estate for federal estate tax purposes. A, who enjoyed a good deal when he could make one, was able to get a substantial discount on this note because he knew that M was in a shaky financial condition. A knew nothing of P's fraud and was confident that M would be able to improve his condition to the extent of being able to pay the instrument upon demand within a few weeks. His confidence soured when within a week after purchase he learned that M might possibly be involved in embezzlement charges. A hurriedly sold the note to X for \$250 and indorsed it in blank. X knew nothing of the embezzlement difficulties and A did not enlighten him. When X inquired about B's rights under the note, A explained why he had placed the beneficial interest in the note in B's name and assured X that he was capable of passing complete title to X. A was sincere in believing that this was true and convinced X of this. X had no knowledge of any defenses between M and P. Within a reasonable time after issue of the note, X brought suit against M on the note for \$500. Is X entitled to recover from M? Please answer this question under Illinois law. You may assume that fraud in the inducement is a "personal defense."

FINAL EXAMINATION IN BILLS AND NOTES (Law 321)

Second Semester 1955-1956

Professor Warren

Essay Portion

Important: You will find a number in the upper right-hand corner of this page. This will be your examination number. A sheet will be passed around, listing each member of the class. Please write your examination number in the space after your name. Do not write your name on either the question sheet or the examination booklet.

Directions: Please write on only one side of a page. WRITE PLAINLY. You need not pay especial attention to the case or statute law of Illinois in any of the three questions below.

1. On July 25, 1955, Thomas and Betty Gallegos, husband and wife, asked defendant bank for a loan of \$1,000 in order to buy a certain automobile from Schneider Motors of Hamburg, New York. Defendant gave them a cashier's check for \$1,000, made payable "to the order of Betty J. & Thomas Gallegos", and, in return, took a note for the same amount and a chattel mortgage on the specific auto that was to be purchased. To assure itself that the check would be used to effect the purchase of the car, the bank, before delivering the check to the payees, had them indorse it "to the order of Schneider Motors, Hamburg, N. Y."

When the Gallegoses left the bank, they went, as they said they would, to Schneider Motors. However, Alvin Schneider, a partner in the firm, refused to accept the check because of the recital typed on its reverse side by the bank that it was "Payment in full covering one 1953 NASH 4-door Sedan." It appears that the Gallegoses had not told the bank the truth, for they had purchased the 4-door sedan described on the check from Schneider Motors some time before and had actually paid everything due upon it except the sum of \$200. It also appears that, in connection with Schneider's refinancing of sales on credit, Commercial Credit Company had taken a chattel mortgage on the Gallegos car as security. Reading between the lines, Schneider apparently believed that, by taking and later indorsing the check, he might somehow or other impair the finance company's security. In any event, Schneider did not accept the check; after examining it, he returned it to Thomas Gallegos.

Several days later, on July 30, Betty Gallegos went to plaintiff's grocery store in Forestville, -- where the Gallegoses had formerly lived -- and asked John Hall, plaintiff, who was owner of the store, to cash the \$1,000 check. At that time, it contained the following indorsements:

"Pay to the order of
Schneider Motors, Hamburg, N.Y.
Betty J. Gallegos
Thomas Gallegos
Payment in full covering one
1953 NASH 4-door Sedan
Motor # RE 91798 Ser # K 231878
Schneider Motors
Alvin Schneider Hamburg
Thomas Gallegos N.Y."

Schneider Motors' name had been written without its authorization, and Alvin Schneider had not signed either his name or the company's on the check, but those facts were not known to the plaintiff. After looking the instrument over, and

after Mrs. Gallegos had signed her name below that of her husband, John Hall cashed the check. He gave her \$880 in currency and \$20 in groceries and used the remaining \$100 to settle a grocery bill long overdue. Plaintiff deposited the check in his own bank, but defendant refused to honor or pay it.

The trial court, sitting without a jury, allowed plaintiff Hall to recover on the check against defendant bank on the theory that plaintiff was a holder in due course. On appeal, what result under the UNIL? Explain.

2. D owed P a \$1000 debt and made out a check to P for this amount of money. D entrusted the check to X, one of D's employees, to deliver it to P. X had absolutely no authority to write or indorse checks on behalf of D. X wrote P's name on the back of the check and deposited it in A Bank. A Bank stamped, "Pay any bank or banker, A Bank," on the back of the check and sent it to B Bank, upon which the check was drawn, for payment. B Bank paid A Bank the amount of the check; X drew out the entire deposit as soon as A Bank notified him that the check had cleared. P now sued A Bank for the amount of money it collected from B Bank on the check. What result? Why? You may assume that neither bank had any knowledge of the forgery until P notified them of it.

3. Eugenia was payee of a negotiable promissory note made to her order for value by Michael. Her cousin Rachel fraudulently induced Eugenia to indorse the note in blank and deliver it to her in payment for some securities which Rachel well knew were worthless. This delivery took place one week after the note became due. Rachel indorsed the note in blank and quickly sold it to Harold, who paid value without actual notice of any defenses to the note of any nature. When Eugenia learned of the fraud, she sued to recover the note from Harold. What result? Why?

FINAL EXAMINATION IN BUSINESS ASSOCIATIONS (Law 324)

First Semester 1954-55

Professor Frampton

Time: Four hours. Allow forty (40) minutes for each question.

1. Art Abb and Bill Batt, having developed the idea of selling a barbecued beef product on a stick, obtained from their uncle, Charles Cobb, a wealthy grain merchant, \$2,000 to help finance a rather elaborate Stakestick Drive-In in Champaign. Pursuant to a stock subscription agreement under which Abb and Batt put up \$250 each, Cobb took eight of the ten authorized no-par common shares and Abb and Batt took one each. Cobb later put up additional funds in return for a large mortgage on the Drive-In land and building. Abb consulted Dorr, a lawyer friend, and gave Cobb's name and home address in Macon County as the address, on Illinois Form B, of Stakestick Inc.'s initial registered office in Illinois. When Dorr received the certificate of incorporation from the Secretary of State, he filed it with the recorder of Champaign County.

Stakestick Inc.'s flourishing profits were augmented by sales of hot Stakesticks at school and university athletic games.

(1) Assume that for the purpose of handling sales at the games, Stadium Sales Inc., a wholly-owned subsidiary of Stakestick Inc., was duly organized, with a capitalization of \$1,000. A Stadium Sales motorbike on its way to a game to make deliveries ran over Homer Patt and blinded him. On what one or more theories, and with what probability of success, could Patt seek judgment against Cobb individually?

(2) Assume that Stadium Sales Inc. was organized and is owned wholly by Abb and Batt. Cobb knew that Stadium Sales was Stakestick's biggest customer but did not know that it was owned by Abb and Batt. He consults you within a reasonable time after learning of its stock ownership. Advise him what his rights are and what he should do.

2. The Max Company was duly incorporated in 1888 and has engaged profitably for many years in the manufacture of home furniture. Its five directors are:

- (1) Awl, owner of several large timber tracts from which the woods used in the Max plants are cut;
- (2) Bik, who is also a director of Toolmake., Inc., a machine tool manufacturing concern;
- (3) Cott, a local merchant, who is a friend of Awl's;
- (4) Den, the president and principal stockholder of Max; and
- (5) Elm, a local banker, who is related to Fox, a large stockholder.

At a duly noticed director's meeting on December 22, 1953, Bik proposed that the company branch out into the manufacture of television sets. He said he thought this change could be accomplished without additional financing, in view of the company's large surplus, and he stated that his company had some television parts machinery available that was worth at least \$50,000. He said they would sell this machinery to Max, as a favor to Bik, for \$40,000. He did not tell the Board that Toolmake had paid \$30,000 for the machinery in November 1952. In the discussion that followed Awl approved the idea, saying he thought it would greatly stimulate the cabinet end of Max's business. Den's motion to adopt Bik's proposal was then passed, Awl, Bik and Den voting for, and Elm voting against. Cott was absent as usual but had given Den a proxy authorizing him to cast Cott's vote at the directors' meeting as Den saw fit in the interests of the company, and Den cast Cott's vote for the motion. The company's venture into television was a complete fiasco and the company lost more than \$500,000.

Miff, a minority stockholder, asks you what his rights are. Outline for him what action can be taken, against whom, on what theories, and with what probable outcome.

3. On December 27, 1954, Hal Hur purchased 22% of the common stock of the White Book Company, an Illinois corporation. Three stockholders, relatives of the founder, held 38% of the stock and the rest of the stock was held in smaller blocks. The annual meeting of the stockholders for the election of the nine directors for a one-year term was held according to custom at the company's offices on the first Tuesday after New Year's Day, which fell on January 4, 1955, and Hur showed up for the meeting with a public stenographer. Only ten other stockholders, including Al Wit, president of White, were present, none of them relatives of the founder, who were known by sight to Hur and to Wit. Wit called the meeting to order and asked Hur who he was and what the stenographer was doing. Hur identified himself and said that he wanted a complete record of everything that was said at the meeting. Wit said, "Well, we've always done everything very informally in this little business and we've always been a very successful one, too." "Maybe so," said Hur, "but after I get on the board there are going to be a few changes." Wit said, "Well, under the circumstances, I think we'd better have some proper legal advice. I'd better get hold of our company lawyer this afternoon as soon as I can reach him. Meanwhile this meeting is adjourned until next Monday morning, same time and place, or if I have to postpone it to some later date I'll let you know." Hur said that next Monday was not convenient for him and one of the stockholders present said it wasn't convenient for him either. As Wit got up to leave, Hur suggested to the others that they carry on and elect directors. Wit left and Hur and the others elected a nine-man board of their choosing, which then met and voted to conduct a thorough investigation of the company's affairs looking to a possible wholesale ouster of the present management.

Hur now consults you to see what can be done to enjoin the Monday meeting and have a court make the management recognize his board. Advise him.

4. A layman friend of yours who is interested in the contemporary scene points out the following passage to you from Berle, The Twentieth Century Capitalist Revolution (1954):

Herein lies, perhaps, the greatest current weakness of the corporate system. In practice, institutional corporations are guided by tiny self-perpetuating oligarchies. These in turn are drawn from and judged by the group opinion of a small fragment of America--its business and financial community. Change of management by contesting for stockholders' votes is extremely rare, and increasingly difficult and expensive to the point of impossibility. The legal presumption in favor of management, and the natural unwillingness of courts to control or reverse management action save in cases of the more elementary types of dishonesty or fraud, leaves management with substantially absolute power. Thus the only real control which guides or limits their economic and social action is the real, though undefined and tacit, philosophy of the men who compose them.

He asks you whether it is true that management's power is substantially absolute. List and evaluate checks or controls on management power that would interest your friend.

5. Jay Mills, Inc. is engaged in the manufacture of rope and twine. The capital stock of the company consists of 100,000 shares of authorized no-par common stock, of which 60,000 is issued, 59,000 outstanding and 1,000 held as treasury shares. In December 1951, Jay was in distress after eight bad post-war years in which competitors and others made large profits. Occasional over-the-counter sales of its stock were made at \$2 and \$3. John Jay, retired son of the founder and holder of 25,000 shares, was instrumental, in conjunction with certain other large stockholders, in replacing the management with Sty, a new president, and Trill and Ock, two associates brought in by Sty. All three men signed four-year contracts dated January 1, 1952, under which they agreed to serve at salaries of \$50,000, \$35,000, and \$20,000, respectively. In 1952 the company made profits for the first year since 1940. In 1953 profits after taxes, aggregating about \$500,000, were tripled over 1952, substantial sums were spent or reserved for expansion and improvements, and dividends of \$2.00 a share were paid. In 1954 profits were larger than in 1953.

Sty, Trill and Ock want to participate in this success, which they claim to be largely due to their efforts. They have notified Jay that they will resign at the directors' meeting of February 1, 1955, unless the directors vote them the following:

- (1) A cash bonus of $\frac{1}{3}$ each of 1% of net profits after taxes earned during the year 1954.
- (2) A further bonus of 250 shares each of stock.
- (3) A new two-year contract effective January 1, 1955, under which Sty would receive annually \$150,000, Trill \$100,000, and Ock \$75,000.

The contract would further provide that each man would receive an annual cash bonus of $\frac{1}{3}$ of 1% of net profits after taxes and an option to purchase up to 5,000 shares each of the company's shares, at any time on or after January 1, 1955, so long as they remain in the company's employ, or within 6 months thereafter, at the market value of the stock on January 1, 1955, which was \$28.50.

As legal counsel for the company, what do you advise the directors in this situation?

6. Kidd, Ladd and Mann want to open a sporting goods store in Illinois. Kidd has had some accounting and business experience and Ladd, a former Illinois football star, will be a valuable salesman. Mann has the money and will be able to spend some time in the store, but for the present he wants to devote most of his time to certain other interests. Mann wants a veto on all important decisions, however. They ask you to organize a corporation for them. Tell them what documents you will have to prepare and what important provisions bearing peculiarly on their situation should be contained therein.

FINAL EXAMINATION IN BUSINESS ASSOCIATIONS (LAW 306)

Second Semester 1955-1956

Professor Frampton

This is a three-hour examination. There are five (5) equal-credit questions. Allocate not more than 36 minutes to a question. The first four questions are essay questions and the fifth question calls for a series of short answers.

Begin the answer to each question on a new page, and place your examination book number and the question number on each page. Do not write anything on the cover page of the examination book except the information called for by the blanks at the top of the cover page. Write legibly in blue or black ink.

1. In settlement of a tort claim brought against Paul Pox by Abe Axe, Pox agreed to appoint Axe his exclusive representative to buy skins and sell furs in the Seashoot area for a period of three years. The agreement provided that "this appointment is irrevocable for the term of this agreement." It further provided that Axe would set up an office and pay its expenses out of his commissions, would purchase skins in the amounts and at the prices directed with cash plus a 10% commission furnished in advance by Pox, and would undertake to sell all furs shipped to him by Pox at the prevailing Seashoot market prices, remitting the sales price less 10% commission to Pox upon sales to customers. Although the contract did not so provide, Axe put "PAUL POX" in large letters, followed by "Abe Axe, Local Representative," in small letters, on the office door and business papers. Ralph Rap, an auditor from the Pox home office, audited Axe's books and took inventory of cash, furs, and skins at the Axe office every Friday. Six months after the office opened, Tom Tad, a customer, tripped on a linoleum tear in the Axe office and fell. Axe urged him to go at once to a hospital for a complete check, promising that Pox would pay the bills. Tad, in reliance on Axe's statement, did so, and wrote Pox from the hospital about his injuries and Axe's statement. Pox replied: "You state that our employee Axe advised you that we would pay your hospital bills. The description you give of your condition does not seem to us to warrant any assumption of your bills on our part and Axe was certainly not authorized under the circumstances to make any such commitment." Pox wrote Axe: "I cannot imagine how you could have acted so irresponsibly in the Tad claim matter. We cannot use people with such poor judgment in our organization and our relationship and agreement are hereby terminated." Pox now asks you where he stands legally with Tad and Axe and what he should do further, if anything, to get completely clear of Axe and of any future losses or liabilities he might have through Axe. Advise him.

2. Pel Pog, a farmer, of Notown, hired Art Ake on a weekly salary basis to protect Pog against a grain shortage by locating and purchasing for Pog enough grain for winter storage to fill Pog's two storage barns. Ake fell luckily on a little-known source of supply and discovered he could keep turning grain over at a nice profit, which he did, faithfully remitting the profits weekly, less his salary, to Pog, and thus drawing out the hiring period originally contemplated. After eight weeks of this activity, he learned about profits to be made in soybean trading and began trading in them, pocketing the profits without Pog's knowledge. He continued to make and remit to Pog profits from the grain trading. Ten weeks after the soybean trading had begun, Pog died, and his widow, Pam, qualified within a few days as his executrix and sole heiress. She tells you that she has just received the second of two weekly grain profits checks and has learned about the soy trading. She also tells you that a neighbor has told her about, although she herself has not seen, a newspaper story in the Notown Star quoting Ake as stating that he is continuing in the business of buying and selling feed of all kinds in association with the late Mr. Pog's widow. She says that she has no idea how her husband ever got into this business and wants to know what her legal position is and what she should do. Advise her.

against him by the third person named. Assume, unless otherwise stated, that the existence and identity of Gold is learned by the third person after the act described and that the third person brings an action only against Gold. Mention specifically the one or more theories, doctrines or rules of law most closely involved in each act, indicating why you believe the situation comes or does not come within it. More credit will be given or denied for the reason than for the result. Make your answer short: one or two sentences will usually have to do, because you do not have more than 2 to 3 minutes for each act. You may use phrases "telegram style" but not at the expense of clarity.

(1) Silver purchases from Tat, a jewelry wholesaler, a jewelled brooch, purportedly for his stock in trade, but actually with the intent of taking it from the store without a proper charge and presenting it to his wife.

(2) Silver carefully hires Alloy as a clerk, and Alloy assaults Tuff, a customer whom Alloy mistakenly thinks is stealing a ring.

(3) Silver contracts in his own name to sell the business -- stocks, accounts, equipment, and good-will -- to Tor.

(4) Silver makes an improper and tortious advance upon Miss Tim, a young lady who enters the store to solicit a pledge for the Retailers' Division of the United Neighborhood Drive.

(5) Silver holds an anniversary sale of merchandise at 10% off the regular price and sells a \$500 punchbowl for \$450 to Tier, who obtains a judgment for specific performance against Silver before learning that Gold owns the punchbowl and that Gold took possession of it after learning of the sale and the sale price.

(6) Silver sells to Trull, for \$500, a faulty diamond known by Silver to be worth only \$100 but represented by Silver to be flawless. Silver pockets \$400 for himself.

(7) Silver tells True, a banker, that Gold, who is away and cannot be reached, really owns the business but that Silver is conducting it for him. True thereupon okay's a loan to Silver of enough money to pay pressing back-due utility bills of the store, aggregating \$250, which are paid by Silver with the money received from the loan.

(8) Silver tells Tum that a wealthy principal whom Silver is not permitted to identify owns the business, and Silver borrows \$1,000 for business purposes, on a note signed "John Silver." Tum obtains a judgment against Silver on the note after learning at the trial of the identity of Gold, but is unable to collect the judgment against Silver.

(9) After Gold has terminated their arrangement by discharging Silver upon notice only to Silver, Silver sells Toll a bracelet from the showcase at a 50% discount.

(10) After Gold has terminated their arrangement by discharging Silver upon notice only to Silver and removing all stock from the store, Silver tells Ty that Gold was and still is his principal and buys new stock on Gold's credit from Ty, absconding with it.

FINAL EXAMINATION IN CONFLICT OF LAWS (Law 339)

First Semester 1954-1955

Professor Holt

Time - 3 hours

Give reasons for your conclusions. Use correct English. In answering any question you may make reasonable assumptions beyond what is expressly stated in the question, but state clearly what assumptions you make. Above all, write clearly and legibly.

1. A statute of State X provides that "neither party to a divorce shall be permitted to marry again for six months from the date of the divorce decree, and the bond of matrimony shall not be deemed to be dissolved as to any marriage subsequent to such decree or in any prosecution on account thereof, until the expiration of such six months." October 26, 1943, M secured a divorce from his wife, W, in a competent court of State X. November 26, 1943, in State Y, W and H went through a ceremony of marriage that as to form was in accord with the statutes of State Y. Ten days later H went overseas and did not return to the United States until May 1945. On H's departure overseas, W came to State Z for a few weeks and then went to Washington, D. C., where she took an apartment and obtained employment. On his return to the United States in 1945, H went to Washington and lived with W in her apartment for several months, when they moved to a home he purchased in State Z. Still later W sued for a divorce from bed and board in a competent court of State Z on the ground that H had been guilty of cruel and abusive conduct (a ground for divorce from bed and board in State Z), and H filed a cross bill for an annulment of the alleged marriage. What disposition of W's bill and H's cross bill?

2. H and W, a married couple domiciled in State X, adopted S under a statute of that state which contains a provision that an adopted child may inherit from his adoptive parents, but not from their collaterals. After H and W died a brother of H, C, also domiciled in State X, died intestate. C shortly prior to his death had made a contract to convey his interest in a leasehold estate in State Y. The adoption statute of State Y provides that an adopted child shall possess the same rights of inheritance as a natural-born legitimate child. S claims the proceeds of the sale of the leasehold as C's next of kin. He is the only claimant. How should the proceeds be distributed?

3. In State X a chattel mortgage duly recorded in the state is valid even as against an innocent purchaser for value from the mortgagor in possession, and on default by the mortgagor the mortgagee may obtain possession by seizure. In State Y an innocent purchaser from a mortgagor in possession acquires a good title as against the mortgagee. In State X, one M executed and delivered to one E a chattel mortgage on a truck then in State X. The mortgage was duly recorded in State X. M took the car to State Z, where he obtained motor vehicle registration plates for the truck. Still later M took the truck to State Y and there sold it to P, a bona fide purchaser for value without notice or knowledge of E's mortgage. E caused the truck to be seized in State Y, M being in default under the mortgage. In the federal district court of State X, action in conversion was brought by P against M. What disposition of the case?

4. D owned land in State X immediately adjacent to land in State Y owned by P. D erected a dike on the edge of his State X land so as to back up water on P's land in State Y. By State Y law this was permissible; by State X law it was actionable. P sued D in State X for damages.

(a) Indicate briefly how as a judge you would support a judgment for P.

(b) Indicate briefly how as a judge you would support a judgment for D.

5. The Workmen's Compensation Act of State X provides that the principal contractor as well as the subcontractor who employs a worker is liable to pay the same compensation he would have been liable to pay if that workman had been immediately employed by him. If the principal contractor does not take out workmen's compensation insurance, he is subject to negligence suits by the employees of his subcontractors and is deprived of certain common law defenses. When, however, the principal contractor does participate in the workmen's compensation plan, the statute of State X relieves him of common law liability to employees of his subcontractors.

In State Y the principal contractor is liable to pay compensation to employees of a subcontractor only if the subcontractor has not himself taken out workmen's compensation insurance; and the act covers injuries outside of State Y when the contract of employment was made in State Y. If a workman is injured in the state of Y in the course, and within the scope, of his employment, as an employee of a subcontractor, and only the subcontractor has taken out workmen's compensation insurance, the principal contractor may be liable in a negligence suit brought by that employee of the subcontractor. The Act gives an injured employer an option to receive compensation provided by his employer or to recover damages from a third party where negligence caused the injury.

W was employed in State Y, where he resided, by Colonial Electric Company and was injured in State X while working on a construction project on which Woodner Company was principal contractor and Colonial Company a subcontractor. Colonial Company had compensation insurance for W's benefit under the statutes of both X and Y. Woodner had compensation for W's benefit only under the State X statute. W did not claim compensation under either Workmen's Compensation Act, but sued Woodner Company in State Y for negligence and recovered judgment. Woodner Company appealed. What disposition on appeal?

6. Peter Payee was the holder of a promissory note made by Michael Maker. Payee kept the note with other valuable papers in a safety deposit box in State Y, but he died domiciled in State C. Michael Maker is domiciled in State J. Administrators for Payee's estate were appointed in States C, J and Y. E, the administrator appointed in State C, by deed assigned the claim represented by the note to A. E-2, the administrator appointed in State Y, indorsed the note to B. E-3 was appointed administrator in State J; he, A and B all brought actions against Maker in State J to recover the amount of the note. Results?

7. "Haddock v. Haddock is overruled," said Mr. Justice Douglas, speaking for the majority of the Supreme Court of the United States in Williams v. North Carolina I ... nor did he pause to add the conventional qualification, 'to the extent that it is inconsistent herewith.' It is an ironic commentary ... that the very Justice who declared so emphatically that Haddock v. Haddock was dead should later have been instrumental in infusing new life into the corpse." Discuss the extent to which the "ironic commentary" is justified.

FINAL EXAMINATION IN CONFLICT OF LAWS (LAW 339)

First Semester 1955-56

Professor Holt

TIME: 3 HOURS

Give reasons for your conclusions. Concise and correct English is expected.

1. (a) P was injured in State X by the negligence of D. P executed and delivered in State Y to D a release of claim. Such a release, under the local law of Y, was considered against public policy and unenforceable, but valid under the local law of X. P sued D in State Z for the recovery of damages for the injury; and the enforceability of the release was put in issue. How should the court rule?

(b) P was injured in an automobile collision in State X by the negligence of D, the owner and operator of an automobile in which P was riding, and the negligence of DA, the owner and operator of the other automobile. P executed and delivered to D in State Y for valuable consideration paid by D a written instrument releasing D from all liability, but expressly reserving all rights against DA. Under the local law of State Y such a release is treated as a covenant not to sue the releasee, but does not discharge the other tortfeasor unless full satisfaction has been received by the releasor. Under the local law of State X such a release discharges all joint tortfeasors. P sued DA in the United States District Court in State X. (It is to be assumed that the requisite diversity of citizenship jurisdiction existed.) DA pleaded release of any liability that might have existed on his part by reason of the said release. P moved to strike the defense. What disposition of the motion?

2. (a) P, a domiciliary of State X and resident thereof, was injured in State Y in an automobile accident by the negligence of D, likewise a domiciliary and resident of State X. D died as a result of the accident, and A was appointed his administrator in State X. P presented to A a claim for damages against D's estate, but A denied it. P sued A in a competent court of State X. In State X a statute provides for survival of tort actions for personal injuries; in State Y if a tort action has not been commenced before the death of the tortfeasor, a plea in abatement must be sustained. Write an opinion upholding a decision that P has power to maintain the action against A in State X.

(b) The Wrongful Death Statute of State X permits action to be brought within two years after death; that of State Y permits action to be brought within one year, and State Y courts apply that one-year period of limitations to all wrongful death actions. P sued, in a federal district court in State Y under the diversity of citizenship jurisdiction, R for the wrongful death in State X of P's intestate, T, such action being brought within twenty-three months from, but more than twenty-two months after, T's death. R moved for summary judgment on the ground that action could not be instituted more than a year after T's death under the State Y statute. Write, first, an opinion upholding the motion; secondly, an opinion denying the motion.

3. H and W were divorced in State X in 1948. The divorce decree granted H custody of the two minor children, S and D, for eleven months of the year and W custody for the twelfth month. In 1950, while S and D were in her custody in State Y, where she had become domiciled, W instituted a proceeding in a court in State Y to secure complete custody and control of the children. The Y Court attempted to change the X decree only to the extent of awarding W sixty days' custody of the children a year and the right of having them with her on alternate Christmas and Easter vacations. In 1951 H moved the court in State X to modify the custody provision by vesting control of the children solely in him subject to the reasonable right of visitation by W in State X. W appeared and contested. H's motion was denied; the original custody decree was re-affirmed and approved. H appealed. What disposition on appeal?

(It is to be assumed that there had been no fundamental changes in the condition of the children resulting from their growth and development since 1948 that made modification of their custody expedient; and it is to be also assumed that there was no evidence to establish that the children wished any change.)

4. State X has no statute providing for the issuance, with respect to a locally registered automobile, of a certificate of title. B in State X bought from P an automobile on a contract of conditional sale which was duly and promptly recorded in State X in the office of the clerk of the county of B's residence. B registered the automobile with the proper officer in State X and obtained license plates that showed the county of his residence, along with a certificate of registration. The contract of conditional sale limited B's use of the car to States X and Y, but B drove the car one thousand miles to State Z and there for a price substantially below the list price sold the car, still bearing State X license plates, to V, a dealer in automobiles, who knew nothing of the contract of conditional sale. State Z had no statute expressly providing for the recording of a foreign-executed contract of conditional sale. B gave V a bill of sale along with the certificate of registration B had obtained in State X, on the back of which B executed an assignment to V. On presentation of these documents to the proper State Z authorities, V obtained a State Z certificate of title and, having previously removed the State X license plates, sold the car for a reasonable price to D, a bona fide purchaser for value in good faith and without knowledge of the contract of conditional sale. P sued D in State Z for recovery of the automobile. What judgment?

5. The Workmen's Compensation Act of State X provides that the principal contractor as well as the subcontractor who employs a worker is liable to pay the same compensation he would have been liable to pay if that workman had been immediately employed by him. If the principal contractor does not take out workmen's compensation insurance, he is subject to negligence suits by the employees of his subcontractors and is deprived of certain common law defenses. When, however, the principal contractor does participate in the workmen's compensation plan, the statute of State X relieves him of common law liability to employees of his subcontractors.

In State Y the principal contractor is liable to pay compensation to employees of a subcontractor only if the subcontractor has not himself taken out workmen's compensation insurance; and the act covers injuries outside of State Y when the contract of employment was made in State Y. If a workman is injured in State Y in the course, and within the scope, of his employment, as an employee of a subcontractor, and only the subcontractor has taken out workmen's compensation insurance, the principal contractor may be liable in a negligence suit brought by that employee of the subcontractor. The Act gives an injured employee an option to receive compensation provided by his employer or to recover damages from a third party where negligence caused the injury.

W was employed in State Y, where he resided, by Colonial Company and was injured in State X while working on a construction project on which Woodner Company was principal contractor and Colonial Company a subcontractor. Colonial Company had compensation insurance for W's benefit under the statutes of both X and Y. Woodner had compensation for W's benefit only under the State X statute. W did not claim compensation under either Workmen's Compensation Act, but sued Woodner Company in State Y for negligence and recovered judgment. Woodner Company appealed. What disposition on appeal?

6. H and W, a married couple domiciled in State X, adopted S under a statute of that state which has a provision that provides that an adopted child may inherit from his adoptive parents, but not from their collaterals. After H and W died, a brother of H, B, also domiciled in State X, died intestate. Shortly prior to his death B had made a contract to convey his interest in a leasehold estate in State Y. The adoption statute of State Y provides that an adopted child shall possess the same rights of inheritance as a natural-born legitimate child. S claims the proceeds of the leasehold as B's next of kin. He is the only claimant. How should the proceeds be distributed?

7. The divorce statute of State X provides:

"When the defendant is a non-resident, the other party to the marriage must have been a bona fide resident of this state for one year next before filing a bill for divorce, which must be alleged in the bill and proved; provided, however, the provisions of this section shall not be of force and effect when the Court has jurisdiction of both parties to the cause of action."

W sued her husband, H, for a divorce in State X. He appeared and pleaded. The pleadings of the parties showed that both resided in State Y. Without hearing the case on the merits, the court dismissed the suit on the ground that it had no jurisdiction.

(a) Write an opinion upholding the dismissal. (b) Write a dissenting opinion.

MIDSEMESTER EXAMINATION IN CONTRACTS A (LAW 301)

December 13, 1954

Professor Goble

The following matters will be taken into consideration in grading this examination: (1) Ability to discern the points most likely to arise in litigation; (2) Plausibility of argument or theory; (3) Clarity, conciseness and precision of expression (especially accuracy in the use of legal terms); (4) Organization of points and general forcefulness of discussion.

This examination will count between 15% and 20% on the final grade.

I. On October 1, 1954, S delivered to B a statement in writing, saying, "I agree to sell you my furniture, including a piano, a rug, six chairs, one table, one davenport, one bed, one gas stove, and one radio, all of which you inspected today, for \$2,000, to be delivered and paid for in cash on December 1, 1954. I agree to hold this offer open no longer than until October 15. Signed S." B decided to accept the offer on October 4, and rented a storeroom in which to store the furniture, paying a \$25 advance storage charge. Unable to reach S by telephone, B on October 5 went to the home of S, who lived on the other side of town from B, for the purpose of notifying S of his acceptance. S was not at home, but another man, Y, was working in S's yard. B therefore left a note of acceptance with Y and requested him to give it to S, which Y agreed to do.

On October 13, B, not having heard from S, called him by telephone and told him that he had left a note of acceptance at S's house on October 5. S expressed surprise at this information, and told B that he had never received the message and that on October 4 he had sold and delivered his furniture to another person for \$2,500, and that on October 6 he had posted B a letter informing him of the sale and expressly revoking the offer. B told S that he had received no such letter and that he intended to hold S to his offer. However, upon Y's making inquiry of other members of his family, he found that S's letter had been received on October 7 but had been mislaid without being opened. B then opened the letter (on October 13) and it was found to contain the information of the sale as represented by S. Investigation revealed that Y had neglected to deliver B's note to S. S refused to perform and B sues for damages. Result?

II. S sent a message to B by wire in code. As literally decoded the message read, "Offer for delivery Chicago 10 head steers 30 price 25 cash."

As intended and interpreted by S, the message was: "Will sell you 10 head prime beef steers for delivery in 30 days in Chicago at 25 cents per lb., cash on delivery."

As interpreted by B, the message meant: "Will sell you 30 head prime beef steers for delivery in 10 days in Chicago at 25 cents per lb., cash on delivery."

B immediately wired S in code, "Accept your offer of steers," and then made a contract to resell 30 steers to X for delivery in 10 days. S offered to perform in accordance with his interpretation, but refused to perform in accordance with B's interpretation. The misunderstanding arose because B interpreted the code word "hag", which meant "10", as indicating the number of days before delivery was made, and the code word "ding", which meant "30", as indicating the number of steers, whereas S intended the reverse. Trade usage was sufficient to show the meaning of all terms used, but there was no usage as to word order. B sued S for damages. Result?

QUIZ IN CONTRACTS A (Law 301)

December 19, 1955

Professor Goble

The following matters will be taken into consideration in grading this examination: (1) Ability to discern the points most likely to arise in litigation; (2) Plausibility of argument or theory; (3) Clarity, conciseness, and precision of expression (especially accuracy in the use of legal terms); (4) Organization of points and general forcefulness of discussion.

This examination will count between 15% and 20% on the final grade.

I

On November 1, 1954, S, a farmer, personally delivered to B, another farmer, a writing stating, "I quote you for acceptance within 30 days 2000 bus. of yellow corn at \$1.00 per bu. Delivery to be made February 1 to 10, 1955. Terms cash at time of delivery. This offer not subject to cancellation." B, who lived about ten miles away, took S's writing home with him. He had no crib for the corn but he decided to accept S's offer if he could buy a crib. This he was able to do, and on November 4 he contracted to buy a crib to be delivered before February 1. During the next five days corn unexpectedly advanced in price to \$1.05 per bushel and on November 5, S sold the corn to X at that price, and on November 6 posted a letter to B withdrawing his offer. This letter was delayed in the mail and was not delivered to B's house until November 15 and not actually seen by B until November 18. In the meantime, on November 10, B went to S's house to accept S's offer but S was not at home. B asked a neighbor, Y, to tell S that he (B) accepted the offer, and he left a note under S's kitchen door, which was later blown away by the wind and was never seen by S. Y also neglected to tell S of B's acceptance. On November 11 B posted a letter to S saying, "I accept your offer of November 1." But B misdirected this letter, as a result of which S did not receive it until November 16. S refused to deliver the corn and B sued for damages. Result?

II

B wired S, "Name price of carload of Honduras rice." In response S wired to B, "Have 200 sacks Honduras rice, highly graded, \$5.00 for immediate shipment f.o.b. here. Wire quick." B immediately wired, "Ship 200 sacks rice per your wire." S immediately shipped the rice. It appeared later that when S stated the price of "\$5.00," he meant "\$5.00 per bbl.", whereas B interpreted "\$5.00" to mean "\$5.00 per sack." The total price by the barrel was \$1100 and the total price by the sack was \$1000. B, upon being billed for \$1100, refused to accept the rice or to pay the price. B, however, tendered S \$1000 which S refused. S sues for breach of contract, and B files a cross action for breach of contract. Evidence showed that the quantity of rice in a sack varied from sack to sack and that it was usual in the rice trade to quote the price by the barrel; however, it was also proved that B was not familiar with the rice business and did not know the custom, and that he presumed barrels and sacks meant the same thing. Result?

MID-TERM EXAMINATION IN CONTRACTS A (LAW 301)

Second Semester 1955-1956

(60 minutes)

Professor Stone

Begin each answer with a statement of your decision. Discuss all points involved and give reasons fully, including references to pertinent authorities. If you think that further facts have to be assumed, assume them and say what they are. If you think that ambiguities exist, point them out and resolve them in some stated way, or deal with the question on the basis of alternative resolutions. Read the whole examination before you write.

1. After some oral negotiations with Stevens, Bowen on September 22, 1951, signed a written offer to buy Stevens' property, known as Lockwood Dell, for \$45,000 cash, closing date, if title were finally approved, to be ninety days after acceptance. The offer also provided: "This offer is to remain open five days from date." The offer, duly witnessed and dated "September 22, 1951," was delivered by Bowen's messenger boy to Stevens on September 23. Stevens' written statement, "I accept your offer," dated "September 28, 1951," duly signed by Stevens, was mailed to Bowen on September 28, and was received by him on September 29. Bowen made no reply. A week later Bowen telephoned Stevens' lawyer, Atwater, and asked when he might expect to receive the title abstract from Stevens; Bowen was then informed (correctly) by Atwater that Stevens had sold Lockwood Dell to Young for \$50,000. Bowen sues Stevens to recover damages for breach of contract. Stevens denies making a contract. What decision?

2. On June 3, 1953, Peters lent Downs \$1000 in return for the latter's promissory note for that sum payable to Peters' order six months after date with interest at 6 per cent from date. The note was secured by a mortgage on Downs' GM two-ton truck, which he used in his business. On January 4, 1954, Downs, having paid Peters nothing, induced Peters to lend him \$800 more, and to extend the \$1000 note for six months. Downs gave Peters his (Downs') note for \$835 (including unpaid interest on the first note), payable six months after date, with interest at 6 per cent. The second note was secured by a second mortgage on the same truck. On May 4, 1954, Downs wrote Peters: "I am afraid that I'll become bankrupt, so I am sending you my check for \$1000 in full discharge of both notes and truck mortgages." He enclosed his check for \$1000. The check had written on the back, above the space for endorsements: "Accepted in full payment of debt and mortgages on GM two-ton truck." Peters endorsed and cashed the check; the next day he wrote to Downs that he accepted it "on account." Before receiving this letter, Downs had received the cancelled check from his bank, and had then sold the truck, with a warranty that it was not mortgaged, to Brown, for \$1000 cash, which Downs then used to pay off his other creditors at 60 cents on the dollar. After demand for payment on June 8, 1954, Peters sued Downs to recover the balance due on the principal and in interest on the two notes, after crediting him with a payment of \$1000. Downs defends on the ground that the two notes had been discharged in full. What decision?

FINAL EXAMINATION IN CONTRACTS A (LAW 301)

Second Semester 1955-1956

Professor Stone

PART I

TIME: TWO HOURS

Begin each answer with a statement of your decision, or your conclusions. Discuss all points and issues involved, and give reasons fully, including references to pertinent authorities. If you think that further facts have to be assumed, assume them and say what they are. If you think that ambiguities exist, point them out and resolve them in some stated way, or deal with the question on the basis of alternative resolutions.

Read the whole examination before you write. Do not write any part of your answer on the first page of the examination book, or on any other page on which your name appears.

Problem 1
One Hour

A is a young architect who, until June 1, 1954, worked in the drafting room of a large architectural firm. Over a period of six months prior to that date, he had a number of conversations with B, the head of another architectural firm, about the possibility of going to work for B. A told B that he was dissatisfied with the routine nature of his work and wanted more responsibility. B told A that the young architects in B's office were given responsibility for complete jobs, or significant parts of big jobs, and that he believed in letting young men "have their head." On May 4, 1954, A and B orally agreed that A would go to work for B "on a trial basis for a year beginning June 1, 1954," at an annual salary of \$6,600, and that if the year's experience proved mutually satisfactory, A's salary would thereafter be raised at the rate of \$1,000 per year. A then notified his current employer that he was about to leave, and the latter advised him to "get something in writing." A reported this remark to B, who then wrote the following on a piece of his printed stationery:

B)
ARCHITECT) Printed
MEMBER OF AMERICAN INSTITUTE OF ARCHITECTS)

May 21, 1954

A is hired to work for me as an architect starting June 1, 1954, at \$6,600 per year, salary to increase \$1,000 per year thereafter.

A went to work in B's office on June 1, 1954. In November 1954, A was directed to assist a senior architect in drafting plans for a new building. He protested to B that such work was not what B had promised that A would do, and, on being told that he would "have to learn to crawl before you can expect to run," he refused the assignment and was promptly discharged on November 25, 1954. He had received a total of \$3,300 in salary payments.

A then consulted a lawyer concerning his legal rights. The lawyer had recently hired you as his associate, and, after having acquainted you with the foregoing facts, requested that you prepare for him a memorandum on whether A has a cause of action against B. Write that memorandum.

Problem 2
Thirty Minutes

In 1947, M, a small manufacturer employing about 50, was requested by several of his older employees, including E, to establish a pension plan. Accordingly, M prepared and signed a non-contributory pension plan, i.e., the employees were not to make any contribution by way of deduction of salary. M distributed copies of the plan to all employees. One clause of the plan stated that in recognition of long and faithful service, M would pay to any employee who had been continuously employed by him for 20 years or more prior to July 1, 1947, an annual pension, on his retirement at age 65, equal to one and one-half per cent of the terminal annual salary times the number of years employed by M. E, who had been in M's employ for 27 years prior to that date, on an employment terminable at the will of either party, continued in M's employ and thanked M for his generosity. E worked for M until December 1, 1950, at which date E became 65 years of age and requested retirement on an annual pension of 45 per cent of his terminal salary. Meanwhile M had been forced by his creditors into receivership and E presented his claim to the receiver, R, who asks the court to declare whether or not M is under any legal obligation to pay E the pension claim. What decision? Discuss all theories upon which E's claim might be based. Ignore social security benefits.

Problem 3
Thirty Minutes

N is the nephew of U, who is a man of means, and a regular customer of T, a tailor. N purchased a suit from T for \$100. Though he had no real or apparent authority, he said to T, "Charge the suit to my uncle, U. If he doesn't pay for it, I'll answer for him." When T presented a bill for the suit to U, the latter said, "Why, that young rascal! I never told him he could do that. He's got to pay his own bills. I'm sorry that he put this one over on you, though, and if you can't get him to pay for his suit, I'll do it."

T tried without success to get payment for the suit. Both N and U refused to pay. What, if any, are T's rights?

FINAL EXAMINATION IN CONTRACTS B (Law 302)

Summer 1955

Professor Martz

This is a four-hour examination. It consists of eight questions, all of which are of equal weight. Apportion your time carefully and set forth clearly upon your paper your analysis and conclusions.

I. Arthur, owning a demand note on the Bogus Corporation for \$5000 payable to bearer, executed and delivered to Carson, without consideration, the following writing: "I hereby assign unto Carson all my rights against the Bogus Corporation. Arthur." Thereafter Arthur, for an adequate consideration, orally assigned his note to Dawson, but did not deliver the note itself, and wrote to the Secretary of the Bogus Corporation as follows: "I direct that you pay to Dawson the \$5000 claim that I have against you." Dawson had no knowledge of the prior instrument. Throughout this period the note remained in Arthur's safety deposit box. Later, on his death bed, Arthur delivered one of his two safety deposit box keys to his son Everett, saying: "Take this. The contents of the box are yours." After Arthur's death Everett obtained the note from the box, presented it to the Bogus Corporation, and received payment. Thereafter Carter and Dawson demand payment from the company. Discuss their rights.

II. On August 1, 1954, Atwell contracted to convey Blackacre to Burke for \$20,000, payable \$2,000 on August 10, 1954, at delivery of his deed, and \$1,000 each year thereafter until the purchase price be paid. The contract further provided that the vendor should have a mortgage upon the premises to secure payment of installments coming due after conveyance of the legal title and that the purchaser was not to assign his interest under the contract without the vendor's consent. Atwell further agreed to install curbs and gutters and pave the street in front of the premises, at his own expense, within one year after the conveyance of the land. Burke paid the \$2,000 on August 10, 1954, obtained a deed, and conveyed the property, without Atwell's consent, to Church for \$18,000, "subject to the contract with Atwell." On August 11, 1955, and before work on the curbs, gutters, and pavement has been started, Atwell demands the first installment of \$1,000 from Church. Church refuses to pay on the grounds that the obligations under the contract were not assignable, and in any event were not assigned, and that even if they were he had no obligation to pay after Atwell's default in his paving agreement. The market value of the land at the date of Church's refusal is \$18,000.

Atwell comes to you for advice. Outline for him all remedies, if any, available to him and indicate what course he should pursue.

III. On September 1, 1954, Midland Construction Co. contracted to erect a building for Barnes. On the same date, and for an adequate consideration paid by the Construction Co., Abbot Surety Co. executed a bond in the amount of \$50,000 payable to Barnes on September 1, 1955. Therein was a proviso that "if the Midland Construction Co. shall faithfully perform its contract and satisfy all claims and demands incurred for the same and shall fully indemnify and save harmless the owner from all cost, and shall pay all persons who have contracts directly with the principal for labor and material, then this obligation shall be null and void." Upon completion of the building in April 1955, the Construction Co. becomes insolvent and cannot pay Cobb Lumber Co. \$10,000 for material used in the structure. In May 1955 Barnes orally promised to pay Cobb's claim against

Midland Construction Co. out of money he receives from Abbot Surety Co. on condition that Cobb does not assert a materialman's lien against the property. Cobb does not file a lien within the statutory period and commences suit on August 1 against Abbot Surety Co. as an assignee of Barnes' claim and as a third party beneficiary and against Barnes on his promise to pay. What result? If Barnes is required to pay the claim, may he get reimbursement from the Surety Co.?

IV. Anderson, a retail television merchant, contracted with Baker, manufacturer for 10 television sets, to be delivered at once, and signed notes for the purchase price, payable in 90 days. He assigned to Baker as security all money he would receive on their sale. He sold one of the sets to Carlyle for \$200 payable in monthly installments of \$20 and secured by a chattel mortgage on the set. Thereafter he assigned the Carlyle contract and mortgage to Davis for \$150, which sum Davis has never paid. At this time Davis was indebted to Carlyle in the amount of \$100 on an independent contract, and this debt has not been paid. Davis then further assigned the contract and mortgage to Emory for \$175. Neither Davis nor Emory had notice of any defects or prior equities at the date of their respective assignments.

Baker served notice of his interest on Carlyle and Carlyle, without notice of the interests of Davis and Emory, paid the first three installments to Baker; then he refused to make further payments on the basis that the set is of poor quality and operationally unfit. Shortly thereafter Emory demands that Carlyle pay him the first three installments due under his contract and Carlyle again refuses to pay on the grounds that these installments have already been paid to Baker and that no further payments will be made to anyone until the set is repaired or replaced. At the same time Anderson gives notice to Emory that he has rescinded the assignment because of the failure of Davis to pay the agreed consideration.

Emory comes to you for advice. Outline for him the status of his claim and how he should proceed to protect himself.

V. Amy, a famous singer, contracted to give five Saturday night performances during the summer of 1955 at Booth's Theater, and Booth agreed in return to pay her a total fee of \$5000 in advance and to conduct a publicity campaign to her satisfaction. He paid the \$5000 and then sold his theater and assigned all his rights in her contract to Carter. Carter conducted the publicity campaign that was standard in the trade. On the day of the first performance Amy learned for the first time of the change in management and refused to perform. As a consequence Carter had to refund tickets in the amount of \$2500 for the performance. After consulting her lawyer, Amy contends that the rights under her contract were not assignable, the duty to give her publicity was non-delegable, and that the publicity campaign was not to her complete personal satisfaction. It is now too late in the season for Carter to bill other talent of comparable reputation. He brings suit for total breach of contract and claims as damages \$7500 in lost profits for the five performances, \$1000 spent in advertising and publicity, \$5000 for injury to the reputation of his theater, and \$10,000 for wilful and unjustifiable repudiation of a public service contract. May he recover? If you assume that he can, what will be the measure of damages?

VI. Arnold, owner of a business property, entered into a contract on July 1, 1954, with Bradley Construction Co., the provisions of which required the Construction Co. to erect a building on the land according to plans and specifications:

to be furnished him, and for Arnold to pay a total price of \$50,000. It was further provided that in the event the building was completed according to the plans and specifications and was ready for occupancy on July 1, 1955, Arnold would pay a bonus of \$25,000. After the contract was executed, but before the contractor began work, Arnold wrote him a letter which stated that he was losing the lease on his present business site on July 1, 1955, and consequently would lose considerable money if the building were not completed by that date. On March 1, 1955, the contractor complained that he could not complete the contract by July 1, due to shortages of materials, and would lose money on the lower figure. Arnold sympathized with him and said he would not hold him to the July 1 date.

The building was actually completed and ready for occupancy on August 1, and the contractor demanded the unpaid portion of the \$75,000 figure (amounting to \$35,000, \$40,000 having already been paid in progress payments). Arnold refused payment, saying there was no consideration for his waiver of the July 1 date; that the contractor did nothing thereafter that he was not bound by contract to do; and that in any event there was no substantial performance, as the building extended six inches into the public right-of-way.

Bradley promptly filed a contractor's lien and now forecloses thereon for the unpaid balance of the \$75,000 price. Arnold denies liability under the contract in excess of \$50,000, and counterclaims for \$25,000, the cost of moving the wall back onto his land, and for \$10,000 loss of profits and good will during the month's interruption in his business. What result? Discuss.

VII. Ashton, aged 70 and unable to care for himself, made an agreement with Bertha that "if Bertha will care for him the rest of his life," he "will pay her \$2000 a year for her services and leave to her daughter, Charity, all the property remaining in his estate at death." Thereafter Ashton's health failed rapidly and ten months after Bertha began work, he became confined to his bed and wheel chair. Bertha did not have the strength to move him from bed to chair, with the result that he spent all his time in bed except on the occasions when Charity would come to move him. At the end of the eleventh month, he declared that he would not continue the agreement unless Charity would come at his call to move him from chair to bed and from bed to chair. Charity agreed to do this but was unable to answer his calls on many occasions because of her own work and family responsibilities. As a consequence of his dissatisfaction, Ashton discharged Bertha a few days before the end of the first year of employment and obtained the services of another attendant. Bertha demanded pay for the work performed and assurances that Charity would be provided for as agreed, but Ashton declared the contract at an end since Bertha could not render the performance required. Bertha and Charity come to you for advice, Bertha claiming that her services were actually worth \$3000 a year and that she was always ready, willing and able to do all the work contemplated by the parties at the time the contract was made. Advise them as to their rights, if any, and available remedies.

VIII. Anderson, building contractor, agreed to construct 20 residences for Bates, real estate promoter, on land of Bates and at a unit price of \$10,000, payable in full 30 days after the completion of each unit. The contract expressly provided that all lumber used in the buildings should be No. 1 grade and be supplied by Carter Lumber Co. Anderson, knowing the reason for the latter provision to be that Bates owned a half-interest in the Carter Lumber Co., nonetheless contracted for his lumber requirements with Dawes Lumber Co., as it gave 20 percent discounts on all purchases. He used Dawes' No. 1 grade lumber. Bates made contracts for the sale of all twenty units to be conveyed upon completion for \$12,000 per unit. The first house was completed before May 1 but Bates refused to accept or pay for it because of the wilful lumber substitution. He can show that he will lose \$500 per unit as a consequence of the loss of lumber contracts by Carter Lumber Co. Evans, however, who had a contract to purchase the first unit, is ready, willing and able to pay the \$12,000 contract price to Bates. At this time Anderson had started the 2nd, 3rd, and 4th units and had labor and materials to the extent of \$4,000 in each. He proceeded, notwithstanding Bates' refusals, to complete the 2nd unit, still using Dawes lumber, and the 2nd unit was also refused by Bates for the same reasons. As a consequence, Anderson pulled off the job. Bates tried unsuccessfully to obtain other contracts for the same price, and on August 10 demanded that Anderson return to work and complete his contract.

Anderson brings this demand to you and asks what he should do. He says he will lose money on any building he erects with Carter lumber, that the costs of lumber are going up so that the two completed buildings are reasonably worth \$12,000, and that he has \$4,000 of labor and materials already in units 3, 4, 5, and 6. Explain to him the status of his contract at this date, what remedies and liabilities he has if he fails to comply with the demand, and what remedies or liabilities he will have if he does comply.

FINAL EXAMINATION IN CONTRACTS B (LAW 302)
PART I

Summer Session 1956

Professor Stone

TIME: TWO HOURS

Begin each answer with a statement of your decision, or your conclusions. Discuss all points and issues involved, and give reasons fully, including references to pertinent authorities. If you think that further facts have to be assumed, assume them and say what they are. If you think that ambiguities exist, point them out and resolve them in some stated way, or deal with the question on the basis of alternative resolutions.

Read the whole examination before you write. Do not write any part of your answer on the first page of the examination book, or on any other page on which your name appears.

Madame Diva, a famous foreign singer who had never visited the United States, contracted with Best Productions, Inc., to present concerts in the Chicago Music Hall on three successive evenings in August. She was to receive one-third of the box-office receipts for those performances.

Explain succinctly the legal consequences of the following facts and events. Each numbered paragraph represents a separate contingency.

1. Because of the large number of cases of poliomyelitis in Chicago, the City, by a valid exercise of its police power, closed all theaters in Chicago for a period including the dates of the scheduled performances.
2. After Madame Diva had given the three concerts, Best discovered that she had entered the United States on a student visa, under the terms of which she was not allowed to engage in remunerative employment. Best refused to pay her.
3. In the contract, Best agreed to furnish an accompanist for the concerts. During a rehearsal on the afternoon before the first performance, Madame Diva flew into a rage because the accompanist played a certain passage too loudly. She slapped his face, and he thereupon refused to accompany her. It was too late to arrange for another accompanist for the first concert. It had to be cancelled, and the ticket money had to be refunded.
4. As a result of flaring tempers in the Suez crisis, the head of the government of Madame Diva's native country denounced the President of the United States as an "imperialist swine." Local patriotic societies then picketed the Chicago Music Hall in protest against American citizens putting money, even indirectly, into the pockets of the offending leader. Tickets sales were negligible. Best then notified Madame Diva and the public that the concerts were cancelled.
5. After giving the concerts, Madame Diva was arrested by immigration authorities, charged with violation of the terms of her student visa, and held for deportation. She was then released on bail pending a hearing on the charges. She hired a Chicago lawyer to assist her in her difficulties, and promised to pay him \$3,000 if he could make it possible for her to fulfil scheduled engagements over the next year; otherwise he was to receive nothing. The attorney went to Washington, where, in a number

of interviews with senators and congressmen, he convinced several of them that this country's cultural life would be uplifted by the presence of and performances by a singer of the caliber of Madame Diva. These congressmen then sponsored a private bill to allow Madame Diva to stay and work in this country as a non-quota immigrant, the dispensation to be retroactive to the date of her entry. The bill passed the Congress and was signed by the President. Madame Diva refused to pay the lawyer.

6. Giuseppe Impressario, who had a previous exclusive contract for the promotion of Madame Diva's singing appearances in the United States, obtained, in the United States District Court for the Northern District of Illinois, an injunction against Madame Diva and Best, forbidding the presentation of the scheduled concerts.

7. A clause in the contract entitled "Liquidated Damages" provided that Madame Diva should "forfeit" to Best the sum of \$5,000 in the event that she failed to perform in full her obligations under the contract. The contract also stipulated that the concerts were to begin at 8:30 p.m. Madame Diva appeared at 9:12 p.m. for the first concert. A number of the audience had left and had had their tickets refunded. The amount of the refunds was \$300.

8. After arriving in Chicago, Madame Diva became inebriated, took a long walk in the rain, went to bed in her wet clothes, and contracted pneumonia. She was physically unable to perform on the nights of the concerts.

9. The contract between Madame Diva and Best provided that ten per cent of all moneys to become payable to her thereunder should be paid directly to SOLICITUDE, Inc., a philanthropic organization. Upon her arrival in Chicago, Madame Diva instructed Best to ignore that part of their agreement. After the concerts, Best paid to Madame Diva one-third of the box office receipts, and gave nothing to SOLICITUDE, Inc. Madame Diva then announced publicly that she had changed her mind about making a gift to the organization because she disapproved of new policies adopted by its directors after she had made her contract with Best. No one connected with SOLICITUDE, Inc., had known of the terms of the contract previous to Madame Diva's announcement. SOLICITUDE, Inc., sues Best and Madame Diva for ten percent of the amounts paid to her under the contract.

10. Before they signed their contract, Best informed Madame Diva that its lease with the owners of the Chicago Music Hall required Best to present at least three performances each week, and that Best expected to present no other performances during the week of Madame Diva's scheduled performances. The contract did not refer to the lease. Without justification, on the day before the concerts were to begin, Madame Diva refused to perform. Best was unable to arrange for another performance. The lessor terminated Best's lease. Best sues Madame Diva for \$25,000, the estimated value of its lost leasehold.

FINAL EXAMINATION IN CORPORATIONS (Law 324)

First Semester 1955-56

Professor Frampton

Time: Three hours. Allow thirty-six (36) minutes for each question.

- - - - -

1. Jay Mills, Inc. is engaged in the manufacture of rope and twine. The capital stock of the company consists of 100,000 shares of authorized no-par common, of which 60,000 shares are issued, 59,000 outstanding and 1,000 held as treasury shares. In December 1952, the company was in distress after eight bad post-war years in which competitors and others made large profits. Occasional over-the-counter sales of its shares were made at \$2 and \$3 a share. John Jay, an important director, retired son of the founder and holder of 25,000 shares, was instrumental, in conjunction with certain other large shareholders, in replacing the management with Sty, a new president, and Trill and Ock, two associates brought in by Sty. All three men signed four-year contracts dated January 1, 1953, under which they agreed to serve at salaries of \$50,000, \$35,000, and \$20,000, respectively. All three were duly elected directors. In 1953 the company made profits for the first year since 1940. In 1954 profits after taxes, aggregating about \$500,000, were tripled over 1953, substantial sums were spent or reserved for expansion and improvements, and dividends of \$2.00 a share were paid. In 1955 profits were larger than in 1954.

Sty, Trill and Ock want to participate in this success, which they claim to be largely due to their efforts. They have notified Jay that they will resign at the directors' meeting of February 1, 1956, unless the directors vote them the following:

- (1) A cash bonus of $\frac{1}{3}$ each of 1% of net profits after taxes earned during the year 1955.
- (2) A further bonus of 250 shares each of stock.
- (3) A new two-year contract effective January 1, 1956, under which
 - (a) Sty would receive annually \$150,000, Trill \$100,000, and Ock \$75,000; and
 - (b) Each man would receive an annual cash bonus of $\frac{1}{3}$ of 1% of net profits after taxes and an option to purchase up to 5,000 shares each of the company's shares, at any time on or after January 1, 1956, so long as they remain in the company's employ, or within 6 months thereafter, at the market value of the shares on January 1, 1956, which was \$28.50.

As legal counsel for the company, what do you advise the ten-man board of directors in this situation?

2. Dan Dee is the president, a director and the owner of 43% of the shares of Chem, Inc., a duly incorporated and prosperous manufacturer of chemicals, which occupies one of four floors of the Ajax Building under a year-to-year lease commencing at the beginning of each calendar year. Upon learning through friends that the Ajax Building is for sale, Dee negotiates with the owner for its purchase and acquires it on October 15, 1955, in the name of Real-T Inc., a corporation of which Dee's wife and only daughter own all the shares. Dee always thought that the rent

charged Chem by the former owner of Ajax was too low and he now causes Real-T to offer a renewal of the lease to Chem for 1956 at a 25% increase in rent over the previous lease. The directors of Chem honestly believe that the cost of moving would be prohibitive and they reluctantly accept the proposal and authorize the new lease at a meeting duly held, but not attended by Dee, on December 15, 1955. In January 1956, Dee sells his shares of Chem and resigns as president, and the purchasers bring in a new slate of officers, under whose aegis Chem's fortunes instantly wane. Pat Par, a minority shareholder, asks you in May 1956, what actions can be brought, by and against whom, for what, and with what probability of success. Advise him, indicating, if and where necessary, what further facts would have to be ascertained and why.

3. Ave Amm and Ben Bar are partners in Illinois of a hardware store in which Ave and his wife invested \$5,000 (their life savings) and Bar invested \$15,000. Ave runs the business for \$100 a week (his wife handling the bookkeeping on a part-time basis for \$20 a week). Bar takes no active part in the business. The partnership agreement provides that profits will be shared on a 1-to-3 basis reflecting capital investment, with Ave, however, guaranteed a salary regardless of profits but deducting the amount of his salary from the share of the profits which he takes. The business is now worth twice the initial investment and the parties have decided to incorporate, each to transfer to the corporation his present interest in the partnership assets. Ave asks you to handle the incorporation.

- 1) Outline the capital structure you would recommend, assuming that all parties prefer the simplicity of a single class of shares, and indicate how many shares each will have. Will you recommend par or no par? Why? Assuming no debts, show how the liability side of the opening balance sheet will appear.
- 2) Describe briefly all legal steps that must be taken before you can finally say to Ave: "This business is now running as a corporation."
- 3) Advise Ave what, if any, protection (additional to his rights as a simple shareholder of the amount of shares you allot him) you think he ought to have and how you recommend providing it.

4. In 1950 United Uranium, Inc., an Illinois corporation with headquarters in Chicago and uranium holdings in the west and Canada, acquired 75% of the shares of Southern Thorium, Inc. (ST), a very small, duly organized Illinois corporation engaged in mining and research in thorium. In 1951 United organized Southern Uranium, Inc. (SU), United's lawyers causing SU's articles to be filed with the Secretary of State and the certified copy filed in Cook County, and causing all of SU's shares to be issued to United in return for \$50,000 in cash, all of which was set up as capital. ST and SU both have their principal and registered offices in Carbondale, Illinois, in the same building, where two separate office staffs are maintained. Assistant officers of United are officers and directors of ST and SU jointly; they divide their time between Chicago and Carbondale. The accounts of all three companies are kept separately and their funds are separate. ST is operated normally, just as it was prior to acquisition by United, but joint research contracts between SU and United are so provided as to divert all possible profits from SU to United in the form of fees paid United for research assistance. ST and SU both now have liabilities in excess of assets.

In each of the following plaintiff's separate actions against United, write the court's opinion on defendant's motion to dismiss, taking the actions in any order you wish:

- 1) A's action for injuries resulting from thorium burns suffered accidentally in the ST workshop while A was being shown through on a visit.
- 2) B's action for injuries received when a flowerpot accidentally knocked off the windowsill by a stenographer of SU hit B on the head.
- 3) C's two separate actions against ST and SU for money due on machinery and parts delivered by C to ST and SU under a two-year contract which C had with each corporation.

5. A layman friend of yours who is interested in the contemporary scene points out the following passage to you from Berle, The Twentieth Century Capitalist Revolution (1954):

Herein lies, perhaps, the greatest current weakness of the corporate system. In practice, institutional corporations are guided by tiny self-perpetuating oligarchies. These in turn are drawn from and judged by the group opinion of a small fragment of America--its business and financial community. Change of management by contesting for stockholders' votes is extremely rare, and increasingly difficult and expensive to the point of impossibility. The legal presumption in favor of management, and the natural unwillingness of courts to control or reverse management action save in cases of the more elementary types of dishonesty or fraud, leaves management with substantially absolute power. Thus the only real control which guides or limits their economic and social action is the real, though undefined and tacit, philosophy of the men who compose them.

He asks you whether it is true that management's power is substantially absolute. List and evaluate very briefly and concisely checks or controls on management power that you have studied in corporations and that would interest your friend in assessing Berle's conclusion.

FINAL EXAMINATION IN CREDITORS' RIGHTS (Law 344)

Second Semester 1954-55

Professor Bowman

TIME: 3 hours

I. Ray Jones owned and operated a garage in Urbana, Illinois. From 1950 to October 1, 1954, he borrowed \$20,000.00 on promissory notes from his brother-in-law, John Martin. On October 1, 1954, Jones was insolvent, which fact was known to Martin. On October 1 Jones sold and conveyed to Martin his garage premises for \$35,000.00, the appraised value. Martin made payment by cancelling Jones' promissory notes in the amount of \$20,000.00, and paying the balance of \$15,000.00 to Jones in cash. The deed was duly recorded. On the same date, October 1, 1954, Martin leased the premises to Jones for 25 years at an annual rental of \$5,000.00. The lease contained an ipso facto clause and required a security payment to Martin of three (3) years' rent, to be applied as rent for the last three years of the term, provided all other conditions of the lease were performed. Jones paid Martin the required \$15,000.00 security.

On April 1, 1955, Jones filed his voluntary petition in bankruptcy, scheduling non-secured liabilities of \$25,000.00 and non-exempt assets of \$5,000.00. He was duly adjudicated.

Martin entered and took possession of the garage premises on April 2, 1955, and subsequently filed his claim against the bankrupt estate for \$2,500.00 accrued rent, and \$24,500.00 damages for breach of the lease, supported by appraiser affidavits that the fair rental value of the premises was \$4000.00 per year. Unsecured claims in the amount of \$25,000.00 were also filed against the estate by other creditors.

- (1) As attorney for the trustee, what action would you advise him to take in order to protect the best interests of all unsecured creditors? Why?
- (2) May all questions raised on the facts given be decided by the bankruptcy court in the exercise of its summary jurisdiction? Why?

II. On December 2, 1953, Ralph Hedge applied for a loan of \$1500.00 from the Consumer Finance Company. On his financial statement, submitted in support of his application, he omitted a debt of \$500.00 which he then owed to the Grant Department Store. In reliance upon the financial statement, the company made the loan. Subsequently, on May 15, 1954, Hedge filed his voluntary petition in bankruptcy, listing among his liabilities the obligation to the finance company and the obligation to the department store. The referee duly mailed notices to all listed creditors of the date for hearing objections to discharge. No objections were filed and the order of discharge "from all probable debts and claims" was entered on July 2, 1954.

Question II continued -

On November 8, 1954, the Grant Department Store filed suit against Hedge in the Circuit Court of Champaign County, Illinois, for \$500.00 on Hedge's obligation to it. Hedge petitioned the bankruptcy court which had granted his discharge for an injunction against the state court proceeding. The bankruptcy court granted the injunction and included in its enjoining order the finding and determination that the debt sued on was barred by the discharge. On appeal the department store urged:

- (1) That the bankruptcy court lacked jurisdiction to issue the injunction, and
- (2) That the debt sued on was not barred by the discharge.

What ruling should the Court of Appeals make on each ground urged by appellant? Why?

III. Hayward Jackson operated a household appliance store in Champaign, Illinois. On August 18, 1953, he executed a chattel mortgage to the County National Bank of Champaign covering his entire floor stock of appliances to secure a contemporary loan of \$8,000.00. The mortgage recited that Jackson might retain and sell stock covered by the mortgage but that the proceeds from each sale should be delivered and paid over to the mortgagee bank at the beginning of business on each day following the sale. The mortgage was duly recorded on August 25, 1953.

On August 20, 1953, Jackson received on 30-day open account from Westinghouse Electric Corporation 10 refrigerators and 15 window fans at a total cost of \$4,000.00.

On August 28, 1953, Jackson received on 30-day open account from Emerson Electric Company 5 attic fans at a total cost of \$1,400.00.

On September 1, 1953, an involuntary petition in bankruptcy was filed against Jackson revealing that on August 18, 1953, and for some time prior thereto Jackson's liabilities had exceeded his assets by approximately \$50,000.00 and that his financial condition had steadily and consistently worsened throughout 1953. His creditors had no knowledge of this when the above transactions occurred.

Between August 18 and September 1 Jackson had sold \$4,000.00 of the merchandise covered by the bank mortgage and, in accordance with the mortgage terms, had paid such amount to the bank in reduction of the mortgage amount.

In due time the bank claimed the balance of the merchandise covered by its mortgage; Westinghouse claimed the merchandise delivered to Jackson on August 20, and Emerson claimed the fans delivered to Jackson on August 28. The trustee opposed all three claims and petitioned for an order of sale of all merchandise in the store on September 1 for the benefit of all unsecured creditors. In addition, he petitioned for a turnover order on the bank for the \$4,000 paid to it by Jackson between August 18 and September 1.

Question III continued -

- (1) What decision on the claims of the bank, Westinghouse and Emerson? Why?
- (2) What decision on the trustee's petition for order of sale? Why?
- (3) What decision on the trustee's petition for turnover order on the bank? Why?

IV. On May 25, 1955, your client, Patricia May, obtained a judgment in the Circuit Court of Champaign County, Illinois, for \$18,000.00 against Dwight Fontaine. Upon investigation you find that Fontaine owns the following property:

- (1) \$8,000 home in Urbana, Illinois, where he resides with his wife and three children.
- (2) \$900 in household furniture in the Urbana home.
- (3) A \$400 unimproved lot in Monticello, Piatt County, Illinois.
- (4) \$600 on deposit in a joint checking account with his wife in Busey Bank, Urbana.
- (5) 50 shares of common stock of The Southern Company, a North Dakota corporation, worth \$20 per share.
- (6) A safety deposit box in Busey Bank, Urbana (rented by the quarter).
- (7) Fontaine works for the University of Illinois at a salary of \$600 per month, payable on the first of each following month.
- (8) A 1953 Buick automobile worth \$1,600.00, subject to a recorded mortgage of \$800.00.

Explain the legal steps you would take, in order of urgency, to enforce your client's judgment and assure the collection of the maximum amount thereon. Give reasons for each step.

TIME: 3 hours

I. The only real property which John Fabius owned was the house and lot where he lived with his family in Champaign County, Illinois. The property was worth approximately \$15,000.00. On October 1, 1955, Robert Adams recovered a judgment for \$10,000.00 against Fabius in the Champaign County Circuit Court. On October 15, 1955, Fabius borrowed \$10,000.00 from the Busey Bank, executing a mortgage on his house and lot to the Bank to secure repayment of the loan. Busey Bank duly and properly recorded the mortgage on the same date. On October 31, 1955, the X-Ray Optical Company recovered a judgment for \$10,000.00 against Fabius in the Champaign County Circuit Court.

Fabius defaulted on his debt to the Bank and on January 20, 1956, the Bank foreclosed its mortgage. Both Adams and the X-Ray Optical Company had issued on their respective judgments executions which were in the hands of the sheriff when he sold Fabius' home for \$15,600.00 in the Bank's foreclosure suit. After all expenses were paid in the foreclosure suit, the sheriff had a balance in hand of \$15,000.00.

How and in what amounts should the sheriff distribute the \$15,000.00 in full recognition of the rights of Fabius, Adams, Busey Bank, and X-Ray Optical Company? Why?

II. On June 15, 1954, Sharrod Construction Company obtained a contract with the University of Illinois for construction of a law building, subject to execution of a proper performance bond supported by satisfactory surety, and retention of ten percent on all progress payments until the building was completed and accepted. On June 17, 1954, Sharrod executed an indemnity agreement with Pacific Indemnity Company whereby Pacific agreed to execute a proper and satisfactory performance bond to the University, and Sharrod agreed to indemnify Pacific as to any loss it might sustain as a result thereof. Sharrod further assigned to Pacific all of its law building job equipment together with all of its right, title and interest in and to all monies that might be due or become due to it from the University on the law building contract. The assignment was conditioned upon Sharrod's faithful and satisfactory performance of its University contract, and was to become effective immediately upon any default in Sharrod's contract performance. The indemnity and assignment contract was duly recorded by Pacific in the Champaign County Recorder's office on June 18, 1954.

Pacific's bond was accepted by the University on June 25, 1954, and Sharrod entered upon performance of its contract.

At the time it entered into the construction contract, Sharrod was banking with the First National Bank of Champaign, and during late 1954 and early 1955, prior to May 1, 1955, borrowed money from the Bank. For each loan, Sharrod gave the Bank a note secured by a chattel mortgage on its law building job equipment. In each such instance the Bank duly recorded its chattel mortgage on the date executed.

By May 10, 1955, Sharrod was in default on labor and materials in excess of \$50,000.00 and on May 15, 1955, notified Pacific Indemnity that it was insolvent and would be unable to complete the contract. Pacific took over the law building contract on May 16, 1955, and paid out approximately \$250,000.00 in completing the contract by August 28, 1955. \$100,000.00 had been paid out by Pacific by June 1, 1955.

(continued on next page)

On May 20, 1955, Sharrod received a progress payment check from the University for \$49,000.00. Pacific demanded the check. Sharrod refused and deposited it to its account in the First National Bank of Champaign. The Bank credited Sharrod's account and processed the check for collection, which was made in due time. On May 25, 1955, Pacific demanded the amount of the check from the Bank, specifically notifying the Bank of Sharrod's insolvency and of its indemnity and assignment contract with Sharrod. The Bank refused to pay over the check proceeds. On June 1, 1955, Pacific filed suit against the Bank and Sharrod in the state court asking that the Bank and Sharrod be enjoined from disposing of the check proceeds and that the Bank be ordered to pay over the proceeds to Pacific.

On June 3, 1955, Sharrod filed its voluntary petition in bankruptcy in the Eastern District of Illinois, and was duly adjudicated.

On June 15, 1955, the Bank answered Pacific's state court suit, stating that it had set off \$42,000.00 of the check proceeds against a like amount owed it by Sharrod. The Bank deposited the balance of the check proceeds, \$7,000.00, with the clerk of the state court.

A trustee was appointed in the Sharrod bankruptcy proceedings on June 20, 1955, and was substituted for defendant Sharrod in the state court suit on June 25, 1955.

On July 1, 1955, the trustee petitioned the bankruptcy court for an order enjoining the state court suit and, alleging a preference, for an order on the Bank to turn over to him the \$42,000.00 retained by it out of the check proceeds, and for an order on the state court to turn over to him the \$7,000.00 it had received from the Bank.

In answer to the trustee's petition, the Bank denied any preference and re-asserted its claim of set-off. Pacific Indemnity submitted to the Referee its indemnity and assignment contract with Sharrod, the validity of which was admitted by all parties, and asked for a turnover order on the Bank and state court respectively for the total of \$49,000.00.

1. May the Referee decide the matter in a summary proceeding? Why?
2. Should the Referee enjoin the state court proceeding? Why?
3. Was the Bank's retention of the \$42,000.00 a preference? Why?
4. Assume for the purposes of this sub-question that the Bank's retention of \$42,000.00 was not a preference. May the Bank set off its claims against Sharrod with the \$42,000.00 on deposit, after receiving notice from Pacific on May 25 of Sharrod's insolvency and of Pacific's indemnity and assignment agreement with Sharrod? Why?
5. What decision by the Referee as between Pacific and the trustee only on their respective claims to the total amount of the check, \$49,000.00? Why?

II. On the facts of the previous question (Question II), if Sharrod had not filed a voluntary petition on June 3, 1955, could the Bank or Pacific, separately or together, have filed a valid involuntary petition in bankruptcy against Sharrod? Why?

IV. On December 5, 1954, J. H. Patterson, Realtor, in Chicago, Illinois, executed as agent for the owners two contracts of sale of real estate with B. D. Doss and E. O. Foss respectively. Doss paid Patterson \$1,500.00 earnest money and Foss paid him \$1,000.00 earnest money. On December 6, 1954, Patterson deposited the total of \$2,500.00 in a special account which he maintained in his own name for such purposes with the First National Bank of Chicago.

On December 7, 1954, Patterson filed a voluntary petition in bankruptcy and was duly adjudicated. A trustee was appointed in due course and notified the First National Bank to transfer all funds on deposit in Patterson's name to a special "Trustee Account," which the trustee established with the Bank. The Bank did so, including the \$2,500.00 in Patterson's special account, which was the total amount in that particular account.

Doss and Foss retain you to represent them in the bankruptcy proceedings. What action would you take to protect their respective interests? Why?

Name _____

No. _____

MIDSEMESTER EXAMINATION IN CRIMINAL LAW (Law 309)

November 22, 1954

Dean Harno

This quiz is in two parts. Part I is an essay question. Part II is an objective test. In the essay question, you should limit your answers to the lines drawn after the question.

PART I

W was charged in an indictment with the crime of larceny. The charge was that he stole fifty pounds of gold-bearing quartz rock. The facts showed that W was a trespasser on property owned by Y in a mountainous area where gold-bearing rock existed. You may assume that the evidence showed that W had just broken off the quartz rock when arrested, that it actually was gold-bearing rock, but that he could not be found guilty of larceny of this rock since the crime of larceny can be brought only as to the wrongful taking of personal property and this rock at the time in question still had the characteristics of real property. The trial court did, however, permit evidence to be introduced on this indictment for an attempt to commit larceny. After the court had instructed the jury on attempts, the jury found W guilty of an attempt to commit larceny.

(1) If you were attorney for W arguing this case on review before an appellate court, what contention or contentions would you raise in your argument?

(2) What do you believe the judgment should be?

(3) Assuming that W were caught digging for gold in the good soil of Illinois, would this introduce another factor, touching the law of attempts, and if so, what factor?

NAME _____

NO. _____

MIDSEMESTER QUIZ IN CRIMINAL LAW (Law 309)

December 5, 1955

Dean Harno

This quiz is in two parts. Part I is an essay question. Part II is an objective test. In the essay question you should limit your answer to the lines drawn after the question.

PART I

A statute provides: "Any person who with intent to defraud shall make and deliver any check for the payment of money drawn upon any bank and thereby obtains money or personal property, and at the time of making such check does not have sufficient funds in such bank for the payment of the check upon its presentation shall be guilty of a misdemeanor."

A criminal charge was brought against A under this statute. The facts established at A's trial were that he had bought personal property from B and that he had given B in payment for the property a check for \$200 drawn on the XY Bank; that at the drawing of the check and at its presentation at the bank, A had no funds on deposit in the bank, and that A knew he had no funds on deposit in the bank. The evidence also established that the bank refused payment on the check. A offered evidence at the trial in his defense that he had an informal understanding with the bank that it would honor checks drawn by him and would charge the amounts of checks drawn by him as loans to him on its books. The trial court refused to receive this evidence. A was convicted.

Assuming that this case is appealed and that you are the judge of the Appellate Court to whom the case is assigned for an opinion, what is your judgment? Give reasons.

Horizontal lines for writing the answer.

Name _____

No. _____

FINAL EXAMINATION IN ESTATES IN LAND (Law 308)

Second Semester 1954-55

Professor Summers

Time: 3 1/2 hours

(Write all answers in ink on the blank lines following the questions.)

1. (a) By a valid conveyance, A conveys Blackacre "to B." What estate would be created in B

(i) At common law? Why?

(ii) In Illinois? Why?

(b) By a valid conveyance, A conveys Blackacre "to B for life and remainder to his heirs." What estates or interests would be created

(i) At common law? Why.

(ii) In Illinois in 1920? Why

(iii) In Illinois in 1955? Why?

(c) By a valid conveyance, A conveys Blackacre "to B for life with remainder to the heirs of his body." What estates or interests would be created

(i) In England in 1260? Why?

(ii) In England in 1350? Why?

(iii) In Illinois in 1930? Why?

(iv) In Illinois in 1954? Why?

2. (a) In 1901 A conveyed one acre in the southwest corner of his 160-acre Illinois farm to the trustees of the Liberty Church "for as long as the said described land shall be used for church purposes." A church was built on the land in 1902 and used as a church until 1953, when it burned. The Liberty Church congregation built another church on other land. In 1920 A conveyed his 160-acre farm to B, describing it as the southwest one-fourth of a certain section of land, "subject to the rights of the Liberty Church." A died in 1930.

(i) What are the rights of A's heirs now, 1955, to the one acre? Why?

(ii) What are the rights of B now, 1955, to the one acre? Why?

(iii) What are the rights of the Liberty Church now, 1955, to the one acre? Why?

(Two more lines for this question on next page.)

(b) By a valid deed A conveyed land in Illinois "to B." A later provision in the deed provided as follows: "To have and to hold to B for and during his natural life and after his death to the heirs of C in fee simple."

(i) What estate was created in B? Why?

(ii) What estate, if any, was created in the heirs of C?

(c) In 1930, Joseph White conveyed land in Johnson County, Illinois, to his nephew John White and his heirs "on condition that the grantee within five years plant the land described in peach, apple and other fruit trees, and for breach of this condition the grantor Joseph White reserves to himself the right of re-entry." Mary White, the wife of Joseph, joined in this deed, releasing her dower rights.

(i) Suppose that in 1936 John White had not performed the condition, that Joseph White had died in 1934, and that the heirs of Joseph White had brought an action of ejectment in 1936 and recovered the land. Would Mary White be entitled to dower in the land? Why?

(ii) Suppose that John White died in 1932, would his widow be entitled to dower in the land? Why?

- (iii) Suppose that in 1932 Joseph White conveyed this land to John Black, and that John White had not planted the land in fruit trees in 1936. Could John Black recover the land in an action in ejectment against John White? Why?

3. (a) A conveyed land in Illinois "to B for life with remainder to C and his heirs." While B was still living, C died intestate, leaving a wife and one child surviving him. What interest or interests may the wife and child take in the property? Why?

- (b) A conveyed land in Illinois "to B and his heirs, but if he die without issue surviving him, to C and his heirs." B died in 1945. He had no living descendants at his death, but his wife, W, survived him.

(i) What interest did B take in the land?

(ii) What interest did C take in the land?

(iii) On B's death, what interest, if any, did W take in the land?

(c) In 1952 A owned a tract of land in Illinois. During the year he conveyed the land to B, but A's wife did not join in the execution of the deed. In 1954 A died intestate, leaving a wife and child surviving him. What interest or interests may the wife and child of A take in the property? Why?

(d) In 1951 F purchased a home in Urbana from V for \$20,000. Upon the execution and delivery of the deed, F paid V \$10,000 and delivered to V a mortgage on the property purchased to secure his promissory note for \$10,000. F's wife did not join in the execution of the mortgage. F died in 1952, leaving his wife and brother as his only heirs. After F's death, V brought suit to foreclose the mortgage and the property was sold at the sale to D for \$21,000. The amount of the unpaid principal, interest, and costs amounted to \$11,000. What interest or interests may F's wife and brother take in the surplus? Explain.

4. (a) A owned a 40-acre tract of unimproved land in Illinois. He made an oral agreement with B whereby B agreed to farm this tract during the 1954 crop season. The agreement further provided that B plant 20 acres in corn and 20 acres in soybeans and that each of them was to receive one-half of each crop at harvest time. B harvested the soybeans in October, sold them to X and left the state. He left the corn in the field unharvested. What remedies does A have? Why?

(b) L and T entered into a parol lease of L's farm to T for a term of five years, ending December 31, 1954. T took possession and farmed the land during five seasons. On November 10, 1954, T gave L a written notice stating that he would vacate the premises on December 31, 1954. T did vacate the premises on the date named in the notice. L has been unable to find another tenant for the land. T paid a cash rent while he was on the farm of \$4,000 each year, \$2,000 on the first of May and \$2,000 on the first of October.

(i) Suppose L brings suit against T, after the first of May 1955, to recover \$2,000. Can he recover? Why?

(ii) Suppose L brings a suit against T after the first of October 1955, to recover the second installment of the rent. Can he recover? Why?

(iii) Suppose that on October 1, 1955, T gives L a written notice of termination of the lease as of December 31, 1955. Will T be liable to L for rent thereafter? Why?

(iv) Suppose that on February 1, 1955, L leased the farm to X for one year for a cash rent of \$3,000 per year. Can L recover \$1,000 from T in a suit brought after October 1, 1955? Why?

5. (a) In 1940 A conveyed a tract of Illinois land to himself and his wife "as joint tenants and not as tenants in common." A died in 1954 survived by his wife and a brother.

(i) What interest or interests do the wife and brother take in the land? Why?

(ii) Suppose the deed was made in 1954. What interests do the wife and brother take in the land? Why?

(b) A died in 1951, owning a tract of 160 acres of land. A's only heirs were his two sons, X and Y. In 1952 P secured a judgment against X for \$5,000. P caused execution to be levied on X's interest in the 160-acre tract and it was sold at sheriff's sale. Y was the purchaser at this sale. After the period of redemption expired, Y was given a sheriff's deed covering X's interest in the land. At the date of the sheriff's sale X's interest in the land was worth about \$6,000. Y's bid at the sale was \$5,800. Since the sale the land has greatly increased in value, due to the discovery of oil on nearby land. X now brings a partition suit against Y and tenders into the registry of the court the amount Y paid for the land. What decision? Why?

- (c) Suppose under the situation stated in question (b) above, that P, instead of levying execution on the undivided interest of X in the 160-acre tract, had levied execution on the east 80 acres thereof. And further suppose that before the land was sold at sheriff's sale, Y had brought a partition suit and the decree in partition awarded the east 80 acres to X. And suppose at the execution sale P was the purchaser. Does P now have good title to the east 80 acres? Why?

- (d) A leased property to B for a term of five years by a valid written lease. The rent agreed upon was \$1,200 per year payable in equal monthly installments. After this lease had been in effect for one year, A and B entered into a new parol lease of the same property for a term of three years at the same rent. After four years of occupancy, B vacated the premises. A leased the property to C for one year for \$800 and then brought suit against B for \$400. Should he recover? Why?

6. (a) In 1500 A conveyed land in England to "B and his heirs" by feoffment and livery of seisin. The deed did not recite the payment of a consideration or declare that the beneficial use of the land was to be in B. What decree would an equity judge make with respect to the beneficial use of the land? Why?

- (b) Name three methods of conveying a present freehold interest in land which were used in England prior to the Statute of Uses.

- (c) Name three methods of conveying the legal title to land which developed in England as a result of the enactment of the Statutes of Uses and Enrollments.

- (d) In 1950 A conveyed land in Illinois by a deed which did not recite the payment or receipt of a valuable consideration. The grantee in the deed was A's daughter. Was the deed effective to convey good title? Why?

- (e) In 1500 in England A, by deed of feoffment and livery of seisin, conveyed land "to B and his heirs, but if B die without issue surviving, to C and his heirs." What interest, if any, did C take in the land? Why?

- (f) Suppose the conveyance in question (e) had been made in England in 1500 by bargain and sale. What interests would B and C take in the land? Why?

- (g) Suppose the conveyance in question (e) had been made in Illinois in 1945 by an ordinary deed. What interest or interests, if any, would B and C take in the land? Why?

(Two more lines for this question on next page.)

7. (a) What prompted the English courts to develop the Rule Against Perpetuities?

(b) What uses were not executed by the Statute of Uses?

(c) In 1950 A, the owner of land in fee simple, leased it for a term of 25 years "to B for the use of C." What interests do B and C take in the land? Why?

(d) A conveyed Blackacre to B for life with remainder to C and his heirs. A conveyed Whiteacre to B for life with remainder to the heirs of D.

(i) If C died before B, would C's heir, X, inherit Blackacre? Why?

(ii) If B died before D, would D's heir, Y, inherit Whiteacre? Why?

FINAL EXAMINATION IN ESTATES IN LAND (Law 308)

Second Semester 1955-1956

Professor Cribbet

Time: 3 hours

The examination consists of four parts. Part One is a discussion question and should be answered in the examination booklet. The remaining three parts are to be answered as indicated by the questions. The relative grading weight is indicated in each instance. Please write legibly and succinctly.

PART ONE (25)

Grant Bishop was seised in fee simple absolute of 360 acres of farm land in Macon County, Illinois. In May 1921, he executed a statutory form of warranty deed conveying the tract to Gordon Gray for an adequate consideration recited in the deed. Grant's wife, Hazel, joined in the deed by signing at the proper place. The granting clause read as follows: "Convey and warrant to Gordon Gray and his bodily heirs of Decatur, County of Macon and State of Illinois, the following described real estate ..."

In 1950, Grant Bishop died intestate survived by his widow, Hazel; by a grandson, Grant III, who was the sole descendant of a deceased son, Grant II; and by a half brother, James Bishop. In 1954, Gordon Gray died testate leaving his entire estate, both real and personal, to his wife Katherine. Gordon never had any legitimate children although there was strong evidence that a son, Max Besterd, was born out of wedlock to a certain Miss Susie Besterd of Blue Mound, Illinois. On Gordon Gray's death, Katherine Gray claimed the land as devisee under his will and continued in possession. In 1955, an ejectment action was filed by Hazel Bishop and Grant Bishop III, claiming title as tenants in common to the tract. The trial court found for the plaintiffs, and Katherine Gray appealed directly to the Supreme Court of Illinois, a freehold being involved.

Write the opinion disposing of the case. Discuss all relevant issues.

PART TWO (31)

The following questions can be answered categorically on the basis of materials studied in the course. If any question appears ambiguous, you may place a question mark after it and state your reason in the margin. Such comments will be considered in grading. However, it is the opinion of the instructor that in most instances no comment should be necessary.

Assume that the old common law is in effect, modified only by the statutes of De Donis, Quia Emptores, Uses, and Wills, If other changes in the common law have been made, the individual question will so state.

Underline the correct word or phrase in each instance. It may be correct to underline more than one item in each group.

I.

Adams owned Blackacre in fee simple absolute. Adams enfeoffed Brown for life remainder to Curtis for life remainder to the heirs of Brown. Immediately following the feoffment:

1. Adams had
 - a) a reversion in fee
 - b) nothing
 - c) a contingent remainder
 - d) a possibility of reverter
 - e) an executory interest
2. Brown had
 - a) a life estate
 - b) a vested remainder
 - c) a contingent remainder
 - d) a fee simple absolute
 - e) a shifting executory interest
3. The heirs of Brown had
 - a) a contingent remainder
 - b) a vested remainder
 - c) nothing
 - d) a power of termination
 - e) a springing use

If Brown dies intestate in the lifetime of Curtis,

4. the heirs of Brown have
 - a) a reversion
 - b) a fee tail
 - c) a vested remainder
 - d) a contingent remainder
 - e) nothing

If Curtis dies in the lifetime of Brown,

5. Brown has
 - a) a fee tail
 - b) nothing
 - c) a vested remainder
 - d) a fee simple absolute
 - e) an expectancy

If Adams' conveyance was made in 1955 in Illinois by a warranty deed, immediately following the conveyance,

6. the heirs of Brown would have
 - a) a contingent remainder
 - b) nothing
 - c) a vested remainder
 - d) a springing use
 - e) a statutory fee tail

II.

Adams owned Whiteacre in fee simple absolute. Adams by a bargain and sale deed conveyed the tract to Black for adequate consideration. The instrument read, "grant, bargain, and sell to Black with remainder to the heirs of Adams." Immediately following the conveyance:

1. Black has
 - a) a fee simple determinable
 - b) a fee simple absolute
 - c) a legal life estate
 - d) nothing
 - e) an equitable life estate
2. Adams has
 - a) a reversion in fee simple
 - b) nothing
 - c) a possibility of reverter
 - d) a contingent remainder

III.

Adams died seised in fee simple absolute and in possession of Hardclod. He left a will devising Hardclod "to Brooks for life; then to Cutter and his heirs so long as their land is used as a summer camp for poor city children."

1. As of the date of Adams' death, the interest of his heirs is

- a) nothing
- b) possibility of reverter
- c) reversion
- d) power of termination
- e) right of re-entry for condition broken

2. Merger will take place

- a) if Brooks turns out to be Adams' sole heir
- b) if Brooks surrenders his interest to Cutter
- c) if Cutter acquires the interest of Adams' sole heir

3. While all of the following persons are alive, which of them would have to join in a conveyance in order to pass a fee simple absolute title to Hardclod?

- a) Brooks
- b) Cutter
- c) Cutter's only son
- d) Cutter's wife
- e) Brooks' wife
- f) Adams' sole heir

IV.

Arnold was seised of Softsod in fee simple absolute. Arnold enfeoffed Baker and his heirs to the use of Cotton for life remainder to Daniels and his heirs but if Daniels dies in the lifetime of Cotton then to Ellis for life.

Immediately following the feoffment:

1. Baker had

- a) a legal fee simple
- b) an equitable estate
- c) nothing

2. Cotton had
 - a) a legal life estate
 - b) an equitable life estate
 - c) nothing
3. Daniels had
 - a) an indefeasibly vested remainder
 - b) a vested remainder subject to being totally divested
 - c) a reversion
 - d) a contingent remainder
 - e) an equitable estate
 - f) a legal estate
4. Ellis had
 - a) a springing use
 - b) a shifting use
 - c) a contingent remainder
 - d) a power of appointment
 - e) nothing
5. Arnold had
 - a) nothing
 - b) a possibility of reverter
 - c) a right of entry for condition broken
 - d) a reversion
 - e) a possible resulting use

PART THREE (20)

In 1950, A, by a statutory warranty deed in correct form, conveyed a Champaign County, Illinois, farm to B and C using the following language: "Warrant and convey to B and C in fee simple absolute, but if liquor is ever sold on the premises, the grantor may re-enter and terminate the estate." The land was located near Urbana, and B and C established a new subdivision which was approved by the city. Before any lots were sold, B died intestate, survived by the following persons: W, his wife; Y, a former wife, divorced for her own fault; S, a son of Y and B; T, an illegitimate daughter of Z, who was a deceased adopted daughter of B; M, the mother of B.

A week later C died testate, with a clause in his will leaving all of his property "to my two grandsons, D and E, not as tenants in common but as joint tenants." C was also survived by a son, F, and a wife, G.

Answer the following statements true (+) or false (-). If the question appears ambiguous, you may so indicate in the margin.

_____ If A had only a life estate when he conveyed to B and C, they would take nothing by the conveyance.

_____ If A had a fee simple absolute prior to the conveyance, he would retain a power of termination after the conveyance.

_____ A's future interest, following the conveyance, could be freely sold or devised by him.

_____ On A's death any future interest he might have would cease to exist.

_____ Assuming that B and C take a defeasible fee of some sort, their successors in interest (devisees, heirs, transferees, etc.) would take free of the condition.

_____ B and C would be tenants in common following the conveyance from A.

On B's death:

_____ W would be entitled to either dower or a $1/3$ estate in fee, in B's undivided $1/2$ interest.

_____ Y would be entitled to dower but not to $1/3$ in fee.

_____ S would be entitled to $2/3$ in fee.

_____ Z would be entitled to $1/3$ in fee.

_____ M would have no interest in the property.

_____ If W did not elect to take dower, W, S, and Z would be joint tenants in B's undivided $1/2$ interest.

On C's death:

_____ D and E would take C's undivided $1/2$ interest as joint tenants.

_____ F could renounce the will, since he is disinherited, and then claim his statutory share of the property.

_____ G has lost all possibility of either a dower or a fee interest by reason of C's will.

_____ If E has a wife, O, she will have inchoate dower in E's share of the property.

_____ If E should convey his interest to J, this would sever the joint tenancy, and D and J would thereafter be tenants in common.

_____ If W, S, Z, D, or E should allow a tavern to be set up on the land, the title would automatically revert to A or his heirs.

_____ B and C took only life estates by the original conveyance because the deed did not contain the words "and his heirs."

_____ W, S, Z, D, or E could bring a suit for partition if they, individually or collectively, desired to do so.

PART FOUR (24)

The following questions are designed so that they can be answered in a brief fashion. Use only the space provided.

I.

P leased a storage room in D's hotel for a period of two years at a yearly rental of \$1200.00, payable monthly in advance. The leasing agreement was a simple document containing the minimum essentials but without any covenants beyond the promise to pay rent. Six months after the lease was made and at a time when P was one month in arrears on the rent, a heavy rainstorm came through the roof of the storage room and damaged P's stock of millinery. The roof was in a weakened condition, unknown to either party, and the water flooded the room. P sued D for \$750 damages. What result? Why?

Suppose M, who had a mortgage on the premises prior to the lease, foreclosed the mortgage for non-payment by D and then ousted P. Would P have a cause of action against D? Why?

II.

L leased a city dwelling to T for a period of five years. The lease contained the following clause: "That the tenant shall not assign this agreement without the landlord's written consent first had and obtained. Assignment without consent shall give the landlord the right to terminate the lease and re-enter the premises. Nothing herein contained shall permit the landlord unreasonably to withhold his consent to any assignment."

Two years later T entered into a written agreement with X whereby X agreed to pay rent to T in the same amount as T was paying to L and to occupy the premises for a period of two years. T moved out and X moved in. After accepting two monthly payments of rent directly from X, L declared a forfeiture and ousted X. T brought a forcible entry and detainer action (the correct summary remedy for the recovery of possession) against L. What result? Why?

III.

L entered into a ten-year lease of an amusement park with T. The lease contained the following clause: "The lessor can terminate the lease at any time by giving a 30-day notice in writing to the tenant." After one year, T gave a 30-day notice in writing to L, terminating the lease. L refused to honor the notice and insisted on holding T for the rent. One year later, L sued T for the rent. The property had been idle in the meantime in spite of the fact that L could have rented it had he really tried to do so. Can L recover the full year's rent? Why or why not?

IV.

In Illinois, L made an oral 18-month lease to T, who entered into possession at once. The rent was payable monthly in advance and after making three payments, T was ordered to leave the premises on five days written notice. He was told that he would be a trespasser if he remained beyond that period. He comes to you for advice. What would you tell him?

FINAL EXAMINATION IN EVIDENCE (Law 326)

Second Semester 1954-1955

Professor Cleary

TIME: 4 Hours

Instructions: Put only your name and the course name on first page of examination book. Begin writing on second page.

1. In a prosecution of D for murder, the following items of evidence were offered by the prosecution and admitted by the trial court:

(a) Testimony by W that shortly before his death the deceased said, "D shot me through the window at night. I know it was him because he was after my wife. I'll get him if it's the last thing I do."

(b) A gun, identified by ballistics experts as the one from which the fatal bullet was fired, found in D's home by officers acting without a search warrant after D had been arrested and while he was in jail.

(c) Testimony by X that three months earlier he went on a hunting trip with D and the deceased, and that several times D had fired in the direction of the deceased and narrowly missed him.

(d) The verdict of a coroner's jury, finding that D had feloniously shot and killed the deceased.

Assuming that appropriate and timely objections were interposed, discuss the correctness of each ruling.

2. In the same case described in Question 1, D offered evidence of an alibi and expert testimony tending to prove that the deceased committed suicide. D then offered the following items of evidence, each of which was excluded by the trial court:

(a) Testimony by A that a week before the death of deceased, A told D that A had heard that deceased was threatening to kill D the next time they met.

(b) Testimony by B that deceased had the reputation of being a violent and dangerous man.

(c) Testimony by C that on numerous occasions during the preceding two years he had heard deceased say he was going to kill himself, although on the day before he was shot deceased said, "All this suicide talk is just to keep my wife in line."

(d) Testimony by E that he had heard F, since deceased, say that he was the one who shot and killed the deceased.

Assuming that appropriate offers of proof were made, discuss the correctness of each ruling.

3. P, a pedestrian, sues D, the proprietor of a dry-cleaning establishment, for personal injuries sustained when struck by D's delivery truck driven by E. P's complaint alleges negligent failure to have the lights on the truck lit.

Discuss the admissibility of the following items of evidence offered by P:

(a) Testimony by W that he heard E say that the accident was his fault.

(b) Testimony by X that other cars had their lights lit at the time.

(c) Testimony by Y that immediately after the accident a bystander said to E, "It was your fault for not turning on your lights," and that E said nothing.

(d) Testimony by Z that E had the reputation of being a reckless driver and was often seen driving after dark without lights.

4. In a bastardy proceeding in which Mary is the complaining witness and John the defendant, the following items of evidence were offered by the prosecution and admitted over appropriate and timely objection:

(a) A certified copy of a birth certificate, naming John as the father of the child.

(b) Testimony of W that he heard John say, upon seeing Mary with the child, "That's my baby."

(c) Blood-grouping tests showing that John and the child had the same type of blood.

(d) After John had testified in his own behalf, bringing out on his cross-examination that he had previously been convicted of raping Josephine.

Discuss the correctness of each ruling.

FINAL EXAMINATION IN EVIDENCE (LAW 326)

Second Semester 1955-1956

Professor Cleary

TIME: 4 Hours

Instructions: Write only your name on the first page of the examination book. Begin your answers on the second page.

1. D is on trial for burglary. At the preliminary hearing to determine whether there was probable cause to hold D for further proceedings, W was called for D, but the testimony given by him was favorable to the prosecution. The prosecution called W at the trial, but W refused to testify on the ground of self-incrimination. The court entered an order granting W immunity, as provided by statute, and ordered W to testify, but W still refuses to do so. The prosecution now proposes to prove W's testimony at the preliminary hearing by the testimony of a spectator, although a shorthand reporter took down W's testimony. What ruling and why?
2. P sued D Company for damages arising from a collision between a car driven by P and a bus operated by D Company. Following the accident the bus driver made a written report to the claims department of D Company, as required by company rules.
 - (a) Is the report admissible if offered by D Company? Why?
 - (b) If the report were stolen from the files of D Company by an investigator employed by P, would it be admissible if offered by P? Why?
3. X had three children, A, B, and C. He conveyed all his property to A and then died. B and C have filed a suit to set aside the conveyance on the grounds of undue influence and lack of mental capacity.
 - (a) Can A testify on his own behalf that he overheard a conversation between B and W, in the course of which B offered W \$100 to testify that X was not of sound mind? Why?
 - (b) Can B and C testify on their own behalf that X was not of sound mind? Why?
 - (c) Can A's son, called by A, testify that X was of sound mind? Why?
4. P, beneficiary, sues D Insurance Company on a policy insuring Insured against death by violent, external and accidental means.
 - (a) If all the evidence offered at the trial were evidence offered by P that Insured while alone in the basement was shot to death with a gun customarily kept there, what ruling on motions by P and by D Insurance Company, respectively, for directed verdicts in their own favor? Why?
 - (b) Would a certified copy of the death certificate of Insured, stating, "Cause of death: Suicide", attached to the proofs of loss, be admissible if offered by D Insurance Company? Why?

FINAL EXAMINATION IN FEDERAL JURISDICTION
AND PROCEDURE (Law 356)

Summer 1955

Professor Bowman

TIME: 3 hours

- I. The Railway Brotherhood, an unincorporated association of railroad employees with its headquarters office in Chicago, Illinois, had a provision in its by-laws which prohibited the admission to membership of any person of the negro race. A statute of the State of Illinois declared unlawful the practice of any labor organization within the state which barred from membership in such organization any person on account of race, color or creed. The Railway Brotherhood admitted that it was a labor organization within the state and that it barred negroes from membership, but claimed that the state statute, as applied to it, violated the federal constitution. The Attorney General of Illinois informed the Brotherhood that if it did not cease immediately its practice of barring negroes from membership, he would file suit in the state court to enjoin the Brotherhood, its officers and members from engaging in such practice in the future and to impose upon the Brotherhood, its officers and members the fines and penalties provided in the statute for its barring of negroes in the past.

The Brotherhood filed suit in the federal District Court for the Northern District of Illinois (Chicago) to enjoin the Attorney General of Illinois from enforcing the state statute, and for a declaratory judgment holding the statute unconstitutional as applied to it.

- (1) Does the federal District Court have jurisdiction of the suit? Why? Who should decide the question of jurisdiction? Why?
- (2) If the District Court decides against jurisdiction, what disposition should it make of the case? Why? Is its order disposing of the case appealable? If so, to which court? Why?
- (3) Assuming that the District Court decides in favor of its jurisdiction, is its order so finding appealable? Why? What procedure should the District Court pursue in determining the matter on the merits?

- II. Dora May, a citizen of Illinois, owned a warehouse building in Champaign, Illinois. On July 1, 1952, she leased it to John Hopkins and Merl Acres, also citizens of Illinois, for five years. The lease contained a provision requiring the lessees to procure and maintain adequate fire insurance on the building. Pursuant to such requirement the lessees duly applied to the Dubuque Fire and Casualty Company, an Iowa corporation, for a fire insurance policy in the amount of \$50,000.00 on the building, to be issued to the owner, Dora May, but mailed to lessees. The Company notified lessees by mail that the application was accepted and that upon receipt of \$1,500.00, premium for five years, the policy would be issued. Lessees forwarded their check for \$1,500.00 to the Company, whereupon the Company issued to Dora May, and mailed to lessees, its windstorm policy in the amount of \$50,000.00. Lessees failed to notice the discrepancy in the kind of policy received and notified Dora May that the building had been insured in accordance with the provisions of the lease, and that the policy had been deposited for safekeeping in lessees' safe deposit box. The premium of \$1,500.00 was proper for a five-year windstorm policy. For a five-year fire insurance policy in the amount of \$50,000.00, the premium would be \$3,000.00.

On January 13, 1954, the warehouse building was destroyed by fire. On June 5, 1955, Dora May filed her complaint against the Dubuque Fire and Casualty Company and against John Hopkins and Merl Acres in the Circuit Court of Champaign County, Illinois, In Chancery, praying for reformation of the policy and recovery thereon against defendant insurance company. Dora deposited \$1,500.00 with the court to cover the additional premium. In the alternative she prayed for recovery against Hopkins and Acres for their failure properly to place fire insurance on her property as required by the lease.

- (1) Defendant insurance company removed the case to the federal District Court for the Eastern District of Illinois in Danville. Plaintiff May moved that the case be remanded to the state court. What decision on plaintiff's motion? Why?
- (2) Assume that the motion is denied. Defendant insurance company moves for dismissal on the merits of plaintiff's claim as to it. The motion is granted and plaintiff's complaint as to defendant insurance company is dismissed with prejudice. Is the order dismissing plaintiff's complaint as to the defendant insurance company a final order? Why? Is it appealable? Why?
- (3) After dismissal of plaintiff's claim against defendant company, plaintiff moves for remand to the state court of her claim against the remaining two defendants. What decision? Why?
- (4) Without regard to the other questions on the above facts, assume that when the case is removed to the federal court plaintiff demands a jury trial. Defendant insurance company objects and moves to strike the jury demand. What order should the court make on plaintiff's jury demand and the motion to strike? Why? Is the order appealable? Why?
- (5) Without regard to the other questions on the above facts, assume that the Illinois Statute of Limitations on plaintiff's claims is one year whereas, prior to *Erie v. Tompkins*, federal courts had enforced no specific statute of limitations against such claims but merely applied the doctrine of laches. Upon a proper motion, which rule should the federal court apply in this case, the Illinois Statute of Limitations or the doctrine of laches? Why?

III. Henry Jones, a citizen and resident of Florida, was proceeding by means of hitch-hiking rides from Florida to California. In Ft. Worth, Texas, he was picked up and given a ride by Herschel Black, a citizen and resident of New Orleans, Louisiana, who was driving to Los Angeles.

As they were leaving Albuquerque, New Mexico, Black, who was driving at the time, collided head-on with a car owned and driven by Adrian Wilkes, a citizen and resident of California who was on his way to San Angelo, Texas. Jones was seriously injured and spent several months in a hospital in Albuquerque. Upon his release from the hospital Jones filed suit in a New Mexico state court in Albuquerque against Black and Wilkes for \$85,000.00 damages for personal injuries. Defendants filed their answers and removed the suit to the federal District Court for the Southern District of New Mexico (Albuquerque). Plaintiff moved to remand.

- (1) What decision on plaintiff's motion to remand? Why?
- (2) Would your decision on plaintiff's motion be different if defendant Wilkes were a citizen and resident of New Mexico instead of California? Why?

FINAL EXAMINATION IN

FEDERAL COURTS AND THE FEDERAL SYSTEM (Law 356)

Summer Session 1956

Professor Bowman

TIME: 3 hours

I. On June 18, 1953, Randy Haversack, a citizen and resident of Ohio, was killed in a collision between the river boat "Colleen," on which he was a passenger, and the river barge "Angie." The collision occurred on the Kentucky side of the Ohio River in the Northern District of Kentucky. The Kentucky Wrongful Death Statute gave a cause of action in such cases to the personal representative or heirs of the deceased. Under such statute Joseph Ingram, a citizen and resident of Ohio, personal representative of the estate of Haversack, filed an admiralty proceeding on May 15, 1955, in the Federal District Court for the Northern District of Kentucky against the "Angie" and its owners, Delta Freight Company, an Ohio corporation. A federal statute conferred exclusive jurisdiction in such cases on the federal district court in the federal district where the ship collision occurred.

The Kentucky statute of limitations was two years on actions brought under the Wrongful Death Statute.

On June 25, 1955, Ingram amended his complaint. In the Kentucky state courts this would have barred his action on a motion to dismiss since, under the state practice, an amendment did not relate back to the date of the original complaint. In the federal courts such amendments related back to the original pleading. The defendant, Delta Freight Company, moved to dismiss the action.

What decision on the motion to dismiss? Why?

II. The Jackson Trucking Company, a Delaware Corporation, was licensed to do business in Illinois and had designated in writing with the Illinois Secretary of State the general manager of its office in Mattoon, in the Eastern District of Illinois, as its agent for the service of process in Illinois. While driving through Champaign, in the Eastern District of Illinois, one of its trucks collided with an automobile owned and operated by Jed Black, a citizen and resident of Chicago, in the Northern District of Illinois. Alleging negligence, the Jackson Trucking Company filed suit against Black in the Champaign County Circuit Court for \$6,500. Black removed to the federal district court for the Eastern District of Illinois in Danville. The Jackson company moved to remand to the state court on the ground of no jurisdiction, and, in the alternative, objected to venue in the Eastern District of Illinois and moved to dismiss or transfer to a court of proper venue.

1. What decision on the motion to remand? Why?

2. Assume that the motion to remand is denied. What decision on the motion to dismiss or transfer? Why?

III. The Gritty Gravel Company, a Missouri corporation, paid \$25,000.00 for ten acres of land outside the city limits of St. Louis, Missouri. The company bought the land for the purpose of excavating therefrom and selling the high grade gravel contained in the land. After purchasing excavating equipment and trucks worth \$35,000.00, the gravel company began operations from which it anticipated an ultimate net profit of approximately \$500,000.00. After operations were well under way, St. Louis annexed to the city, by legal procedures, a large area which included the gravel company's land. The city council then passed a city ordinance prohibiting the excavation and removal of gravel in excess of one-half ton per day from any land within the city limits. Fines of \$1000.00 for each half-ton removed in excess of the legal limit were imposed.

The Gritty Gravel Company filed suit in the Federal District Court for the Southern District of Missouri (St. Louis), asking that court to enjoin the city council, its members and other city officials from enforcing the ordinance, and for a declaratory judgment that the ordinance was void because it violated the due process and equal protection provisions of the federal constitution. The complaint further alleged that the complainant had no adequate remedy at law, in that if it were forced to suspend operations pending a decision on the constitutionality of the ordinance, it would lose valuable contracts already executed; would have to pay large penalties under the non-performance provisions of such contracts; its valuable equipment would deteriorate during any long period of inactivity; and its valuable and skilled workmen, recruited and obtained with great difficulty, would leave the company for employment elsewhere.

The defendants moved to dismiss the suit.

1. What action, decision and disposition should the District Court take and make in and of the matter? Why?
2. By what procedure and in what court would you seek review of the District Court's action, decision and disposition? Why?
3. What decision should be made on your endeavor to obtain review? Why?

Name _____

No. _____

FINAL EXAMINATION IN FEDERAL TAXATION (Law 328)

Second Semester 1954-1955

Professor Young

Allowed Time: 4 hours

- Instructions:
- (1) Begin writing on the next page.
 - (2) Limit your answers to the space indicated.
 - (3) Be sure to state your reasons.

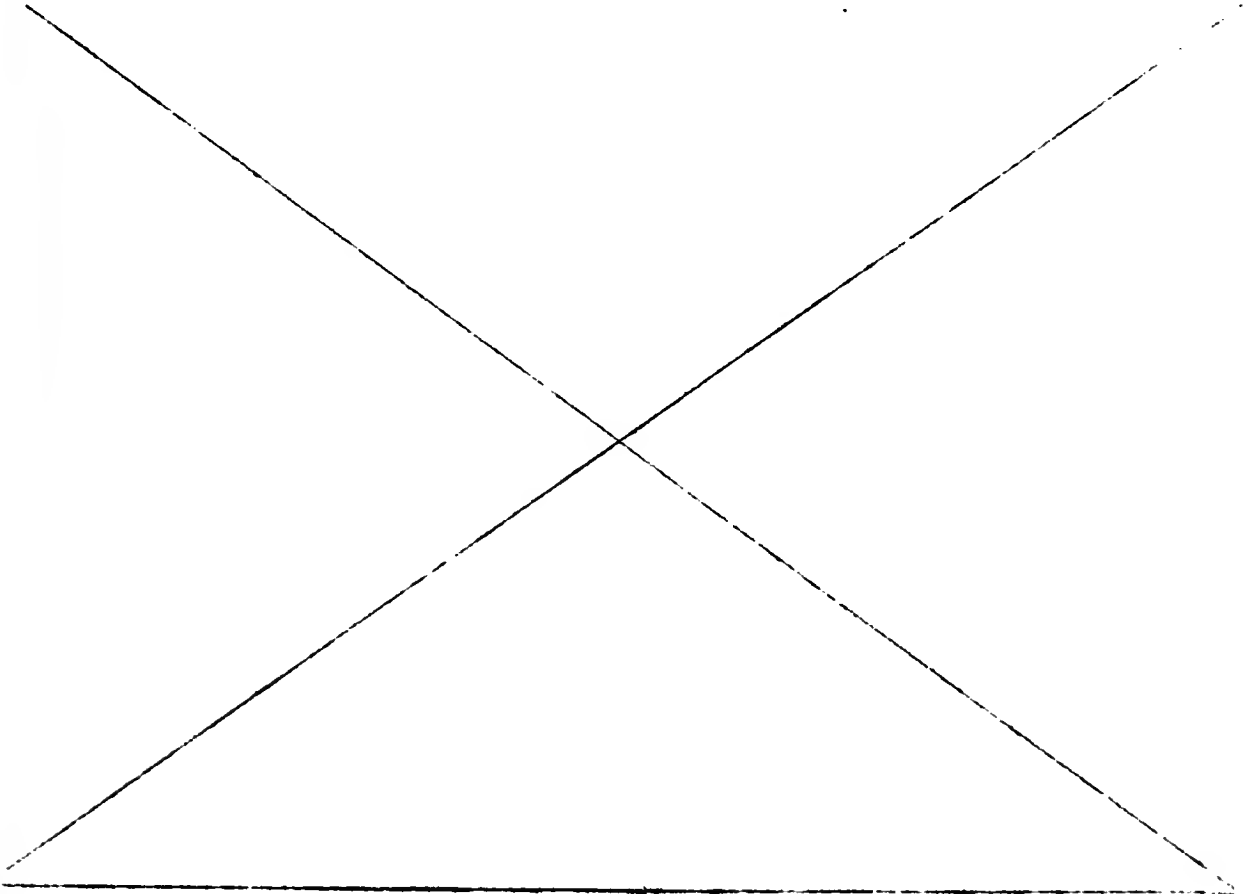
Final Examination in Federal Taxation (Law 328)

I. (10%) Adams, an attorney who reports his income on a cash and calendar year basis, rendered certain legal services for General Machinery Corporation. As payment for his services he agreed to take 1,000 shares of common stock of the corporation held as treasury stock. Upon completion of his services, Adams directed the corporation to issue the shares to his daughter Mary. This was done on December 15, 1953, and on that date the stock had a value of \$50 per share. In February 1954, a group of minority shareholders brought suit against the Adamses and the officers of the corporation to set aside the transfer of shares to Mary Adams on the basis of alleged fraud. Adams retained Brown as his attorney and successfully defended the suit which was concluded October 15, 1954. Brown's fee for defending Adams was \$5,000. Adams, being short of funds, borrowed \$5,000 from Jones with which to pay Brown. He gave Jones his promissory note dated October 15, 1954, due January 1, 1955. Adams paid the note by check, drawn on his bank account, which was mailed December 31, 1954, and received by Jones on January 2, 1955. On December 1, 1954, Mary Adams sold the 1,000 shares of General Machinery stock at \$60 per share. These transactions were reported as follows: (1) Adams reported a capital gain of \$50,000 with respect to the stock in his 1954 return and took a deduction of \$5,000 for the legal expenses incurred in the litigation. (2) Mary Adams reported \$10,000 capital gain with respect to the stock in her 1954 return which was prepared on a cash basis. The Commissioner has assessed a deficiency by including \$60,000 with respect to the stock as ordinary income in Adams' 1953 return. He has also denied a deduction for the legal expenses on the ground that these expenses are either capital expenditures or they had not been paid in the year claimed as a deduction. Adams has filed a petition with the Tax Court. What decision and why?

(a) With respect to Adams' treatment of the stock?

(b) With respect to the legal expenses incurred by Adams?

(c) With respect to Mary's treatment of the stock?



III. (20%) H, age 60, and W, age 29, were married June 10, 1952. H was a man of considerable wealth and this was his second marriage. On June 8, 1952, H and W entered into an antenuptial agreement by which W relinquished her prospective dower rights in H's estate in consideration of the creation of a joint tenancy in a large tract of unimproved farm land. The joint tenancy was created by proper conveyances executed on the same date. The land had been acquired by H in 1935 at a cost of \$150,000 and its fair market value on June 10, 1952, was \$400,000. H was killed in an automobile accident January 2, 1955, and the fair market value of the land at that date was \$450,000. W sold the land on June 6, 1955, for \$450,000.

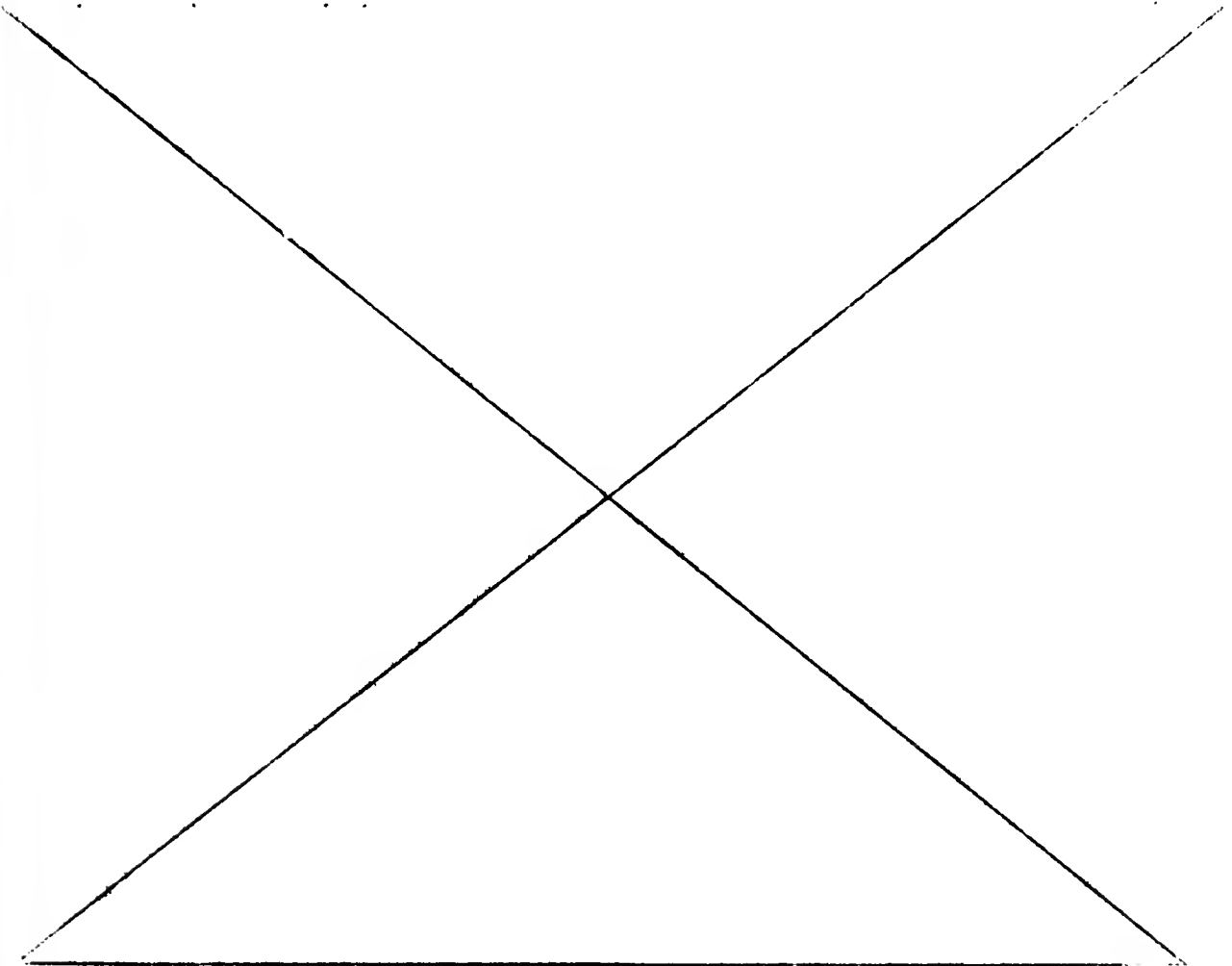
(a) Did the creation of the joint tenancy in 1952 result in a taxable gift?

(b) To what extent, if any, is the land includible in H's gross estate for purposes of the Federal estate tax?

(c) What are the income tax consequences of these transactions to H?

(d) What are the income tax consequences to W?

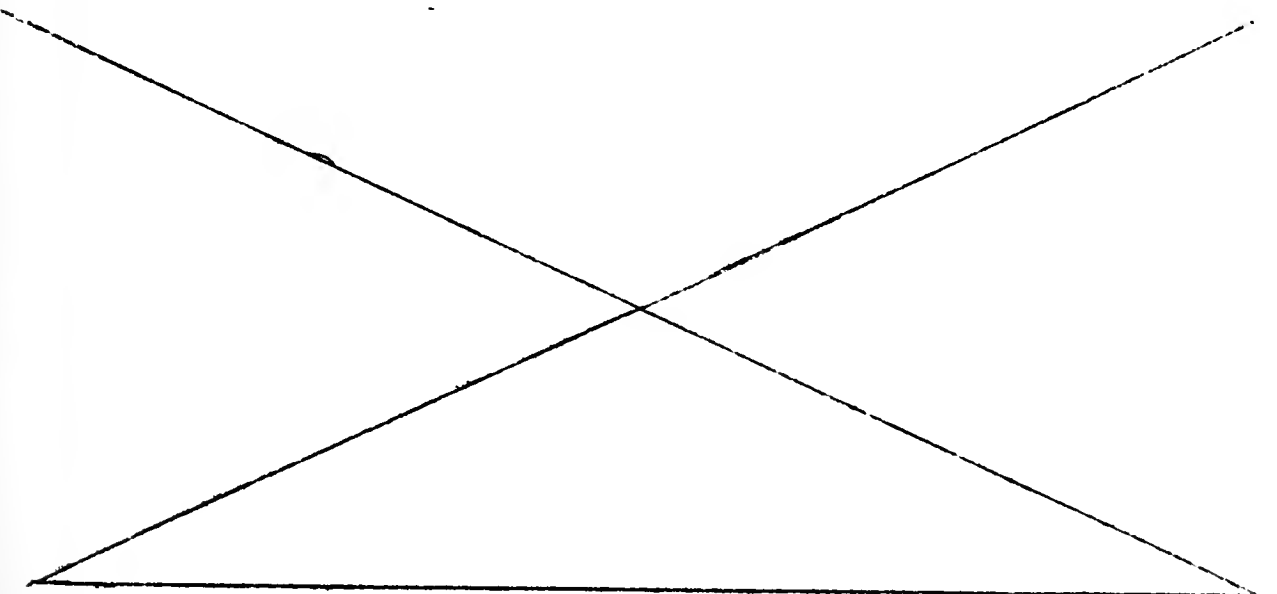
(e) Is the Illinois inheritance tax applicable upon H's death?



(b) Is Uncle John's estate entitled to a charitable deduction for purposes of the Federal estate tax?

(c) Is Uncle John's estate entitled to deduct the amount of the settlement with T as a claim against the estate for Federal estate tax purposes?

(d) Is T subject to the Illinois inheritance tax with respect to the settlement obtained?



V. (10%) The Real Estate Corporation was organized in 1950 by A, B and C with a total capital of \$90,000, which was contributed in equal amounts by the respective parties. The corporation was to acquire and develop land adjacent to the City of Chicago as a new industrial area for small manufacturing companies. In 1953 the corporation sold a tract of land which had cost \$10,000 in 1950 at a price of \$100,000. The purchaser, Smaller Mfg. Co., paid \$40,000 down and gave its notes secured by a purchase-money mortgage for the balance of \$60,000. The purchaser received a deed and took possession of the property on December 1, 1953. On June 1, 1954, when the Real Estate Corporation had accumulated earnings of \$75,000, the board of directors declared a dividend of the notes of the Smaller Mfg. Co. The notes were endorsed and delivered to A, B and C in amounts of \$20,000 each. The notes became due and were collected by A, B, and C on March 1, 1955. The Real Estate Corporation and A, B, and C all report their income on a cash and calendar year basis. What were the tax consequences of these transactions:

(a) To Real Estate Corporation?

(b) To the shareholders -- A, B and C?

VI. (15%) On January 10, 1951, H and W, his wife, purchased a farm at a cost of \$100,000, taking title as tenants-in-common. H furnished \$90,000 of the consideration and W furnished \$10,000. The \$10,000 furnished by W represented the proceeds from the sale of certain stocks which had been given to her by H in 1940. These securities at the date of the gift in 1940 had a value of \$5,000 and had been purchased by H in 1935 at a cost of \$2,000. H died February 1, 1955, and devised his interest in the farm to W for life, coupled with a power exercisable by deed or will to appoint the remainder as she might see fit. On May 1, 1955, W deeded the remainder interest to her son John. On June 6, 1955, W was killed in an automobile accident. The farm had a value of \$120,000 at the date of H's death and at the date of W's death. Indicate whether the following statements are true or false by circling "T" or "F" as the case may be. Discuss your answer in the space provided.

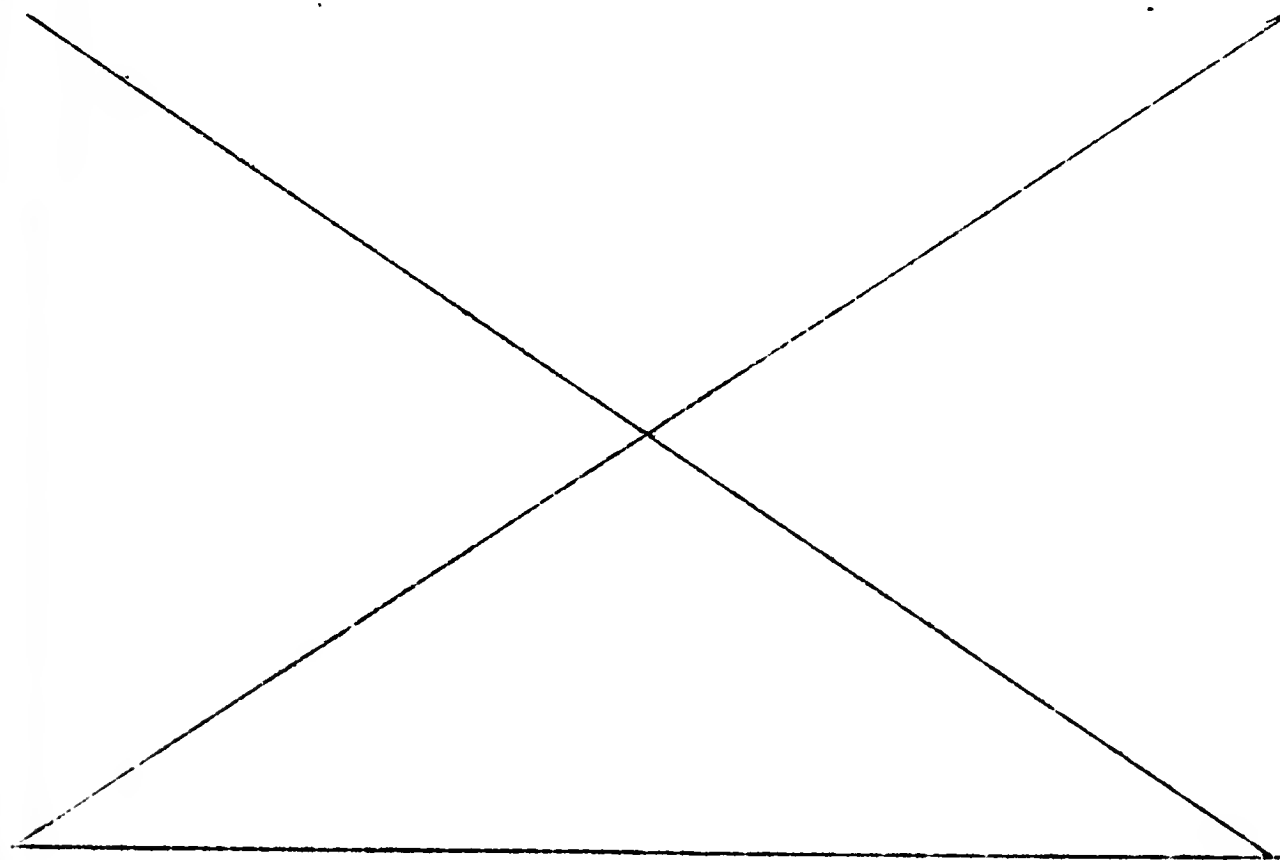
T F (a) The farm is includible in H's estate for Federal estate tax purposes at a value of \$120,000.

T F (b) The purchase of the farm resulted in a gift by H to W of \$90,000.

T F (c) Under the Illinois inheritance tax, W's gross taxable inheritance in H's estate will be \$108,000.

T F (d) This transfer will not qualify for the marital deduction.

T F (e) The transfer of the farm to John is not subject to inheritance tax in W's estate.



VII. (15%) On January 1, 1954, T, at the age of 60 and in good health, transferred on trust, securities having a value of \$100,000. By the terms of the trust, the income was to be paid to S, his son, for life. Upon the death of S, the trust was to terminate and the corpus be distributed to W, wife of T, if living; if not, to named grandchildren in equal shares. By express provision, T retained the power to revoke the trust, in whole or in part, at any time, but only with the consent of S. During 1954, the trust realized and distributed to S all of its income which amounted to \$10,000. On January 1, 1955, both T and S were killed in an automobile accident. However, S survived T by a few hours, and W survived both her husband and son. As of January 1, 1955, the trust corpus had a value of \$125,000. Indicate whether the following statements are true or false by circling T or F as the case may be. Discuss the problem in the space provided.

T F (a) The \$10,000 of trust income for 1954 is taxable to T.

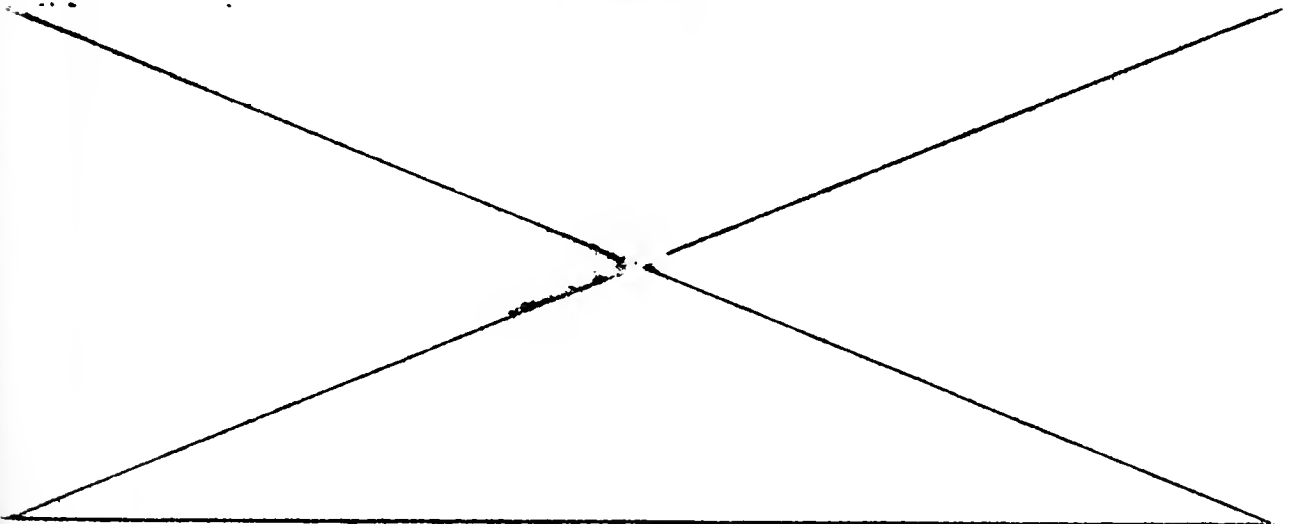
T F (b) The trust corpus is not includible in T's gross estate for purposes of the Federal estate tax.

T F (c) Creation of the trust did not result in a taxable gift.

T F (d) The trust corpus is subject to the Illinois inheritance tax in both the estate of T and the estate of S.

T F (e) The trust qualified for the marital deduction.

T F (f) The basis of the property acquired by W is \$100,000.



Name _____

No. _____

FINAL EXAMINATION IN FEDERAL TAXATION (Law 328)

Second Semester 1955-1956

Professor Young

Allowed Time: 4 hours

- Instructions:
- (1) Begin writing on the next page.
 - (2) Limit your answers to the space indicated.
 - (3) Organize your answers carefully and be sure to state your reasons.

I. (20%) John Jones, a resident of Champaign County, Illinois, died intestate on January 1, 1953. He owned a section of excellent farm land in fee. His wife, Mary, and two adult children, Robert and Susan, survived. Under the statute (Illinois Probate Act, Sec. 11) the widow and the two children each took an undivided one-third interest in fee in the farm. On December 24, 1953, Robert and Susan each conveyed a life estate to their mother. At the same time they executed bills of sale to their mother of their respective shares of the harvested and unmarketed crops for the year 1953 which were then stored on the farm. The bills of sale recited a "consideration of \$1.00 in hand paid." Their mother was 87 years old at the date of these transactions and had a life expectancy of approximately three years. The value of each of their shares of the unmarketed grain as of the date of the gift was \$5,000. The farming expenses for the year 1953 totalled \$3,600. These were paid by their mother during the year 1953. Robert, Susan, and their mother each took a deduction for one-third of the expenses (\$1,200) in their respective income tax returns for 1953. During the year 1954 the net value of all the crops produced on the farm which were marketed by the mother totalled \$15,000. During 1954 the mother also marketed the grain which she had acquired by gift from the children. This grain was sold by the mother for \$12,000. The mother included in her 1954 income tax return the total amount realized from the sale of both the 1954 crops and the amount realized from the sale of the grain acquired by gift in 1953. All three taxpayers are on a cash and calendar year basis. Robert and Susan are both unmarried and neither filed a gift tax return with respect to any of these transactions. Their mother died in July 1955. The Commissioner has assessed deficiencies against both Robert and Susan with respect to the following items. They have appealed the deficiencies to the Tax Court.

(1) Year 1953: The Commissioner has denied to Robert and Susan the deduction of \$1,200 for farming expenses and has included as additional income the amount of \$6,000 which represents their respective shares of the proceeds from the sale of the 1953 crops. What decision and why?

(2) Year 1954: The Commissioner has included as taxable income for both Robert and Susan an additional \$5,000, which represents one-third of the crop income from the farm for the year 1954. What decision and why?

(3) Years 1953 and 1954: The Commissioner has assessed gift tax deficiencies against both Susan and Robert based upon alleged gifts to their mother of \$6,000 each in 1953 and \$5,000 each in 1954. What decision and why?

II. (10%) In 1953, T contracted to sell certain rental real estate to P at a price of \$100,000. The property had an adjusted basis of \$40,000 in T's hands. The terms of the sale were: \$20,000 down, with the balance payable in annual installments of \$20,000 during the years 1954 through 1957, inclusive. The sale was consummated under a contract for deed subject to an outstanding 10-year lease. The deed was to be delivered by T upon completion of payment of the purchase price by P. Under the terms of the contract, it was agreed that T should continue to collect the rentals under the lease and apply them against the payments due from P. T reported the sale of the property on the cash basis. The annual rentals amounted to \$12,000 per year for each of the two years 1953 and 1954. Each year P paid an additional sum of \$8,000 to T. P included the annual rentals of \$12,000 in his income tax returns for the years 1953 and 1954. Both T and P report their income on a cash and calendar year basis.

(a) The Commissioner has assessed the following deficiencies against T which have been appealed to the Tax Court. Indicate the proper decision and your reasons therefor.

(1) For the year 1953, the Commissioner has included the entire gain from the sale (\$60,000) as income of that year.

(2) For each of the years 1953 and 1954, the Commissioner has included the rentals as income taxable to T.

(b) Upon learning of the deficiency assessment against T with respect to the rental income, P promptly filed claims for refund of the taxes paid upon the rentals included in his tax returns for the years 1953 and 1954. P's claims were denied and he has brought suit in District Court to recover. What decision and why?

III. (10%) Indicate by circling (yes) or (no) whether the following items qualify for the marital deduction in H's estate under the Federal estate tax. State briefly the reasons for your conclusions in the space allowed.

Y N (1) H, who died in 1954, created a testamentary trust for the benefit of W, his wife, for life. She was given an unrestricted power to use, consume, and dispose of the principal during her lifetime. There was a gift over to a daughter, Joan, at W's death. W was mentally incompetent at all times from the date of H's death in 1954 to the date of her death in 1956.

Y N (2) An insurance policy upon the life of H, who died in 1955, provided that payments thereunder should be made in 120 monthly installments to W, his wife. If W should die before the payments were completed, the balance of the installments were to be paid to a daughter, Mary, who was designated as secondary beneficiary. H held all incidents of ownership in the policy at his death.

Y N (3) In 1945, H purchased a farm at a cost of \$100,000 and took title in joint tenancy with his wife, W, and their son, John. Upon H's death in 1956, the farm was valued at \$150,000. Both W and John survived.

Y N (4) H died owning commercial real estate valued at \$100,000. He devised the property to his wife, W, provided she should survive him by three months; if not, the property was to pass to their son, John. W was killed in an automobile accident two months after H's death.

Y N (5) H died intestate in 1955. Shortly after H's death, W, his surviving spouse, pursuant to local law, elected to take dower in certain real estate owned by H. In the course of administration of H's estate, it was necessary to sell the property and the widow consented to the sale of her interest therein. The property was sold for \$200,000, and \$50,000 was allotted to the widow as the fair value of her dower interest.

IV. (15%) On January 1, 1955, T transferred on trust securities having a value of \$200,000. Under the terms of the trust the income was to be paid in equal shares to his adult children, James and Jennifer, until T's death. At that time the trust was to terminate and the corpus to be distributed in equal shares to James and Jennifer. Alternative gifts of income and principal were provided in the event either or both children should predecease T. T retained the power to revoke the trust in whole or in part with the consent of James. T was killed in an automobile accident on December 31, 1955. His wife, Mary, and the children, James and Jennifer, survived. The income for the year 1955 which was distributed to James and Jennifer in 1955 amounted to \$12,000. The value of the corpus as of December 31, 1955, was \$220,000. All parties are on a cash and calendar year basis.

(a) Did the creation of the trust result in a taxable gift? _____

(b) Who is taxable upon the income of the trust for the year 1955? _____

(c) How should this transaction be handled in determining the Federal estate tax in T's estate?

V. (10%) T, a professional vocal entertainer, was accused in a statement published by one I. M. Venom of being pro-Communist, of selecting un-American musical selections for his performances, and of frequently interrupting his concerts to deliver "party-line" speeches. As a result of these attacks, which were given wide publicity, T lost several engagements which would have netted him approximately \$30,000. Upon the advice of his agent and his attorneys, he brought a libel suit in 1954 against Mr. Venom. In July 1954, he borrowed \$7,000 at the bank upon the security of his promissory note and advanced this sum to his attorneys to defray necessary legal expenses. T recovered a judgment in the amount of \$25,000, which was paid on December 30, 1954. On January 10, 1955, T paid the note which became due at the bank. In his 1955 tax return, T took a deduction for the \$7,000 legal expenses. He did not return the \$25,000 as income at any time. T was on a cash and calendar year basis. The Commissioner has assessed the following deficiencies which T has appealed to the Tax Court.

(a) For the year 1954, the Commissioner has included as ordinary income the sum of \$25,000 recovered in the libel suit. What decision?

(b) For the year 1955, the Commissioner has disallowed the deduction of the legal expenses in the amount of \$7,000. What decision? Should the result be different if the libel suit had been unsuccessful?

VI. (15%) On January 1, 1955, H transferred on trust securities having a value of \$300,000. Under the terms of the trust the income was to be paid to H for the duration of his life. If his wife, W, should survive him, the income was to be paid to her for life. Upon the death of the survivor, the trust was to terminate and the corpus to be distributed to the University of Illinois to be used in such manner as the Board of Trustees might determine. At the date of creation of the trust, H was 60 years old and W was 55. H was killed in an automobile accident on December 31, 1955. W survived him, but died of a heart attack on May 31, 1956. During 1955, H received a distribution of \$10,000 from the trust. He was on a cash and calendar year basis.

(a) What were the gift tax consequences of the creation of the trust?

(b) How should this transaction be reported in H's income tax return for 1955?

(c) How should this transaction be handled in determining Federal estate tax liability of H's estate?

VII. (10%) On October 1, 1954, T, a wealthy man, purchased at a cost of \$10 a lottery ticket in connection with a fund-raising drive sponsored by a local charity. In the particular jurisdiction, lotteries of this type had been legalized. There were several prizes to be given, the first being a Continental automobile having a retail value of \$10,000. On October 10, 1954, T entered the hospital to undergo major surgery. On this date he gave his lottery ticket to A, a close friend, stating that there was some question as to whether he would recover and that, in any event, he wanted A to have the benefit of the lottery ticket if it should prove to be one of the lucky numbers. On October 17, 1954, the drawing was held and A won the Continental automobile with the ticket which T had given to him. On October 24, 1954, T died as a consequence of the surgery which had been performed on October 12, 1954. T reported his income on a cash and calendar year basis. It did not occur to any of the interested parties that these transactions might have tax consequences. They have been shocked out of their complacency, however, by the Commissioner's assessment of the following deficiencies. These have been appealed to the Tax Court.

(1) For 1954, a gift tax deficiency has been assessed against T's estate on the ground that T made a gift of \$10,000 to A. What decision and why?

(2) For 1954, an income tax deficiency has been assessed against T's estate on the ground that an additional \$10,000 of income was realized by T prior to his death and should have been reported in his tax return for the year 1954. What decision and why?

(3) An estate tax deficiency has been assessed against T's estate on the ground that there had been a gift in contemplation of death of property having a value of \$10,000, which was omitted from the Federal estate tax return. What decision and why?

HOUR EXAMINATION IN FUTURE INTERESTS (Law 346)

April 14, 1955

Professor Schnebly

NOTE: Organize your answers with respect to both substance and phraseology before writing is begun. In each answer give particular attention to the rules of law developed in Illinois. Write in ink.

1. A will executed by T contained the following provisions:

"The rest and residue of my estate including any and all property of which I may die possessed or be entitled to, I devise and bequeath in equal parts, share and share alike, to my children Paul Dunham Close and Helen Close Baker. If either of my said children predeceases the other, the survivor shall inherit the entire rest and residue of my estate."

Both children above named survived T. Helen Close Baker died five months after the death of T, leaving a will wherein she gave her entire estate to her surviving husband, William F. Baker.

What are the rights of William Baker in T's estate?

2. Your client desires to purchase certain land from V. Upon examination of the abstract of title to the land you find the following entries:

(24) A devise by A "to B for life, and after his death to the heirs of his body."

(25) A warranty deed from B and C(his wife) to V.

(26) Letters of administration issued on the estate of B, who died intestate. Proof of heirship, showing that B was survived by C, his wife, and by D, his daughter; and by no other descendants.

(27) A quitclaim deed from D, a single woman, to V.

On the basis of the facts shown by the abstract, would you advise your client that V has merchantable title to the land?

FINAL EXAMINATION IN FUTURE INTERESTS (Law 346)

2nd Sem 54-58

Professor Schnebly

PART I: TRUE-FALSE QUESTIONS

Directions: Read the statements that follow each problem, and mark each statement at the left of its number with a plus sign if you think it is a true statement, and with a zero sign if you think the statement is false in whole or in part.

For each statement marked correctly you will receive a credit of one point.

Read each statement carefully, for the truth or falsity of it may depend upon the presence or absence of a single word.

Base your marking upon the law of Illinois.

Use nothing but plus and zero signs.

Ask no questions.

Time allowed for this Part: Two and one-half hours.

I. By his will duly executed, F devised land to T on trust "for the use and benefit of my daughter Mary, during her natural life," and provided further as follows:

"It shall be the duty of my said trustee to keep said land and tenements well rented, to make reasonable repairs upon the same, to pay promptly all taxes and assessments thereon; to keep the buildings thereon reasonably insured against damage by fire; and to pay over all remaining rents and income into the hands of said Mary in person and not upon any written or verbal order, nor upon any assignment or transfer by the said Mary."

"At the death of the said Mary such trust shall cease and be determined and the said lands shall vest in the heirs of the body of the said Mary, and in default of such heirs, shall descend to the heirs of my body then living."

The will contained a clause devising and bequeathing all the residuary estate of F to his three children, Albert, Edward and Mary, in equal shares. These three children survived F.

Albert died intestate in 1895, leaving his son Logan as his sole heir. Logan died in 1931, without descendants or surviving spouse, leaving a will wherein he devised his entire estate to the First Trust & Savings Bank.

Edward died in 1914, without descendants or surviving spouse, leaving a will wherein he gave his entire estate to one Wood.

Mary died in 1944, without descendants or surviving spouse, leaving a will wherein she devised her entire estate to the People's Bank.

- ___ 1. The will of F created an equitable life estate in Mary.
- ___ 2. The will of F created alternative legal contingent remainders.
- ___ 3. The interest limited to the heirs of the body of F is an equitable contingent remainder.
- ___ 4. At the death of Mary the nearest relatives of F then living are entitled to the property in the hands of T.

Final Examination in Future Interests

- _____ 5. During the life of Mary she could have transferred her interest under the trust to anyone.
- _____ 6. While Mary, Albert and Edward were all living, they could have conveyed a complete title to the property by joinder.
- _____ 7. Albert had an interest in the land devised in trust, which he could have transferred during his life by deed to anyone.
- _____ 8. Edward had an interest in the land devised in trust, that was vested subject to divestiture by his death in the life of Mary.
- _____ 9. At the death of Mary, the First Trust & Savings Bank, Wood, and the People's Bank are entitled to the property in equal shares.
- _____ 10. If, of the persons hereinbefore mentioned, only Logan had survived Mary, he would have been entitled to the whole of the property.
- _____ 11. If Mary had had one child who had died in her lifetime, at her death the legal representatives of that child would have been entitled to the whole of the property.
- _____ 12. If Mary had been survived by a grandchild, but by no other descendant, that grandchild would have been entitled to the whole of the property.
- _____ 13. At common law Mary would have taken a fee tail by operation of the Rule in Shelley's Case.
- _____ 14. The limitation to the heirs of the body of F is void under the rule that one cannot limit a remainder to his own heirs.
- _____ 15. If the will of F had not contained a residuary clause, and if F had left children other than those hereinbefore mentioned, and such children had died in the life of Mary without surviving issue, their legal representatives would have been entitled to share in the property at the death of Mary.
- _____ 16. Albert had an interest in the land devised in trust, which, during the life of Mary, was vested subject to divestiture.
- _____ 17. The Illinois Statute of 1921, making contingent remainders indestructible, in no way affects the answers to any of the foregoing questions.

II. T died in 1930, leaving a will containing the following gift:

"I devise Blackacre to A for life, and after his death to my brother B's children who shall attain the age of 21 years."

At the execution of this will B had children C and D.

C died in the life of T at the age of 25.

D was 20 years of age at the death of T, and died in the life of A at the age of 23, leaving B as his sole heir.

After the death of T and during the life of A, a child E was born to B.

At the death of A, B and E survived, E being then ten years of age.

The will of T contained a general residuary gift to X.

(continued on next page)

Final Examination in Future Interests

II. (continued)

- _____ 1. If C left issue who survived T, said issue are entitled to share in Blackacre at the death of A.
- _____ 2. As heir of D, B is entitled to share in Blackacre at the death of A.
- _____ 3. Children of B who may be born before E attains the age of 21 will be entitled to share in Blackacre.
- _____ 4. All children born to B at any time after the death of T will be entitled to share in Blackacre.
- _____ 5. Since E was under the age of 21 at the death of A, his interest in Blackacre was extinguished.
- _____ 6. X is entitled to the income from Blackacre in the interim between the death of A and attainment of 21 by E.
- _____ 7. The Illinois Lapse Statute has no application in this case.
- _____ 8. If D had died at the age of 19 in the life of A, and A had died in 1915 leaving B and E surviving, the gift to the children of B would have failed completely.
- _____ 9. If C had left a will devising all his property to Y, Y would have been entitled to share in Blackacre at the death of A.
- _____ 10. At the death of A, B is assured of an undivided half interest in Blackacre.
- _____ 11. The gift to the children of B created a contingent remainder at the death of T.
- _____ 12. At the death of A, the interest of E might reasonably be described as an executory interest.
- _____ 13. If the gift to the children of B had been to such children "as shall attain the age of 25," the gift would have been wholly void.

III. T devised Blackacre "to A for life, and after his death to his surviving children." At the death of T, A had children B and C, both adults.

A, B and C all joined in a quitclaim deed purporting to convey all right, title and interest in Blackacre to P, for the sum of \$5000, which was a fair price.

- _____ 1. By this deed P acquired A's life estate.
- _____ 2. If B and C should be the only children of A surviving him, legal title in fee to Blackacre would vest immediately in P.
- _____ 3. If B and C should be the only children of A surviving him, P would be entitled to a conveyance of Blackacre by B and C.
- _____ 4. If T had died in 1920, and if A had been residuary devisee under the will of T, the conveyance above recited would have passed complete title to Blackacre.

(continued on next page)

Final Examination in Future Interests

III. (continued)

- _____ 5. If B should die in the life of A, leaving his child D surviving, and D should also survive A, D would be entitled to an interest in Blackacre.
- _____ 6. If A should have a third child E born after the date of the conveyance above stated, and E should survive A, E would be entitled to a share in Blackacre.
- _____ 7. If B and C and E (mentioned in #6 supra) should all survive A, E would be entitled to an undivided third part of Blackacre.

IV. T devised Blackacre "to A for life, and after his death to B for his life, and after the death of B to the heirs of A living at the death of A."

- _____ 1. By this gift B acquired a remainder for life.
- _____ 2. If B should die in the life of A, the latter would have a fee simple in possession.
- _____ 3. If, during the life of B, A should make a deed purporting to convey Blackacre to P in fee, the latter would not acquire an absolute fee simple.
- _____ 4. If A should die leaving a will devising all his property to P, the latter would be entitled to Blackacre at the death of B.
- _____ 5. Whether or not the will of T contains a residuary gift, the heirs of T have no interest in Blackacre.

V. T devises Blackacre "to A for life, and after his death to B, but if B shall die without issue surviving, then to C."

A, B and C all survive T.

- _____ 1. B has an indefeasibly vested remainder in fee in Blackacre.
- _____ 2. If B should survive A, and should thereafter die intestate without issue surviving, Blackacre would pass to the heirs of B.
- _____ 3. By joining in a deed, A, B and C could convey complete title to Blackacre.
- _____ 4. C has a contingent remainder.
- _____ 5. By a proper form of deed without warranties C can convey his interest in Blackacre to B.
- _____ 6. If C should purport to convey Blackacre by warranty deed to P, and thereafter B should die in the life of A without surviving issue, P would have legal title to Blackacre at the death of A.
- _____ 7. C's interest in Blackacre is a life interest.
- _____ 8. By implication the above devise creates a remainder in the issue of B surviving him.

VI. T makes a will containing the following gift: "All my property, both real and personal, I give to W, my wife, with full power and authority to dispose of the same as she may see fit."

_____ 1. W takes the real estate of T in fee, with a power appendant to the fee.

T makes by will the following gift: "All my property, both real and personal, I give to W, my wife; what property may remain at her death shall pass to S, my son."

_____ 2. W takes a life estate in the real estate owned by T at his death, and S takes an indefeasibly-vested remainder.

T provides by will: "I devise Blackacre to A for life, and after his death to such of the children of B as A shall appoint by will."

_____ 3. A has a power that may properly be described as a power "collateral."

_____ 4. The power of A in this case is a mandatory or imperative power.

_____ 5. If A should die without having exercised the power, all children of B living at the death of A would be entitled to share in Blackacre.

T by will provides: "All my real estate I devise to W, my wife, to receive the income therefrom during her life, with full power to sell and dispose of any part thereof during her life, and to use the proceeds of any such sale in such manner as she may deem necessary to her comfort in life. Any part not disposed of by her in her life shall pass at her death to my daughter, D."

_____ 6. W has a life estate with a power in gross to convey the remainder by deed.

_____ 7. Any portion of the real estate not conveyed by W by deed in her life will pass to D at the death of W.

_____ 8. If W should leave a will disposing of any of the above mentioned real estate, such gift would be valid.

_____ 9. D has a defeasibly vested remainder in fee in the real estate left by T.

_____ 10. If, five days before her death, W, being fully aware of her approaching death, should execute and deliver a deed conveying a portion of the real estate above mentioned to her son S without consideration, such conveyance would vest in him an indefeasible title.

FINAL EXAMINATION IN FUTURE INTERESTS (Law 346)

Second Semester 1954-1955

Professor Schnebly

PART TWO: ESSAY-TYPE QUESTIONS

NOTE: One and a quarter hours are allowed. Organize your answers with respect to both substance and phraseology before writing is begun. Give particular attention to the rules of law developed in Illinois. Write in ink.

1. By his duly executed will T devised a tract of Illinois land known as Blackacre in these terms:

"... to A for life, and after his death to his children, if he leave any, in equal undivided shares."

T died in 1915. His will did not contain a residuary clause. X and Y were his heirs at law.

At the death of T, A was living and had children B and C. On May 1, 1916, in the life of A, the child B made a warranty deed purporting to convey Blackacre to D.

Thereafter, on August 10, 1918, A and X joined in a deed purporting to convey Blackacre to E.

B, C, D, E, X and Y are all living at the death of A in 1919. Who is entitled to Blackacre at the death of A?

2. By his will duly executed, T devised Whiteacre as follows:

"... to A for his life, and after his death to his children, but if any child shall die in the life of A leaving issue him surviving, said issue shall take the share that the deceased child would have taken."

A had children B and C.

P recovered judgment against B for a debt, caused execution to be levied on B's interest in Whiteacre, and purchased the same at execution sale. B died in the life of A, leaving a child X, who survived A.

C died in the life of A without issue surviving. He left a will wherein he devised all his property to Y.

At the death of A, what is the state of the title to Whiteacre?

HOUR EXAMINATION IN FUTURE INTERESTS
(Law 346)

April 10, 1956

Professor Schnebly

NOTE: Organize your answers with respect to both substance and phraseology before writing is begun. In each answer give particular attention to the rules of law developed in Illinois. Write in ink.

1. In 1856 G conveyed a tract of land to the trustees of Industry Congregation of the Cumberland Presbyterian Church by a deed which recited a consideration of one dollar, and described the land to be conveyed as follows:

"a certain tract or parcel of land to be used as a church location, situated in the State of Illinois, county of McDonough, being a part of the south-east quarter of section 15, in township 4, north of range 2 west, and more particularly described as follows: Lot No. 16, in block No. 5, in the town of Industry"

A church building was erected on the premises and used until 1891. In 1901 Industry Congregation was dissolved, and the trustees conveyed the land to D, who devoted it to other purposes.

P, the heir at law of G, brought ejectment against D in 1904. Should he recover?

2. In 1950 T died leaving a will which contained the following gift:

"I devise my country estate known as Blackacre to my wife, W, for the period of her life. After her death my son, S, shall be entitled to enjoyment of the same for his life, and after his death my grandson, GS, shall have it for his life. After the death of GS I devise the same to the heirs at law then living of my said son S."

P desires to purchase Blackacre, and is able to obtain a conveyance joined in by the widow, W, and by S and GS. Would you advise him to proceed with the purchase?

FINAL EXAMINATION IN FUTURE INTERESTS (Law 346)

Second Semester 1955-1956

Professor Schnebly

PART TWO: ESSAY-TYPE QUESTIONS

NOTE: One and a quarter hours are allowed. Organize your answers with respect to both substance and phraseology before writing is begun. Give particular attention to the rules of law developed in Illinois. Write in ink.

1. T by his will duly executed devised land to A for life, and at the death of A to his children in equal shares, providing that if any child of A should die without issue surviving, either before or after the death of A, such child's share should pass to the then surviving children of A.

At the death of T, A had one child, B. A second child, C, was born to A after the death of T. Both B and C survived A. Thereafter B died without leaving issue surviving him.

C made a contract to convey the land involved to D, who now refuses to accept a conveyance on the ground that C cannot make good title. Is D's position on this point correct?

2. T died leaving a will which contained the following items:

(1) "I devise Blackacre to A in fee simple, but he shall not have power to transfer the same before his twenty-fifth birthday."

(2) "I devise Whiteacre to B for his life; upon his death, or upon any transfer by him of his interest, the land shall pass to C in fee."

The will contained no residuary clause. H was sole heir of T. At the death of T, A was twenty-three years of age. Before he had attained the age of twenty-five, A executed and delivered a deed conveying Blackacre to X. At the same time B executed and delivered a deed conveying all his interest in Whiteacre to X. X took possession of both tracts.

Thereupon H filed an action of ejectment against X in respect to Blackacre; and C filed a similar action in respect to Whiteacre. Can either H or C recover?

NAME _____

NO. _____

FINAL EXAMINATION IN INSURANCE (LAW 338)

Second Semester 1954-1955

Professor Goble

Time: 4 hours

Part A

Essay (15% of final grade)

Discussion Questions

1. All three New York Standard Fire Policies contain provisions dealing with the ownership or interest of the insured with reference to the insured property. Point out the differences in these provisions, discuss the leading cases that have a bearing upon their interpretation, and in particular show their application to the following relationships:

- (a) life tenant -- remainderman
- (b) vendor -- vendee
- (c) mortgagor -- mortgagee (of real property)
- (d) joint tenants

2. Many cases have held that the business of insurance is "affected with a public interest."

(a) What is the basis for this policy?

(b) Discuss the significance of the policy as it bears upon the regulation of insurance companies and the interpretation of insurance contracts. Give instances to illustrate your arguments.

FINAL EXAMINATION IN INTERNATIONAL LAW (Law 348)

Second Semester 1954-55

Professor Carlston

IMPORTANT: You will find a number in the upper right-hand corner of this page. This will be your examination number. Your grading will be made without knowledge of your name. A list of the members of this class will be passed around. Place your examination number in the space opposite your name on this list. Do not write your name on either this question sheet or the examination booklet.

You will have 3 1/2 hours for answering this examination.

- 15 points 1. The A Construction Company contracted in 1953 with the Viet Nam government to build a certain road in territory now under the control of the Communist government of North Viet Nam. The road was built. Has the company a valid claim against the present South Viet Nam government?
- 20 points 2. Assume that the United States government created by legislation the Export Bank as a Federal corporation, of which the government was the sole stockholder, for the purpose of making loans in support of foreign trade. Also assume that the Bank issued insurance against expropriation by other countries of United States foreign investment. Is the Bank immune from suit in foreign countries? If it should pay an insured party a claim for expropriation of its foreign investment and take an assignment thereof, what would be the status of such a claim, i.e., what rights would the Bank have under international law?
3. A treaty between the United States and China, which became effective prior to the assumption of control by the Communist government in China, provided that (i) the nationals of each country should be secure in their persons and property in accordance with the principles of international law and universally recognized principles of justice and (ii) trade and commerce should be freely carried out between the parties and should not be impeded by either party except as authorized by international law.
- 12 points Case A. A Chinese national in Kentucky was convicted of murder. Defense counsel had tried to question prospective jurors on their views of United States foreign policy regarding China. His questions had been excluded and exceptions duly taken. Present such arguments as you would consider to be available to him on appeal.
- 11 points Case B. American prisoners of war were convicted by a Chinese court of espionage upon their confession in open court. The Department of State wishes to make a protest against this. How should this be done and upon what grounds? What would be the response of the Chinese government?
- 12 points Case C. The United States prohibited by legislation substantially all trade with China. Upon what grounds would you expect China to protest? What would be the United States' answer?

15 points 4. What would be the effect of war on the treaty provisions above?

15 points 5. Answer either of the following two questions:

(a) What is the legal status today of the use of force or war as between states, or

(b) What amendments of the United Nations Charter should the United States seek to establish and why?

FINAL EXAMINATION IN INTERNATIONAL LAW (LAW 348)

Second Semester 1955-1956

Professor Carlston

IMPORTANT: You will find a number in the upper right-hand corner of this page. This will be your examination number. Your grading will be made without knowledge of your name. A list of the members of this class will be passed around. Place your examination number in the space opposite your name on this list. Do not write your name on either this question sheet or the examination booklet.

You will have 3 1/2 hours for answering this examination.

1. (a) Interstate relations are political, economic, military, and cultural. What forms or kinds of law regulate these relations? Briefly describe the nature of each such form of law.

(b) Discuss the strength and weakness of international law and the manner of its growth.

(c) How would you attempt to prove the existence of the law applicable to the case outlined in "2" below? That is, what sources would you use?

2. The State of Helvetia proclaimed sovereignty over the waters of the high seas for 200 miles adjacent to its coast. At a point 15 miles from its coast, a citizen of the State of Slobovia found a sponge bed growing. He also found immediately adjacent to the sponge bed a coral island of about 50 square yards in size, projecting above usual high tide only about a foot. The citizen landed supplies on the island, anchoring them by steel cable to the land to prevent them from being washed away by heavy seas in very high tides or storms. Using the island as a supply depot, the citizen fished for sponges from a floating vessel. When he had accumulated a large supply of sponges, a boat manned by private persons who were subjects of Helvetia took them from him by force of arms.

The citizen complained to the police authorities of the State of Helvetia, who thereupon arrested him for the statutory crime of removing the natural resources of the state without a license. He was tried, convicted and punished by imprisonment for one year and confiscation of his enterprise and the property used therein.

The authorities also arrested the subjects who had taken the sponges by force but the court ordered their release on the ground that the sponges could not be the subject of property of the complainant.

The citizen then appealed to the foreign office of Slobovia for protection. Upon hearing of the facts, the Slobovian authorities sent a destroyer to the coral island and proclaimed sovereignty over the same.

Assume that the claims of Slobovia (1) on behalf of its citizen and (2) for title to the coral island were submitted to arbitration to be decided on the basis of international law. How should they be decided and why?

Do you see any other issues of international law in the above facts? If so, what is the law applicable thereto?

3. (a) Discuss executive agreements under international law and the constitutional law of the United States.

(b) A corporate client obtained a mining concession from a foreign state. The president of the corporation advises you as attorney that the chief executive of the foreign state is willing to enter into an exchange of notes with the United States Secretary of State under which the former would agree not to expropriate the concession if the latter would agree that, subject to the principles of international law itself, the only law applicable to the concession would be the law of the forum and that United States law would not apply within the territory of the forum. What is your advice to him, ignoring the issue whether as a practical matter the United States would in fact ever enter into such an arrangement? State your reasoning which led to such advice.

4. Discuss any one of the following topics:

(a) Fruitful avenues or methods of international cooperation.

(b) The International Court of Justice as a means for the settlement of international conflict.

(c) The international regulation of the use of force between states.

Name _____

No. _____

HOUR EXAMINATION IN JUDICIAL REMEDIES (LAW 305)

November 15, 1954

Professor Cribbet

In answering the questions, state (1) your conclusion and (2) your reasons. Confine your answers to the space provided and write legibly.

I

On the statute books of State X the following enactment appeared:

"An Act Providing for the Erection of Public Buildings

"There shall be erected and finished, in each county within this state, whenever the commissioners of the county may deem it necessary, a good and convenient courthouse, a strong and sufficient jail or prison for the reception or confinement of prisoners and criminals; also, one or more convenient fire-proof buildings, in some convenient place or places near the courthouse, in which shall be kept the offices of the clerk of the Supreme Court, Court of Common Pleas, sheriff, recorder of deeds, county auditor, and county treasurer; provided, however, that the commissioners may provide or finish one or more suitable rooms within the walls of the courthouse, or other building, for the use of the whole, or a part of the officers aforesaid; and the commissioners may assign such room or rooms to the sole and exclusive use of such officers, as they may deem expedient. Until proper buildings are erected at the place fixed for the permanent seat of justice in any county, or in event of destruction of said buildings, it shall be the duty of the county commissioners to provide some suitable place for housing the offices aforesaid."

In 1953 the courthouse of Y County of State X was destroyed by fire, except that the jail was not harmed and could still be used. The officers mentioned in the statute are temporarily housed in adjacent business property. The commissioners signed a contract with Merritt J. Boone to build a new courthouse, and the foundation was almost in when 2 of the 5 commissioners were killed in an automobile accident. Two new commissioners were elected and they claimed that inferior materials were being used in the foundation. By a vote of 3 to 2 the commissioners then decided to rescind the contract with Boone.

Boone applied to the proper trial court for a writ of mandamus to force the commissioners to continue with the contract. The trial court granted the writ and the commissioners appealed to the proper appellate court. What result on appeal? Why?

II

In State X, a state still using the common-law forms of action, the following facts occurred. Pennell made an oral contract to purchase a 40-acre tract of land from Denton for \$12,000. Pennell paid \$1,000 down, but nothing more has been done and Denton refuses to convey the land. This oral contract was made December 15, 1949. On the same day as the making of the contract, Denton borrowed Pennell's black stallion, Rex, and has never returned him. Pennell has never demanded the return of Rex and, in fact, is aware that the horse has been sold to Raemer, a b.f.p., for \$750. The date of sale was May 14, 1952.

State X has the following statutes, among others:

"No action shall be brought to charge any person upon any contract for the sale of lands. . . unless such contract or some memorandum or note thereof shall be in writing. . ."

"Actions on unwritten contracts, expressed or implied . . . shall be commenced within five years next after the cause of action accrued."

"Actions on written contracts shall be commenced within ten years next after the cause of action accrued."

"Actions for damages for an injury to the person or personal property . . . shall be commenced within two years next after the cause of action accrued."

You are the attorney for Pennell. What form or forms of action might you successfully bring against Denton? Why? What would Pennell recover in such action or actions?

HOUR EXAMINATION IN JUDICIAL REMEDIES (LAW 305)

November 21, 1955

Professor Cribbet

State X has a system of law based on the English common law; both procedural and substantive. The common law has been modified by statute and the following enactments may or may not be relevant to the case at hand.

STATUTES OF STATE X

Practice Act of State X

Section 1. (1) Neither the names heretofore used to distinguish the different ordinary actions at law, nor any formal requisites heretofore appertaining to the manner of pleading in such actions respectively, shall hereafter be deemed necessary or appropriate, and there shall be no distinctions respecting the manner of pleading between such actions at law and suits in equity, other than those specified in this Act and the rules adopted pursuant thereto, but this section shall not be deemed to affect in any way the substantial averments of fact necessary to state any cause of action either at law or in equity.

(2) Proceedings in attachment, ejectment, eminent domain, forcible entry and detainer, garnishment, habeas corpus, mandamus, ne exeat, quo warranto and replevin, or other actions in which the procedure is regulated by special statutes, shall be in accordance with the statutes dealing therewith.

Section 2. Subject to rules any plaintiff or plaintiffs may join any causes of action, whether legal or equitable or both, against any defendant or defendants; and subject to rules the defendant may set up in his answer any and all cross demands whatever, whether in the nature of recoupment, setoff, cross bill in equity or otherwise, which shall be designated counterclaims.

Statutes of Limitation of State X

Section 1. Actions for damages for an injury to the person or personal property . . . shall be commenced within two years next after the cause of action accrued.

Section 2. Actions on unwritten contracts, expressed or implied, and for damages for injury to real property shall be commenced within five years next after the cause of action accrued.

Section 3. Actions on written contracts shall be commenced within ten years next after the cause of action accrued.

Jurisdiction of Courts of State X

Section 1. Jurisdiction of Small Claims Courts. Small Claims Courts have jurisdiction in their respective counties in the following actions, when the amount claimed does not exceed one thousand dollars.

First--Arising on contracts, whether under seal or not, express or implied, for the recovery of money only.

When the action is upon a bond, or promissory note the amount to be recovered thereon, and not the penalty of the bond or the amount of the note determines the jurisdiction; and when the payments are to be made by installments, an action may be brought for any installment as it becomes due.

Second--For damages for injury to personal property and real property, or for taking or detaining personal property.

Third--For rent and distress for rent.

Fourth--Against railroad companies and any person or company controlling, operating or using any railroad, for killing or injuring horses, cattle, sheep, hogs or other stock; for loss of or injury to baggage or freight; and for injury or damage to real or personal property, caused by setting fire to the same by their engines, or otherwise.

Fifth--Of replevin, when the value of the property claimed does not exceed one thousand dollars.

Sixth--For damages for fraud in the sale, purchase or exchange of personal property, and where the action of debt or assumpsit lies. This section applies to claims originally exceeding five hundred dollars, if the same, at the time of rendition of the judgment, are reduced by credits or deductions to an amount not exceeding one thousand dollars.

Seventh--Arising under the laws for the incorporation of cities, towns and villages, or any ordinance passed in pursuance thereof.

Eighth--Arising under the law in relation to dramshops.

Ninth--For the recovery of statutory fines or penalties.

Tenth--By and against incorporated towns, cities, villages, or other municipal corporations, which, if brought by an individual, might be brought before a justice of the peace.

Eleventh--To assess damages for sheep killed by dogs.

Twelfth--Of forcible entry and detainer.

Thirteenth--For trespass or trespass on the case.

PROBLEM

In April, 1951, Harry Varnum, who owned a twenty-acre tract of land called Blackacre, agreed to sell the same to Randall Peterson for \$6,000. This contract was not in writing and hence was unenforceable under the Statute of Frauds of State X. Peterson paid \$500 down at the time of the oral contract and this sum was never returned to him.

In May, 1952, Peterson demanded that Varnum either perform the oral contract or repay the \$500 plus interest. When Varnum refused, Peterson entered Blackacre and cut \$350 worth of standing timber from the south part of the tract. In January 1952, Varnum had made a valid written lease of Blackacre to Joseph Croix for a period of two years and the latter was in possession of the premises at the time of the timber incident.

In 1954, after the expiration of the Croix lease, Peterson again demanded the return of his \$500 and when the demand was refused, Peterson ousted Varnum and took full possession of Blackacre.

In May, 1955, Varnum brought an action of ejectment (following the proper statutory form) against Peterson in the Small Claims Court of State X. He joined with it a count for damages for the standing timber which was cut in 1952. Peterson defended on the ground that Blackacre belonged to Jerome Mitchell, a local business man, and he introduced sufficient evidence to show that Mitchell had a good paper title that could be traced back to a patent deed from the United States. Peterson did not show any connection between himself and Jerome Mitchell. Peterson also counterclaimed for the \$500 that was due from the original 1951 contract.

The Small Claims Court gave judgment to Varnum in the ejectment action and also entered judgment for \$350 damages for the timber episode. Peterson's counterclaim was disallowed. Peterson then sought a writ of prohibition in the appropriate court of general jurisdiction for the county where the land was located. How should the court of general jurisdiction rule on the application for prohibition? Why?

Quite apart from the question of prohibition, did the Small Claims Court correctly decide the issues presented to it? Discuss each separate issue that was involved in the trial and explain why the holding of the court was correct or incorrect. Confine your discussion to relevant points.

NAME _____

NO. _____

FINAL EXAMINATION IN JUDICIAL REMEDIES (Law 305)

First Semester 1955-56

Professor Cribbet

Time - 4 hours

The final examination should be an integral part of the course. It should continue the learning process for the student at the same time that it provides a grading criterion for the teacher. It should comport to the general objectives of the course and test the achievement of those objectives. This examination has been drafted with these principles in mind and each section begins with a statement of the purpose it seeks to serve.

The one-hour quiz counted twenty percent of the course grade. Accordingly, this examination carries a total weight of eighty percent. Each question is marked to indicate its numerical weight so that you can effectively judge the relative emphasis.

SECTION A
(27 points) (Essay questions)

Answer the questions in this section in the examination booklet.

This section is designed to test ability in legal analysis and skill in organizing the relevant facts and law into a coherent answer. Evaluate all the factors involved in each question and discuss in full. Where more than one view is pertinent, discuss them all and evaluate their relative merit.

I. (15 points)

In 1948, an interesting case arose in this country involving the use of music of Russian composers. The following is a direct quote from the salient undisputed facts in the case:

"Plaintiffs are composers of international renown. They are citizens and residents of the Union of Socialist Soviet Republics. Defendant, a domestic corporation has produced a picture known as 'The Iron Curtain' which is now being exhibited in theatres throughout this country. In the public mind, this title has come to indicate the boundary between that part of Europe which is under the sovereignty of, occupied by or under the influence of the U.S.S.R., as distinguished from the rest of the continent. The picture depicts recent disclosures of espionage in Canada attributed to representatives of the U.S.S.R. There is shown, preliminarily, but not as part of the picture proper, as is customary in the showing of motion pictures, the names of the players, the producer, the cameramen, and similar informative data. Included is this statement: 'Music--From the Selected Works of the Soviet Composers--Dmitry Shostakovich, Serge Prokofieff, Aram Khachaturian, Nicholai Miashovsky--Conducted by Alfred Newman'. Such practice in the theatrical, advertising and kindred businesses is known as giving a 'credit line'. During the picture, music of the several plaintiffs is reproduced, from time to time, for a total period of approximately 45 minutes. The entire running time of the film is 87 minutes. The use of the music can best be described as incidental, background matter. Aside from the use of their music neither the plot nor the theme of the play, in any manner, concerns plaintiffs. In addition to the use of their names on the 'credit lines' the name of one plaintiff is used when one of

the characters in the play is shown placing a recording of this particular plaintiff's music on a phonograph. Again this is incidental, the name is mentioned in an appreciative, familiar fashion, the impression given being that the character has come upon a record of a composition which he recognizes and appreciates hearing. All the music, it is conceded, for the purposes of this motion, is in the public domain and enjoys no copyright protection whatever."

The plaintiffs seek to enjoin pendente lite and permanently the use of their names and music in the picture and in any advertising or publicity matter relating to it. In addition to the injunctive relief a money judgment is asked. The complaint is set up in four counts, each stating substantially the same facts but obviously framed on the following theories: (1) libel, in that plaintiffs are depicted as endorsing the film and thereby casting upon them "the false imputation of being disloyal to their country, Russia"; (2) invasion of plaintiffs' right to privacy; (3) interference with the plaintiffs' property rights, both in the music and in their own names; and (4) a deliberate infliction of an injury without just cause.

The defendant motion picture company moved to dismiss the entire complaint on the grounds that it failed to state a cause of action on any theory either at law or in equity. The trial court (a court of general jurisdiction) sustained the motion to strike and the plaintiffs, electing to stand on the complaint, appealed to the appropriate appellate court. You are the presiding judge of that court. Write the opinion disposing of the case. Would your opinion differ in any way if the copyright protection of the music had not expired? (It is assumed that the Russians had standing to sue in this country and that point need not be discussed.)

II (12 points)

The following situations arise in the course of your practice. Answer each question but confine your discussion to a brief space. Not more than six to eight lines should be used for each question.

(a) P had been in possession of Blackacre for some 21 years and claimed title by a direct chain from the federal government. In 1953 he was dispossessed by X who is now in possession of the land. P would like to sell his interest in the land to B, and has entered into a binding contract to do so, but after an examination of the abstract, B's lawyer discovers outstanding claims against the land evidenced by recorded instruments held by Y and Z. In addition C and D are making oral claims of ownership to the land. What remedies are available to P against X, Y, Z, C, and D? Why? If these remedies are successful and B still refuses to perform, what remedies would P have against B? Why?

(b) A contracted in writing to sell B a 1955 Ford. A refused to deliver the Ford and B sought specific performance but was met with a demurrer on the grounds of an adequate remedy at law. The demurrer was overruled and, after a trial on the merits, the court granted specific performance. A ignored the decree and was imprisoned for contempt of court. A sought release on a writ of habeas corpus. What result? Why? If the demurrer had been sustained and B had then sought relief at law, would the prior equity action be res judicata, thus defeating the law action? Why?

(c) V, an Illinois resident, contracted to sell P, an Illinois resident, a 200-acre tract of land located in Ohio. After V's failure to perform, P brought suit in Illinois for specific performance and since V was vacationing in Florida, used service by publication. The court granted the relief prayed and appointed a commissioner who conveyed the land to P by a commissioner's deed. X would now like to buy the land from P. Would you advise X to buy the land? Why or why not? Would your advice change if the original service had been personal service on V in Florida but the other facts had been the same? Why or why not? Would your advice change if the original service had been personal service on V in Illinois? Why?

(d) D, a New York corporation, sent its agents onto P's land in Cleveland, Ohio, and piled rocks, stones, and earth on the vacant lots to a depth of five feet. If P were to remove the material, he would be compelled to haul it a distance of at least five miles, and pay for the privilege of dumping it on someone else's land. Meanwhile the debris is doing irreparable harm to P's land. P seeks a mandatory injunction in a New York equity court where D has been personally served. The injunction prayed for would force D to remove the material. What result in the New York court? Why?

SECTION B

(13 points) (True or False)

In every course there are many incidental items of information which should be absorbed by the student. While not specifically stressed by the cases or materials, they are important by-products of the course objective. Since this is a basic procedural course, this section is designed to test your general knowledge of procedural points.

Use + for true and - for false.

I (8 points)

- _____ In Illinois, the county court is a court of general jurisdiction.
- _____) The justice of the peace is a part of the Illinois court structure.
- _____ The Illinois Supreme Court has original jurisdiction in mandamus, prohibition, habeas corpus, and matters affecting the revenue.
- _____ Separate courts of law and equity still exist in some American jurisdictions.
- _____ The federal district courts have exclusive original jurisdiction in all cases involving diversity of citizenship where the amount in controversy exceeds \$3,000.
- _____ The complaint is generally the first pleading filed in a law suit.
- _____ It is possible to enforce a default judgment by the normal process of execution on the defendant's property.
- _____ The principal function of a demurrer is to raise an issue of law.
- _____ The jury's verdict is the final procedural step in the trial of a lawsuit, except for the possibility of appeal.

Joinder of causes of action in Illinois today is based more on the equity system than on the common law system.

The federal district courts have both legal and equitable power.

Self help is no longer an available remedy in Illinois.

All legal remedies are enforced by in rem action.

In Illinois, once a judgment has been barred by the 20-year statute of limitations, it can never be revived.

Equity decrees can be enforced only by in personam methods.

In Illinois a judgment in replevin may be enforced by in personam methods.

II (5 points)

Under the Illinois ejectment act, damages for loss of mesne profits must be included in the original complaint or be barred under the doctrine of res judicata.

Since mandamus is in essence an equitable remedy, all issues of fact may be tried by the court without a jury.

Forcible entry and detainer is a statutory action for the recovery of possession of real property and cannot be used to try questions of title.

Personal service, issuing from an Illinois court, on a Wisconsin resident in Wisconsin can never confer on the Illinois court any power to act.

Mandamus can never be used as a remedy when the duty in question is a discretionary one.

The abolition of the forms of action has made little change in the substantive rights of the parties to a lawsuit.

Under certain circumstances in Illinois, a pleading may be amended to state a cause of action even after the statute of limitations has run.

At common law the basis for joinder of causes of action was legal theory rather than trial convenience.

Illinois follows the minority rule that allows the plaintiff to split a cause of action.

The fusion of law and equity has resulted in major changes in the rights of parties to a jury trial.

SECTION C (15 points) (Multiple Choice and Filling Blanks)

One of the principal objectives of this course was to give the student "the big picture" of the whole field of remedial relief -- to make him "remedies conscious", so that he would be aware of the wide variety and scope of judicial remedies. This section is designed to test skill in the selection of the proper remedy under a wide variety of situations. More than one remedy may be available for your use, but underline only the one that is most appropriate. If none of those listed is appropriate, so indicate.

I (10 points)

1. D has executed a contract under seal with your client for the sale of 100 shares of General Motors stock. The price of the stock has been stable since the contract was made. No question of control is involved, but your client has a sentimental desire for the stock since his mother-in-law was run over by a Cadillac. (specific performance, replevin, trover, detinue, injunction, special assumpsit, debt, covenant, none of these)
2. D, by a valid contract in writing but unsealed, has agreed to convey Blackacre to your client. Since the date of the contract, a new super highway has been projected for the area, thus increasing the value of the land substantially. The indications are it will go even higher in the future. (specific performance, special assumpsit, general assumpsit, covenant, ejectment, forcible entry and detainer, eminent domain, none of these)
3. Your client was in possession of Blackacre but did not have legal title to the tract. He left the property and moved to California. D is now in possession of the tract. X has the legal title but he is in Europe and has not claimed the property. Your client wants to regain possession. (bill to quiet title, declaratory judgment, ejectment, forcible entry and detainer, bill of peace, jus tertii, none of these)
4. D borrowed your client's watch and failed to return it. D has now sold the watch, a family heirloom, to X who has skipped the country with the watch. No demand has been made on D. You are suing D. (bill in equity, replevin, detinue, trover, attachment, ne exeat, specific performance, none of these)
5. D is circulating defamatory letters concerning the quality of your client's products. Both D and your client are manufacturing batteries for flashlights. (case, trespass, injunction, interpleader, bill of peace, declaratory judgment, none of these)
6. Your client plans to build an apartment hotel in a residential area that is zoned against commercial hotels. D, a resident of the area, protests that this violates the city ordinance. (declaratory judgment, injunction, bill quia timet, bill to quiet title, ejectment, none of these)
7. Your client, J. C. Caroline, is the subject of an article in Life magazine. Over his protests pictures of his boyhood home are published and defamatory statements are made concerning his parents. (injunction, case, trespass, declaratory judgment, prohibition, quo warranto, none of these)
8. Your client has been falsely accused of rape (he says) and is sentenced by the Circuit Court of Cook County to a term at Joliet. His attorney at the trial was a green young member of the bar with no previous trial experience. Several prejudicial errors were committed at the trial. You are called into the case just after he was sentenced. (habeas corpus, prohibition, mandamus, case, declaratory judgment, appeal, none of these)
9. The Superior Court of Cook County issued an injunction against your client in a matter arising out of a political controversy. He violated the injunction and was jailed for contempt. (habeas corpus, prohibition, mandamus, case, declaratory judgment, none of these)
10. Your client is being tried in the Circuit Court of Cook County for violation of the federal antitrust laws. The court has no jurisdiction to try such matters. (mandamus, prohibition, appeal, quo warranto, injunction, bill quia timet, none of these)

11. D agreed to sell your client 10 dozen watches at \$200 a dozen. The secretary typed the contract and it reads \$220 a dozen. Both D and your client signed it. D is insisting on the terms of the contract. (specific performance, special assumpsit, covenant, cancellation, rescission, reformation)
12. Your client has a judgment in Indiana against D. D is now living in Champaign but has a few assets and is making \$400 a month at Sears, Roebuck and Co. (scire facias, garnishment, attachment, sequestration, contempt proceedings, none of these)
13. Your client had a chop suey dinner at D's Ye Olde Chinese Shoppe, and a rare old Chinese worm turned up in the food. Your client became violently ill and lost several days work. (assumpsit, case, trespass, covenant, debt, declaratory judgment, none of these)
14. Your client was injured when D, in a fit of anger, tapped him on the skull with a croquet mallet. (case, trespass, injunction, trover, assumpsit, bill of peace, none of these)
15. Your client's wife has been seen frequently at lunch with a business competitor. The competitor has been molesting the wife at all hours (so she says) and will not leave her alone. He follows her on all shopping trips. (self help, injunction, divorce, bill of peace, trespass, case, none of these)
16. The state's attorney of X county consistently refuses to arrest the operators of illegal pin ball machines in the county. He contends that the only machines to be found in the county are for amusement and cannot be used for gambling. (mandamus, quo warranto, injunction, habeas corpus, sequestration, replevin, none of these)
17. Your client has a contract to purchase a new 1956 tractor. He must have the machine to carry on his business as a truck farmer. D has orally contracted to sell him one but now refuses because he needs his supply for a large scale operator who will take all he can furnish. (special assumpsit, general assumpsit, debt, covenant, specific performance, replevin, none of these)
18. The branches of D's trees encroach 3 inches on your client's property. Due to a neighborhood squabble your client wants relief. (injunction, ejectment, forcible entry and detainer, self help, replevin, none of these)
19. Your client has a judgment rendered against D by an Indiana court for breach of a personal services contract. D was never personally served in Indiana. You can now get personal service on D in Illinois. (debt, scire facias, certiorari, specific performance, special assumpsit, none of these)
20. In state X, the statute of limitations on contract claims is ten years and on tort claims five years. Six years ago your client was injured in an automobile crash due to D's negligence. (case, trespass, debt, covenant, assumpsit, laches, none of these)

II (5 points)

In the following question fill the blank with the remedy which you think most appropriate for A under the circumstances.

(1) A found a fine watch which he admits does not belong to him. It is claimed by X, Y and Z, all of whom are threatening suit. _____

(2) A was forced to give B a check under duress. The check is negotiable and B is threatening to transfer it to others, who may be holders in due course. _____

(3) A was awarded custody of his two children when W divorced him. She has the children and refuses to give them up. _____

(4) A has a good cause of action arising out of contract against B. Although A has not yet filed suit, B is loading all of his assets on an old Ford truck and plans to leave the state. _____

(5) A has a New York judgment against B but it is uncollected. B is now living on his farm in Illinois. _____

(6) A is in possession of Blackacre but X, Y and Z have written recorded instruments which show that they claim a share of the tract. A wants to sell to B but the latter is afraid to buy. _____

(7) A was in partnership with B but the partnership was dissolved. A thinks B still has assets belonging to A. _____

(8) A owns an apartment house and B, whose lease on one apartment has expired, refuses to vacate. _____

(9) A delivered some corn to B by mistake. B used the corn to feed his cows but refuses to pay for it. _____

(10) A was maliciously prosecuted by B before a justice of the peace who has no jurisdiction of the controversy. _____

SECTION D

(16 points) (True or False)

The testing of skill in legal analysis can best be done by the essay question. However, the same objective can be attained by the true or false device. Section A approached the problem through discussion; this section has the same objective but a different method.

Use + for true and — for false.

I (12 points)

P was injured when his motorcycle collided with a Jaguar driven by D. P suffered a broken leg, what appeared to be minor scalp wounds, and a sprained arm. The motorcycle was a total loss. D was not injured personally but the Jaguar, which D had borrowed from X, was badly damaged. After the accident D began to tell all of his acquaintances that P was drunk at the time of the collision and was a confirmed alcoholic. In fact P never drank and was a pillar of the WCTU male auxiliary.

A photographer, Y, was present when the accident occurred and over P's objection took several pictures of P as he lay moaning on the ground. The picture subsequently appeared in the local paper and in one of the national magazines. Z company, a manufacturer of a motorcycle safety device, is using the picture without P's permission to advertise the need for its product.

A few days after the accident D entered a tract of land owned by P's mother, but occupied by P as a lessee from month to month, and cut growing timber in sizable quantities. This timber was sold to S, who had full knowledge of the methods by which the timber was obtained.

- _____ P can successfully sue Y for an invasion of his right to privacy.
- _____ P can enjoin the use of his picture by Z and also recover damages for the injury done prior to issuance of such injunction.
- _____ P can enjoin the repeated statements by D that the former is an alcoholic.
- _____ At common law P could sue S in replevin, trover, or trespass q.c.f.
- _____ At common law P's mother could sue D in case.
- _____ At common law P could sue D in replevin for loss of the timber.
- _____ Under the Illinois statute if P sued D in replevin for the timber, P's mother would have the right to intervene in the suit.
- _____ If P sued D in Illinois for damages to his motorcycle and recovered judgment, he would be barred from suing later for injuries to his person.
- _____ If P sued D in Illinois and recovered for injuries to his person, he could later sue for damage to his motorcycle and all he would have to prove would be the extent of the damage.
- _____ If P recovered for injuries to his person and then at a later date discovered that he had epilepsy as a result of the scalp wound, he would be barred from further recovery.
- _____ Under the Illinois CPA, P could join all of the causes of action which he has against D in a single suit.
- _____ There is at least one situation in the facts stated where P could waive the tort and sue in general assumpsit.

II (4 points)

P owned bottom lands on a sluggish creek, the overflow of which caused the growth of grass useful for pasturing stock and for hay. Oil escaped from D's wells, pipe lines, and tanks, and accumulated in pools, whence it was washed by melting snow and rain into the creek, and was carried down through and upon P's land, where it gathered in depressions. In cold weather it congealed on the banks on P's land, and in warm weather it melted and ran down into the pools of water where the stock drank, coating the pools with oil. The water and grass were thus rendered unfit for cattle. D was using every known method to prevent escape of the oil. To enjoin its escape would in effect stop D's operation, which employed many men and paid large royalties to the United States and the state. The life of the oil field was estimated at 20 years; when its production should cease, P's lands would be restored to their normal condition shortly afterwards.

- _____ D is violating no right of P in handling his drilling operation in the fashion just described.
- _____ If D began his oil operations before P purchased the bottom lands, P is without remedy.
- _____ P has a remedy at law against D.
- _____ P could probably get an ex parte restraining order against D.
- _____ Under the doctrine of Whalen v. Union Bag, a permanent injunction would probably issue in this case.
- _____ If the facts showed that machinery could be installed, at a moderate price, to protect P, an injunction would be more likely to issue than under the facts as stated.
- _____ The importance of oil in the total economy of the state is a relevant factor in this case.
- _____ Even if the injunction is issued, it would be possible for P and D to settle out of court.

SECTION E
(9 points) (True or False and Essay)

Judicial Remedies should make clear to the student the relationship of the various remedies -- legal, extraordinary legal, equitable, statutory, and extrajudicial. Taken as a whole, they form a complete legal structure. This section tests your understanding of these points.

Use \dagger for true and $-$ for false.

I (5 points)

- _____ In equity either party may demand an advisory jury as a matter of right.
- _____ Arbitration is an equitable remedy.
- _____ The declaratory judgment is a statutory remedy which allows the courts to give advisory opinions.
- _____ Prior to the modern codes of civil procedure there were different methods of appellate review at law and in equity.
- _____ Since habeas corpus is an extraordinary legal remedy, the parties are entitled to a jury trial as a matter of right.
- _____ Under present day Illinois law, a suit in ejectment may be joined with a bill of interpleader involving proceeds of a life insurance policy.
- _____ In a realistic sense there are no legal rights without legal remedies.
- _____ New legal remedies, and hence new legal rights, can be created only by statute.

_____ A master in chancery is an officer of a court of equity.

_____ In Illinois the circuit judge possesses both legal and equitable powers.

II (4 points)

You have just sought equitable relief for a client in a case involving a contract to sell certain valuable machinery. The defendant, who can get a higher price elsewhere, has refused to honor his written contract. Your client can get the machinery from other sources but it will take a long time and the quality may be inferior. The trial court on demurrer has dismissed your complaint for want of equity. The only reason given is a terse, "The remedy at law is adequate and hence equity has no jurisdiction."

How would you explain this result to your client, a highly intelligent layman?

FINAL EXAMINATION IN LABOR LAW (Law 347)

First Semester 1954-55

Professor Sullivan

Time: 3½ hours

1. The G Corporation owns extensive farms in California on which potatoes are grown. The Corporation employs 50 persons who work in the fields and who operate various kinds of farm machinery, and there is one plant pathologist. The Corporation sells potatoes valued at more than \$400,000 each year. In addition to all of its farm buildings, it owns a large packing shed in which the crop is washed and packed for sale. The corporation entered into a contract with the A & B partnership to furnish the packing service. A & B have over 100 employees who work during the marketing season in the packing sheds. Of this number there are 5 supervisors and 8 additional individuals whose job it is to see that there are no delays in the work. There are also 3 clerical workers. A, who is one of the partners, also owns three trucks and he has a contract with the G Corporation to truck the crop to the railroads where most of it begins its journey in interstate commerce, for 90% of the crop is shipped outside of California. A employs 4 truck drivers. G pays to A & B partnership \$90,000 per year for packing service and \$10,000 per year to A for trucking service.

All of the employees are now being organized and a total of 47 persons sign cards with the Agriculture Workers Union, which then petitions the NLRB for an election. This union seeks to have all of the employees of the three employers included in the single unit. The Teamsters Union seeks to represent the truck drivers and each of the employers objects to the election.

Decide all of the issues presented by these petitions. Explain fully.

2. The C Publishing Company publishes a daily newspaper, the Sunday issue of which was usually assembled by a group of employees called inserters. There were 21 regular employees in this group, most of whom were college students who worked at irregular hours to assemble the Sunday paper. All were paid a piece-work rate and the rate varied each week with the number of pages in the various sections of the paper. The piece rates were determined by the publisher and announced the day the assembling work began on each issue. On a number of occasions the inserters objected informally but they continued to work. The evidence indicates that most of these individuals worked only during their time as students in college and when they finished college they left the employment.

On August 23, 1953, after the employer had announced the piece-work rate for that week, the 21 employees met before working hours and decided not to work at the announced rate and appointed one of their number to convey their decision to the foreman. The publisher spoke to the men before they were to begin work and told them that any one of them could work at the announced rates but, if they did not care to do so, they were discharged. All 21 men left the premises and adjourned to a restaurant next door where they formed the Inserters Union and elected officers. Two days later the new officers gave written notice of their election with cards signed by all of the former employees, which stated that they chose this union and its duly elected officers as their representatives for collective bargaining. The employer refused to meet and to discuss any questions because he said that all of the former employees had been discharged. On August 30, the union representatives wrote a letter to the employer indicating that all of the employees were willing to return to work at the old rates and that thereafter they would seek to bargain. The employer refused to re-employ the men and refused to bargain.

The men and the union filed a complaint with the NLRB charging various unfair labor practices. (Assume that the NLRB will take jurisdiction and that the complaint sets out specifically the unfair labor practices.) What results? Give attention to the scope of the Board's order.

3. On January 29, 1950, the A Union, claiming that it had a majority of the employees of Ramco Company as members, made a demand on the employer to be recognized as the bargaining representative and asked for collective bargaining conferences. The employer refused, alleging that it had no knowledge of the extent of organization. Thereupon the employer began a series of meetings at which the virtues of the open shop were expounded. Then the employer rented a public address system which was installed in the factory, and daily for 10 minutes prior to the noon-hour lunch period the employer and his representative made a speech to the workers. During this time the power to run machines was cut off and the workers were required to remain at their work stations. This employer had been induced to come into the community by the local businessmen and by the Chamber of Commerce. These persons became disturbed over the possibility that if the plant were unionized, there would be a strike and their purpose in financing the employer would be frustrated; they therefore offered their assistance to the employer to prevent the organization. Then at the noon speeches over the plant public address system local businessmen, not directly connected with the employer, made speeches in which they said that the employees and the town would lose by a strike which would follow unionization of the factory, that the employees might lose the benefits of their factory pension plan, and that they stood to lose a retroactive wage increase which had been approved by the Wage Stabilization Board. One day the speaker was a local lawyer who offered his services free to the men if they wanted to organize a local independent union. This offer was accepted by a few of the men and they began to organize a competing union. The A Union and the employer then signed an agreement for a consent election to be held by the NLRB. The election was conducted and the A Union lost. The independent did not appear on the ballot, for it did not at the time claim to have a majority. After A Union lost the election, the independent secured signed cards authorizing it to represent the employees. The employer granted recognition to the independent on the basis of the signed cards.

A Union then filed charges of unfair labor practices against the employer and asked that the election be declared a nullity. Decide what order the Board should enter. Give reasons for your answer. (Assume the jurisdiction of the Board.)

4. The X Manufacturing Company is engaged in State A in the business of making prefabricated parts for homes, including not only all of the structural members and wall panels but also a greatly simplified plumbing assembly and heating system. It has a contract with the CIO--Construction Workers Union. It sells its houses through dealers located in 10 states in the general area of the factory and the sales amount to \$3,000,000 per year, of which 80% are out of state. The dealer in State B has a large warehouse in the city of Pineville where parts valued at over \$500,000 per year are stored, pending sales to ultimate consumers. The A. F. of L. Building Trades Council decided to attempt to prevent the erection of prefabricated houses in Pineville and surrounding towns because the amount of on-the-site labor is greatly reduced by prefabrications. The Council, being aware of the law, decided to picket the warehouse rather than the construction sites. The Teamsters Union members refused to cross the picket line and the parts could not be moved from the warehouse.

(1) The General Counsel of NLRB, on this state of facts, applied to the USDC for a 10(L) injunction. What result? Why?

(2) What effect would it have on the subsequent 8(b)4 proceeding before the NLRB if the injunction were denied? Explain fully.

(3) The X Manufacturing Company now sues in the USDC the Building Trades Council, its member unions, and the Teamsters Union for damages. What result? Why?

5. On June 1, 1950, the ABC Union was certified as the bargaining representative of all the production employees of the XYZ manufacturing company. The employer and the union immediately began bargaining conferences, and a contract agreeable to both parties was signed and became effective August 1, 1950. The contract was to expire July 31, 1952, but it had a clause which provided that it would automatically be renewed unless notice was given by either party not less than 60 days before the date of termination. The contract had another clause that permitted its reopening on the question of wages alone once each year. It also included a valid union shop clause. Relations between the parties were amicable, but in early 1952 a competing union, DEF, began an organizational campaign which was moderately successful. On May 15, 1952, the ABC Union president wrote a letter to the XYZ president, stating the union was giving notice that it desired to reopen the contract and discuss the wages to be paid during the ensuing year. On June 10, 1952, the DEF Union began organizational picketing of the plant. DEF on June 15, 1952, filed a petition with the NLRB for an election to determine the bargaining representative.

The employer, XYZ, then filed a complaint with the General Counsel asking him to seek a 10(L) injunction against DEF.

Decide these cases and discuss fully.

6. Discuss the power of a state court to enjoin picketing under the U. S. Constitution and under the doctrine of the Garner Case.

FINAL EXAMINATION IN LABOR LAW (Law 347)

First Semester 1955-1956

Professor Sullivan

Maximum Time: 3 Hours

1. The M Corporation was a manufacturer of textile products. Its employees had never been organized. In the spring of 1951, the Textile Workers Union began an organizational drive to secure bargaining rights for the employees. Before this drive began, the company had the following rule: "Activities for or against any union must not be carried on during working hours." As the drive progressed the company posted on its bulletin boards news of strikes which were occurring around the country, especially those which were unsuccessful. Below each of these it placed the following comments: "Do you want to be deprived of work as were these workers?" or "Again arbitrary union leadership fails." It is admitted that at no time did the employer make "any threats or promises of benefits." Twenty-six hours before the election was to be held, the president of the company made an anti-union speech to the workers assembled in the plant during working hours. The union asked for an opportunity to reply but this was denied. The union lost the election.

- (a) TWU then filed with the NLRB an unfair labor practice charge against the company, alleging violation of 8 (a) 1 and 8 (a) 2 of the Act. What result? Why?
(b) What other action should the Board take? Explain.

2. On November 2, 1952, the X Union presented to the ABC Company its demand that the company bargain with the union. No election had been held but the X Union offered to show signature cards to the employer. The union alleged that these cards would demonstrate that 60% of all of the employees of the company had designated the X Union as their bargaining representative. The employer refused to bargain and refused even to consider the demand. X then applied to the Regional Director of the Board for a representation election. The Regional Director found that the union had the requisite interest and proceeded to investigate and attempted to secure the consent of all parties to an election. The employer insisted that at the time of this petition the work force was only 45% of the normal number employed by the company and that these were not truly representative of the employee group. Further the employer argued that if an election were held, the office employees, the laboratory technicians, and all inspectors should be excluded from the unit. The Teamsters Union intervened and requested that the truck drivers be excluded from the unit.

- (a) What should the Board decide? Why?

Assume that some kind of election was held and X Union was successful. Bargaining between the employer and the union began and continued for three months, and no agreement was reached. The employer's business expanded during this period and many new employees were hired. When the number of new employees was as great as the number that had been employed at the time of the election, the employer refused to bargain any longer, claiming that there was now serious doubt that the union represented the workers. The union then filed an unfair labor practice charge, alleging violation of 8 (a) 5 (refusal to bargain).

- (b) What result? Why?

3. The ABC Union had been successful in organizing the employees of the Good Food Grocery Company, which operated five grocery stores in various communities of Beautiful County, Illinois. A collective bargaining contract was made between the grocery and ABC Union. The business of the store was essentially local. The XYZ Union sought, during the life of the above contract, to induce the Grocery Company to bargain collectively, the XYZ Union claiming a majority of the employees as members. The Grocery Company refused on the ground that it had a valid contract with ABC for a period of one year and it was under a duty to comply with the terms of the agreement. XYZ filed a representation petition with the NLRB asking for an election. The Board dismissed the petition on the ground that this was an essentially local business and it would not effectuate the policy of the Act to exercise jurisdiction in this case. XYZ then started to picket the grocery stores. Good Food petitioned the General Counsel to seek an injunction under 10 (1) of the Act but the General Counsel refused to proceed for the same reason as that given by the NLRB. The company then filed a bill in the appropriate Illinois circuit court to enjoin the picketing. The circuit judge restrained all picketing of the Grocery Company. On appeal should the injunction be enforced or set aside? Discuss fully.

4. The ABC Union had for some years represented the employees of the M & M Corporation, and during this period there was no doubt that the union did in fact represent the workers. Further, the company and the union had always negotiated a contract without a strike. The Taft-Hartley Act was then passed and the union officers, feeling secure in their control of the membership, refused on principle to sign the anti-Communist affidavits required by the Act. When the contract in force on the effective date of the Act expired, the company refused to bargain with the union and demanded an election. The NLRB refused to hold an election on the ground that no question concerning representation existed. The union then went on strike to compel the employer to bargain. The employer was adamant and the plant was closed for four weeks. Then the employer advertised that it was going to re-open and it publicly invited the workers to return. In addition a letter was written to all employees asking them to return. On the day set for the reopening, the union had 100 pickets at the gate to the plant. The first group of returning workers entered the plant though the pickets jeered and scoffed and called them many unpleasant names. When another group arrived to go into the plant, it became apparent to the union leaders that there was a real threat that the return to work would undermine the union's position. The union had, of course, established the picket line. When the second group started through this picket line, someone shouted, "Let's get them!", and immediately the pickets converged on the returnees and many persons were injured. All of this had been observed by the plant superintendent who immediately discharged all of the pickets who had participated in the violent conduct.

(a) Smith, Jones, and Johnson, who were discharged, filed an unfair labor practice charge with the Board, alleging that they had been discriminatorily discharged. The General Counsel issued a complaint and the employer filed a petition to dismiss on the ground that these workers were being supported by the union, all of the expenses were being borne by the union, and therefore these employees were "fronting" for the union. What should the Board decide on this petition and on the substantive charge?

(b) The company began a suit for an injunction in the state court to prohibit all picketing. What result? Why?

(c) After the discharges, the company filed a petition for an election. What result?

5. In 1921, the W Manufacturing Company decided to provide some of the benefits of security for its employees. It therefore organized the W Benefit Association, whose governing board consisted of three representatives of the workers and four of management. Originally the Association provided loans for workers who were in need. Then it decided to encourage home ownership by guaranteeing mortgages when the home was approved by the board. Subsequently, it provided hospital care for workers, and in 1935, hospitalization insurance was provided for the families as well as for workers. The Association and the company agreed on a modest pension plan in 1937 and gradually the workers began to present their claims for increased wages and other benefits through the Association. Then an industrial union began to organize the workers in the plant. Since this occurred after the passage of the NLRA, the company realized that the Association could not be selected as the bargaining representative. The Association was thereupon discontinued and the company announced that in the future, the benefit program would be continued under the company management. The workers who had been on the board of the Association decided to organize a company union to combat the "outside union." The management of the company did not in any way aid or assist the formation of the new union. These workers did succeed in securing members and they were elected as the principal officers of the new union.

The company then applied to the NLRB to hold an election to determine the bargaining representative. The industrial union objected, for it did not claim that it represented the workers. The company then bargained with the new company union, and a contract was signed. The industrial union then filed a charge of an unfair labor practice by the company.

What order should the Board enter? Why?

FINAL EXAMINATION IN LEGAL ACCOUNTING (Law 357)

First Semester 1954-1955

Professor Young

Allowed time: 3 hours

Attached are copies of the Balance Sheet as of December 31, 1954, and the Statement of Income and Earned Surplus for the year ended December 31, 1954, prepared for the Bargain Store Corporation, an Illinois corporation engaged in the retail business. Additional information concerning certain transactions consummated by the corporation and the accounting treatment thereof is itemized below.

Instructions: (1) Review each of the various transactions listed below. Discuss the legal and accounting aspects and the propriety of the accounting treatment. Comment upon the corrections, if any, which are necessary and illustrate with journal entries. (2) Prepare a revised Balance Sheet and a revised Statement of Income and Earned Surplus to reflect the corrections which you deem necessary.

1. In 1935 the corporation had purchased at a cost of \$10,000 the land upon which its store building was constructed. The land was carried at this figure until 1954. In 1954, the company increased the book value of this land to \$75,000 on the basis of an appraisal made by an experienced real estate broker. The increase was recorded as an addition to Capital Surplus.
2. In 1940, the company received a gift of a parcel of land adjacent to its plant which had a fair market value of \$5,000. This land was used to provide a parking lot and loading platform. It was recorded on the books at its fair market value and was entered as an increase to Earned Surplus.
3. The inventory as of December 31, 1954, included office supplies and stationery on hand at cost in the amount of \$2,500.
4. The balance of the inventory consists of merchandise priced on a LIFO cost basis. As of December 31, 1954, the valuation of the inventory on a market basis was \$227,500.
5. On January 1, 1954, the corporation entered into a 5-year lease for an additional retail outlet. Under the terms of the lease the corporation was obligated to pay a rental of \$10,000 per year. The first year's rental was paid upon execution of the lease and charged as an expense for the year. The bookkeeper also entered a liability upon the books in the amount of \$40,000 as "Leasehold Liability" and an asset of an equivalent amount in an account entitled, "Leasehold Interest."
6. Under the terms of the lease referred to in item No. 5, the company was authorized to construct a new store front at its own expense, such improvement to become the property of the landlord. As of July 1 the company completed the improvement at a cost of \$2,500. This expense was charged off as a repair expense.

7. In connection with the acquisition of the leasehold interest referred to in item No. 5, the corporation purchased the stock and fixtures of a concern which had previously carried on business at the same location. As consideration for these assets, the corporation paid the seller \$5,000 in excess of the appraised fair market value of the property acquired. The amount was entered in the accounts as Goodwill.
8. During the year 1954 the company acquired 100 shares of its own stock from the estate of a deceased shareholder at a cost of \$12,500. Prior to the end of the year, the corporation sold the stock for a net amount of \$15,000. The \$2,500 excess was credited to Earned Surplus.
9. During 1954, the Corporation paid its 1953 property taxes in the amount of \$7,000 which were charged to operating expenses for the year 1954. No provision has been made, however, for 1954 property taxes which became a lien upon the corporation property as of April 1 and which it is estimated will total \$7,500.
10. Included in the investments held by the corporation were 100 shares of common stock of the General Manufacturing Company. On December 20, the corporation received a dividend notice which stated that a dividend of \$3 per share had been declared, payable to shareholders of record as of December 15, payment to be made on January 15, 1955. No entry was made upon the books, it being the bookkeeper's practice to enter dividends only upon receipt of the dividend checks.
11. On December 10, 1954, the Board of Directors declared a dividend of \$2 per share payable to shareholders of record on December 28, payment to be made on January 10, 1955.
12. On December 31, 1954, the company issued ten-year 4% First Mortgage Bonds in the amount of \$100,000. The corporation realized a net amount of \$95,000 and charged the difference to Earned Surplus.
13. As of December 31, the company held \$5,000 as deposits made by customers upon goods subject to special order. These amounts were credited to the account, Customer Deposits.
14. In November the corporation contracted to purchase certain merchandise at a cost of \$100,000 to be delivered February 1, 1955. As of December 31, the wholesale market price for these goods had dropped to \$85,000. The bookkeeper entered the difference of \$15,000 as an expense for the year and created a Reserve for Loss on Purchase Commitments.
15. Make any corrections or changes in classifications, terminology or captions which you deem either necessary or desirable.

Bargain Store Corporation

Balance Sheet as of December 31, 1954

Assets

Current Assets:

Cash		\$ 50,000	
Amounts due from customers, less amounts estimated uncollectable		350,000	
Merchandise inventory (last-in, first-out basis)		250,000	
Prepaid expenses		<u>15,000</u>	\$ 665,000

Investments

Stocks and bonds (at cost; market value \$37,500)			30,000
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Fixed Assets

Land		80,000	
Building and Equipment	\$250,000		
Less depreciation	<u>50,000</u>	200,000	
Leasehold interest		<u>40,000</u>	320,000

Other Assets

Goodwill			5,000
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\$1,020,000

Bargain Store Corporation

Balance Sheet as of December 31, 1954

Liabilities and Stockholders Equity

Current Liabilities

Accounts payable	\$150,000	
Accrued liabilities	12,500	
Federal income taxes	62,100	
Liability under lease	<u>40,000</u>	\$ 264,600

Long-Term Liabilities

4% Ten-Year First Mortgage Bonds		100,000
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Deferred Credits

Customer deposits	5,000	
Reserve for loss on purchase commitments	<u>15,000</u>	20,000

Stockholders Equity

Common stock		
Authorized 10,000 shares, par value \$100 per share; issued and outstanding 4,000 shares		400,000
Capital surplus		95,000
Earned surplus		<u>140,400</u>
		<u>\$1,020,000</u>

Bargain Store Corporation

Statement of Income and Earned Surplus
For the Year ended December 31, 1954

<u>Sales</u>		\$1,000,000
<u>Deduct:</u> Cost of goods sold		<u>700,000</u>
Gross profit on sales		300,000
<u>Selling and administrative expenses:</u>		
Salaries and wages	\$98,000	
Utilities	7,000	
Rent	10,000	
Repairs	4,500	
Supplies	2,500	
Insurance	2,000	
Property taxes	7,000	
Bad debts	1,500	
Depreciation	10,000	
Advertising	7,500	
Loss on purchase commitments	<u>15,000</u>	
		<u>165,000</u>
		135,000
<u>Other income:</u>		
Interest and dividends		<u>2,800</u>
<u>Net income before Federal taxes</u>		137,800
Provision for Federal income taxes		<u>66, 200</u>
<u>Net earnings for the year 1954</u>		71,600
<u>Balance earned surplus January 1, 1954</u>		<u>71,300</u>
		142,900
<u>Add:</u> Profit on sale of treasury stock		<u>2,500</u>
		145,400
<u>Deduct:</u> Discount and expense on bonds		<u>5,000</u>
<u>Balance earned surplus, December 31, 1954</u>		<u>\$ 140,400</u>

FINAL EXAMINATION IN LEGAL ACCOUNTING (Law 357)

Summer Session 1956

Professor Young

Allowed time: 3 hours

Attached are copies of the Balance Sheet as of December 31, 1955, and the Statement of Income and Earned Surplus for the year ending December 31, 1955, which have been prepared for the Square Deal Corporation, an Illinois corporation engaged in the wholesale electrical supply business. Additional information concerning certain transactions consummated by the corporation and the accounting treatment thereof is detailed below.

Instructions

- (a) Review each of the various transactions. Discuss the legal and accounting aspects and the propriety of the accounting treatment. Indicate the corrections, if any, which are necessary and illustrate with correcting journal entries.
- (b) Prepare a revised Balance Sheet as of December 31, 1955, and a revised Statement of Income and Earned Surplus for the year ending December 31, 1955, to reflect the corrections which you deem necessary.

Transactions

- (1) In 1955, the corporation sold its investment in the stock of Wild-Cat Uranium Co. at a loss of \$5,000. This loss was entered as a debit to Capital Surplus.
- (2) The corporation purchased 100 shares of its common stock during 1955 at a cost of \$125 per share. This stock is being held as treasury stock and is carried at par as a separate item in the investment section of the balance sheet. The excess of the cost of the treasury stock over its par value was debited to the Capital Surplus account.
- (3) During 1955 the corporation invested \$10,000 in 5% first mortgage registered bonds of the General Utilities Corporation. The interest on the bonds is payable semi-annually on July 1 and January 1. The interest on these bonds has been recorded only upon receipt of the interest checks. The check for the interest due January 1, 1956, was received and entered on January 5, 1956.
- (4) The inventory is valued on a first-in-first-out basis, lower of cost or market. As of December 31, 1955, the replacement market value was \$10,000 less than cost and for this reason market value was used in preparing the year-end financial statements. Inquiry indicates, however, that the corporation held a substantial number of contracts for future delivery of goods as of December 31, 1955, which assured the company of a normal profit margin on its entire inventory.
- (5) During the year the board of directors noted that the replacement cost of its building had more than doubled since its acquisition. The accountant was therefore directed to double the amount of depreciation to be taken each year thereafter. The building had been acquired January 1, 1944, at a cost of \$50,000 and was being depreciated on a 25-year basis at the rate of \$2,000 per year. For 1955, the accountant entered depreciation of \$4,000 in the accounts.
- (6) The 4% Notes Payable were issued July 1, 1955, and are serial notes payable over a 5-year period. The first group in the amount of \$10,000 were due and payable on July 1, 1956.

- (7) On January 2, 1955, the corporation sold a building which had been held for rental purposes at a profit of \$12,000. This gain was credited directly to Capital Surplus.
- (8) To obtain an exclusive right to distribute a newly developed line of electric light fixtures, the company agreed to undertake an extensive advertising program. As of December 31, 1955, the company contracted with an advertising concern for three years' promotional work at a cost of \$10,000 per year. No entry was made in the accounts with respect to this transaction.
- (9) The investment in stocks and bonds increased in market value during 1955 in the amount of \$14,000. At the end of the year, the board of directors authorized a revaluation of the investment in stocks and bonds and the increase of \$14,000 was credited directly to Earned Surplus.
- (10) On December 20, 1955, the company contracted to purchase \$50,000 of merchandise from one of its leading suppliers. Under the terms of the contract, the goods were to be delivered and title was to pass to the company on January 15, 1956. This transaction was entered in the accounts on December 20, 1955, as a purchase of merchandise on credit.
- (11) On December 31, 1955, checks in the amount of \$20,000 were prepared and mailed to suppliers who had sold goods to the corporation on credit, but these were not entered in the accounts until January 2, 1956.
- (12) On December 1, 1955, suit was brought against the company for alleged breach of warranty with respect to certain merchandise sold under a contract performed in July 1955. Attorneys for the company advise that there appears to be very little basis for this action. Damages in the amount of \$40,000 are claimed by the plaintiff. No entry was made in the books of account with respect to this transaction.
- (13) Expenses of organizing the corporation in 1944 totalled \$10,000. This item was immediately charged to Capital Surplus.
- (14) The 4% Notes Payable were issued on July 1, 1955, at a discount of \$2,000. This item was also written off against Capital Surplus.
- (15) Upon organization of the corporation in 1944, the shareholders paid \$600,000 for common stock having a par value of \$500,000. The Common Stock account was credited with \$500,000 and the balance was credited to Capital Surplus.
- (16) Make any corrections or changes in classification, form, terminology or captions which you deem either necessary or desirable in the financial statements.

SQUARE DEAL CORPORATION

Balance Sheet as of December 31, 1955

<u>ASSETS</u>	<u>LIABILITIES AND STOCKHOLDERS' EQUITY</u>
<p><u>Current Assets:</u></p> <p>Cash \$250,000</p> <p>Accounts receivable-trade (less amounts estimated uncollectible) 409,000</p> <p>Merchandise inventory (first-in, first-out, lower of cost or market) 400,000</p> <p style="text-align: right;">Total current assets <u>\$1,059,000</u></p> <p><u>Investments</u></p> <p>Stocks and bonds (at market) 164,000</p> <p>Treasury stock (at par) 10,000</p> <p style="text-align: right;">Total investments 174,000</p> <p><u>Fixed Assets</u></p> <p>Land 10,000</p> <p>Building \$50,000</p> <p>Less accumulated depreciation 26,000</p> <p style="text-align: right;">Total fixed assets 34,000</p> <p><u>Deferred Charges</u></p> <p>Prepaid insurance 2,000</p> <p>Supplies 3,500</p> <p style="text-align: right;">Total deferred charges <u>5,500</u></p> <p style="text-align: right;"><u>\$1,272,500</u></p>	<p><u>Current Liabilities</u></p> <p>Accounts payable \$200,000</p> <p>Accrued liabilities 15,000</p> <p>Federal income taxes 90,000</p> <p style="text-align: right;">Total current liabilities <u>\$305,000</u></p> <p><u>Long-Term Liabilities</u></p> <p>4% Five-Year Notes 50,000</p> <p><u>Stockholders' Equity</u></p> <p>Common Stock (Authorized 10,000 shares, par value \$100 per share; issued and outstanding, 5,000 shares) 500,000</p> <p>Capital Surplus 92,500</p> <p>Earned Surplus 325,000</p> <p style="text-align: right;">Total stockholders' equity <u>917,500</u></p> <p style="text-align: right;"><u>\$1,272,500</u></p>

SQUARE DEAL CORPORATION

Statement of Income and Earned Surplus
For Year Ending December 31, 1955

<u>Sales:</u>		\$1,500,000
<u>Deduct:</u> Cost of goods sold		<u>1,100,000</u>
Gross profit on sales		400,000
<u>Selling and administrative expenses:</u>		
Salaries and wages	170,000	
Heat, light, water and telephone	12,000	
Repairs and maintenance	5,000	
Supplies	3,000	
Insurance	3,500	
Property taxes	8,000	
Bad debts	2,200	
Depreciation on building	4,000	
Advertising	15,000	
Interest expense	1,000	
Total selling and administrative expenses		<u>223,700</u> <u>176,300</u>
<u>Other income:</u>		
Dividends and interest on investments		<u>7,500</u>
<u>Net income before Federal income taxes</u>		183,800
Provision for Federal income taxes		<u>90,000</u>
<u>Net earnings for the year 1955</u>		93,800
<u>Balance earned surplus, January 1, 1955</u>		<u>217,200</u> <u>311,000</u>
<u>Add:</u> Increase in market value of investments		<u>14,000</u>
<u>Balance earned surplus, December 31, 1955</u>		<u>\$ 325,000</u>

FINAL EXAMINATION IN LEGISLATION (Law 331)

First Semester 1954-55

Professor Cohn

Time - 4 Hours

I. (A) Section 47 of the Chicago Law Department Employees Annuity and Benefit Act provides as follows:

"Sec. 47. Benefit to be known as 'Ordinary Disability Benefit' shall be provided for municipal employees in the Law Department who shall become disabled as the result of any cause other than as the result solely of chronic alcoholism, and other than as a result of pregnancy or childbirth."

The City of Chicago, under separate statutory authority in each instance, maintains seven other annuity and benefit funds for designated categories of employees, all of which, with the exception of the Chicago Public Library Employees Fund, contain a disability benefit provision the same as above cited. The Library Employees Fund disability benefit provision reads as follows:

"Sec. 15. Any employee covered by this Fund who, because of mental or physical disability arising from any cause, becomes unable to perform the duties of any assigned position, shall, for the period of the disability, be entitled to a disability benefit."

Four of the statutes were enacted in the period 1921-1927, the Library Fund Act in 1931, and the remaining three in the period 1933-1937. There are no committee reports or other extrinsic guides which shed light on the legislative intention in respect to any of these statutes. Each of the acts provides for compulsory participation of employees and for employee contributions of a fixed percentage of salary as well as employer (government) contributions to finance the schedule of benefits.

In 1932, the Board of Trustees of the Library Fund, pursuant to a general grant of rule-making power, adopted a rule excluding disabilities occasioned by chronic alcoholism, pregnancy and childbirth from the application of Section 15. In 1949, an employee of the Library became unable to perform her assigned duties by reason of pregnancy and petitioned for disability benefits. Her application was promptly rejected. During the period 1931 to 1949 similar applications to the extent of 50 in number had been made and rejected. In 1935 and 1937 the Board had proposed amendments to Section 15 to incorporate the substance of its rule but in each instance the proposal had died in committee.

In 1950 the employee whose 1949 application had been rejected filed suit against the Board of Trustees asserting her claim to \$450 in disability benefits.

(a) As attorney for the claimant, develop your argument in support of the claim, utilizing such canons of interpretation and other "rules" of interpretation as you believe are relevant and persuasive.

(b) As attorney for the Board of Trustees, do the same in defense of the Board ruling.

(c) As judge of the Supreme Court, determine the issue, specifying the reasons for your decision.

(B) Assume that during the pendency of the suit on appeal to the Supreme Court, the Legislature in 1951 enacts an amendment to Section 15 of the Library Employees Fund Act which expressly denies disability benefits for pregnancy or childbirth, including claims therefor arising prior to the effective date of the amendment. Analyze and determine the legal issues involved in such legislative action.

II. Within the past ten years, seventeen states in this country have adopted so-called "Right to Work" laws. A typical statute reads as follows:

"Sec. 1. It is hereby declared to be the public policy of this State that the right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization.

"Sec. 2. Any agreement or combination between any employer and any labor union or labor organization whereby persons not members of such union or organization shall be denied the right to work for said employer, or whereby such membership is made a condition of employment or continuation of employment by such employer, or whereby any such union or organization acquires an employment monopoly in any enterprise, is hereby declared to be against public policy and an illegal combination or conspiracy.

"Sec. 3. No person shall be required by an employer to become or remain a member of any labor union or labor organization as a condition of employment or continuation of employment.

"Sec. 4. No person shall be required by an employer to abstain or refrain from membership in any labor union or labor organization as a condition of employment or continuation of employment.

"Sec. 5. No employer shall require any person, as a condition of employment or continuation of employment, to pay any dues, fees or other charges of any kind to any labor union or labor organization.

"Sec. 6. Any employer or labor organization or labor union who violates any of the provisions of this Act shall be fined not less than \$200.00 nor more than \$500.00, and each violation shall constitute a separate offense. Upon application of any employer, labor organization or labor union, or person affected by any violation or threatened violation of this Act, any court of competent jurisdiction may enjoin such violation or threatened violation."

The following facts are relevant. The Supreme Court of the United States has sustained the constitutionality of such state statutes, holding that in the exercise of its police power the state may protect a non-union employee's right to work as properly as a union employee's right. The National Labor Management Relations Act (Taft-Hartley Act) recognizes the validity of "union-shop" agreements between labor unions and employers whereby the employer may employ non-union labor initially but requiring the discharge of any such employee who does not within a specified period of time (usually 30 days) join the union which is the recognized union for collective bargaining purposes with the employer. The National Act does not recognize the validity of "closed-shop" agreements whereby the employer is required to employ only members of the recognized labor union.

Such "closed-shop" agreements are valid and in force in Illinois and a number of other states in respect to labor-management agreements to which the National Act is inapplicable. The National Act, however, expressly recognizes the power of the states to enact labor-management relations statutes, including right-to-work statutes.

Although not certain, it is reputed that the motivating force beyond this movement for the enactment of right-to-work laws is an organization of management interests (manufacturing and industrial interests particularly) who are concerned with the growing strength, political and legislative, of organized labor. There is evidence, in support of charges made, that closed-shop agreements have in some cases deprived some elements of skilled labor, as well as unskilled labor, of the opportunity to work. There is other evidence of some union abuses, such as high membership fees, limitation of membership, and other restrictive practices such as allowing union membership only to relatives of members, which have prevented non-union labor from finding employment in the area of their skills.

Recent information is to the effect that the legislatures of some 5 or 6 of the 17 states which have adopted right-to-work laws are now seriously considering the repeal of such laws. In several other states, efforts to adopt such laws are now being made.

With this background, assume now that you are a member of the Illinois General Assembly and that a Right-to-Work Statute in terms as above set forth has been introduced and is now on passage stage. You are in the fortunate position of owing no allegiance either to labor or management interests. Your judgment can be predicated solely upon the "public interest."

How would you vote on this proposal? Explain fully the considerations, pro and con, involved in your determination, the strength and weakness of the proposal in terms of proper legislative norms, and the desirability or effectiveness of the proposal as a means of accomplishing its presumed legislative objective.

III. Assume that the Right-to-Work Statute as set forth in Problem II has been enacted in this State, with its effective date being July 1, 1955.

(a) On September 1, 1954, an Illinois union negotiated a closed-shop agreement with its employer, the contract to expire August 31, 1955. The National Labor Management Relations Act is inapplicable.

On July 15, 1955, the employer hires an employee who is not a member of the union. The union calls a strike and the employer seeks an injunction. You are to assume that if the statute is in force as to this contract, the strike is illegal. Discuss the issues and give decision.

(b) On September 1, 1955, an Illinois labor union and employer negotiate a labor-management contract which, among other features, expressly incorporates the principles of the Right-to-Work Law. On October 1, the employer refuses to employ a person solely on the ground that he is a member of the contracting union. The person denied employment brings an action against the employer for damages suffered by him as a result of the employer's violation. Discuss the issues and give decision.

IV. Section 14 of "An Act in regard to garnishment" (an Illinois statute) reads as follows:

"Sec. 14. The wages or salary for services of an employee who is the head of a family and residing with the same, to the amount of \$30.00 per week, exclusive of all payroll deductions in the form of taxes, shall be exempt from garnishment. Provided, that when such employee receives no definite or agreed wage or salary but is compensated for services by commission or profit allowances, such allowances shall be similarly exempt from garnishment to an amount of \$30.00 per week. All above said exempt amount shall be liable for garnishment."

In the 1953 session of the Illinois General Assembly, the following law was enacted:

"A Bill

For An Act providing greater granishment exemptions for honorably discharged members of the armed forces of the United States.

(Enacting clause -- assume in proper form)

Sec. 1. In any proceeding under the laws of this state to garnishee the salary or wages of an honorably discharged member of the armed forces, only the amount of the employee's weekly salary, wages, commission or profit in excess of \$50.00 shall be subject to garnishment. A like exemption shall apply to a garnishment proceeding against the spouse of an honorably discharged serviceman if the two are residing together."

Analyze and determine the constitutional issues presented by this enactment.

V. Section 19 of the United States Immigration Act of 1917 reads as follows:

"Sec. 19. Any alien who is hereafter sentenced to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude, committed within five years after the entry of the alien to the United States, or who is hereafter sentenced more than once to such a term of imprisonment because of conviction in this country of any crime involving moral turpitude, committed at any time after entry . . . shall, upon the warrant of the Attorney General, be taken into custody and deported."

Petitioner Gomez was born in the Philippine Islands in 1913. He came to the United States in 1930 and has lived here ever since. In 1941 he was convicted in California of assault with intent to commit murder and was sentenced to a term of one year, which he served. In 1950 he was convicted of second-degree burglary and sentenced to a minimum term of two years. Both crimes may be assumed to involve moral turpitude. In 1951, after an administrative hearing under the Immigration Act, he was ordered deported under Section 19 thereof.

The Philippine Independence Act of 1934 which provided for the eventual independence of the Philippines, subsequently achieved in 1946, contained the following section:

"Sec. 8. For the purpose of the Immigration Act of 1917, this section, and all other laws of the United States relating to immigration, exclusion or expulsion of aliens, citizens of the Philippine Islands who are not citizens of the United States shall be considered as if they were aliens. For such purposes, the Philippine Islands shall be considered as a separate country and shall have for each year a quota of fifty."

From 1898 until final independence in 1946, the Philippine Islands were American territory subject to the jurisdiction of the United States. Persons born in the Philippines during this period were American nationals entitled to the protection of the United States and conversely owing allegiance to the United States, but until 1946 they could not become United States citizens.

Gomez never became a citizen of the United States. He petitions for a writ of habeas corpus, alleging that the immigration authorities had no statutory power to order his deportation. Congressional Committee Reports on the Immigration Act of 1917 are inconclusive, speaking generally of the growing national concern over the increasing incidence of crime committed by "foreigners" and the need to empower the immigration officials with additional powers to order the deportation of undesirable criminals.

Discuss the issues arising from the interpretation of these laws and facts, and render a decision on Gomez's petition.

FINAL EXAMINATION IN LEGISLATION (Law 331)

First Semester 1955-56

Professor Cohn

TIME: 4 HOURS

1. The Illinois Act on Bastardy (Ill. Rev. Stats., Chap. 17, Secs. 1-18) provides in Section 8 that if the defendant is found by the jury to be the father of the child or if the defendant acknowledges paternity in open court, a judgment shall be entered obligating him to pay a sum not exceeding \$200 for the first year after the birth of the child and a sum not exceeding \$100 yearly for nine years succeeding the first year for the support, maintenance and education of the child. Section 18 of that Act provides that the mother, before or after the birth of the child, may release the reputed father of all legal liability, upon consent in writing of the court of the terms of the release; however, the consent of the court is not necessary to effect a valid release if the consideration therefor to be paid by the reputed father is not less than \$800. The Bastardy Act does not provide criminal penalties to enforce liability. Instead it provides for the giving of a bond by the father to secure payment of the sums determined and for contempt proceedings upon default in payment of any installment.

The Illinois Public Assistance Code (Ill. Rev. Stats., Chap. 23, Art. VI, Secs. 441-1 to 441-8, inc.) authorizes the payment of assistance grants to any dependent child qualifying as such under the terms of Sec. 441-1. Statistics show that since the enactment of the Aid to Dependent Children program in 1941, millions of dollars have been expended annually in grants of public assistance in aid of illegitimate children living with their mothers. In only a relatively few cases have bastardy proceedings been instituted against reputed fathers, and where such proceedings have been had the liability provided under the Bastardy Act is known to be wholly insufficient to provide for the needs of the child, with the result that supplemental assistance grants are necessary to sustain the child during his minority.

In an effort to strengthen the Bastardy Act and to reduce the public liability for assistance grants, the Illinois Public Aid Commission which administers the Public Assistance Code proposed a bill in the 1955 session of the Illinois General Assembly which amended the Bastardy Act to accomplish the following:

1. Repeal the specific limitations on liability established in Section 8 and provide in lieu thereof that the obligations of a defendant adjudged to be the father of the child shall be the same as the obligations of a father of a child born in lawful wedlock. Essentially this means the obligation to support a child during minority, the amount thereof to be determined by the court, based both upon the child's needs and the father's financial ability to provide therefor.

2. Repeal of Section 18, thus outlawing any release of liability.

3. Authorization to the court to require the defendant to execute an assignment of wages as additional security for the payment of his obligation of support.

4. Permit the Commission to file a complaint instituting a bastardy proceeding when the mother refuses or fails to do so.

In all other respects the Bastardy Act was to remain unchanged.

(continued)

The bill was referred to the House Committee on Judiciary. Assume that you were a member of that Committee. Would you recommend its passage or defeat? Explain fully the policy considerations which would motivate your decision in the light of the objectives of the proposal, the effectiveness or necessity of the proposed sanctions, and such other factors as in your judgment are necessary to a decision.

Note: Assume that there are no constitutional objections to the form or substance of the proposed bill.

2. Assume that the proposed bill in the preceding problem did not pass the legislature. Assume further that the Illinois Public Aid Commission in 1957 determines to approach the problem in another manner. It prepares and secures the introduction and enactment of a bill which amends the Public Assistance Code as follows:

A Bill

For An Act to add Section 6-1.1 to "An Act to revise the public assistance laws of Illinois, to consolidate and codify such laws, to prescribe the functions, powers and duties of governmental units, agencies, and persons thereunder, to provide penalties for the violation thereof, and to repeal certain Acts herein named," approved August 4, 1949, as amended.

Enacting Clause (assume in proper form)

Section 6-1.1. A child shall not be a "dependent child" within the meaning of Section 6-1 if born out of lawful wedlock unless, if its mother be living, she has instituted a bastardy proceeding against the reputed father under "An Act concerning bastardy," approved April 3, 1872, as amended, or unless the mother can establish to the satisfaction of the Commission that the father is unknown, dead or residing outside the State.

In a bastardy proceeding the defendant, if adjudged to be the father of the child or if he acknowledges paternity in open court, shall be liable to provide support and maintenance for the child to the same extent as is required of a father of a child born in lawful wedlock.

Assume that the bill is signed by the Governor on July 5, 1957. On August 1, 1957, Mary Jones files an application for aid to dependent children under Article VI of the Public Assistance Code. A routine investigation reveals that her child for whom assistance is sought was born out of wedlock on June 15, 1957. She informs the Commission that the father is living and presently residing in the same county in which she resides. She is then advised that under the 1957 amendment to the Public Assistance Code her child is ineligible for assistance until a bastardy proceeding is instituted against the reputed father.

(a) Mary Jones refuses to file a bastardy complaint. She employs you as her attorney to secure an assistance grant for her child. You file an action in the circuit court to review the decision of the Commission denying your client's application. What grounds would you urge to secure a reversal of the Commission's decision? Discuss fully.

(b) Mary Jones files a bastardy complaint against Joe Smith whose paternity is adjudged by the jury. What is the measure of his liability, assuming for the purpose of this question that the 1957 amendment to the Public Assistance Code is valid?

3. A Workmen's Compensation Act provides compensation for accidental injuries or death suffered by employees in the course of employment without regard to common law conceptions of master-servant relationships and liabilities. Employers are required to furnish security for obligations incurred under the Act. This may be done by filing an approved self-insurance plan, by filing bond or other approved security, or by filing evidence that liability is insured by an insurance carrier. Employers engaged in extra-hazardous enterprises are mandatorily and automatically subject to the Act. Other employers may elect to come within the Act.

Employers who fail to file the required security or who in any other manner violate any other provision of the Act imposing duties upon them are subject to criminal penalties of fine, imprisonment or both. One section of the Act provides that any contract of employment which requires any employee to pay any portion of the cost of any premium for insurance or other security to be provided by the employer is null and void. There is nothing in any other part of the Act which makes reference to any other contract as being void.

Plaintiff is engaged in business as a house mover, clearly an extra-hazardous occupation within the meaning of the Act. He entered into a written agreement with defendant to move the latter's house on a designated date. Prior thereto defendant inquired of plaintiff whether he had insurance or other security required of plaintiff under the Act for the protection of plaintiff's employees. Plaintiff responded that he had no coverage on file with the Industrial Commission and furthermore that he did not intend to secure any since the cost thereof would render his contract with the defendant economically unfeasible and he did not foresee any reasonable risk of injury to his employees. Several days later and prior to the contract date, defendant contracted with another company for the moving of his house, this company being in full compliance with the Workmen's Compensation Act.

In an action against him for breach of contract, defendant pleads the Workmen's Compensation Act and plaintiff's non-compliance with its security provisions. Discuss and determine the issues, noting such interpretive considerations and canons as may seem relevant.

4. A section of a state liquor regulatory law provides as follows:

"No person shall exercise the privilege or perform any act or acts which a licensee under this Act may exercise or perform under the authority of a license issued under this Act unless such person is authorized to do so by a license duly issued pursuant to the provisions of this Act. Any person violating any provision of this section is guilty of a misdemeanor."

A subsequent section of the same statute provides that it is a misdemeanor for a licensee to sell package liquor for consumption off the licensed premises after 8:00 o'clock p.m. or before 10 o'clock a.m.

Defendant had no license under the Act. He sold a pint package of liquor at 2:00 a.m. to Jones and at 3:00 a.m. of the same day sold another to Smith.

(a) You are defendant's attorney in a prosecution under the above quoted section. What theory of interpretation of the section would you advance and what canons of interpretation in support thereof would you offer in defense of your client?

(b) You are the prosecuting official. What interpretation and canons would you offer in support of defendant's guilt?

(c) As the court, how would you rule? Reasons need not be given for decision.

5. Assume that the Illinois General Assembly enacts a statute providing that the children of mentally ill parents admitted to state institutions for the mentally ill shall be liable for reimbursement to the state to the extent of 20% of the costs of maintenance and care if the institution is located in counties of more than 500,000 population, and to the extent of 10% of such costs if the institution is located in counties of lesser population. Assume further that admission to such institutions is not dependent upon residence in the county in which the institution is located.

Discuss and determine the constitutional issues raised by such legislation.

FINAL EXAMINATION IN MORTGAGES (Law 342)

Second Semester 1954-1955

Professor Holt

Time: 3 hours

Due consideration should be given to the different theories of mortgages and to statutes of the types considered in the course. Give reasons for your conclusions. Consider carefully all implications of a question.

1. S offered to sell certain land for \$5,000, which was subject to a mortgage for \$3,000 held by E. Pursuant to some arrangement between G and L, L paid \$2,000 to S and G received a deed absolute from S "subject to" the mortgage to E, the oral understanding between G and L being that G should hold the land in trust for L. In a suit by L against G to compel a conveyance or for other relief, what should be the disposition of the suit?

2. M made to E a mortgage to secure the purchase price of materials which E undertook to sell and M to buy under an agreement whereby if M should make default in payments therefor or if the premises should become subject to any other incumbrance, E at his choice might refuse to make further deliveries. M mortgaged the same premises to E-2 to secure a present loan. With knowledge thereof, E made further deliveries to M. Both mortgages were duly and promptly recorded. On suit by E to foreclose his mortgage, E-2 was made a party, and he filed a cross-bill to foreclose his mortgage. How should the proceeds of foreclosure sale be distributed?

3. B Company executed its negotiable promissory note to Lender in return for a loan and executed and delivered to Lender a mortgage on certain land to secure the payment of the note. Prior to delivery of the note S and S-2 indorsed the note for the accommodation of B Company. Lender, before maturity of the note, for value indorsed and delivered the same to Porter; and B Company, before maturity of the note, conveyed the mortgaged land, subject to the mortgage, to G. Without the knowledge or consent of B Company, S or S-2, Porter made with G a valid and binding agreement for an extension of time for payment of the mortgage debt. At the end of the period of extension the debt remained unpaid.

Discuss the rights and liabilities of the parties.

4. A statute of State X provides that "a satisfaction or release of a mortgage by the party appearing to be the record owner and holder of said mortgage shall operate to free the land described in such mortgage from the lien thereof, so far as regards all subsequent purchasers and incumbrancers for value, and without notice." In State X for value received, M executed and delivered to E a mortgage on certain premises, which mortgage was duly and promptly recorded. Later M gave to E-2 a second mortgage on the same premises to secure his negotiable promissory note payable to the order of E-2. This second mortgage was duly and promptly recorded. Before maturity of the note E-2 sold and delivered the note, duly indorsed by him, to A, and executed an assignment to A of the mortgage, which A failed

to record. Still later M conveyed the fee to E in consideration of E's discharging him (M) from liability on his debt to E. Before acceptance of this deed E for value procured from E-2, and had recorded, a satisfaction of the mortgage to E-2, without requesting a production of the second mortgage and the note it secured. A brought suit to foreclose his lien. What disposition?

5. M mortgaged Tract 1, with a two-story house thereon, to E to secure repayment of a loan and later conveyed the mortgaged premises to R, who moved the house onto Tract 2, which R owned. R for value received later mortgaged to E-2 Tract 2 with the two-story house thereon. Both mortgages were duly and promptly recorded. E brought a bill to foreclose his mortgage, making E-2 a party, and E-2 brought a bill to foreclose his mortgage. The two suits were consolidated for trial. Discuss the rights and remedies of E and E-2.

6. By one mortgage R mortgaged two adjacent tracts, X and Y, to E to secure a \$5,000 loan. R then conveyed the two tracts to A, who assumed payment of the mortgage to E and also gave R a second mortgage on Tract X to secure his negotiable promissory note for \$10,000. Later A conveyed the two tracts to B and B conveyed to C, B and C each taking subject to the mortgages. C sold Tract Y to D and conveyed by deed providing that Tract Y should be subject to thirty percent (30%) of the first mortgage. Both mortgages came into default. R brought suit to foreclose the mortgage given him by A, making E, B and C, as well as A, parties to the suit, and E filed a cross-bill to foreclose the first mortgage. What disposition?

7. In 1940 M gave E his promissory note due in two years and secured it by a first mortgage on his land. In 1942 M gave C a second mortgage on the same land to secure another promissory note. In 1945 M conveyed the land to G. Thereafter, from time to time, M and G paid interest on the mortgage to E and part of the principal, the last payment being made in 1951. In 1951 C, without making E a party to the suit, foreclosed the second mortgage and bought in the property at the sale. In 1952 E sued to foreclose his mortgage, making C and other parties defendants. C pleaded the five-year statute of limitations on written contracts.

What result?

FINAL EXAMINATION IN MORTGAGES (Law 342)

Second Semester 1955-1956

Professor Holt

TIME: 3¹/₄ HOURS

Due consideration should be given to different theories of mortgages and to statutes of the types considered in the course.

1. M mortgaged a tract to E to secure repayment of a loan and later conveyed the tract to B, who assumed payment of the mortgage debt. On default in payment E brought suit to foreclose, obtained a decree of foreclosure, purchased at foreclosure sale, received a sheriff's deed, entered into possession, and continued in possession, although after due notice and hearing the foreclosure sale was set aside and declared null and void. One month after the foreclosure sale had been set aside, E recovered judgment against B on a debt other than the mortgage debt and caused B's interest in the tract to be sold on execution. E purchased on the execution sale and in due time received a sheriff's deed. He later deeded to D, a purchaser with knowledge of all the facts. B brought suit to redeem from the mortgage and judgment of foreclosure, making D and E parties to the suit. What disposition?

2. In 1940, in return for a loan by E of \$20,000, M gave his negotiable promissory note payable to the order of E, due in 1943, and secured by a mortgage of Blackacre. In 1941 E executed a cleverly forged duplicate of the note, indorsed the same in blank and delivered it to K, a bona fide purchaser for value without knowledge of the forgery, along with the mortgage on which E executed the following assignment:

"For value received, I assign and transfer the within mortgage and note secured thereby to K, his representatives and assigns.

(Signed) E."

In 1944 E for value indorsed and delivered the genuine \$20,000 note to C, and promised to deliver the mortgage, but never did so. C was a purchaser in good faith, without knowledge of the prior assignment. In 1942, 1943, 1944, and 1945 M, who knew nothing of the assignments, indorsements and transfers just described, paid E on account of the mortgage debt sums amounting to a total of \$7500 in reliance on E's statements that he would credit the payments on the note when he went to the safety deposit box wherein the note was kept; but no such credits were ever entered on the note. In 1947 K and C each filed suit to foreclose the mortgage, M and E being parties defendant. The two suits were consolidated. What should be the ultimate disposition of the controversy? (Pay no attention to the effects of recording statutes.)

3. B contracted in writing to buy White Horse Farm from S for \$20,000, due April 1, 1955. In January 1955 B applied to E for a loan, offering to assign the contract as security. E replied:

"I am willing to make the following arrangement. You assign your contract to me and I will simultaneously agree in writing to pay S \$20,000 on April 1, 1955, in return for a deed to White Horse Farm made out to me, and let you in possession on that day and to convey the said premises to you on April 1, 1956, for \$21,000, which you agree to pay on that day, it being understood that time is of the essence in respect to that payment."

B accepted this proposition, which was carried out until April 1, 1956, when B failed to pay. E consults you as to the rights and liabilities of the parties. What advice?

4. M mortgaged Blackacre, with a frame house thereon, to E to secure repayment of a loan, and later conveyed the mortgaged premises to G, who moved the house onto Sweetacre, which G owned. For value received G later mortgaged to E-2 Sweetacre with the frame house thereon. Both mortgages were duly and promptly recorded. Each mortgagee brought suit to foreclose his mortgage, making the other mortgagee a party. The two suits were consolidated for trial. Discuss the rights and remedies of the two mortgagees.

5. M mortgaged land to E to secure a debt from M to E. C then recovered a judgment against M, which became a lien on M's interest in the land. Thereafter M by quit-claim conveyed the land to E, and E credited on the debt secured by the mortgage an amount equal to twenty per cent more than the then fair, market value of the land. Some time later, when the land had more than doubled in value, C brought suit against G, to whom E had conveyed the land, for enforcement of the judgment lien. What result?

6. M mortgaged land to E to secure an indebtedness from M to E. M requested E to have the mortgage recorded, but E never did so. Later M conveyed the land to G, who by an agreement in writing that was not a part of the deed agreed to pay off the mortgage indebtedness. Still later G for value conveyed the land to T, who had neither knowledge nor notice of E's mortgage. Rights of E against M, G and T?

7. To secure the payment of his negotiable note due in 1942, M gave to E, the lender and payee of the note, a first mortgage on Redacre. In 1942 to secure another loan M gave to C a second mortgage on Redacre. In 1945 M conveyed Redacre to G. Thereafter, from time to time, M and G paid interest on the mortgage to E and a part of the principal, the last payment being made in 1951. In 1951 C, without making E a party to the suit, foreclosed the second mortgage and bought Redacre at the sale. In 1952 E brought suit to foreclose his mortgage, making C and others the parties defendant. C pleaded a five-year statute of limitations on contracts. What disposition?

FINAL EXAMINATION IN MUNICIPAL CORPORATIONS (Law 340)

Second Semester 1955-1956

Professor Kneier

TIME: THREE HOURS

1. A state law confers power on cities to "license, tax and regulate brokers." The city of Chicago has an ordinance providing for the licensing of insurance brokers, with an annual license fee of \$35.00 being charged. There is now pending before the city council an amendment to this ordinance providing for the licensing of stock brokers with the annual license fee being set at three per cent of the gross receipts of such brokers. Is the proposed amendment valid? Decide with reasons.
2. A state law provides that all "contracts for public work shall be let, after publication of notice, to the lowest responsible bidder." The law further provides that "no municipal officer shall be interested, directly or indirectly, in any contract, work or business of the municipality." A contract is awarded by the city council of the XYZ Company, the lowest bidder, to build an iron fence around a small park in the city. The daughter of a member of the council is employed as secretary by the XYZ Company. As the work nears completion, the manager of the XYZ Company calls the attention of the mayor to the fact that the contract does not call for painting the fence, that painting it would result in a better looking fence and also protect it against rust. The mayor, the president of the city council, and the chairman of the committee on local improvements of the council meet the manager at the project, discuss the matter, and say they will let him know whether they will accept his offer to paint the fence at cost plus ten per cent for supervision. The mayor later writes the manager of the company to "go ahead and paint the fence and send us an itemized bill. Use union painters only and paint it with Zenith Iron Paint. We have inquired and find it is the best." A newspaper editorial has raised the question as to the "ethics and legality of that park fence," and the city refuses to pay either for the fence or the painting. May the XYZ Company recover and in what amount? What are your reasons?
3. In 1930 the defendant acquired several lots in the city of M. He constructed a residential building in which he established a wholesale and retail plumbing business. Also used in the business were a garage, and racks, bins and stalls (not attached to or a part of the house) for the storage of materials and supplies. The use to which the defendant put the property was permitted under the applicable zoning ordinance in 1930. In 1940 the ordinance was changed so as to make defendant's use of the lots nonconforming. In 1946 another zoning ordinance provided that the nonconforming commercial use of a residential building, and the nonconforming use of land where no buildings were employed in connection with such use, should be discontinued within five years. Five years having elapsed, the city brought suit for an injunction ordering defendant to discontinue the prohibited use of his property. Decide with reasons.
4. The City of N owned and operated a municipal airport under authority of a state statute which permitted it to "acquire, maintain and operate a municipal airport in its governmental capacity," and which barred suits for damages or injuries against the municipality with respect to the operation of the airport. The city carried a policy of liability insurance covering it in the ownership and operation of the airport. Plaintiff was injured at the airport as he was leaving a plane. Two employees whose work was to push the baggage truck from the plane to the terminal building were playing "catch" while they waited for the baggage to be unloaded, and a wild throw hit the plaintiff and severely injured an eye. The city moved for dismissal of the suit. Decide with reasons.

5. A state law authorizes cities to acquire by purchase or otherwise, and to operate motor vehicle parking lots. Cities are authorized to issue and sell bonds to acquire and equip such lots; "such bonds shall be payable solely and only from the revenues to be derived from the operation of any or all of its parking facilities and shall be secured by a pledge of the revenues of any or all of its parking facilities." The city of P, which has reached the limit of its power to incur debt, decides to establish another off-street parking lot (it now owns one such lot). The city enters into an agreement with a company which will provide the needed money but only if the city will covenant to (1) pledge all parking revenues above costs of operation of parking facilities, from both on-street and off-street parking facilities, to the retirement of the debt, and (2) covenant not to reduce the number of either on-street or off-street parking facilities until the debt is retired, and (3) covenant not to change the location or the meter charge for any existing on-street or off-street parking facilities until the debt is retired. An action is brought to enjoin the city from entering into the agreement. Decide with reasons.

Name _____

No. _____

FINAL EXAMINATION IN OIL AND GAS (Law 341)

First Semester 1954-55

Professor Summers

(Time $3\frac{1}{2}$ hours)

(Write all answers on the lines following the questions.)

1. In 1910 A conveyed a tract of land to B by a deed which contained the following provision: "The grantor excepts and reserves from this conveyance one-half of all the minerals in and under the land or which may hereafter be produced therefrom." There was no production of oil or gas in the state where the land was located at the time of the execution of this deed. In 1953 oil was discovered within a few miles of the land. In 1950, E, a successor in title of B, leased the land to D for oil and gas. E and his successors in title, including E, have been in possession of the land since 1910. When D took the lease, he caused the title to be examined and secured a legal opinion to the effect that E had good title to the oil and gas. E, by inheritance, now has whatever interest in the oil and gas A reserved and excepted in his deed of the land to B.

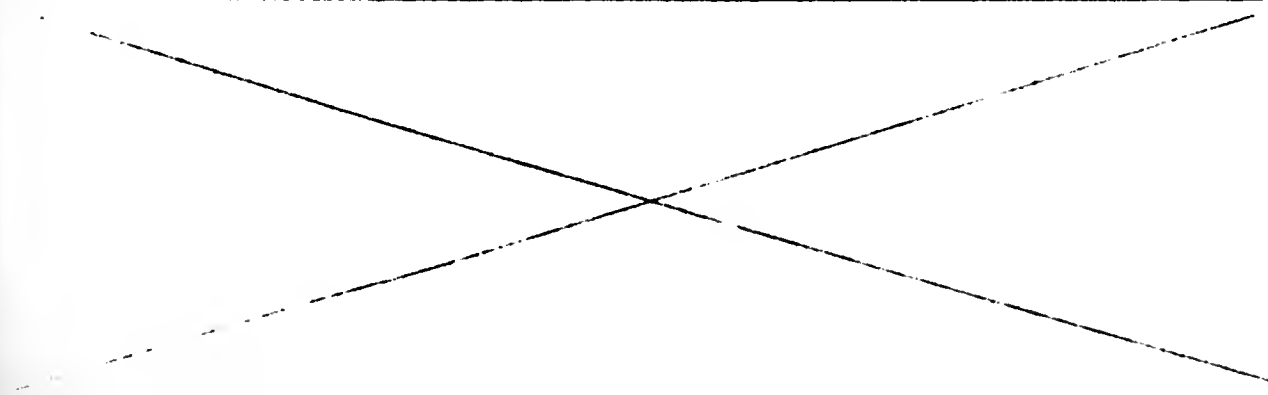
(a) Did A's deed have the effect of reserving any interest in the oil and gas? Why?

(b) If the deed did have the effect of reserving an interest in the oil and gas in A, is it a mineral fee or a royalty interest? Why?

(c) Suppose the deed reserved a mineral fee interest in the oil and gas and that before H asserted any claim thereto D had drilled oil wells on the land and had produced and sold oil therefrom for more than \$500,000. What remedies does H have against D? Why? Assuming the cost of drilling and equipping the wells was \$200,000, what would you advise H to do? Why?

(d) Suppose H has a mineral fee interest which is still valid, and that he commenced a suit to quiet his title thereto before D commenced the drilling and production of oil mentioned above, would your answer be different than it was in (c)? Why?

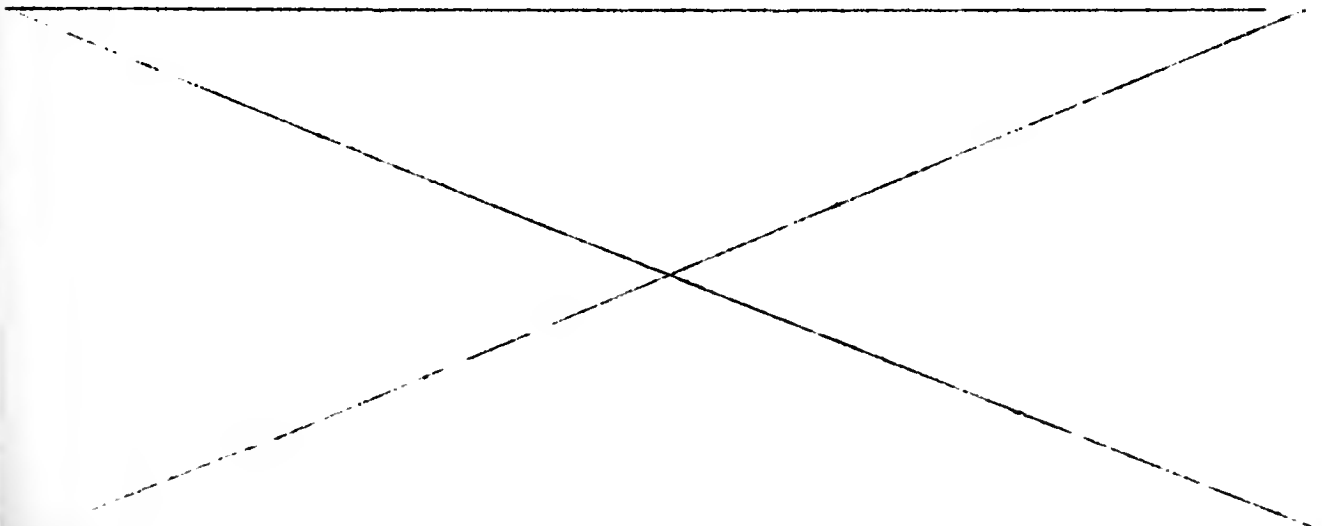
(e) If you find that H's interest in the oil and gas is an expense free royalty, is the lease from E to D valid? Why? Has H any remedy against D? If so, what is the measure of his damages?



2. (a) What are the legal relations of a landowner in a common source of supply of oil and gas as stated by Justice White in *Ohio Oil Company v. Indiana*?

(b) Upon what theory did Justice White hold that a landowner's legal relations respecting oil and gas differ from his legal relations respecting other substances, such as water or coal?

(c) What two bases does Justice White's analysis of the landowner's legal interest in oil and gas provide for the support of the constitutionality of oil statutes regulating the production of oil and gas?



3. (a) In 1930 A conveyed one acre in the southwest corner of a 40-acre tract to the trustees of a church for church purposes only, the deed containing a provision for reverter to the grantor when the land ceased to be used for church purposes. In 1940 A conveyed the 40-acre tract to C, excepting the one acre previously conveyed to the church trustees, but providing that when the one acre ceased to be used for church purposes, it would revert to C.

(1) Suppose that in 1950 the church trustees, while still using the church, leased the one acre for oil and gas. Is the lease valid? Why?

...

(2) Suppose that in 1950 the one acre was no longer used for church purposes, C leased the entire 40-acre tract for oil and gas, and the lessee drilled a well on the one-acre tract. What are the rights of A, C and the lessee with respect to the oil produced from this well? Why?

(b) In 1945 A leased a tract of land to B for oil and gas for a term of 10 years and as long thereafter as oil or gas is produced from the land in paying quantities. The lease contained a drill or pay development provision and a provision authorizing the lessee to surrender the lease at any time. B kept the lease alive by the payment of delay rentals. In 1952 A brought a suit to cancel the lease as a cloud on his title, on the grounds that it was unilateral and void, and created a tenancy at will terminable at the will of the lessor. Should A recover? Why?

4. (a) A leased a tract of land to B for a term of 5 years and as long thereafter as oil or gas is produced from the land by the lessee or his assign. The lease contained an unless drilling and rental clause. B paid delay rentals which kept the lease alive to the end of the primary term. B commenced the drilling of a well 30 days before the end of the primary term and completed it as a producer 20 days after its expiration. A then brought a suit to cancel the lease. What result? Why?

(b) What change has been made in modern leases to avoid the situation arising in (a)?

(c) Suppose under (a) the lessee B drilled a gas well on the land capable of producing great quantities of gas, but was unable to market the gas, due to the absence of pipe line facilities, until six months after the expiration of the primary term, and that A brings suit to cancel the lease. What result?

(d) What change has been made in modern oil and gas leases to avoid the situation arising in (c)?

(e) A leased a tract of 40 acres to B for oil and gas purposes for a term of 5 years and as long thereafter as oil and gas is produced from the land in paying quantities. The lease contained a provision authorizing the lessee to unitize the 40 acres with other tracts for unit operation and make a pooling or unitization declaration to be filed of record. During the first year of A's lease, B unitized the 40-acre tract with 760 acres upon which he held leases. B proceeded to develop the unitized block of leases but did not drill a well on the 40-acre tract. The primary term of A's lease expired and A brought suit to cancel. After production started on the unitized block, A was paid his proportionate share of the royalties. What should be the result of A's suit? Why?

5. A leased an 80-acre tract of land to B, the lease containing the usual unless drilling and rental clause, and the primary term of the lease was for 5 years. Delay rental was payable on or before June 1, 1951.

(a) Suppose B mailed the delay rental check to the depository bank in ample time to be delivered on or before June 1, 1951, but the check was not delivered until five days thereafter. Should A recover in a suit to cancel the lease? Why?

(b) Suppose B mailed the delay rental check in due time with proper instructions to credit the amount to A's account, and the check was received by the depository bank on May 28 but was not credited to A's account until June 3. Should A recover in a suit to cancel the lease? Why?

(c) Suppose A sold 40 acres of the leased tract to C during the first year of the lease and C, as required by the lease, had furnished B with a certified copy of the deed, but due to an error of B's clerical staff the entire amount of the delay rental was sent to the bank with instructions to credit the amount to C. Should A recover in a suit to cancel the lease as to the 40 acres retained by him? Why?

(d) Suppose after the execution of the lease A made a mineral and royalty deed to C, transferring to C the right to receive a portion of the delay rentals under the lease, and C furnished B with a certified copy of this deed. And suppose further that this deed was so uncertain in meaning that B misconstrued it and paid a lesser amount of delay rental to the bank for A's credit than A was entitled to receive and that A learned of this error in ample time to give B notice thereof. Should A recover in a suit to cancel the lease with respect to his interest? Why?

6. (a) A leased a tract of land to B for oil and gas, the lease containing the usual habendum clause and the unless drilling and rental provision. It did not contain any express covenants by B to drill offset wells to prevent drainage or reasonably to develop the premises.

(continued on next page)

(1) Suppose B also held a lease on an adjoining tract and drilled a well thereon which had the effect of draining a portion of the oil from A's tract, but kept the lease on A's tract alive by the payment of delay rental. Does A have a remedy against B? If so, what?

(2) Would your answer in (1) be different if B had not been the lessee of the adjoining tract and the wells thereon had been drilled by a third person? Why?

(b) A leased 160 acres of land to B for oil and gas in 1940, the lease containing the usual unless drilling and rental provision and the usual habendum clause, but it did not contain an express covenant by the lessee to drill any particular number of wells or to drill the number of wells reasonably to develop the leased tract. In 1942 B drilled two producing wells on the east half of the tract but has failed to drill more wells.

(1) In 1953 A brings a suit for the cancellation of the lease as to the undeveloped portions thereof. On what theory or theories may A support his claim? What proof must he make to establish his claim? What evidential facts are material to support his claim?

(1) continued

(2) If A seeks a remedy in damages, what proof must he offer? If he is entitled to damages, what is the measure thereof?

7. (a) In 1948 A leased a tract of land to B for oil and gas. The lease was for a term of 5 years and as long thereafter as oil or gas is produced, and contained a clause requiring the lessee to complete a well within one year or forfeit the lease. To secure additional funds to finance the drilling, B conveyed to P, for a cash consideration of \$25,000, an overriding royalty of one-eighth of seven-eighths of the oil produced from the lease until P had received the sum of \$50,000. This deed was filed for record. B started drilling about two months before the end of the year and drilled to a depth of 2,500 feet where he struck an impenetrable granite, making it impossible to complete a well at this location. B did not have the funds or the time to drill a well at a new location within the year. He thereupon surrendered the lease. A then executed a lease of the land to D, who drilled a producing well on the land. P now brings a suit against D claiming to be entitled to the payment of \$50,000 out of one-eighth of seven-eighths of the oil produced. Should he recover? Why?

(lines on next page)

7. (a) continued

(b) Suppose that under (a) above, B, after conveying the overriding royalty to P, had assigned the lease to X and that X completed a producing well within the year. Would P be entitled to payment of his override out of the oil produced? Why?

8. (a) A, the lessor of a tract of land, executed a mineral and royalty deed to B whereby he conveyed one-sixteenth of the oil and gas in and under the land, subject to the existing lease, together with one-half of the one-eighth royalties payable under the existing lease. The existing lease expired and A and B entered into a second lease. The lessee produced oil. The second lease merely provided for the payment of an oil royalty of one-eighth to the lessors. To what share of the royalties is B entitled? Why?

(b) A, lessor of an 80-acre tract of land, conveyed 40 acres of the tract to B, subject to the existing lease. The lessee drilled producing wells on B's tract, but the wells on the tract retained by A were unproductive. Is A entitled to any portion of the royalty from the wells on B's tract? Why?

(c) Suppose in (b) above the lease had contained an entirety clause. Would your answer be different? Why?

(d) A leased a tract of land to B for oil and gas. Before B had done any drilling on the land, A died, leaving a will by which he gave his wife a life estate therein and his son a vested remainder. Later B drilled several producing oil wells on the land. Who is entitled to the royalties? Why?

FINAL EXAMINATION IN OIL AND GAS (LAW 341)

First Semester 1955-56

Professor Warren

Time: 3 hours

Instructions: Please do not write your name on the examination booklet. Please give some thought to your English usage in writing this paper. Leave a space between paragraphs, and maintain reasonable margins. Make your handwriting legible.

I. In 1950, L leased a 160-acre tract of land to T for oil and gas. In 1951, L drilled a well on the northeast 40 acres. This well is still producing oil in paying quantities, that is, it has repaid the lessee for the cost of drilling and operating and a considerable profit. In 1952, T drilled another well on the northeast 40 acres, southwest of the first well, which was a very small producer and has not paid for the cost of drilling. In 1953, T drilled a well on the southeast 40 acres of the tract and one on the northwest 40 acres. Neither of these wells was a producer. All of the production in the vicinity is to the north and east of the 160-acre leased tract. The lease does not contain a forfeiture clause nor an express covenant on the part of the lessee to drill additional wells in event of production in paying quantities. The lessor, L, now claims that T has broken the implied covenant of the lease for reasonable development by failure to drill a well on the southwest 40 acres of the 160-acre tract. Select either Texas or Oklahoma as the jurisdiction involved. In answering this question consider these points: May L have judgment for cancellation of the lease? If so, on what theory? What must L allege and prove to establish a breach of the implied covenant for reasonable development? What evidence will be taken into account in determining whether the lessee had broken the covenant? If L's only remedy is damages, what is the proper measure thereof?

II. A and B are co-owners of Illinois land lying over two miles from oil and gas production. A desired to lease the land for oil and gas purposes to T, but B refused to join in the lease. You may assume that at all times pertinent to this question A is willing to account to B for one-half the royalties obtained under any lease of the land.

Discuss A's ability to make a valid lease of his own interest without B's consent so as to enable T to take the oil and gas, with an accounting to B for his share of the royalties: (a) as though this case had occurred in 1920; (b) as though this case had occurred in 1950; and (c) if this case were to occur in 1956.

III. L leased a 160-acre tract of land to T for oil and gas purposes for a five-year primary term commencing on January 1, 1950. T made delay rental payments sufficient to keep this unless lease alive through 1954. In July 1954, L sold the northeast 40 acres to A and the southeast 40 acres to B; in each case the conveyance was subject to the lease. In April 1954, T drilled a producing well on the southwest 40 acres and in September 1954, he drilled a dry well on the northeast 40 acres. By the end of the primary term no development had taken place on B's land, but the well on the southwest 40 acres was a mildly profitable well.

(a) Assuming that T's lease said nothing on these points, discuss the validity of B's alternative claims enumerated below:

(1) B claims that the lease terminated as to his 40 acres at the end of the primary term.

(2) B claims that if the lease did not terminate as to his land by then, L is liable to him for breach of implied covenant to develop, or for breach of implied covenant to protect, or for breach of both these covenants. (III. continued)

(III. continued)

(3) B claims that if neither of the above claims is valid, at least he is entitled to a one-fourth share of the royalties payable under this lease.

(b) Draft a clause which you would advise an oil operator to carry in his leases to cover this situation.

IV. January 1, 1948, A leased a 120-acre tract to B for oil and gas for a primary term of five years and as long thereafter as oil or gas is produced from the land by the lessee. The lease provided for a royalty of one-eighth of the oil and gas and a flat yearly rental of \$500 for each gas well from which gas was produced and sold or used off the premises. The lease contained the usual dry well provision as follows: "Should the first well drilled on the premises be a dry hole, then and in that event, if a second well is not commenced on the land within twelve months from the expiration of the last rental period for which rental has been paid, this lease shall terminate as to both parties, unless the lessee on or before the expiration of said twelve months shall resume payment of rentals in the same amount and in the same manner as hereinbefore provided."

(a) Suppose B drilled a dry well on the land in June 1948 and did not pay delay rental on or before January 1, 1949, and A brings a suit to cancel the lease. What decree? Why?

(b) Suppose B paid the delay rentals on or before January 1, 1949, 1950, 1951, and 1952, and commenced a well on the land in November 1952. This well was completed as a producing oil well in January 1953. A now brings suit to terminate the lease. Should he recover? Why?

(c) Suppose B paid the delay rental on or before January 1, 1949, and during that year drilled a gas well capable of producing large quantities of marketable gas. and suppose further that B, being unable to market the gas for lack of pipe line facilities, tendered to A, and A accepted the annual gas well rental for the years of 1950, 1951, 1952, and 1953 on or before the first of January of each of these years. A now brings a suit to cancel the lease. What result? Why?

(d) What changes have been made in modern oil and gas leases to avoid the controversies presented in (b) and (c)?

V. L leased to T for oil and gas purposes, reserving the usual one-eighth royalty. T transferred the lease to C, reserving a one-sixteenth overriding interest. The transfer agreement stated: "This reservation [referring to the reservation of the overriding interest] shall likewise apply as to all modifications, renewals, or extensions of such lease that the transferee, his successors or assigns may secure." T then transferred the lease to D, reserving a one-sixteenth overriding interest. The transfer agreement between C and D had no clause comparable to that in the agreement between T and C. When D took the lease, he had only six months to drill to keep the lease from lapsing at the end of the primary term. He was dubious as to his chances of profitably developing the lease due to the heavy burden of the two outstanding overrides.

After a conference with his attorneys, D decided to allow the lease to terminate without development at the end of the primary term. Two weeks after the termination of the first lease, D took a second lease of the same premises from L which made no provision for recognizing any overriding interests in T and C. D immediately spent 750,000 in developing the premises and obtained good production.

Discuss the rights and remedies, if any, of T and C in this case.

FINAL EXAMINATION IN PERSONS (Law 333)

First Semester 1954-1955

Professor Carlston

Time: 3½ hours

(Answer to the extent possible on the basis of Illinois law)

30 points 1. John was a middle-aged, successful business man. Following a serious illness he lost all interest in his business and spent as much time as possible in attending church services of all denominations and sects. His dress and personal habits became slovenly. His speech became vague and slurred. The teachings of one sect interested him greatly. It taught that one could not attain spiritual bliss after death unless one were married in the church of that faith and were wedded at the time of death. At this church John met Lucy, a woman of loose morals, who was attending the services as a means of finding a spouse. In the belief that this was the road to heaven, John married Lucy, not knowing of her character and reputation. The minister of the church married them without their having procured a County Clerk's license to marry. Shortly after the marriage Lucy became pregnant.

(a) What remedy or remedies does John have with a view to freeing himself from Lucy?

(b) What remedy or remedies does Lucy have with a view to freeing herself from John?

(c) What will be the status of Lucy's child? Why?

(d) If Lucy possessed a communicable venereal disease in its incurable stage, how would you answer question (a) above?

(e) If Lucy were pregnant by another at the time of her marriage to John, how would you answer question (a) above?

30 points 2. (a) H married W when he was 19 and she was 16. At 20 years of age W left H and married A. H sued W for divorce on grounds of desertion and adultery but the court dismissed the case on the ground that W had disaffirmed her marriage to H by marrying A. H then married B and is now living with her. B did not know of his prior marriage. A deserted W and W sued H for support. H filed a counterclaim praying alternatively for a decree that his marriage to W was avoided or that he be granted a divorce on grounds of adultery. W consults you as attorney for advice as to her legal rights. What would you advise her? What would be the outcome of the support suit and any other suits she might file?

(b) If H should die at this time, would W be entitled to dower in his estate?

(c) What would be the status of any children of H and W and H and B, respectively?

(d) Could H recover an antenuptial gift in consideration of marriage from B?

Note: For the purposes of your answer, assume that the principle of res adjudicata does not apply to the judgment of dismissal.]

20 points 3. H and W were married in Illinois and conducted a tavern in Chicago. H owned the tavern but the wife worked with him and contributed her earnings to the business, taking no pay for her work. H bigamously married W2 and established her in the restaurant business, telling her that he was a travelling salesman. H held title in fee simple to the land and building of the restaurant and also owned in his name the personal property therein, but one year after his marriage to W2 he created a joint tenancy therein in favor of W2. W learned of the second marriage and sued for divorce. What disposition will the court likely make of H's property as between W and W2 and upon what authority or principle?

20 points 4. H was a carpenter who had married W, a schoolteacher. After his marriage it was his habit to return home and greet his wife but otherwise never to talk to her. He would go to sleep immediately after dinner, leaving his wife to clean up after the meal, and sleep until about 10:00 P.M. From about 10:00 to 2:00 P.M., he would usually be in a tavern drinking, when he would return home. He would not be drunk but he would be cheered by his drinking. W finally prevailed upon him to let her leave his home and he turned over to her \$3500 in U. S. savings bonds in consideration of her release of dower in his house and lot, in which he had a \$2500 equity. W did not seek employment but lived on the proceeds of the sale of the bonds. She bought several coats, pairs of shoes and a small television set on credit. When the merchant who sold her one of her coats and also the merchant who sold her the television set pressed her for payment, she bought their respective claims with the last of her funds, taking an assignment thereof. What remedies does W have against H for support and for recovery on the assigned claims? What are her prospects of success therein? Is any additional action on her part necessary to recovery in any such action? Can she set aside the postnuptial contract? Can he?

FINAL EXAMINATION IN PERSONS (Law 333)

First Semester 1955-1956

Professor Carlston

IMPORTANT: You will find a number in the upper right-hand corner of this page. This will be your examination number. Grading will be made without knowledge of your name. A list of the members of this class will be passed around. Place your examination number in the space opposite your name on this list. Do not write your name on either this question sheet or the examination booklet.

You will have 3 1/2 hours for answering this examination. Answer questions on the basis of Illinois law.

20 points 1. (a) Mary, 16 years of age, married John, 23 years of age, a resident of Illinois. Mary lived in a state where no blood test prior to marriage was required. At the time of her engagement, John suggested that they be married at her home. At that time, he remarked that he was "perfectly healthy" but thought it more fitting that she be married at home. The marriage took place at Mary's home. Following the marriage, the parties established their home in Illinois, where John conducted a used car business. His stock of cars varied from \$50,000 to \$75,000 in value. His income ranged from \$1,000 to \$1,500 a month. Mary discovered shortly after her marriage that she was infected by a venereal disease from John.

List all possible remedies Mary has against John and briefly state her chance for recovery in each, with reasons. What course would you recommend her to pursue? State in your answer any facts you may find it necessary to assume. Also state how you would caption any complaint you might wish to file.

5 points (b) Would any of your above answers be affected by the fact that John could prove that Mary was unchaste prior to marriage and this fact was unknown to him until after marriage? Would your reasoning as to the course of action Mary should pursue be changed if John had by antenuptial agreement given Mary a house and a car in consideration of their marriage?

20 points 2. During their engagement period, Anne noticed that Frank had an explosive temper. He would revile those who opposed him or objects which were difficult for him to control. At the time of their marriage ceremony, his speech was thick and he had difficulty in standing and walking. Following their marriage, he referred to her in public as his mistress and never as his wife, saying that he never remembered any marriage ceremony. Also, following their marriage, his attacks of temper increased. He would throw objects across the room, sometimes in her vicinity, but none ever struck her. One child was born of their marriage. Frank bought a new car every year and claimed that as a consequence he could not provide more than \$25 a week to Anne for living expenses. He earned \$100 a week. Anne consults you as attorney. She states she is afraid to live with Frank, that she wants a divorce and support for herself and child. What possible actions does Anne have and why? Would you advise her to leave home? If she should leave home, what advice would you give her?

- 20 points 3. When H married W he knew she had been previously married but was informed by her that she was divorced. After the marriage, H learned that his wife was in fact married to another through the publication of the entry of her divorce decree from her first husband. H sued for divorce on grounds of prior spouse living at time of marriage. W sued for annulment of the marriage as void and, alternatively, for divorce on grounds of adultery. H in his answer admitted the adultery. What disposition should be made of the case and why? Would any children be legitimate?
- 20 points 4. (a) W married H in 1940. H had difficulty in supporting her; consequently W started a catering business. H used his car for deliveries, made collections, and kept the books. The business at first used a joint bank account of husband and wife, but in 1943 an account was opened in the name of the Florence Bakery, to which all such funds were transferred, other than a sum equal to the balance when the business was started, which was left in the joint account. The Florence Bakery account was opened when H and W took a lease of downtown bakery premises and opened a bakery business there under the name of Florence Bakery.

H and W continued the bakery business jointly until October, 1955, when they entered into a contract whereby W conveyed her interest in the business to H in consideration of his conveying to her all his interest in their home, a cash payment of \$5,000, and an agreement to pay her \$100 a month for 10 years, unless she should sooner die, in which event such payments were to cease. The bakery business was estimated to be worth \$60,000 and the home to be worth \$30,000. The husband had a half interest in each.

The husband then assumed the sole management of the bakery business. It brought in an annual income of \$15,000. His age at this time was 40, his wife's 35. They had two children, a boy and a girl, aged 12 and 15, respectively.

Assume that in November, 1955, the wife brought a divorce action against her husband on grounds of cruelty. Assume that she can prove cruelty in the required degree. If you were attorney for the wife, what alimony and other relief would you request and on what grounds? How would you expect the defense attorney to meet your request? What points would he bring up? Would you wish to request the court to incorporate the October, 1955, agreement in the decree? Why or why not? How would the court likely dispose of the issue of alimony and why?

- 5 points (b) If, following the divorce in (a) above, the wife should remarry, what relief, if any, would be available to H in respect of the \$100 a month payments? What relief, if any, would then be available if the October, 1955, agreement had been incorporated in the decree?
- 10 points 5. H, 19 years of age, bought his wife a \$20 wrist watch for a Christmas present and gave it to her. She lost the watch. The purchase was made in his name on credit. He refused to pay. H is employed at \$75 a week. What remedies, if any, may the store successfully prosecute? Why?

FINAL EXAMINATION IN PERSONS (Law 333)

Summer Session 1956

Professor Carlston

IMPORTANT: You will find a number in the upper right-hand corner of this page. This will be your examination number. Grading will be made without knowledge of your name. A list of the members of this class will be passed around. Place your examination number in the space opposite your name on this list. Do not write your name on either this question sheet or the examination booklet.

You will have 3 hours for answering this examination. Answer questions on the basis of Illinois law. Always give reasons for your answer.

30 points 1. (a) Mary was a girl of mixed Negro and white blood. She moved to Chicago and there passed herself off as white. Under the belief that she was white, John married her. To induce her consent to marry him, he gave a check for \$5,000 and a car. Mary married John and they lived together for six months as husband and wife. Mary then discovered that John was a professional thief and that the car was stolen. John was sentenced to the penitentiary for five years and the car restored to its rightful owner. While John was in the penitentiary, Mary was known to spend week-ends at the country home of her unmarried employer. John discovered after he entered the penitentiary that Mary was of mixed blood. What remedies are available to Mary and John?

(b) While Mary and John were living together, Mary purchased clothes in her married name. Is John liable for the bill? On what ground? Are there any circumstances under which he might not be so liable?

30 points 2. John was a farmer. Jane was a waitress earning about \$180 a month. John met Jane and tried to persuade her to marry him. He drove her to his farm and showed her his house, which was adjacent to the main road. He told her he had "a nice bank balance." He said that he would promise to pay her \$100 a month for her life if she would marry him and promise to be a good wife to him. However, he said that she must also agree to waive all claim to his estate except for the \$100 a month payments. They entered into a written agreement incorporating these promises and thereafter married. Jane then moved to John's home and discovered that his farm was about three times as large as the usual farm in that neighborhood. They lived happily together about a year. Jane then began to grow cold toward him and moved into a separate room. Marital relations ceased. Frequently his meals were not cooked and the house was kept in a slovenly manner. John left home and lived in town for the next year and a half.

(a) Is Jane entitled to separate maintenance? If she used her own funds for her support during John's absence from the home, is she entitled to reimbursement from John? Is she liable to creditors for John's purchases of clothes during this period?

(b) Is Jane entitled to a divorce? If she obtains a divorce, is John still bound by the ante-nuptial agreement? Is Jane entitled to have it set aside? Is John? What would be the effect of the ante-nuptial agreement upon the determination of alimony, assuming Jane was entitled to divorce?

20 points 3. Anne was a skilled stenographer who married James, her employer, who was in practice by himself. James proposed that she continue to work for him as before, that he would credit her with her earnings on the books of his firm as obligations of the firm, but that he would use such sums towards defraying household expenses and building up their property. Anne agreed and the foregoing was placed in writing, signed and recorded. Anne continued to work for him for five years, during which her earnings reached the total of \$24,000. Their household expenses, including rent, amounted to about \$250 a month. James' earnings during his first year of marriage were \$2,500, but the next year were \$5,000 and thereafter \$7,000 per year. At the end of five years, James had a bank balance of \$6,000 and a car valued at \$2,000. Anne and James owned jointly a home in which they had a \$4,000 equity. Anne then suggested that she leave his employment. James became violently angry, grabbed an axe which he had been sharpening, brandished it at her, and ran towards her, saying, "I will kill you!" Anne left the home and sued for divorce. Is she entitled to a divorce? Assuming that she would be, what relief (in addition to divorce, including alimony (in what sum?), and other relief) may justly be granted her and pursuant to what remedies?

20 points 4. (a) Assume in the preceding case that following their separation Anne and James entered into a written agreement whereby Anne received full title to their home and a promise by James to pay her \$2400 a year for the next 15 years. Further assume that when the divorce proceedings began, such agreement was submitted to and approved by the court and incorporated in the divorce decree. Further assume that 10 years later Anne remarries. May James then successfully petition the court to be relieved of his obligation to pay \$2400 a year?

(b) Would your answer to (a) above be changed if the above written agreement contained a recital that it was made "in consideration of Anne's obtaining a divorce from James?"

FINAL EXAMINATION IN PLEADING (LAW 325)

First Semester 1954-1955

Professor Cleary

Time: Four Hours

Write only your name on the first page of the examination book.

1. Two defendants in an action at law are Daniel Deere and Dafoe Company, a corporation. The sheriff's return of summons states: "Served the within summons by leaving a copy thereof with the defendant Joseph Deere in person and by leaving a copy thereof with George Smith, agent of Dafoe Company, a corporation." George Smith is not in fact an agent of Dafoe Company. Discuss, (a) at common law, (b) under the Illinois Civil Practice Act, and (c) under the Federal Rules, the methods of raising the question of the defective service on each defendant, including the procedural consequences of each method and the preservation of error on appeal.

2. Plaintiff files the following complaint, omitting the caption, in the Circuit Court of Champaign County, Illinois:

Plaintiff Paul Planter, complaining of the defendant Dabney Dubois, alleges:

1. On September 1, 1954, John Street running in an easterly and westerly direction intersected Wright Street running in a northerly and southerly direction, in the City of Champaign, County of Champaign, and State of Illinois.

2. Wright Street was then and there a duly designated through street and marked as such, so that traffic entering the same from John Street from the west was required to stop before entering Wright Street.

3. On the west side of Wright Street a public sidewalk was then and there located for the use of pedestrians.

4. At said place and date, at about the hour of 9 A.M., plaintiff was walking in a southerly direction on the public sidewalk on the west side of Wright Street.

5. At all times herein mentioned plaintiff was in the exercise of due care and caution for his own safety.

6. Upon reaching the intersection of Wright Street and John Street, plaintiff started to cross John Street in the extension of the Wright Street sidewalk across the vehicular portion of John Street.

7. Defendant was then and there driving a certain automobile in an easterly direction on John Street and was approaching said intersection.

8. Defendant was then and there guilty of one or more of the following acts or omissions of negligence:

(a) He failed to stop his said automobile before entering Wright Street;

(b) He failed to yield the right of way to plaintiff;

(c) He negligently drove at an excessive rate of speed.

9. As a direct and proximate result of his negligence as aforesaid, defendant struck plaintiff with great force and violence with his said automobile.

10. Plaintiff was thereby injured internally and externally, suffered great pain, and was forced to spend large sums of money in endeavoring to be cured of his said injuries.

Plaintiff prays judgment against defendant in the sum of \$10,000, plus costs of suit.

Arthur Attorney
Attorney for Plaintiff
1 Main Street
Champaign, Illinois

Prepare an answer which will enable you to introduce the following evidence for defendant at the trial:

- (a) Plaintiff was drunk.
- (b) Plaintiff was jaywalking in the middle of the block.
- (c) Plaintiff was struck by a car driven by Richard Roe.
- (d) Defendant was driving slowly.
- (e) Defendant stopped at the stop sign.
- (f) Plaintiff signed a release.

You may offer any explanation (briefly) which you wish in justification of your work.

3. Discuss the extent to which a defendant desiring relief against a third person might bring him in as a party (a) at common law, (b) in equity, and (c) under the Illinois Civil Practice Act.

4. Discuss the difference in attitudes toward pleadings under the Federal Rules and under the Illinois Civil Practice Act.

FINAL EXAMINATION IN PLEADING (Law 325)

First Semester 1955-1956

Professor Cleary

INSTRUCTIONS: Write only your name on the first page of the examination book. Begin writing your answers on the second page.

TIME: 4 hours

1. In an action against Midwest Railroad Company, a corporation, the sheriff's return of service of summons reads: "Served the within summons upon defendant Midwest Railroad Company, a corporation, by leaving a copy thereof with its agent, Alex Jones." The Illinois Civil Practice Act provides, "A corporation may be served (1) by leaving a copy of the process with its registered agent or any officer or agent of said corporation . . ." § 13.3.

As attorney for defendant your investigation discloses that Alex Jones was foreman of a section gang at the time of service of summons, and in your opinion he is not an employee who falls within the designation "officer or agent." How would you raise this question (a) at common law and (b) under the Illinois Civil Practice Act? Discuss the procedural aspects and incidents of each method.

2. Discuss the sufficiency of the following verification: "P, being first duly sworn, deposes and says that he is the plaintiff in the above-entitled action; that he is familiar with the facts stated in the foregoing complaint; and that said facts are true, except as to such facts as are stated on information and belief, and as to these he verily believes them to be true."

3. An Illinois statute provides: "If any engineer on any railroad shall start his train at any station . . . without ringing the bell or sounding the whistle a reasonable time before starting, he shall forfeit a sum not less than \$10 or more than \$100, to be recovered in a civil action in the name of the People of the State of Illinois, and such corporation shall also forfeit a like sum to be recovered in the same manner." Ill. R. S. 1955, c. 114, § 61.

The state's attorney of Champaign County files a complaint under this statute, against the D Railroad Company, a corporation, alleging only that an engineer for D Railroad Company started his train at a station without ringing the bell or sounding the whistle a reasonable time before starting. As attorney for the defendant, what further information would you wish, and how would you obtain it?

4. In an automobile collision case in which you represent plaintiff, discuss whether you can obtain the following evidence or information and how you would do so:

- (a) A photograph of the wrecked cars, taken by a newspaper photographer and now in the possession of defense counsel.
- (b) The names and addresses of eye-witnesses.
- (c) Statements of witnesses obtained by an adjuster for defendant's liability insurance company and now in the possession of defense counsel.
- (d) The identity and opinions of medical experts employed for the defense.

5. Draft a complaint for the recovery of a real estate broker's commission.

FINAL EXAMINATION IN REAL ESTATE TRANSACTIONS (Law 322)

Second Semester 1954-1955

Professor Cribbet

Time - 3 hours

Answer Part B in the examination booklet. Answer Parts A and C by inserting plus (+) or minus (-) in the space provided. Return all of the examination questions with the booklet.

PART A (Weight - 30 points)

Answer the following questions by inserting plus (+) for true and minus (-) for false.

I (16 points)

July 1, 1947, Stuart Jones, a bachelor, executed a six-year lease of an apartment building at 1710 North Main Street to Raymond Harrison. The lease, in addition to the usual provisions, contained an option to purchase the property at any time within the six-year period. March 1, 1951, Stuart Jones married Lizabeth Hetishee, who had knowledge of the lease but not of the option to purchase. August 15, 1951, Stuart Jones died of a heart attack and three days later, on August 18, 1951, Raymond Harrison was killed in an automobile accident. Harrison died intestate and was survived by a widow, June, and one infant son, Henry. Clay Butler, an attorney friend of Harrison, was named administrator of the Harrison estate. On January 10, 1952, Butler elected to exercise the option and tendered the necessary sum under the terms of the lease. Jones had died testate and left everything to his aged mother, Sarah. His will was made subsequent to the marriage to Lizabeth. The City National Bank was named executor of the estate and the tender was made to the bank. The bank refused to accept the tender, stating that it was made by the improper party. A suit for specific performance followed.

_____ In most American jurisdictions Lizabeth Hetishee Jones is entitled to dower in the property.

_____ Lizabeth's lack of knowledge of the option is a material factor in determining her right to dower.

_____ In most American jurisdictions June Harrison is entitled to dower in the property.

_____ Under present Illinois law the doctrine of equitable conversion, if applied here, will materially affect the interests of June and Henry Harrison in the estate of Raymond Harrison.

_____ There is some authority for the position that Stuart Jones' interest in the property as of January 10, 1952, was personal rather than real property.

_____ The fact that the will of Jones was made subsequent to the marriage to Lizabeth is a material element in determining the rights of Lizabeth.

_____ The fact that the will of Jones was made subsequent to the lease to Harrison is a material element in applying the doctrine of equitable conversion to this case.

_____ Since Harrison's interest in the property is personalty, Clay Butler as administrator of the estate was the proper party to make the tender.

_____ Assuming that this is a proper case for the application of the doctrine of equitable conversion, the bank's refusal to accept the tender would defeat the operation of the doctrine.

Assume that the option was properly exercised by Harrison on August 12, 1951, and that the apartment building was destroyed by fire, without the fault of either party, on August 13, 1951, before any payments had been made by Harrison and while the legal title was still in Jones.

_____ Because Harrison was in possession of the premises, the risk of loss would fall on him in most jurisdictions.

_____ In those states following the doctrine of Paine v. Meller, Harrison could be forced to carry out the contract and pay the full purchase price.

_____ In New York, which has the "Uniform Vendor and Purchaser Risk Act," Jones would be clearly liable for the loss.

_____ If Jones had insurance on the premises, there is substantial authority that he could be held to be trustee of the insurance proceeds for the benefit of Harrison.

_____ There is some authority for the proposition that the loss by fire would excuse performance by Harrison and allow him to rescind the contract.

_____ If the risk of loss is found to be on Harrison, then Jones would have no insurable interest and any policy carried by him would be void.

_____ The risk of loss can be fixed by apt language in the contract of sale.

II (14 points)

Jerome Aldis owned property at 720 South Birch, Salisbury, Illinois. In June of 1954 he called Samuel Scull, a real estate agent, on the phone and asked him to dispose of the property at a reasonable price. Scull quickly found a buyer in the person of a spinster, Judy McLean. A detailed contract was prepared by Scull, who, although he was not a member of the bar, carried on a substantial real estate practice. This contract stated the sale price to be \$15,000 and was signed by Scull and Judy. The latter paid \$500 down to bind the contract. Scull never gave this sum to Aldis.

Judy took possession under this contract and early in July was visited by Aldis, who expressed some surprise at finding her living on the premises. He appeared to know nothing of the contract and suggested that she vacate the house. After further discussion, however, he said he would accept the contract if she would pay him \$500 more. She agreed, wrote out a check for that amount, and both parties decided that \$15,000 was a fair price for the property. As Aldis was leaving, Judy asked for a receipt and received the following paper: "Received of Judy McLean \$500 as part payment for the property at 720 South Birch. Rest of the money to be due shortly. Jerome Aldis, Salisbury, Illinois."

Judy continued to live in the house for several months and made a few minor alterations. She made no further payments nor did Aldis ask for any. By November she realized that the house was poorly insulated and badly built and had started to repent of her bargain. On November 15th Aldis called on Judy and asked for the remainder of the purchase price. Judy refused to pay and demanded the return of her \$1,000. Ultimately they agreed to forget about the contract and Judy allowed Aldis to keep the \$500 as rent for the period of her possession. She was to get the other \$500 from Scull. This entire agreement was to be reduced to writing, but this was never done.

Judy vacated the premises, and the following April oil was discovered in neighboring areas. Judy then brought suit for specific performance of the contract of sale.

- _____ Considering all of the facts in this case Judy will probably succeed in her suit for specific performance.
- _____ The original contract prepared by Scull is void as against public policy since Scull was not a member of the bar.
- _____ The contract prepared by Scull cannot be enforced even though it was later ratified by Aldis.
- _____ The receipt is an insufficient memorandum to satisfy the Statute of Frauds because it fails to identify the parties.
- _____ The description of the property in the receipt is sufficient to satisfy the Statute of Frauds.
- _____ The receipt is sufficient to bind Judy McLean to the contract.
- _____ The receipt is sufficient to bind Jerome Aldis to the contract.
- _____ There are sufficient acts of part performance to enable Judy to sue at law for damages for breach of contract if the events of November 15 had not occurred.
- _____ Considering only the acts of part performance, and omitting the events of November 15, Aldis could successfully sue Judy for specific performance in a jurisdiction that follows the "unequivocal referability" test.
- _____ The answer to the preceding question would probably be different in a jurisdiction following Pomeroy's theory of "equitable fraud."
- _____ Prior to the events of November 15, Judy could have successfully sued Aldis for specific performance in Illinois.
- _____ If the agreement of November 15 had been reduced to writing, the outcome of the specific performance action would be different than it will be under the facts as stated.
- _____ The parol evidence rule will bar all testimony as to the events of November 15.
- _____ If the parties had never agreed upon the exact sale price of the land, but only that it was to be sold, then the receipt would have been sufficient to bind Aldis, if the events of November 15 had not occurred.

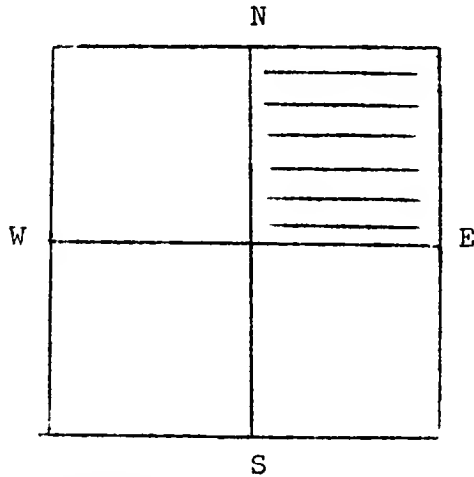
IV. On May 1, 1955, V orally agreed to sell and P to buy Whiteacre for \$25,000 cash, a deed to be delivered and payment to be made July 1, 1955, time to be of the essence both as to conveyance and as to payment. On the same day, P signed the following memorandum: "V has this day agreed to sell Whiteacre to P for \$25,000 cash. Dated: May 1, 1955." V ran into unexpected difficulty with the title and did not tender a deed until August 15, 1955. P, who had been in possession but had not paid anything, refused to perform. V sued for specific performance. What decree? Why?

V. V and P entered into a standard written contract for the sale of real estate. It was discovered that the title was not merchantable and the parties orally agreed that in consideration of the purchase price being reduced \$300 and the date for P's taking possession being advanced two months, P would waive the defect and accept the title as satisfactory. V offered to carry out the contract as modified but P refused to accept a deed. After negotiating for several months, V tendered a deed and on P's final refusal sought specific performance in the alternative (1) of the modified contract or (2) of the original contract. What result? Why?

Part Two (Weight 50 points)

You are a general practitioner in Champaign, Illinois. A large part of your practice consists of real estate work, including the examination of abstracts of title. During the week of June 4-9, 1956, you examined an abstract and made the notes which are set out below. List in chronological order all defects which appear in the chain. If you would be willing to waive a given defect, so state and give your reason (statute, bar rule, etc.). If you would be unwilling to waive a defect without further evidence of title, state what you would require.

Examiner's Notes for Lot 12 in Block 2 in McKinley Place in the City of Champaign



NE 1/4 of S. 11 in T. 19N, R. 8 E. of the 3d P.M., Champaign County, Illinois, containing 160 acres.

Abstract No. 1

<u>Entry # and Date</u>	<u>Instrument</u>	<u>Parties and Remarks</u>
#1; 4/15/1853	Receipt for NE 1/4 of S. 11, etc.	Receiver for U.S. to John H. Thomas.
#2; 8/2/1870	Quitclaim deed	John H. Thomas, Jr., bachelor, to Harriett Brown.
#3; 5/3/1871	Affidavit by John H. Thomas, Jr.	States John H. Thomas died intestate 7/30/1869, leaving John H. Thomas, Jr., as sole heir at law.
#4; 2/3/1887	Warranty deed: unsealed and not acknowledged	Harriett Brown, spinster, to Gordon Gray and Helen Gray, his wife.
#5; 1/15/1900	Quitclaim deed	Gordon Gray, widower, to Samuel Keys.

<u>Entry # and Date</u>	<u>Instrument</u>	<u>Parties and Remarks</u>
#6; 3/2/1910	Estate of Samuel Keys, who died testate	Will properly probated and shows Larry Keys as the devisee under the will.
	Certificate closed at 12:00 Noon, 4/17/1915. Appears to be a proper certificate.	
<hr/>		
<u>Abstract No. 2</u> - Continuation from 5/18/1915. Same captioned property.		
#1; 7/3/1920	Plat of captioned property as McKinley Place	Larry Keys, owner. Plat is set out and appears correct.
#2; 8/15/1920	Warranty deed of Lot 12 in Block 2 of McKinley's Place, etc.	Larry Keys and Mary, his wife, to Frank and Joe Damon as joint tenants and not as tenants in COMMON.
#3; 5/13/1929	Warranty deed	Frank Damon, Edith his wife, and Joe Damon to Harry K. Hibbs.
#4; 5/14/1930	Trust deed with no maturity dates shown on the notes	Harry Q. Hibbs and Alice, his wife, to Busey First National Bank.
#5; 10/17/1933	Tax sale	Certificate of sale issued by county clerk to Jerome Jensen.
#6; 10/15/1934	Tax sale	Certificate of sale issued by county clerk to Patrick O'Toole.
#7; 10/16/1936	Tax deed	Conveys captioned property to Patrick O'Toole.
#8; 6/13/1937	Judgment in Circuit Court of Champaign County	Dennis Paine against Harry K. Hibbs for \$5,000, execution issued same day.
	Certificate closed at 5:00 P.M., 8/13/1940. Appears to be proper certificate.	
<hr/>		
<u>Abstract No. 3</u> - Continuation from 8:00 A.M., 8/14/1940. Captioned property is Lot 21 in Block 2 in McKinley Place, etc.		
#1; 6/19/1942	Warranty deed; unsealed	Harry K. Hibbs and Alice, his wife, to Sara Holt of New York City.

Final Examination in Real Estate Transactions

<u>Entry # and Date</u>	<u>Instrument</u>	<u>Parties and Remarks</u>
#2; 3/12/1945	Will of Sara Holt; probated in New York; copy filed in county court of Champaign County	Conveys all real estate to son Isaac Holt.
#3; 8/13/1948	Scire facias proceeding against Harry K. Hibbs by Dennis Paine	Revives judgment obtained 6/13/1937.
#4; 10/12/1951	Warranty deed	Isaac Holt and Ann, his wife, to Frank Myers.
#5; 12/5/1953	Quitclaim deed	James Roper to Ned Franks.
#6; 1/5/1954	Warranty deed	Frank Myers, divorced, to Gordon and Ellen Peabody, as joint owners.
#7; 8/1/1956	Payment of taxes in amount of \$320.15	Paid by Gordon Peabody.
	Certificate to June 1, 1956 appears to be in good order.	

Part Three (Weight 20 points)

You are a lawyer who represents Iver Jones Johnson, a longtime client of your office. In February 1956, Mr. Johnson brings you a contract prepared by the firm of Cribbet, Doe, and Cribbet. He wants you to look it over and decide whether his interests are adequately represented. The contract is set out below. Answer the true or false statements which follow.

Contract for the Sale of Real Estate

Articles of Agreement entered into this 20th day of February, 1956, between Samuel P. Bryce and Harriet E. Bryce as vendors and Iver Jones Johnson as purchaser

Witnesseth:

The vendors agree to sell and convey to the purchaser and the purchaser agrees to buy from the vendors at the price of thirty-two thousand five hundred dollars the following described real estate:

Lot 1 in Block 1 in Goodyear's Subdivision of the NE 1/4 of the SE 1/4 of Sect. 1, T 39 N, R 14 E of the 3d PM in Cook County, Illinois.

Subject to any and all existing rights of way for public highways, utilities, and drainage and to taxes for the year 1955.

The purchaser has paid twenty-five hundred dollars as earnest money and agrees to pay ten thousand dollars by certified check on March 21, 1956, providing title

is found to be in the vendors. The remaining twenty thousand dollars will be paid in installments according to the plan set out below.

Daniel Bryce, 1319 Penrose Avenue, Chicago, Illinois, will act as escrow agent in this transaction. A good and sufficient warranty deed conveying a title in fee simple to the purchaser, properly executed by both vendors, shall be deposited in escrow on March 21, 1956. Said deed shall be delivered to the purchaser upon the final payment of the twenty thousand dollars as set out below.

The above mentioned twenty thousand dollars with interest at five per cent per annum on the unpaid balance shall be paid at the rate of one hundred thirty-two dollars per month over a period of twenty years. The payments shall be made on the first day of each month beginning March 1, 1956, at the office of Daniel Bryce, 1319 Penrose Avenue, Chicago, Illinois.

Said payments shall be applied first to interest on the unpaid balance at the rate herein specified, and then to principal. The interest for each month shall be added to the unpaid balance on the 1st day of the said month at the rate of one-twelfth of the annual interest rate, and shall be calculated upon said unpaid balance due as of the last day of the preceding month. The amount remaining due may be prepaid in part or in full at any time with interest to date of payment, provided that ninety days' advance interest shall be paid, and provided that twenty days' advance notice shall be given of any such prepayment.

In case of failure of the purchaser to make any of the payments when due or to perform any of the covenants on his part made and entered into, this agreement shall, at the option of the vendors, be forfeited and determined and the purchaser shall forfeit all payments made by him on this agreement and such payments shall be retained by the vendors in full satisfaction of and in liquidation of all damages by them sustained, and the vendors shall have the right to re-enter and take possession of the premises.

The vendors shall, until March 21, 1956, keep all improvements upon the premises insured against fire, lightning, and windstorm for the amount for which they are now insured (twenty-five thousand dollars) and have notice of this contract endorsed upon the insurance policy. The purchaser will accept the assignment of the unexpired insurance policy and pay the vendors for the pro rated value of the unearned premium thereof from the date of possession. After the date of possession the purchaser shall continue to keep insurance on the improvements in an amount at least equal to the remaining unpaid installments on the purchase price.

The vendors shall deliver to the purchaser an abstract of title, complete to this date, at the time of signing this agreement or within two days thereafter. The abstract shall be certified by a reliable abstract company and shall show title in fee simple to be in the vendors. The purchaser shall have two weeks within which to examine said abstract. The vendors shall then have until March 21, 1956, to cure any defects in said title or abstract upon written notice by the purchaser of such defects.

The taxes against the premises for the year 1955 shall be paid by the vendors. The taxes for the year 1956 shall be pro rated on the basis of possession from January 1. After the transfer of possession all taxes and special assessments shall be paid by the purchaser.

The mirrors attached to the doors in two of the bedrooms are the personal property of the vendors and will be removed. All other fixtures, including venetian blinds, automatic washer, and dryer are to be sold with the house.

Settlement shall be made at the office of Cribbet, Doe and Cribbet.

Vendor

Purchaser

Samuel P. Bryce
(signature)

Iver Jones Johnson
(signature)

_____ Based on the facts disclosed by the contract, Mr. Johnson would be well-advised to consider some other form of financing his purchase.

_____ The street address of the property must be inserted following the legal description in order to have an enforceable contract.

_____ Under Illinois law this contract can be said to call for the conveyance of a merchantable title.

_____ As drafted, this contract is non-assignable by either party.

_____ This contract is properly executed by both parties.

_____ You should advise Johnson to have his wife sign the contract.

_____ As drafted this contract probably cannot be specifically enforced by Johnson.

_____ Time is of the essence of this contract in equity.

_____ The insurance provisions of this contract are adequate to protect the interest of Mr. Johnson.

_____ This type of contract is commonly called an installment land contract.

_____ A separate escrow agreement is essential if this contract is to be satisfactory to your client.

_____ If a separate escrow agreement is necessary, it must be in writing to be valid under the Statute of Frauds.

_____ There is no real need for any escrow arrangement in a contract of this type.

_____ A clause should be added setting forth the date for transfer of possession.

_____ If no such clause is added, Johnson would have no right to possession until the full purchase price is paid and the deed delivered to him.

_____ Under the present state of Illinois law (Zeta Bldg. Corp. v. Garst), the forfeiture clause is meaningless and constitutes no hazard to Mr. Johnson.

- The tax provisions of the contract are correctly drafted.
- Under the contract as drafted the gas range would probably go with the house.
- As drafted, the contract would not be binding on the heirs of either party in event of the death of the principals.
- This contract has the same legal effect as a contract calling for a purchase money mortgage.

FINAL EXAMINATION IN RESTITUTION (Law 330)

Second Semester 1954-55

Professor Carlston

IMPORTANT: You will find a number in the upper right-hand corner of this page. This will be your examination number. Your grading will be made without knowledge of your name. A list of the members of this class will be passed around. Place your examination number in the space opposite your name on this list. Do not write your name on either this question sheet or the examination booklet.

You will have 3 1/2 hours for answering this examination.

1. A was the owner of a 100-acre tract of land, composed of one parcel of 20 acres and another of 80 acres, which she leased to B Oil Company for the production of petroleum therefrom against a royalty of 1/8 of the oil produced. The lease contained a pro rata provision for the payment of royalties, to the effect that the premises would be developed as a single tract and that, if the premises should happen to be held in separate parcels by separate owners, each such owner would receive a share of the royalty determined by the ratio of the amount of his land to the entire tract. This lease was recorded. A thereafter executed a mineral deed to the C Oil Company of one-half interest in the oil and gas in and under the 20-acre parcel which was part of the 100-acre tract. Such deed stated that it was subject to any rights existing under any outstanding oil and gas lease. This second transaction was carried out with the realization of both parties that there was an outstanding lease to B Oil Company but without any realization that such lease contained a pro rata clause. The consideration paid was calculated on this assumption. A was an elderly widow, confined to her home, and inexperienced in business matters but of sound mind.

B Oil Company sank a number of producing wells on the 20-acre tract and distributed the royalty payments on the assumption that A and the C Oil Company were each entitled to one-half thereof. A then gave notice to B Oil Company that she was entitled to a larger share by virtue of the pro rata clause. (On the basis of the language of that clause itself she was so entitled.)

What remedies should A and C Oil Company pursue to protect their respective interest or claim? What legal reasoning can they advance in support of each? How should their suits be decided and why?

2. A was a distributor of certain building supply products of B Company under the following pertinent arrangements:

(1) A lease from B Co. to A of the premises in which A carried on his business. The lease contained an option to purchase and was terminable by lessor if lessee should default thereunder or under any other contract with lessor.

(2) A sales contract in which A agreed to buy the supplies in question from B Co. at the seller's published market price established at the place of delivery on the day of delivery.

B Co. at the time of the making and at all times thereafter published a market price applicable to a nearby town which for some time was competitive with and coincided with the market price in A's town. However, the latter market price for the supplies fell in A's town below B Co.'s published market price. B Co. insisted that under the terms of its contract it was entitled to payment at the higher published price, and A paid at that rate for two years.

A was then advised by his lawyer that the price was excessive under the terms of his contract. (For the purposes of your answer assume this advice to be correct.) Does A have any remedy against B Co.? Upon what ground or grounds? Does B Co. have a defense? What judgment?

3. A negotiated with B for the purchase of a used Cadillac car. B stated that the car could be operated twelve miles on a gallon of gasoline. He also said he would give the same guaranty that would go with a new car. A bought the car. On the contract of sale B wrote: "Guarantee as to parts the same as with a new car." The car did not operate twelve miles on a gallon of gasoline. It also developed in a few days excessive engine noise and sputtering, sluggish starts. A new car guarantee in the usual form would contain no guarantee as to mileage on gasoline but would guarantee efficient engine performance for ninety days. Does A have a remedy against B?

4. A's parents entered into an oral contract for the sale of Blackacre to B. Thinking the parents were bound thereby (i.e., both A and B so thought), A paid B \$100 for a release and cancellation of the contract. A then found that the oral contract was unenforceable. What remedy or remedies does A have against B? What would A's argument be? B's argument? Judgment?

5. (a) A bought Blackacre from B for \$25,000. Both parties assumed it was subject to a \$5,000 mortgage. After delivery of the deed, it was discovered that the mortgage had been discharged prior to the conveyance. Does A have any enforceable remedy against B?

(b) A town has a vehicle license tax, applicable to the vehicle and transferable with its sale. A sells his car to B and assigns the license for its unexpired term. The sale price includes a sum representing the pro rata portion of the tax. The tax is thereafter held unconstitutional. Can B recover this part of the purchase price from A?

FINAL EXAMINATION IN RESTITUTION (LAW 330)

Second Semester 1955-1956

Professor Carlston

IMPORTANT: You will find a number in the upper right-hand corner of this page. This will be your examination number. Your grading will be made without knowledge of your name. A list of the members of this class will be passed around. Place your examination number in the space opposite your name on this list. Do not write your name on either this question sheet or the examination booklet.

You will have 4 hours for answering this examination.

15 points

1. A sold B a car, paid for partly by cash and partly by B's note for \$1000. B owned and operated a large dance hall. Those purchasing tickets for entrance to his hall were given slips bearing the names of the purchaser and a number. Once a month the counterparts of such slips were made the subject of a public drawing. The counterpart which was drawn entitled the person holding the slip bearing the lucky number to an automobile without further charge. B told A when he purchased the car that it would be used in the ensuing drawing. A local statute prohibited lotteries.

C was the holder of a slip, and with D attended the drawing at which the car was to be given. Shortly before the drawing, C left the premises and handed her slip to D. She requested D to let her know if she won the car. Her number was called and name read. D presented the slip but did not state his name. The keys to the car were given to him and he drove it away.

B refused to pay A for the car and D refused to deliver the car to C. Do A and C have any remedy? If so, what remedy and why?

10 points

2. A was a longshoreman, i.e., one engaged in loading and unloading boats. Work was obtained by longshoremen through the hiring hall system. Under this system, whenever a boat was about to arrive, a call for workers was made. Nearly always more appeared than were needed. The hiring was done in a large hall owned by B. The selection of workers was made by C, an employee of B. Without the knowledge of B, C made it known that a fee of \$2 per job payable to C was necessary to obtain employment. A paid C a number of these fees totalling in the aggregate \$80. Does A have a remedy against C or B therefor? State reasons.

15 points

3. (a) A wrote B offering to lease him an apartment at \$133 a month. A was mistaken in the offer and intended to lease the apartment at \$155 a month. B, knowing that A was so mistaken, accepted the offer without calling the mistake to A's attention and a lease was duly signed calling for \$133 a month rent. A then discovered his mistake. What remedy or remedies does he have and why?

(b) Assume B had lived in the apartment for 3 months, paying \$133 for each such month. What remedy or remedies does A have and why?

15 points 4. A told B that he wished to buy B's land to use for a public recreation park. B delivered a deed of his premises containing restrictive covenants and told A that such covenants would not prevent the intended use. A paid for the land and accepted delivery of the deed. He then discovered that the covenants would prevent the intended use. What remedy or remedies does A have and why?

10 points 5. A was a guardian of an estate of a minor. He bought bonds from B, an investment broker, on B's representation that they were suitable for investment by a guardian under the state law. B believed this to be true but was mistaken. Does A have a remedy or remedies? State reasons.

15 points 6. (a) A sold B a tract of land. The deed described the land and stated that it contained "210 acres more or less." After B took possession, a survey revealed that it contained 160 acres. Does B have a remedy? Why or why not?

(b) X sold Y the canned tomatoes in X's warehouse. The bill of sale described the goods as "12,000 cases, more or less." There proved to be 8,000 cases in fact. Does Y have a remedy? Why or why not?

20 points 7. A was attorney for B Bank. The bank had a claim against C. C died and D was appointed administrator of C's estate. There was a \$10,000 claim of E against the estate. The funds of the estate were not sufficient to pay E's claim and all other claims. D's own attorneys refused to oppose E's claim and D discussed the question with A. As a result of this discussion, A thought that D had employed him as his attorney to resist E's claim. D had no such intention and did not knowingly use words of employment. He had discussed the matter with A because A was attorney for B bank and D thought the bank might be interested in opposing the claim. The bank did not, however, so employ A.

A opposed the claim, necessitating a trial of the case. D knew of A's action but assumed it was undertaken as attorney for the bank. The court disallowed the claim. As a consequence, all other claims were paid in full, including the bank's claim.

Does A have any remedy for his services against D? B Bank? State reasons.

Name _____

No. _____

FINAL EXAMINATION IN RIGHTS IN LAND (Law 332)

Second Semester 1954-55

Professor Summers

Time: 3 1/2 hours

(Write all answers on the blank lines in ink)

1. A was the owner of a lot in the city of X. B was the owner of an adjoining lot upon which there was a two-story brick building. The foundation of B's building extended only six feet below the surface. An ordinance of the city required one intending to excavate for a building to give notice thereof to the owner of adjoining property. A gave B proper and timely notice that he intended to excavate to a depth of ten feet for a new building.

(a) Suppose that B did nothing to protect his building and that the wall thereof adjacent to A's property fell on A's property as a result of the excavation.

(i) Under what further circumstances, if any, is A liable in damages to B for the injury to his building?

(ii) Under what circumstances, if any, is B liable to A for damages to A's property resulting from the falling of the wall?

(b) Suppose B did nothing to protect his building and A, to protect B's building from injury, spent \$1,000 in shoring up B's foundation without any agreement with B in respect to this work. Can A recover the \$1,000 from B? Why?

Question 3 continued -

4. A, the owner and possessor of a 160-acre tract of land, conveyed "all of the coal thereunder" to B and his heirs. B then conveyed to C and his heirs the "sole and exclusive right to mine coal" from the west half of the tract.

(a) Can A restrain B from entering on the surface of the land to take coal on the ground that B does not have an easement to enter? Why?

(b) Can A restrain C from mining coal for any reason? Why?

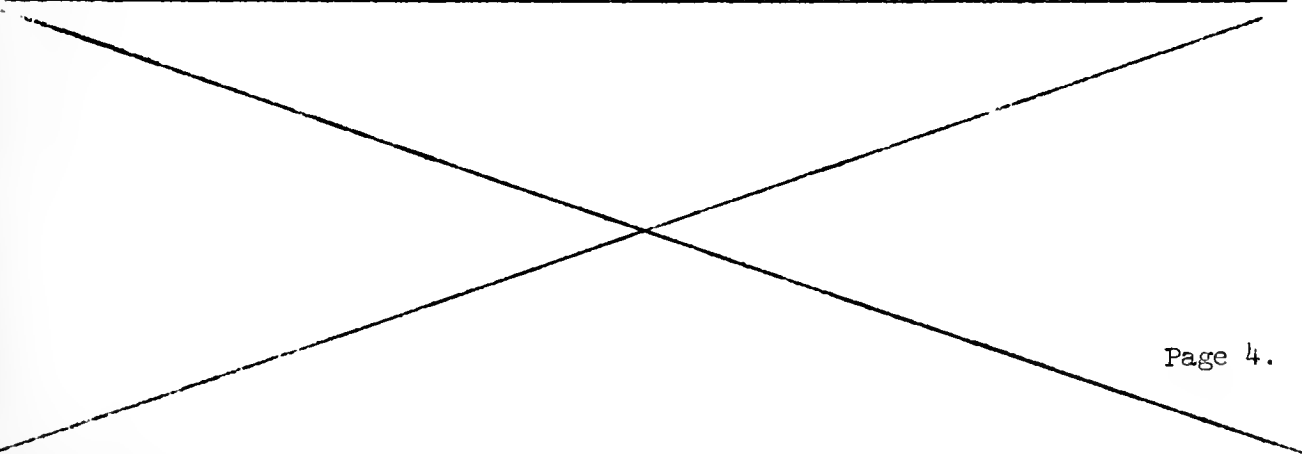
(c) Can B and C restrain A from mining coal? Why?

(d) Suppose the deed from A to B had granted to B "the privilege of taking coal" from the 160-acre tract. Would your answers in (a), (b) and (c) be different? If so, explain.

5. X Pipe Line Company owned and operated a crude oil pipeline across A's cattle ranch. The deed to the pipeline company creating the pipeline easement authorized the grantee to patrol the pipeline on horseback. Later the pipeline company secured an additional grant from A permitting it to erect and maintain a telephone line along the right of way to facilitate the operation of the pipeline.

(a) Suppose the pipeline company ceases patrolling the line on horseback and undertakes to use airplanes for this purpose. A, complaining that the low flying planes frighten his cattle and horses and causes them to injure themselves, brings suit to enjoin the use of planes in patrolling the line. What decision? Why?

(b) Suppose the pipeline company decided to use radio for communication along its pipeline and sells the telephone line to Black County Telephone Company, and A then brings suit to enjoin the use of the telephone line by the telephone company. What decision? Why?



6. A conveyed to the X Railroad a 200-foot strip across his land "for railroad right of way purposes."

(a) A built a grain elevator and feed mill upon an unused portion of the right of way without the consent of the railroad but without any objection from it. Later A contracted to sell the elevator and mill to B, who objected to the title. To establish the merchantability of his title A brought a quiet title suit. The suit was brought 25 years after the mill was built. What result? Why?

(b) A located and commenced the drilling of an oil well upon an unused portion of the right of way. The railroad brought suit to enjoin. What result? Why?

(c) The railroad commenced the drilling of a well on the right of way. A brought suit to enjoin. What result? Why?

7. (a) In 1880 A conveyed 40 acres of a 160-acre tract to his son B. The 40-acre tract did not abut on a public highway. There was no mention of a right of way to the 40-acre tract in the deed, but a right of way was laid out over the land retained by A. B used the right of way over A's land for a short time, but ceased to use it after acquiring oral permission to pass over the land of C, an adjoining owner. Until 1950 B and his successors in title used the private road over the land of C to reach the public highway. In that year the successors in title of C's land refused further permission to cross their land. Thereafter the owner of the 40-acre tract undertook to cross where the original way was laid out over the land retained by A when he conveyed the 40-acre tract. The owner of the 120-acre tract brought suit to enjoin. What result? Why?

(b) Suppose that in 1920 the owner of the 40-acre tract had purchased another tract adjoining the 40-acre tract and which abutted upon a public highway. Would your answer in (a) be different? Explain.

(c) If the present owner of the 120-acre tract claimed that he had no actual knowledge of the existence of a right of way across his land and there were no traces of its existence upon the surface, how would that affect your answer in (a)?

8. (a) A and B were owners of adjoining lots. A's lot was on the corner of X and Y streets. B had a right-of-way easement across A's lot to X street created by deed. B gave A oral permission to build a garage across this right of way. After the garage was built, B brought suit against A asking that the garage be moved. What result? Why?

(b) The X Theater advertised the sale of tickets to children under the age of 12 years for 25 cents. P, aged 11, bought a ticket and entered the theater. An usher forcibly removed P from her seat and ejected her from the theater, claiming that she was more than 12 years old. Through next friend, her father, P brought suit for assault and false imprisonment. What result? Why?

9. (a) A owned a tract of land upon which were located springs flowing a large quantity of water. A executed a deed by which he granted to the X Hotel Company, its successors and assigns the privilege of piping the water from these springs to its hotel. The deed contained an agreement on the part of the grantee to lay a two-inch pipe from the spring to A's residence, located on the tract, and furnish A with water at a specified pressure. The deed did not state that this agreement was to be binding upon the successors and assigns of the grantee. In the state where the land was located, sealing was unnecessary for the validity of the deed. The deed was executed by the grantor only. For several years the X Hotel Company furnished water to A's residence as agreed. Later, however, the X Hotel Company conveyed its hotel property to D and A conveyed his land to P. D, although he took water for the operation of the hotel, refused to deliver water to the residence then owned by P. P brought suit to compel D to deliver water to his residence in conformity with the agreement in the deed. To what extent are the following contentions by D valid?

(Question 9 continued next page)

Question 9 continued -

(1) The agreement to furnish water did not run with the land.

(2) There was no intent that the covenant run with the land.

(3) X Hotel Company was not bound by the agreement because it did not sign the deed, therefore D, its successor, was not bound.

(4) There was not sufficient privity for the agreement to furnish water to run with the land.

Question 9 continued -

(5) The agreement did not bind D because the deed was not sealed.

(6) D was not bound because the covenant was affirmative in nature.

10. (a) A subdivided a tract of land in the city of X into two blocks and 24 lots, numbered from 1 to 24. The plat of the subdivision was filed and accepted by city and county officials. The first lot sold was No. 2. A conveyed this lot to P by a deed which contained a covenant restricting its use to residence purposes. From time to time A conveyed all of the other lots to various persons. The deeds to six of the lots did not contain covenants restricting their use to residence purposes. The last lot sold was No. 1, a corner lot, adjoining No. 2. D was the purchaser of this lot. At the time D purchased, dwelling houses had been built on all of the other lots. The deed to D of Lot No. 1 contained the same restriction as that in the deed conveying Lot No. 2 to P. D commenced the erection of a building to be used as a grocery store on Lot No. 1. P seeks an injunction. What result? Why?

(b) Explain what A might have done in connection with the subdivision and sale of the tract in (a) for residence purposes which would have inured to the benefit of P in his suit against D.

11. (a) P, a wholesale and retail food company, conveyed a lot on a business street to A by a deed which contained a covenant to the effect that if the lot was ever used as the site of a food store, the owner and operator thereof must purchase all the foods sold from P. The deed also contained a provision that this covenant was intended to be binding upon the heirs and assigns of the parties. A conveyed the lot to D, who built and operated a food market thereon. Can P require D to purchase his merchandise from it? Why?

(b) Suppose that at the time the lot was sold to A, the P grocery company owned and operated a food store across the street from the lot sold to A. Would this make your answer in (a) different? Explain.

Question 11 continued -

12. L leased property to T for a term of three years. At the end of the first year, T assigned the lease to A. At the end of the second year A assigned the lease to D.

(a) Suppose D failed to pay a portion of the rent for the last year of the lease.

(i) Can L recover this unpaid rent from T? Why?

(ii) Can L recover this unpaid rent from A? Why?

(iii) Can L recover this unpaid rent from D? Why?

(iv) If L recovers the unpaid rent from T, can T recover this amount from D? Why?

(Question 12 continued next page)

Question 12 continued -

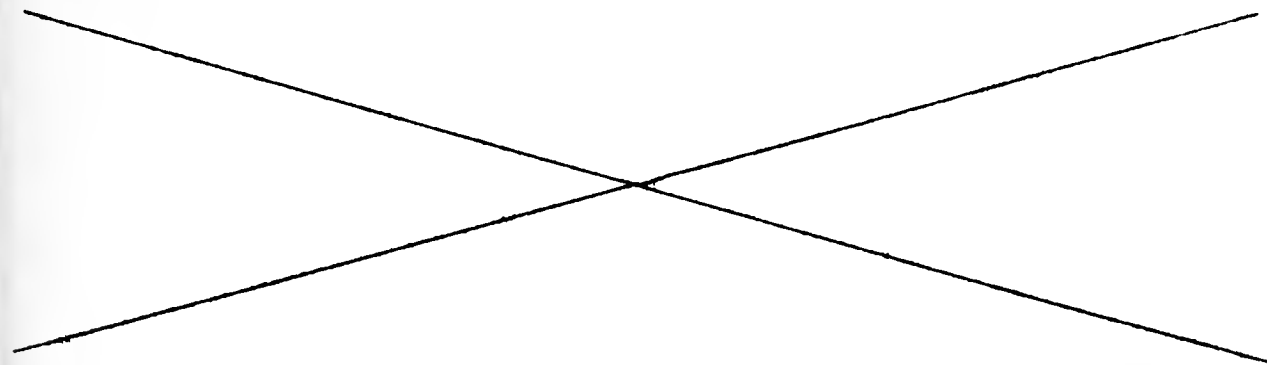
(b) Suppose that in A's assignment to D he reserved a right of re-entry for the failure of D to pay the rent to A. Could L then recover the unpaid rent from D? Why? From A? Why?

(c) Suppose the lease contained a provision against assignment without the written consent of L and also provided that the covenants and agreements of the lease should be binding upon the parties thereto and their assigns. Suppose further that T assigned the lease to A with L's written consent, but that the assignment from A to D was without L's written consent. Under these circumstances can L recover the unpaid rent from A? Why?

13. (a) L, a life tenant of property, leased it for the calendar year of 1954 for a rental of \$5,000, payable in equal installments on July 1 and December 31. R owned a vested remainder in this property. L died at 12 noon on July 1. Is L or R entitled to the rent of the property for the first half of the year? Why?

(b) L leased a farm to T for five years, commencing January 1, 1951, for a cash rent of \$4,000 per annum and payable in equal installments on July 1st and December 31st. At the time the lease was executed, M held a mortgage on the farm to secure the payment of \$5,000. M foreclosed the mortgage and the purchaser of the property, after the statutory period of redemption had expired, dispossessed T on June 25, 1954. At this time T had planted all annual crops on the farm. Can the purchaser recover the rent payable July 1, 1954, from T? Why? Can he recover anything from T for use and occupation of the premises? Why?

(c) L leased an apartment to T for the calendar year of 1954. L covenanted to furnish heat for the apartment. In February the heating plant in the apartment had to be replaced and for three weeks the apartments in the building were without any heat. At the end of the second week of this failure to furnish heat, T moved out and secured other quarters. T had paid the January and February rent. In January 1955, L brought an action against T for 10 months' rent. What result? Why?



14. (a) L leased a residence in Urbana to T for a period of one year from September 1, 1953. In June 1954, L leased the same residence to P for a term of three years, commencing September 1, 1954. T failed to vacate the premises at the end of his term. P tried for two weeks to get T to move out, without result. He then leased another house. T finally moved out in December 1954. L now brings a suit against P to recover the rent payable under his lease since September 1, 1954. What result? Why?

(b) A died intestate in 1930. At his death A owned various tracts of land. One of these was a lot in Champaign on which there was located a two-story business building. A's widow elected to take a dower interest in this particular property on account of the rental returns from it. During the next 20 years the building became badly out of repair and the widow was unable to secure tenants. The income was not sufficient to pay the taxes and insurance. In 1954 the widow had the building removed and the land surfaced for use as a parking lot. The property now brings her a return in excess of that which she received from the rental of the property in 1930. The heirs of A, as remaindermen, now bring a suit for damages against the widow and for the forfeiture of her estate in the property. What result? Why?

FINAL EXAMINATION IN RIGHTS IN LAND (Law 332)

Second Semester 1955-56

Professor Summers

Time: 4 hours

1(a). Plaintiff and defendant were adjoining owners of land. In excavating for a dwelling house on his land, defendant uncovered a bed of quicksand which extended under both lots. Despite all of defendant's efforts in shoring up the excavation, the water and sand flowed from under the plaintiff's land and resulted in its subsidence for a distance of several feet. As a result of this subsidence, plaintiff's brick garage was badly damaged. Defendant was not guilty of negligence and the land would have fallen without the added weight of the garage. Is defendant liable for damage to the garage? Why?

1(b). A, a riparian owner of land, granted to the X Manufacturing Company the right to pump water from the stream and pipe it to the grantee's plant. The taking of water by the X Manufacturing Company resulted in the lowering of the water level in the stream to the extent that the water power mill of L, a lower riparian owner, could not be operated during the dry season of the year. Has L a legal or equitable remedy against X Manufacturing Company? Why? Suppose the taking of water does not cause any appreciable damage to L in the operation of his mill. Has L a cause of action against the X Manufacturing Company? Why?

2(a). D, while drilling for oil and gas, drilled through a fresh water supply at a depth of 200 feet and continued drilling to a depth of 2,000 feet, where he struck salt water. D abandoned the hole without plugging or casing it so as to prevent the salt water from penetrating the fresh water supply. P, an owner of land in the vicinity of the well, brings a suit for damages for the pollution of his fresh water supply. In the absence of statute or administrative regulation requiring D to plug or case the well, is D liable to P? Why?

2(b). The plaintiff constructed an open-air drive-in picture theater outside the corporate limits of a city. A year later the defendant acquired a nearby tract of land and erected thereon a race track for midget automobiles and lighted the same with strong floodlights. Plaintiff brought an action for damages against the defendant, alleging that the lights from the tract seriously interfered with the operation of his theater. The light from the defendant's floodlights was shown to be much more intense than the brightest moonlight. What should the court hold? Why?

3(a). A, owner in fee of a tract of land, conveyed to B "privileges of taking sand and gravel" from the land, "together with privileges of placing on the land such buildings, machinery and other equipment as may be necessary and convenient for the quarrying, washing, marketing, and transporting of gravel and sand." The conveyance further provided that B should pay to A 10 cents per cubic yard for all gravel and sand produced and marketed. B installed machinery and equipment for the production of sand and gravel at considerable expense. After B had operated for about two years, A commenced the production of gravel from the land. B brought suit to enjoin further operations by A. What decree? Why?

3(b). The X Electric Company acquired by deed a right-of-way for a power line across B's land. Later the X Electric Company sold its property, including its power plant, lines and easements, to the Y Power Company. B now seeks to enjoin the Y Power Company from using the right-of-way over his land. What result? Why?

4(a). In 1950 A was seeking a desirable location for the erection and operation of a plant for the manufacture of plastics. Such a plant required a supply of fresh water. Prior to the purchase of the plant site, A acquired by deed from B the right and privilege of taking water from a small lake on B's land. This deed recited that the water was to be used in a plant built by A for the manufacture of plastics. Later, A purchased a nearby site and erected the plant. A then organized a corporation and assigned all of his interest in the plant and in the water rights to it. B now seeks to enjoin the corporation from taking water from his lake. What result? Why?

4(b). A and B are owners of adjoining lots in a city. In 1900 two two-story structures were built on these lots at the same time and provided for access to the second story of each building through a stairway in A's building. At the time of the building, A conveyed to B a stairway easement.

(a) Suppose both buildings are completely destroyed by fire and A prepares to build a new 10-story building on his lot. Is he required to provide a stairway for B in this building? Why?

(b) Suppose A wrecks his old building for the purpose of building a new 10-story building on his lot. Is he required to provide a stairway for B in this building? Why?

5(a). A and B are owners of adjoining city lots. A's lot is on a street corner and B has an easement over the rear 16 feet of A's lot to a street. A, being desirous of erecting a building on his lot so as to extend over B's easement of way, sought and received oral permission to do so. After the building was almost completed, B demanded that the building be remodeled so as to leave the right-of-way open. What are B's rights? Why?

5(b). D Coal Company owned the coal under a tract of land. After sinking a shaft to the coal, it was discovered that to mine the coal successfully, it would be necessary to pump large quantities of water from the mine. The only feasible way of disposing of this water was to pump it over a land divide to an open ditch running across P's farm land to a natural stream. D Coal Company entered into an oral agreement with P whereby, for the privilege of pumping the water to P's land, it agreed to construct a 20-inch loose tile drain in lieu of the open ditch and to lay laterals to this ditch in P's land. The D Coal Company performed its agreement, thereby greatly improving P's land. After securing this outlet for the mine water, D Coal Company spent large sums of money in equipping and operating the mine. P now brings suit to enjoin the pumping of the mine water to the ditch on his land. What result? Why?

6(a). Defendant was engaged in the grocery business in the town of X. Smith purchased defendant's stock of goods and the lot and building where the store was operated. In the deed conveying the real property to Smith, defendant covenanted not to engage in the grocery business in the town of X for a period of ten years. The deed contained the further provision that defendant's covenant should be considered a covenant running with the land. Two years later Smith sold the grocery business and conveyed the land to plaintiff. Shortly thereafter defendant opened a grocery store across the street from plaintiff's store. Plaintiff now brings a suit to enjoin defendant's operation of this store. What decree? Why?

6(b). X Oil Company owned a lot in the town of C which it had acquired for a gasoline filling station. Deciding not to retail its products in this particular area, X Oil Company conveyed the lot to A by a deed which contained a covenant on part of the grantee, expressly stated to be binding on A, his successors and assigns, whereby A agreed that if petroleum products were ever sold on the land conveyed, they would be products manufactured or sold by X Oil Company. This deed was signed only by the grantor. A year later A conveyed the lot to B. B built a filling station on the lot and entered into an agreement with Y Oil Company for the exclusive handling of its petroleum products. X Oil Company now brings suit to enjoin B from handling Y Oil Company's products. What decree? Why?

6(c). A owned eight vacant building lots in one block. These lots were a portion of a subdivision previously plotted by X, but with respect to which there was no evidence of an intent to restrict the lots to residence purposes. A conveyed one of the eight lots to the plaintiff, the deed containing a provision "that neither the grantee herein nor any person claiming under him shall use the lot herein conveyed except for residence purposes." Later A conveyed one of the remaining lots to the defendant and another one to B. Defendant commenced the erection of a grocery store on his lot. Can plaintiff enjoin defendant? Why? Can B enjoin defendant? Why?

7(a). L leased premises to T for a term of five years for a stipulated rental payable monthly. During the term T assigned the lease to A by a written assignment in which A agreed "to assume all the obligations of the lessee arising under the lease." After occupying the premises for a year, A assigned the lease to B. Later B assigned the lease to C for a term ending one month before the termination of the five-year term. The term will expire in about nine months. The rent has not been paid for six months. This rent accrued after B's assignment to C. Can L recover for this rent in a suit against A?, B?, or C? Why?

7(b). L leased a business property to T for a term of 5 years. The lease contained a covenant by T not to assign or sublease the premises without the written consent of L. During the second year of the lease, T assigned it to A with L's written consent. During the third year of the lease L conveyed the property, subject to the lease, to R. During the fourth year of the lease A assigned the lease to X without R's written consent. X occupied the premises for a few months and then went bankrupt. X did not pay any rent. After the expiration of the term of the lease, R brought suit against A for the unpaid rent. Should he recover? Why?

7(c). L leased an apartment to T for one year. The plumbing in the apartment above T's got out of repair, causing water to drip almost continuously into T's kitchen. T notified L several times to make repairs. After suffering this inconvenience for two weeks without relief, T vacated the premises. L then brought an action to recover rent from T. Is T liable? Why?

8(a). A life tenant leased land for a term of years with a provision for the payment on July 1 of the rent for the calendar year. The life tenant died on April 1, during the term of the lease. Is the life tenant's administrator entitled to any of the rent for the calendar year? If so, how much? Why?

8(b). L leased 160 acres of unimproved farm land to T for a term of 5 years for an annual cash rent of \$4,000 per year. Forty acres of this land was taken by the federal government by eminent domain proceedings. The land is of uniform value throughout and was valued at \$300 per acre. Must T continue to pay L a rent of \$4,000 per year? Why? Is T entitled to any portion of the \$12,000 which the government pays for the 40 acres? Why?

8(c). L leased a dwelling house to T for one year beginning September 1, 1951. When this lease was made, the premises were occupied by D under a lease terminating August 31, 1951. L did not expressly agree to deliver possession to T on September 1, 1951. D wrongfully held over and L made no effort to put him out. October 15, T leased another house and moved in. D did not pay L any rent for September or the following months but finally vacated the premises in December 1951. L now sues T to recover rent since September 1, 1951. Can he recover? Why?

FINAL EXAMINATION IN SALES (Law 337)

First Semester 1954-55

Professor Warren

Important: You will find a number in the upper right-hand corner of this page. This will be your examination number. A sheet will be passed around listing each member of the class. Please write your examination number in the space after your name. Do not under any circumstances write your name on either the question sheet or the examination booklet. You will have four hours for this examination.

PART I

Directions for the essay section. Answer each essay question fully with attention to the phraseology as well as the content of your answers. Assume in all questions that the same uniform acts are in force as are currently law in Illinois. Assume that all contracts are in writing unless otherwise indicated in the problem. You need pay especial attention to the rules of law as laid down by the Illinois courts only when the question specifically requests that you do so. Write plainly. Be concise. You will be absolutely restricted to one 16-page examination booklet for the essay portion of this examination.

I.

S contracted to sell to B 100 bales of cotton of 500 pounds each from his cotton crop then growing. S agreed to pick, harvest, gin, bale, and deliver the cotton to B's warehouse in a nearby town. The written agreement was entitled "contract of sale" and contained this statement, "By this instrument the seller does hereby sell and the buyer does hereby purchase 100 bales of cotton of from low middling to good middling grade at 64 cents per pound." B paid \$15,000 on account.

On November first the cotton had been harvested, ginned and baled, and some 55 bales had been delivered by S to the designated place by truck. At this time the county sheriff came on the scene, stopped any further loading of cotton, and attached by virtue of a judgment against S not only the 45 bales still in S's possession but also the 55 bales in B's warehouse.

B now sues the sheriff in conversion, claiming to be the owner of all 100 bales, or, in the alternative, at least of the 55 bales in his possession. What decision? Explain.

II.

Plaintiff was a manufacturer of footwear. One of his items which had been slow in selling was a type of stadium boot known as "Warmees." To cut the price on this article, plaintiff decided to replace the rubber outer surface with a type of plastic produced by the defendant. On July 1, plaintiff placed an order for the plastic with defendant. On August 1, before delivery of the plastic, plaintiff called defendant and asked him what temperature range the plastic in question had. Defendant assured plaintiff that it would withstand any temperature between 50 degrees below zero and 250 degrees above zero, Fahrenheit.

By December plaintiff learned that the plastic cracked on exposure to cold temperature and was thus unsuitable for cold weather overshoes. He called defendant, gave him this information and demanded a settlement; however, defendant, since he had not known what use plaintiff had planned to make of the plastic, refused to make any concessions. On a suit for breach of warranties, what result? Why?

III.

W entered S's drugstore in search of a vaporizer to use in treating a respiratory ailment of her infant son, J. A vaporizer is a vessel designed to throw off fumes from medicinal preparations placed therein when heat is applied to the bottom of the vessel. S's clerk, C, showed W a new electric vaporizer. When W inquired of C about the safety of the device, C replied that it was absolutely safe and could be left on without being watched with no fear of damage. Several statements on the box in which the article came were to the effect that the vaporizer was perfectly safe and reliable and would not become overheated.

W relied on C's statements and on the advertising on the side of the box in deciding to make the purchase. She immediately took the vaporizer to her home and set it up in J's sickroom. When she was out of the room preparing the family dinner, the vaporizer became overheated and started a fire which resulted in injury to J. F, J's father, brought suit, on behalf of J, against both S and M, the manufacturer of the vaporizer, for breach of warranties to recover for the injuries to J.

In view of their previous decisions in this area, how would the Illinois courts be likely to resolve this suit? Explain.

FINAL EXAMINATION IN SALES (Law 337)

No. _____

First Semester 1955-56

Professor Warren

Essay Section

TIME: ONE HOUR AND FIFTEEN MINUTES

Important: You will find a number in the upper right-hand corner of this page. This will be your examination number. A sheet will be passed around listing each member of the class. Please write your examination number in the space after your name on this sheet. Write your examination number on your examination booklet. Do not write your name on the examination booklet.

Directions for the essay section. Answer each question fully with attention to the phraseology as well as the content of your answers. Assume in all questions that the same statutes are in force as are currently law in Illinois. Assume that all contracts are in writing unless otherwise indicated in the problem. You need pay especial attention to the rules of law as laid down by the Illinois courts only when the question specifically requests that you do so. Write on only one side of the page. Write plainly. Be concise.

1. B wanted to purchase an attractive container for his new product, Kranberry Kola. He had been accustomed to using bottles for his other cola drinks but had noted the trend toward canned soft drinks and wanted to take advantage of the novelty aspect of using cans instead of bottles. In the course of negotiations with S, a large manufacturer of cans, B invited S to send out sample containers. S was notified of the purpose for which the cans were to be used and of the precise nature of the contents. S sent several samples and recommended a light-weight container with a nickeliferous lining which was described in his correspondence as "U. S. Can, Litewate No. 6."

B looked over the samples and decided to go along with S's advice; hence, he ordered 100,000 "U. S. Can, Litewate No. 6" containers. When they arrived they conformed exactly to the sample and description, but due to the peculiar chemical properties of the cranberry drink, they gave the contents a distinctly unpleasant metallic taste. These same cans had previously been used for other soft drinks and beer without this unhappy result.

When B notified S of the turn of events, S asserted that the cause of the difficulty lay with B's Kranberry Kola and not with his cans. B refused to pay for the cans and raised breach of implied warranty of quality when S sued for the price. You may assume that on trial it was established that B reasonably understood that the cans were to conform to the sample. What disposition of S's suit? Explain.

2. S, an automobile dealer, sold an auto to B by a conditional sale agreement. B was also a dealer, and S knew this fact. For value received, S assigned the conditional sale contract and indorsed B's negotiable promissory note to X, a finance company. B then sold the car to Z, one of his regular customers, who paid value and had no knowledge of the existence of the arrangement between S and B. You may assume that this case is governed by the law of Illinois and that Z neither received nor inquired about a certificate of title when he purchased the car from B. X now brings replevin to recover the auto from Z. Who should win? Why?

Summer 1956

Professor Warren

Essay Section

Time: Two Hours

Important: You will find a number in the upper right-hand corner of this page. This will be your examination number. A sheet will be passed around listing each member of the class. Please write your examination number in the space after your name on this sheet. Write your examination number on your examination booklet. Do not write your name on the examination booklet.

Directions for the essay section. Answer each question fully with attention to the phraseology as well as the content of your answers. Assume in all questions that the same statutes are in force as are currently law in Illinois. Assume that all contracts are in writing unless otherwise indicated in the problem. You need pay especial attention to the rules of law as laid down by the Illinois courts only when the question specifically requests that you do so. Write on only one side of the page. Write plainly. Be concise.

I. Mrs. Scott knew that her son, John, would not be allowed to enter the first grade in September unless he had had his first shot of the Salk Polio Vaccine. She made an appointment at the Pediatrics Department of the Greybar Hospital in Urbana, Illinois, for the shot. The vaccine used on John was made by the Cutter Laboratories in California and contained live paralytic polio viruses. The little boy became paralyzed due to the shot which was administered by Nurse Royce, an employee of the hospital.

Cutter Laboratories had been unable to detect the live polio viruses in the batch of vaccine from which the shot in question was drawn because of imperfect safety tests. However, the tests used seemed entirely adequate on the basis of knowledge and experience available at that time. They were approved by leading scientists.

Suit is brought on behalf of the boy against Cutter and the Greybar Hospital on the theory of breach of implied warranty of quality. You may assume that Cutter sold the vaccine directly to Greybar and that the latter charged John's parents five dollars for the shot. Assume further that the suit is brought in Illinois, jurisdiction having been obtained against Cutter. Assume further that Greybar is an entity subject to civil suit and that it is legally responsible for the acts of the nurse who administered the shot. What result? Why?

II. The P Company filed a statement on May 25, 1955, under §13 of the Illinois Trust Receipts Act, setting out that P, the entruster, expected to engage in financing the handling of automobiles by X, the trustee, as provided by the statute. The D Company filed a similar statement two months later indicating that D expected to finance X's automobiles. X signed both statements as trustee. Both P and D advanced money to X on the same automobile; neither realized the other had done so. D was the first to make the advancement to X and to take a trust receipt therefor. P also received a trust receipt from X when he made his advance. X was unable to pay either P or D for the automobile, and D took possession of it. P notified D of his claim to the automobile and brought suit against D for it when D denied his claim. What result? Why?

III. A) F owned a general store worth \$30,000, a coalyard worth \$20,000, and a farm implement store worth \$10,000 at Funk's Grove. Two miles away in the small town of Bonfield he owned another general store worth \$10,000. He sold the Bonfield store to X, complete with stock of merchandise, fixtures, and lease. No attempt was made to comply with the Illinois Bulk Sales Act. Can F's creditors set this sale aside due to the failure of F and X to comply with the statute? Explain.

B) A owned a tavern consisting of fixtures, beverages, glasses, and lease. He executed a chattel mortgage of this to B without complying with the Illinois Bulk Sales Act. Can A's creditors set this sale aside due to the lack of compliance with the statute? Explain.

C) X owned a grocery store which he sold to Z. Y had previously been injured by X in an automobile collision and had obtained a judgment against X which had not been paid at the time of the sale. The collision happened when X was on a vacation and had nothing to do with X's business. X did not list Y's name on the list of creditors given to Z, and Z had no knowledge of the existence of the judgment against X; hence, Z did not notify Y of the sale. Otherwise, you may assume the Illinois Bulk Sales Act was complied with. Can Y set this sale aside as against him? Explain.

NAME _____

NO. _____

FINAL EXAMINATION IN STATE AND LOCAL TAXATION (Law 349)

First Semester 1954-55

Professor Young

Allowed Time: 3 hours

- Instructions: (1) Begin writing on the second page.
- (2) Plan your answers carefully.
- (3) Adhere to the space limitations.

I. The Interstate Elevator Company, an Illinois corporation, with grain storage facilities located in East St. Louis, Illinois, is engaged in the business of storing grain which is destined for reshipment in interstate commerce under transit privileges extended by railroad carriers to the owners of the grain. This privilege enables the owner to ship the grain to the Interstate Elevator in East St. Louis and subsequently reship the grain to its ultimate destination with the benefit of a through rate from the point of origin to the point of ultimate destination. Shipment of grain to Interstate originates principally in Iowa and Illinois. Substantially all reshipments are to destinations in Southern states. Prior to March 27, 1954, the corporation had received 100,000 bushels of grain for storage and had issued negotiable warehouse receipts therefor to the owners who were grain brokers doing business in Davenport, Iowa. On March 27, the brokers contracted to sell the grain in storage to purchasers in Texas. They surrendered their warehouse receipts to Interstate and directed that reshipment be made promptly. Railroad cars were not obtained until April 4, but by April 7 all the grain had been reshipped.

IV. D, a resident of Champaign, Illinois, died January 1, 1955, at the age of 40, as the consequence of an automobile accident. During his lifetime D had received the income from a testamentary trust which had been created by his grandfather who died a resident of New York. The trust corpus consisted 50% of commercial real estate located in the business section of Cleveland, Ohio, and 50% of stocks of industrial corporations organized under the laws of New York. A Cleveland trust company served as trustee. Under the terms of the trust, D received the income for life and was given a testamentary power to appoint the remainder. By his will, D appointed the property to his daughter, Mary, a resident of Milwaukee, Wisconsin. Discuss the following questions concerning these transactions:

(a) Pursuant to specific statutory provisions the following states propose to assess estate or inheritance taxes upon the transfer of the trust property. Discuss the validity of these taxes.

(1) Illinois: _____

(2) Ohio: _____

(3) New York: _____

(4) Wisconsin: _____

FINAL EXAMINATION IN STATE AND LOCAL TAXATION (Law 349)

Second Semester 1955-1956

Professor Young

TIME: 3 hours

- Instructions: (1) Begin the first question on the second page of the examination book.
(2) Plan your answers carefully.
(3) State your reasons fully.

I. (10 %) Assume that I. M. Rich, a graduate of the University of Illinois, College of Law, created a trust in 1950 to provide scholarships for needy and capable law students. He transferred to the Champaign County Bank and Trust Company, as trustee, 5,000 shares of common stock in the Acme Electric Corporation, a New Jersey corporation which operates a manufacturing plant in Pittsburgh, Pennsylvania. He also assigned to the trustees a 25-year lease upon certain commercial real estate located in Cincinnati, Ohio, which he owned in fee. The rentals under the lease amounted to \$10,000 per year. The dividends on the Acme stock averaged \$20,000 per year. On May 31, 1956, the trust officer of the bank consults with you and advises that for the first time since the trust was created the property held on trust was assessed for the year 1955 for personal property tax purposes. The Acme stock was assessed on the basis of current market quotations; the lease, at the commuted value of the rentals due for the balance of the term. No notice of the assessment was given to the trust company and the trustee had no knowledge thereof until the tax bill was received on April 25, 1956. The tax becomes delinquent after June 1, 1956. The trust officer requests your advice as to whether he should proceed to pay the tax. What do you advise? Discuss fully.

II. Tom Jones, a resident of Champaign County, Illinois, organized the Jones Grain Company, a Delaware corporation, in 1950, to engage in the grain business with offices in Omaha, Nebraska. Jones invested \$100,000 and, except for a few qualifying shares, held all of the stock in the corporation. The corporation qualified to do business in Nebraska, rented office space in Omaha, and purchased the necessary office furniture and equipment with which to operate. The corporation's only bank account was opened in the First National Bank of Chicago. In its operations, the corporation purchases grain through agents in carload lots at various points in Nebraska and surrounding states for shipment to Chicago to consummate deliveries to its customers. At all times, the corporation has substantial quantities of grain in transit to Chicago both within and without the State of Nebraska. The company does not maintain grain storage facilities but purchases grain after it is loaded on railroad cars by taking title through negotiable bills of lading issued by the carrier. The following questions are based on this general statement of facts. Additional facts are provided where necessary. Answer each part as a separate question, beginning each part on a new page.

(Part A) (10 %). Mr. Jones advises that the taxing authorities of Cook County, Illinois, for the year 1955 have assessed the bank deposit of the Jones Grain Company in the First National Bank of Chicago for personal property tax purposes. The assessed valuation was \$40,000, the balance in the account at the date of the assessment. Mr. Jones informs you that the corporation had no notice of the assessment until receipt of the tax bill. He requests your advice as to whether the corporation should proceed to make payment. What do you advise? Discuss fully.

(Part B) (15 %). The township assessor in Champaign County called at Jones' residence on May 2, 1955, to assess his personal property. Finding no one at home, he left a personal property tax return blank in the mailbox with a note to be filled in and returned by mail or in person to the assessor's office within ten days. Jones found

the assessment blank upon his return but laid it aside and it became misplaced. He forgot the matter entirely and failed to file a personal property tax return. The assessor, having received no return from Jones, proceeded to make a personal property assessment on the basis of his own information and belief as provided in the statute. No notice was given to Jones. The assessor included in the assessment of Jones' personal property two 1955 Cadillac automobiles, his household furnishings, and his stock in the Jones Grain Company. One of the Cadillac automobiles had been purchased on January 15, 1955; the other, on April 20, 1955. The assessor's books were submitted in due course to the supervisor of assessments. He reviewed the assessment of Jones' personal property and, without notice to Jones, increased the value of stock in the Jones Grain Company from \$65,000 as listed by the assessor to \$125,000. The assessment list was thereafter published in the local paper. Jones read the list and noticed that his assessment appeared unusually high. He inquired at the office of the Board of Review, read the assessment list and promptly filed an appeal with the Board for a hearing upon his assessment. He appeared in person and the only objection which he made at the hearing was an objection to the valuation placed upon the stock of the Jones Grain Company. It was brought out at the hearing that the annual dividends of the corporation had averaged \$25,000 per year for the past several years. The Board concluded that the assessor's valuation of the stock was conservative and confirmed the assessment of Jones' personal property in all respects. On May 31, 1956, Jones calls at your office with his personal property tax bill for 1955 and relates the foregoing facts. The tax becomes delinquent as of tomorrow, June 1, 1956. He states that a friend advised him that the stock of a foreign corporation is not subject to tax in Illinois. He also states that the Board of Review informed him that he was the only taxpayer in Champaign County who had been assessed upon stock in a foreign corporation. He requests your advice as to whether he should proceed to pay any portion of the amount billed. What do you advise? Discuss fully.

(Part C) (10 %). The Delaware statute under which the Jones Grain Company was organized in 1950 provided that "all corporations organized under the laws of this state shall as a condition to the grant and retention of a charter, pay such taxes as may at any time be imposed by Act of the legislature of this State." This provision was incorporated in the charter granted to the corporation. In July 1955 the Delaware legislature amended the corporate franchise tax provisions applicable to domestic corporations to provide for "an annual franchise tax upon all domestic corporations in an amount equal to 2% of total gross receipts derived from its business operations. The statute was made effective as of January 1, 1956, and the first tax thereunder, computed on the basis of gross receipts for the prior calendar year, was due and payable on June 15, 1956. The company's gross receipts for the calendar year 1955 amounted to \$1,000,000. The Delaware franchise fee for previous years had been \$2,000. In view of the substantial increase for the current year, Mr. Jones consults with you as to the legality of the new tax. What do you advise? Discuss fully.

(Part D) (20 %). The statutes of Nebraska provide as follows: "Every person engaged in any business shall in the taxing district where the principal office or place of business is located, list and return the average amount of capital invested in such business in excess of real estate and other tangible property separately assessed for the preceding year." Tax day in Nebraska is January 1. The statutes further provide that "the assessor shall determine the average amount of the total investment in the business and the amount, if any, by which the average total investment exceeds the value of the real estate and tangible personal property separately assessed. The excess, if any, of the average total investment shall be separately listed and shall be taxed at the same rate as the tangible property and this tax shall be in lieu of all other taxes thereon." For the year 1956 the assessor determined that the average net capital invested by the Jones Grain Company during the preceding calendar year was \$100,000, consisting of \$5,000 in office furniture, an average bank deposit in the First National Bank of Chicago of \$20,000, and an average investment in

rain in transit of \$75,000. Following the statutory formula, the assessor assessed the net capital investment in the business in excess of real estate and tangible personal property at a value of \$95,000. As of January 1, 1956, the assets of the corporation consisted of office furniture, \$5,000; grain in transit, \$60,000; and a balance on deposit with the First National Bank of Chicago, \$35,000.

(1) If you were representing the corporation, what objections, if any, could you make to the foregoing tax? State your position fully.

(2) If you were representing the taxing authorities, what arguments would you make to sustain the foregoing tax? Discuss fully.

Part E) (10 %). At its 1955 session, the Nebraska legislature adopted "A tax for the act or privilege of engaging in business activities applicable to every person, including corporations, engaging within this state in any business activity, the tax to be assessed at the rate of 3% upon the gross income of the business." The act became effective as of January 1, 1956. Mr. Jones has been advised by the Nebraska tax authorities that the new tax is applicable to the Jones Grain Company. Since this imposes a substantial additional financial burden upon the business, Mr. Jones consults with you as to what, if any, steps can be taken to avoid liability. What do you advise? Discuss fully.

Part F) (10 %). Assume that in 1950, Mr. Jones transferred his stock in the Jones Grain Company to the Omaha National Bank and Trust Company upon trust for the benefit of his wife for life with remainder to his daughter Joan. Joan is married and resides in Minnesota. Mr. Jones, by the provisions of the trust instrument, retained a power exercisable alone to revoke the trust at any time. On May 1, 1956, Mr. Jones and his wife were killed simultaneously in an automobile accident. In accordance with the trust instrument, the trust was terminated and the corpus distributed to Joan. Assume that the inheritance tax statutes of Illinois, Delaware, Nebraska, and Minnesota provide for the inclusion in the taxable estate of all property transferred by the decedent during his lifetime upon revocable trust. Assume further that none of the states provide reciprocal exemption with respect to the estates of non-resident decedents. The assets of the corporation at the death of Mr. Jones consisted of the following: (1) cash on deposit in the First National Bank of Chicago, \$40,000; (2) grain in transit, \$55,000; and (3) office furniture, \$5,000. To what extent can an inheritance tax be imposed with respect to the stock in the Jones Grain Company by (a) Illinois; (b) Delaware; (c) Nebraska; and (d) Minnesota? Discuss each part fully.

FINAL EXAMINATION IN SURETYSHIP (Law 345)

First Semester 1954-55

Professor Holt

Time. 3 hours
Give reasons for your conclusions in clear and concise English. No credit is given for rambling, off-the-point dissertations. Give due attention to statutes of the types considered in the course. You may, of course, make further assumptions of facts in connection with any question that are reasonable in the light of what is stated and of what is not stated, but all such assumptions are to be clearly stated.

1. PD contracts to erect a hotel for C. By the contract PD is to be paid in installments after the completion of each story, the payment to be 85% of the amount due for the stage of the work completed. PD gives a bond for completion on which S is surety. At the request of PD, without the knowledge of S, C pays the full amount due for the completion of each story. PD defaults. Discuss the rights and liabilities of S and C.

2. State briefly the reasons for your conclusions in each of these questions.

(a) S promised to sign as accommodation comaker PD's note in negotiable form to C if Sa would do likewise. Sa agreed so to do. The note was not prepared until a week later, when PD signed and S also signed as accommodation comaker. When the note was taken to Sa, he refused to sign, but he executed and delivered on a separate piece of paper a written guaranty of collection of the note. On the strength of the note and the guaranty, C advanced money to PD. Relationship between S and Sa?

(b) P and S executed as comakers a negotiable note for value to C in the sum of \$1000. In fact S was an accommodation maker for P, but Sa also signed the note, affixing to his signature the word "surety." Sa acted as an accommodation maker, but he reasonably believed that S was the accommodated maker and that P was an accommodation maker. P defaulted. Sa paid C the amount due. Rights of Sa?

(c) P owed S \$500 and offered with the consent of Sa to give S a note for that sum with Sa as surety. S requested that the note be made payable to C, to whom S owed \$500. The note was executed in that form, but C refused to accept without the signature of S. S signed his name under the signature of Sa. Relations between S and Sa?

(d) C sued P and attached certain chattels. The attachment was released when P gave a bond with S as surety to dissolve the attachment, which bound S to pay any final judgment in favor of C. After judgment for C, P and S arranged for an appeal bond and gave a bond with Sx as surety. Judgment was affirmed. C then effectively released S from all liability. Rights of C?

3. (a) S is surety for P on a debt to C. P gives S a mortgage to indemnify him against possible loss on his obligation. C by instrument under seal released P. (It is to be assumed that a seal "imports" consideration.) Rights and liabilities of S and C?

(b) S at P's request becomes surety for P on an obligation of P to C. P proposes a composition to creditors, which the creditors, including C, accept. According to the terms of the composition, C releases P but reserves his rights against S. Rights and liabilities of S?

4. Peterson sold and delivered goods to Matheson, receiving a joint and several negotiable note for the price, signed by Matheson as maker and also by A and B as accommodation makers, the understanding between Peterson and A being that the note should not be operative unless C should also sign as an accommodation maker; B had no such understanding and was not informed of the understanding between Peterson and A. C did not sign the note. Discuss rights and liabilities on the note.

5. In 1944 S and Sa severally guaranteed in writing a negotiable promissory note for \$2000 made by Peedee to C and due in 1945. S paid \$1000 to C on the note in 1950 and \$500 in 1952. The statute of limitations is six years. In 1953 S consults you as to his rights. What advice?

6. Sharpe, a lawyer, had in his possession, for safe keeping, a negotiable promissory note for \$1000 payable to bearer and executed by Maker. He had also in his possession a similar note executed by Peedee. Sharpe transferred both notes to Holdom, a holder in due course, to secure his debt of \$1500. Maker consented to this transaction; Peedee had no knowledge thereof, but Sharpe told Maker that Peedee consented thereto. Holdom collected \$500 from Maker, and \$1000 from Peedee. Rights of Peedee against Maker?

7. Smith and Peters signed as comakers a negotiable note payable to the order of Credit Bank for \$10,000 due February 1, 1946, Smith signing for the accommodation of Peters, who received the entire consideration for the note. On maturity of the note, Smith gave to Credit Bank his own promissory negotiable note in full satisfaction of the note signed by him and Peters, and Credit Bank thereupon handed over to Smith the earlier note. More than two years later, but less than four years after the due date of the original note, Smith consults you as to his rights. The period of limitations on contracts in writing is four years; on all other obligations it is two years. What advice?

FINAL EXAMINATION IN SURETYSHIP (Law 345)

First Semester 1955-56

Professor Holt

TIME: 3 HOURS

Give reasons for your conclusions in clear, concise English. Give due attention to statutes of the types considered in the course. You may make further assumptions of facts in connection with any question that are reasonable in the light of what is, and what is not, stated, but such assumptions are to be clearly stated.

1. In State X, where the age of majority is twenty-one, P (a youth aged nineteen years and eleven months) bought on contract of conditional sale, and took delivery of, a second-hand automobile from D, a dealer in used cars. The total purchase price was \$900. P made an initial down payment of \$50 in cash, and by the terms of the contract he was to pay the \$850 balance in two installments of \$425 each, six months and twelve months, respectively, from the date of the contract. The contract of conditional sale was signed by P, and in consideration of the sale and delivery of the car to P, S in writing guaranteed payment of the contract price. P made prompt payment of the first installment of \$425, but one month thereafter returned the car to D, announcing that he was disaffirming the contract of purchase and demanding the return of what he had paid on account. D refused to accept the car in discharge of the contract, but told P that he would hold the car in storage for him, and D refused to return what P had paid. Soon after the due date of the final payment, and after P had attained majority, P sued D for the recovery of the amount of the payments P had made. What advice to D?

(It is to be assumed that the car was not a "necessity" for P nor used by him in earning his livelihood. It is to be further assumed that the depreciation of the car while P had it amounted to \$400.)

2. D, a corporation engaged in insuring the fidelity of financial officials, for a valuable consideration (a sum of money) gave a bond in the penal sum of \$15,000 to C, a business corporation, as surety for the fidelity of E, a financial officer of C. It was E's duty as such officer to deposit checks in the name of C in X Bank. For some months E faithfully performed his duties; then he began to deposit checks payable to C to his own credit in P, a Trust Company. In all he so deposited with P checks aggregating \$10,000. This deposit he withdrew on his own personal checks, the proceeds of which he used for his own purposes. When E became bankrupt and his unfaithfulness was revealed, P reimbursed C to the total amount of the checks wrongfully deposited with it by E (\$10,000), as the law of the state required it to do, and took from C an assignment of its claims against D. P, claiming to have succeeded to C's rights on the fidelity bond hereinbefore mentioned, sued D for recovery of the amount it had paid C. What result?

3. A and B signed as co-makers a negotiable note payable to the order of C for \$12,000 due July 1, 1945, B signing for the accommodation of A, who received the entire consideration for the note. At maturity B gave to C his own negotiable note in full satisfaction of the note signed by him and A, and C handed over to B the earlier note. More than two years later, but less than four after the due date of the original note, B consults you as to his rights. The period of limitations on contracts in writing is four years; on all other obligations, two years. What advice?

4. To enable M to obtain a \$5000 loan from C, S and S2 signed a negotiable promissory note to C, S as co-maker with M and S2 as an indorser. S had refused to sign until M delivered to him collateral for his indemnity, but S2 did not know that S had this security. At maturity of the note M was bankrupt. S paid C in full. Rights of S?

5. (a) To enable M to borrow \$5000 from C, M and MA gave as joint and several makers their note for that amount in negotiable form, secured by a mortgage of six tracts of land, three of which M owned and three of which MA owned. Before maturity of the note M executed a second mortgage of one of his lots, Tract 1, to D to secure a loan of \$2000. Both mortgages were duly and promptly recorded. D became the legal owner of the first note and mortgage after maturity, by C's indorsement of the note to D and by a formal written assignment of the mortgage. D is pressing for payment of both mortgages. What advice to MA as to his rights and liabilities?

(b) P owed C \$5000 on each of two contracts, the first of which was guaranteed by S and the second by S2. P also pledged bonds worth \$5000 to C. C sold the bonds and applied the proceeds to the satisfaction of the debt for which S was surety. S2 paid C \$5000. Rights of S2?

6. State briefly the reasons for your conclusions in each of these questions:

(a) S promised to sign as accommodation co-maker PD's negotiable note to C if Sa would do likewise. Sa agreed so to do. The note was not prepared until a week later, when PD signed and S also signed as accommodation co-maker. When the note was taken to Sa, he refused to sign, but executed and delivered on a separate piece of paper a written guaranty of collection of the note. On the strength of the note and guaranty, C lent money to PD. Relationship between S and Sa?

(b) P and S executed as co-makers a negotiable note for value to C in the sum of \$1000. In fact S was an accommodation maker for P, but Sa also signed the note, affixing to his signature the word "surety." Sa acted as accommodation maker, but he reasonably believed that S was the accommodated maker and that P was an accommodation maker. P defaulted. Sa paid C the amount due. Rights of Sa?

(c) P owed S \$500 and offered with the consent of Sa to give S a note for that sum with Sa as surety. S requested that the note be payable to the order of C, to whom S owed \$500. The note was so executed, but C refused to accept without the signature of S. S signed his name under the signature of Sa. Relations between S and Sa?

(d) C sued P and attached certain chattels. The attachment was released when P gave a bond with S as surety to dissolve the attachment, which bound S to pay any final judgment in favor of C. After judgment for C, P and S arranged for an appeal bond and gave a bond with Sx as surety. Judgment was affirmed. C then effectively released S from all liability. Rights of C?

7. At a general election in 1951 in State X, one C was elected Y County treasurer for a term of two years commencing January 1, 1952. Pursuant to statute C appointed D his deputy. A bond signed by S Company, a surety compensated by D, was delivered to C without the signature of D. The bond read:

"We, D as principal, and S Company as surety, bind ourselves subject to the conditions hereinafter contained to indemnify C, Treasurer of Y County in State X, hereinafter called the 'employer', against such direct pecuniary loss, not exceeding \$10,000, as the employer shall have sustained of the employer's money or funds stolen or embezzled by said D in the course of the performance of the duties of his employment as deputy treasurer of said employer."

Numerous conditions were then set forth, among them the following:

"That this instrument shall not be construed as entered into or delivered by the surety until executed in due form by the employe as principal; that the liability of the surety hereunder is, and shall be construed as, one of suretyship only. And said employe binds himself to save said surety harmless from and on demand to pay it all claims, demands, loss, judgments, and adjudications whatsoever which said surety shall at any time sustain."

In 1947 and 1949 C had been elected Y County treasurer for terms of two years and had appointed D his statutory deputy. On both occasions bonds similar to that above set forth had been delivered to C without the signature of D.

In 1952 D was guilty of embezzlement of Y County funds to the amount of \$10,000. C reimbursed the county and then demanded indemnification from S Company. S Company then for the first time learned that D had not signed any bond.

Discuss the rights and duties of the parties.

Name _____

No. _____

FINAL EXAMINATION IN TITLES
(Law 327)

Summer Session, 1955

Professor Cribbet

Three (3) hours

Answer all questions on the attached sheets. Each question is weighted the same (20 points). Subdivisions of questions are also equally weighted. Where discussion is required, be concise and write legibly.

I.

Hillcrest Acres, an expensive name for a rather seedy 320-acre Illinois farm, was owned by James Boyce. He had paper title to the land but had never been in possession after it was deeded to him in 1930. He lived in California most of the year and only occasionally returned to Illinois. He was a man of considerable wealth and was not concerned about the condition of this farm, which he felt was virtually worthless.

In 1932, Boyce leased the premises to Franklin Surrey, a nephew, for two years. This was an oral lease made during one of Boyce's infrequent trips to Illinois. Surrey entered into possession at once and began farming the land. January 1, 1936, Surrey, still in possession, sold the premises to Ivan Kratz and gave him a statutory short form quitclaim deed. Kratz thought Surrey was the owner in fee and in fact Surrey orally told him that he so owned. Kratz entered into possession and has remained there until the present time.

In 1940, Boyce was committed to a hospital for the insane in California. He remained there until his death in 1950. His holdings were inherited by his only son and heir, James Boyce, Jr., who was then fifteen years old. Neither Boyce Sr. nor Jr. ever knew of the sale to Kratz. In 1954, Boyce, Jr., died intestate and under the Illinois Statute of Descent Franklin Surrey inherited the entire estate, including Hillcrest Acres.

Through the years the taxes were paid by Boyce or his conservator but in 1947 they went unpaid and the land was sold for taxes. Amos Wyatt purchased the land at the tax sale and paid the taxes for each succeeding year to date. He received a tax deed and took possession of one small corner of the 320-acre tract. He fenced this corner and planted a small garden but never entered the rest of the land. He used this garden each year from 1947 to date. His tax deed is invalid for failure to follow the statutory requirements.

In 1955, oil was discovered under the land and interest in the question of title perked up a bit. You represent one of the claimants. Analyze the problems involved and answer the following questions, true (+) or false (-).

_____ Since Boyce, Sr., never entered into possession of Hillcrest Acres, he lost title by abandonment.

_____ The fact that the Boyces lived in California and never had knowledge of the possession of Kratz is immaterial so far as adverse possession is concerned.

_____ Boyce, Sr.'s, lease to Surrey was voidable because of the Statute of Frauds.

_____ Kratz's possession of the land was never adverse to that of Boyce, Sr., because the former claimed only through Surrey, whose possession was permissive.

_____ Kratz can tack his possession to that of Surrey and thus get a holding for the requisite period.

_____ Kratz could never get title by adverse possession because he did not know the land belonged to Boyce and hence did not intend to claim adversely to him.

_____ Boyce's insanity would toll (stop) the running of the statute of limitation.

_____ Boyce, Sr.'s, insanity could be tacked to Boyce, Jr.'s, infancy and thus stop the statute of limitation for fourteen years.

_____ The fact that Surrey gave Kratz a quitclaim deed is a material factor in the analysis of this case.

_____ Kratz can successfully claim title to Hillcrest under the doctrine of estoppel by deed.

_____ The fact that the Boyces paid the taxes on Hillcrest would not necessarily prevent Kratz from eventually getting title by adverse possession.

_____ Assuming Kratz had obtained title to Hillcrest by adverse possession, he would also have title to the mineral rights.

_____ Wyatt has title to the land by virtue of the seven-year color-of-title statute.

_____ Wyatt has title to at least the garden plot which he was cultivating from 1947 to date.

_____ Based on all of the facts in this case, title would appear to be in Franklin Surrey.

_____ If Kratz could remain in possession, without suit being filed against him, until after January 1, 1956, he would probably be the owner of Hillcrest.

_____ Boyce, Sr., just prior to his insanity, could have successfully conveyed his interest in the premises to a third party.

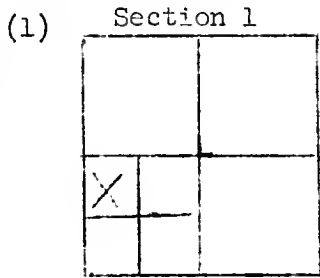
_____ Kratz, if ousted by X, a stranger to the title, could recover his possession by an action in ejectment.

_____ If Surrey brings a suit in trespass against Kratz in 1955 and recovers judgment, this will be sufficient to defeat Kratz's claim to the land.

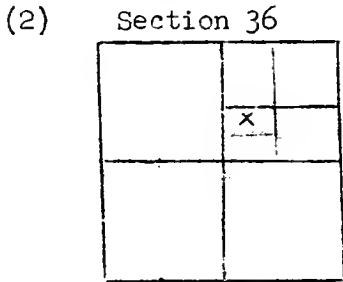
_____ Under the facts as given no one has a merchantable title to Hillcrest.

II.

(A) Complete the legal description for each of the following tracts:



Tract X is the _____ of Section 1, Township 3 North,
 Range 4 East of the 3d Principal Meridian in Champaign County, Illinois.
 It contains _____ acres.



Tract X is the _____ of Section 36, Township 7 North,
 Range 5 East of the 3d Principal Meridian in Champaign County, Illinois.
 It contains _____ acres.

(B) An Illinois deed contained the following description of land: "5 acres, no more and no less, lying in the SE corner of Section 24, T. 2 N., R. 4 E., of the 3d P.M. in McLean County, Illinois."

Is this a valid description? Why or why not?

(C) An Illinois deed contained the following description: "Lots 5, 6 and 7 in Block 1 of Jones Addition to the City of Mattoon, Illinois, excepting the following described plot, starting at the S.W. corner of Lot 5 thence east 20 ft. to the elm tree, thence north 20 ft. by a line perpendicular to the south line of Lot 5, thence east 20 feet by a line parallel to the south line of Lot 5, thence south to the point of beginning." What property is conveyed by this description? Why?

(D) A, an Illinois farmer, owned a tract of land which was bound on the west by a section line road (A owned the fee in this road to the center, subject to the easement of the public created by a common law dedication) and on the east by a meandering stream. A conveyed the tract to B by a deed containing the following description: "Commencing at a point on the east side of the section line road thence east 20 chains, thence south 20 chains, thence west 20 chains, thence north 20 chains along the side of said road to the place of beginning, containing 40 acres more or less, all located in Section 6, Twp. 3 N, R. 4 E of the 3d P.M., in Moultrie County, Illinois." By taking the measurement to the side of the road, the described tract was exactly 40 acres. The metes and bounds description failed to reach the stream and left a strip approximately four feet wide between the eastern boundary and the edge of the stream.

A died intestate and left as his only heir at law, C. Oil was discovered and C claims the land from the eastern edge of the road to the center line and the land under the stream. B disputes both claims. Which party has the better claim? Why?

III.

In 1950, Harold Jones and Mary, his wife, executed a deed of 160 acres of Illinois farm land to the Lutheran Bible Society. The same day they executed a similar conveyance of another 160 acres to their only child, Henry. Both deeds were properly executed, acknowledged, and placed in an envelope on the face of which was written by Harold Jones, "To be filed in the recorder's office at Urbana, Illinois, immediately upon the decease of both Harold and Mary Jones." This was signed by both Harold and Mary.

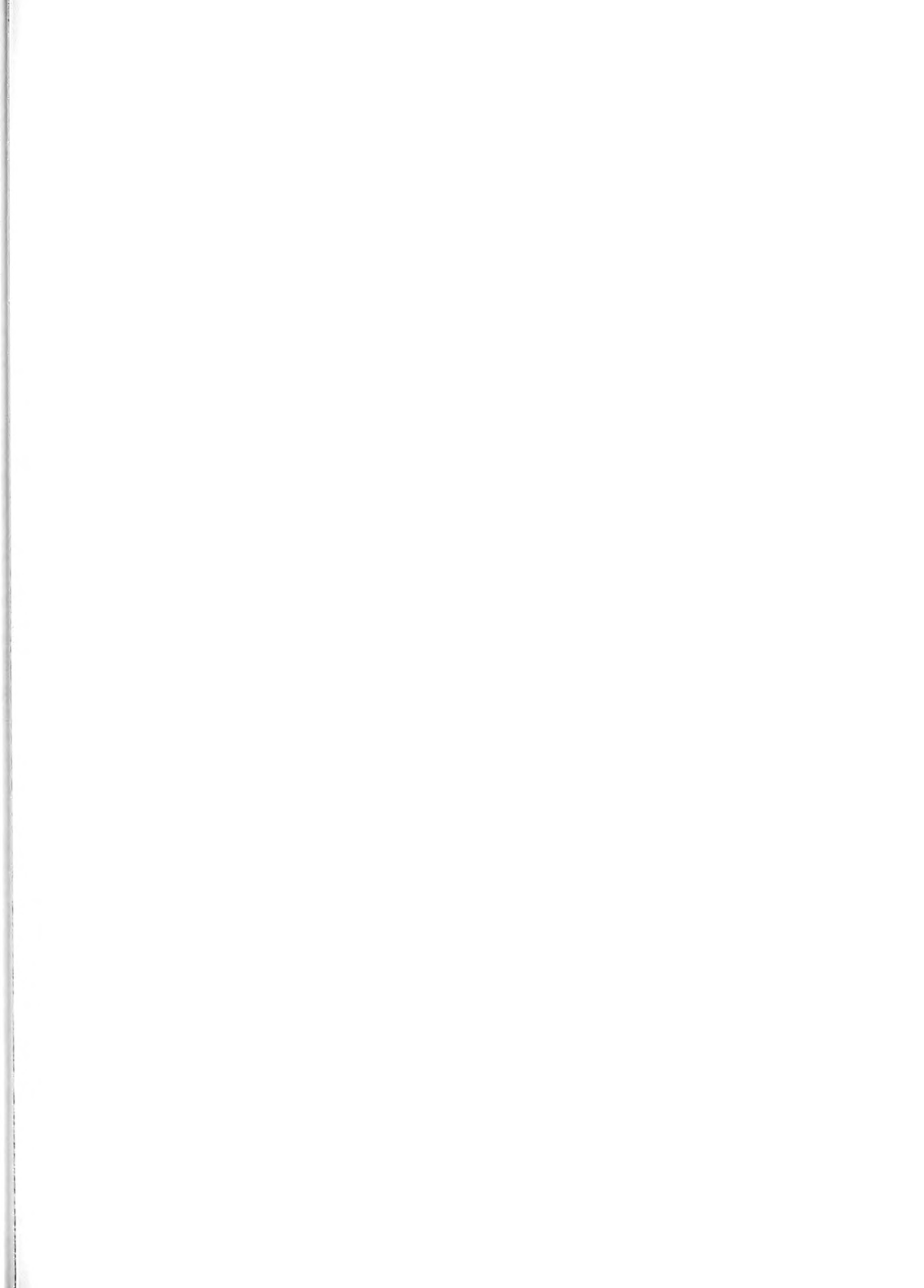
The same day Harold and Mary executed a joint will. One paragraph of said will read: "We have decided to convey all of our real property by warranty deeds and these deeds are properly safeguarded by being placed with the Busey National Bank of Urbana."

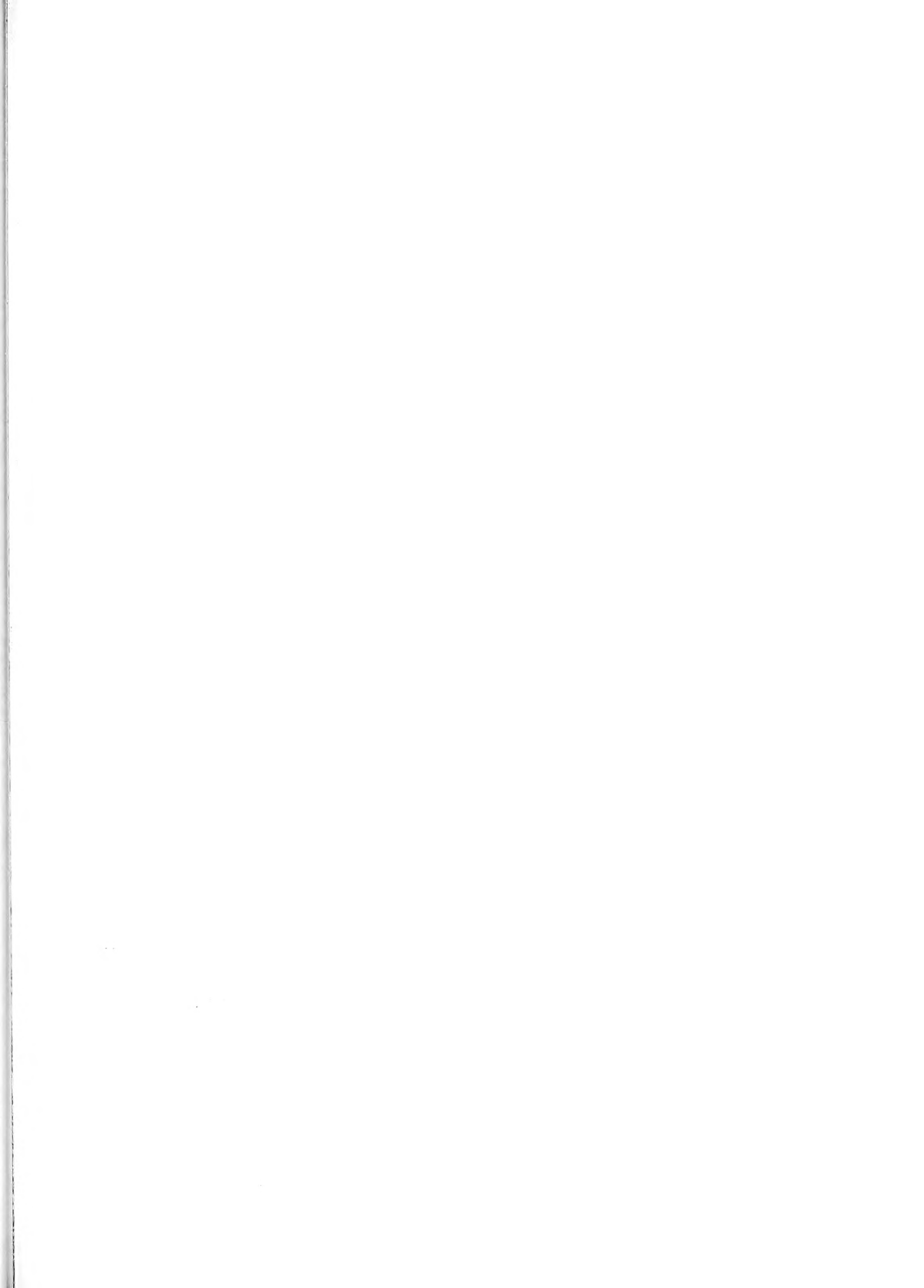
Ten days later Harold Jones took the envelope containing the deeds to the trust officer at Busey Bank and in the presence of his wife said, "Here is an envelope. The instructions are written on the outside and when we die, you follow the instructions on the envelope." No further instructions were ever given. Henry never knew of the deeds or the will. The Lutheran Bible Society was never notified of the deeds and first learned of their existence after the death of Mr. and Mrs. Jones.

The grantors continued to live on the 160-acre tract deeded to their son and to farm the other (Bible) tract. The deeds remained undisturbed in the bank's vault. On May 2, 1955, both Harold and Mary were killed in an automobile accident. On May 5, 1955, the trust officer recorded the deeds and notified the Bible Society. Henry, who was the sole heir at law, entered into possession of both tracts and filed a bill to quiet title against the Lutheran Bible Society. The Circuit Court of Champaign County found in favor of Henry and the Bible Society appealed directly to the Illinois Supreme Court, a freehold being involved.

Write the opinion of the Illinois Supreme Court.

[Use following two pages for this purpose.]



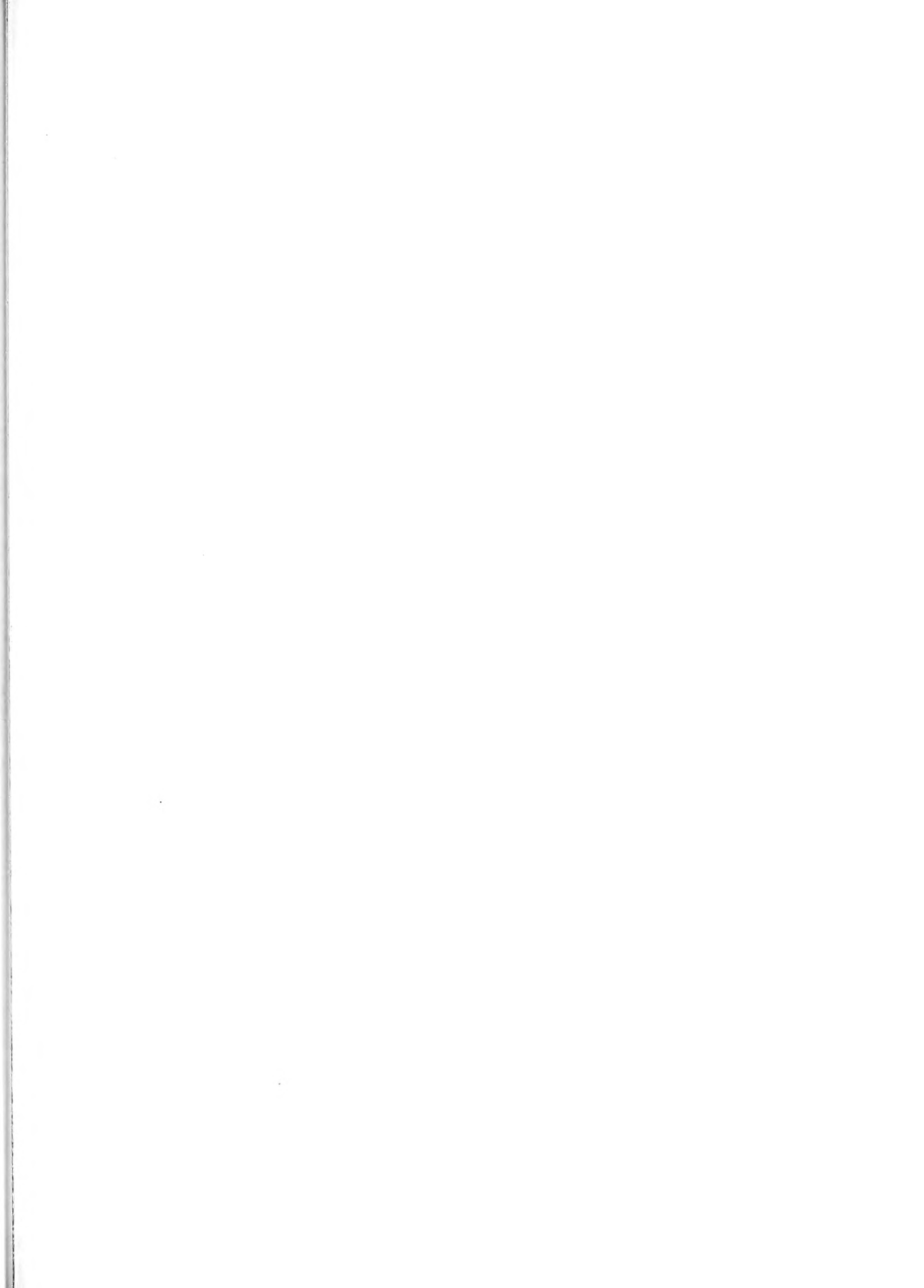


IV.

(A) In 1929, O bought the record title to Lots 1, 2, and 3 in Block 10 of Hibbard's Subdivision of the City of Decatur, Illinois. These lots fronted on Water Street to the south and lay between Prairie on the west and an alley on the east. O lived in the center lot, #2, and #1 and #3 were undeveloped raw land. Because Water Street was a busy highway, O seldom drove his car directly into that street but used a well-defined driveway either across Lot 1 to Prairie or across Lot 3 to the alley. No actual driveway was built but the way was worn smooth. O had continued this practice since 1930.

In 1953 O conveyed, by warranty deed, Lot 1 to A and in 1954 he sold his dwelling, Lot 2, to B (again by warranty deed). Early in 1955, A started construction of a new home on Lot 1 and when B tried to continue O's practice of driving over the lot, A sued him for trespass. B then started driving over Lot 3 to the alley and O sued him for trespass. What will be the outcome of the two suits? Why?

/Use following page for this purpose./



(B) O, using a warranty deed with covenants of seisin and against incumbrances, conveyed Whiteacre to A for \$10,000. This was in 1935. In 1939, A conveyed by a statutory short form warranty deed to B for \$15,000. Whiteacre was unimproved farm land. In 1945, B contracted to sell the land to C for \$20,000 "by a warranty deed in usual form." In fact when the contract was performed, B used a quitclaim deed and although C objected, he accepted the deed. In 1950, C conveyed by statutory short form warranty deed to D for \$30,000. In 1951, it was discovered that O did not have title due to a break in the chain of title prior to his purchase of the land. X, the true title holder, ousts D in 1952. Whiteacre is in Illinois.

- (1) Can D successfully sue C? _____
How much can he recover? _____
- (2) Can C successfully sue B? _____
How much can he recover? _____
- (3) Can C, assuming D successfully sues him, successfully sue A? _____
How much can he recover? _____
- (4) Could A recover from O, assuming that A had been successfully sued by C? _____
How much could A recover? _____
- (5) Assume that O in 1953 acquires the title from X. Who would have the title after O's acquisition? _____

V.

Mark the following statements true (+) or false (-).

State X has no Recording Act and follows the common law. A conveys by warranty deed to B on July 1, 1940. A mortgages to C on August 15, 1941.

- _____ If C has no notice of the conveyance to B, C's mortgage will be valid.
- _____ If B was in possession on the date of the mortgage to C, B would take free of the mortgage.
- _____ The answer to the first question would be different if A had quitclaimed to B.

Assume the same facts occur in Illinois.

- _____ If B records his warranty deed on August 16, 1941, and C records his mortgage on August 17, 1941, B will take free of the mortgage.
- _____ If B enters into immediate possession of the land but fails to record his deed, and C records his mortgage as soon as he receives it, C will have priority over B.

- _____ A deed must be recorded before it can serve as an effective conveyance.
- _____ Recorded instruments that are outside the chain of title do not serve as constructive notice to bfp's.
- _____ Recording may be a material factor in determining whether a deed has been delivered.
- _____ Recording a title and registering a title are synonymous terms in Illinois law.
- _____ It may be possible for a grantor to convey a better title than he possesses.
- _____ Prior to 1951 an unsealed deed was void under Illinois law.
- _____ An acknowledgement is required in order to pass legal title in Illinois.
- _____ A deed of land may be fully effective even though it is signed only by the grantor and his wife.
- _____ It is impossible to make an effective reservation in a deed in favor of a stranger to the instrument.
- _____ A deed delivered into escrow does not take effect until the second delivery by the escrowee. However, it always relates back to the time of the first delivery.
- _____ Illinois does not require acceptance in order to constitute a valid conveyance of land.
- _____ There is some authority for the proposition that no valid conveyance of Illinois land can be made without either good or valuable consideration.
- _____ In absence of statute, there are no implied covenants in deeds of real property.
- _____ Illinois' statutes of limitation will bar suits against an adverse user of land after twenty years of continuous use.
- _____ The doctrine of lis pendens does not operate in Illinois until a statutory notice is filed in the office of the recorder of deeds.

Name _____

No. _____

FINAL EXAMINATION IN TITLES (Law 327)

First Semester 1954-1955

Professor Summers

Time: 3 1/2 hours

Write all answers on the lines following the questions.)

1. (a) In 1920 A acquired a life estate and B a vested remainder in a tract of Illinois land. In 1921 A executed and delivered a deed which purported to convey the land to C in fee. C went into possession of the land and made extensive improvements. A died in 1935. In 1954 B brought ejectment against C. Should he recover? Why?

(b) In 1930, with A's oral permission, D took possession of a five-acre tract owned by A. In 1931 A conveyed several tracts of land to the X Lumber Company and one of these was the five-acre tract occupied by D. D remained in possession of the five-acre tract. In 1954 the X Lumber Company brought an action of ejectment against D. At the trial the jury found that D did not know that A had conveyed the five-acre tract to X Lumber Company until the suit was brought. Should the X Lumber Company recover, if D's defense is adverse possession?

2. In 1930 T died leaving a will by which he devised a tract of land of approximately 300 acres to his sons A and B. The tract was irregularly shaped and was described by metes and bounds. The will gave A the western half of the tract and B the eastern half. The will described each part by metes and bounds. Shortly after T's death, A and B built a partition fence between their

(b) In 1925 D leased a tract of grazing land from A for a term of 25 years. In 1926, to secure water for his cattle on the leased tract, D laid a pipe to a natural spring on P's adjoining tract and pumped water therefrom. P protested to D a number of times about the taking of the water and even threatened suit, but did nothing more. D continued the use of the water. At the expiration of D's lease, he purchased the leased tract from A. In 1954 P brought a suit against D to enjoin the taking of water from the spring. What decision? Why?

4. (a) A executed and acknowledged a deed conveying a tract of land in Illinois to B, his grandson. He placed the deed in a sealed envelope and addressed it to B. He placed the deed in a safety deposit box in the X Bank in Urbana, to which only he had access. On the same day he wrote a letter to B telling him about the deed and its location, and instructing him, after A's death, to present the letter to A's administrator. After A's death, B presented the letter and the administrator gave him the sealed envelope. B recorded the deed. A's heir then brought suit to have the deed declared invalid. What result? Why?

(b) A, about to undergo a serious operation, handed two deeds to W, his wife, one of which conveyed a farm to W and the other a farm to their son John. After explaining the contents of the deeds, A made the following further statement to W: "If I die from this operation, record these deeds, but if I am lucky enough to survive, I shall destroy them and make a will, a thing I have neglected to do." A died on the operating table. W recorded the deeds. P, A's daughter by a previous marriage, brought suit to declare the deeds invalid. What judgment? Why?

5. (a) A owned the west half of a section of land along the west side of which there was a public highway 60 feet in width, the center line of the highway coinciding with the west line of the section. The X Railroad laid out a right-of-way 100 feet wide along the west side of A's land, the center line of which was 70 feet east of the center line of the highway. A made a deed conveying the right-of-way as laid out to the X Railroad "subject to the public road as it now runs, being 50 feet on each side of the center line of the right-of-way as now located." The right-of-way strip thus included 10 feet along the east line of the public road. The public road was later vacated by public authority and a new road located farther to the west. The X Railroad and A now both claim the 20-foot strip along the west line of the section. Who should prevail? Why?

(Lines continued on next page.)

(b) A owned the southeast quarter of a section of land. There were public highways on the east and south of this tract. The highway on the south was paved, but the one on the east was unimproved. A conveyed the south half of the tract to B by a deed in which he expressly reserved a right-of-way 20 feet wide along the west line of the land conveyed to the paved highway. A used this right-of-way for several years. After A's death B sought to enjoin the use of the right-of-way by the owner of the north half of the quarter section. What result? Why?

Would it make any difference in your answer if the 20-foot right-of-way had been in use by A before he conveyed to B? Why?

6. (a) In 1945 A owned lots 4 and 5 in block 3 of a certain subdivision in a city. In that year A built houses on each of the lots and paved a driveway 12 feet wide from the street to garages located at the rear of the houses. Two feet of this driveway were on lot 5 and ten feet on lot 4. In 1946 A conveyed lot 5 to B, making no mention of the driveway. In 1954 some differences arose between A and B with respect to the use of the driveway and A set a line of steel posts in the driveway on the edge of his property line. A could still use the driveway but B had only two feet available. B then brought suit to require the removal of the posts. What result? Why?

(b) Suppose A had conveyed lot 4 to B, retaining lot 5, and that B had set the posts in the driveway. Could A force B to remove the posts? Why?

(c) Suppose A died, devising lot 4 to his son and lot 5 to his daughter. Could the son deprive the daughter of the use of the driveway by setting a line of posts on the property line between the lots? Why?

7. In 1945 O had a merchantable title of record to a tract of unimproved vacant land. In that year D forged a deed of the land from O to himself and filed it for record. In 1946 D conveyed this land to B by a deed containing full covenants for title. In 1947 B conveyed the same land to P by quitclaim deed. The deeds to B and P were duly recorded. None of the parties was in possession. In 1953 P advertised the land for sale. O noticed the advertisement and made an investigation. He brought suit against P to quiet his title and secured a decree in his favor. P then brought a suit against D to recover for breaches of the covenant of seisin and the covenant of warranty in D's deed to B.

(a) On what theories may P be granted or denied recovery against D for breach of the covenant of seisin?

(b) On what theories may P be granted or denied recovery against D for breach of the covenant of warranty?

8. (a) In 1929 A conveyed a tract of land to B by warranty deed. At the time of this conveyance the land was vacant and unoccupied. B did not take possession. In 1930 A took possession of the land and has held it adversely since that time. In 1954 B brought an action of ejectment against A. Should he recover? Why?

(Lines continued on next page.)

(b) In 1950 A conveyed a tract of land to B by deed and B executed and delivered to A a purchase money mortgage securing B's promissory note for \$2,000. A recorded the mortgage June 1, 1950. B did not record the deed until June 1, 1953. June 1, 1952, A conveyed the same land by deed to C. At this time B was not in possession of the land and C had no knowledge of the prior conveyance from A to B. C recorded his deed on the day of its delivery. Suppose C brings a quiet title suit against B. Should he recover? Why?

(c) In 1952 A borrowed \$2,000 from B and gave to B a mortgage on Blackacre to secure this loan. B did not file this mortgage for record until September 25, 1953. In January 1953 A died, leaving H as his only heir to Blackacre. In August 1953, H, without any knowledge of A's mortgage to B, conveyed Blackacre to C for a consideration of \$10,000. C filed his deed for record on August 10, 1953. B now brings a suit to foreclose his mortgage, making C a party defendant. What result? Why?

Name _____

No. _____

MIDSEMESTER QUIZ IN TORTS A (Law 303)

December 6, 1954

Professor Weisiger

X stole A's overshoes from a cloakroom in a hotel. A reasonably mistook B's shoes for his own and wore them home. B, learning that A had probably taken his shoes, inquired about them by telephone; A said he thought he had the right shoes but that he would look again and if they were B's, he would put them on his (A's) porch and B might pick them up. A little later, C, a physician, called at A's home and left his overshoes on the porch. They looked exactly like B's shoes. B then came along and, seeing the shoes, went upon A's porch, picked them up, and carried them away. C was leaving A's home and saw B with the shoes before B had left the porch. He demanded them and B, reasonably certain that they were his, refused to give them up. When C tried to take the shoes from B with slight force, B countered with slight blows in defense of his supposed ownership. C swung at B with his medicine case, and B warded off the attack by swinging the shoes. The case fell to the floor of the porch and burst open. Out rolled some pills which A's dog licked up. The dog died immediately. B went home with C's shoes.

Discuss any tort liability that may arise from these facts.

NAME _____

NO. _____

FINAL EXAMINATION IN TORTS A (Law 303)

First Semester 1954-1955

Professor Weisiger

Time: 3 hours

1. A had trained his dog to attack X whenever X came near A's home. While X was passing A's home on the public sidewalk, the dog rushed at X, and to avoid the attack, X stepped into A's yard and closed the gate. Through an open window of A's house, X then saw a statue of A in a poorly lighted room. X did not see anyone else in the room. X threw a rock at the statue, believing it was A. The rock hit a glass vase on a shelf near the statue and water from the vase was splashed on C, A's daughter, who at the time was exhibiting the statue to Y, a visitor in the home. A piece of the broken vase hit Y in the face, causing serious harm. C saw the rock thrown and jumped to avoid being hit.

Discuss any grounds of liability arising from these circumstances.

2. D at dusk was driving his truck, which was insecurely loaded with old boards with protruding nails. As he turned a corner two of the boards, without his knowledge, fell to the street with the nails up. Soon thereafter A, who made the same turn at the intersection, drove his car over the boards without hitting any of the nails. A parked his car about half a block away in front of his home. A little later two 12-year-old boys came along. They pulled the nails from the boards and drove them into the rear tires of A's car. Discuss D's liability to A.

3. Discuss negligence, duty and proximate cause as used to determine liability.

4. From her home, A saw D negligently drive his car over a man in the street. A erroneously believed the victim to be her husband. She suffered a prolonged illness from the nervous shock. Discuss D's liability to A.

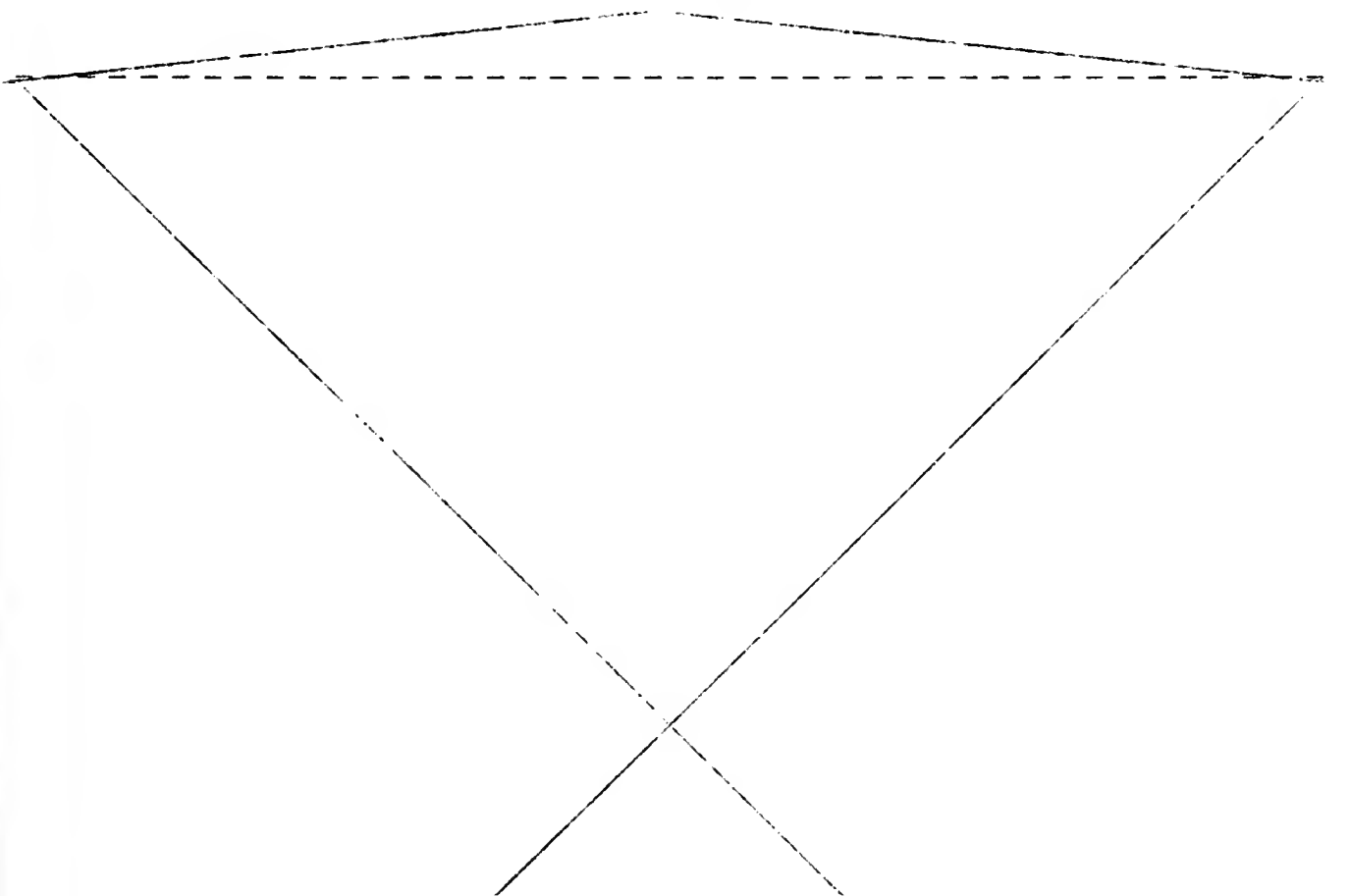
5. On a street where parking was permitted on both sides, A parked his car along the left curb in violation of a city ordinance. D negligently drove his truck against the parked car. What effect has the violation of the ordinance on A's suit against D for damages?

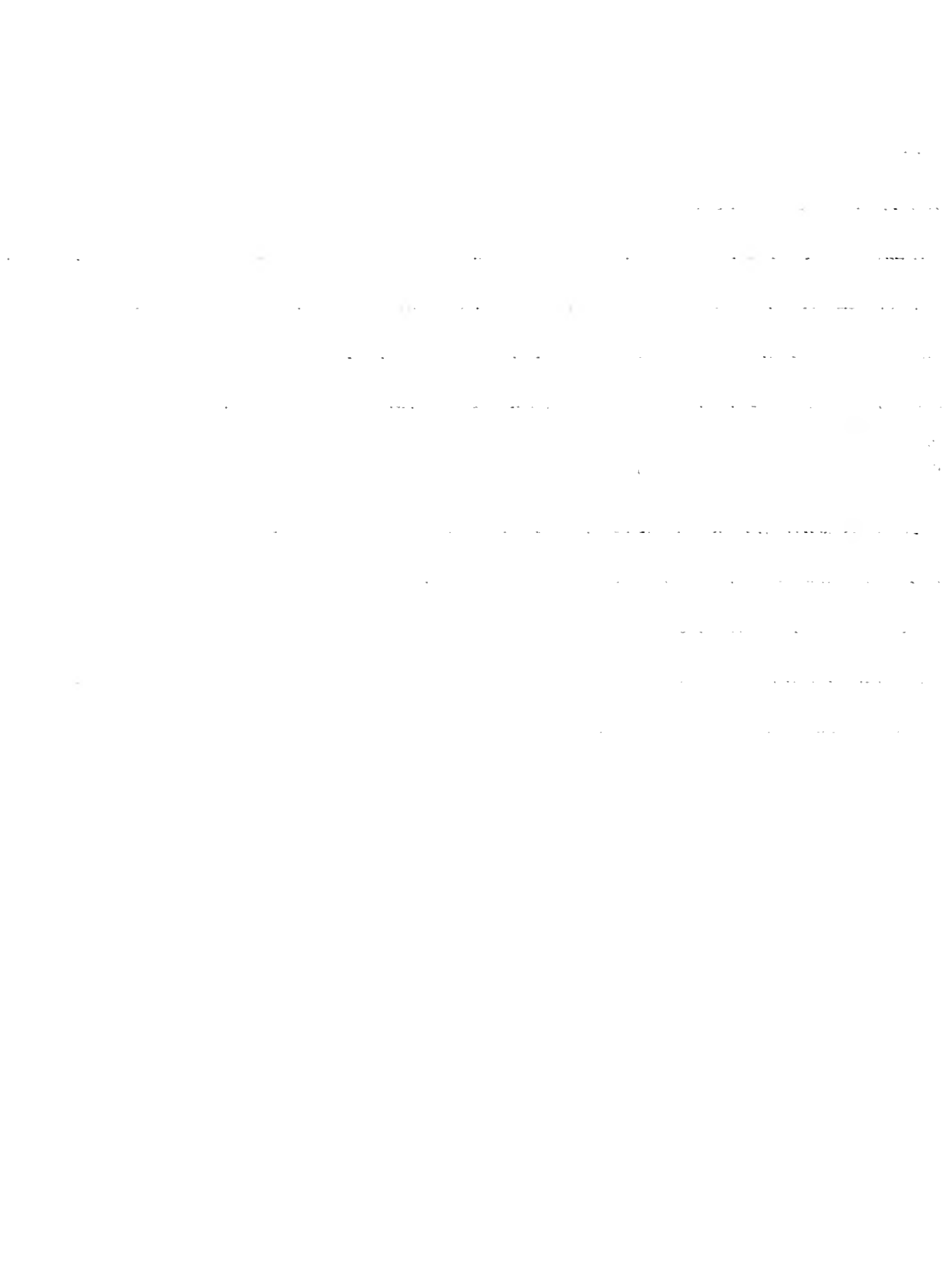
6. Under what circumstances is the doctrine of res ipsa loquitur applied?

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7. B, a man twenty-two years of age, had sexual intercourse with A, a girl of fourteen, with her assent. A was not B's wife. Is B liable to A in an action for damages?

8. A, in lawfully defending himself against an attack by B, reasonably mistook C for the assailant and knocked him down. Is A liable to C?





NAME _____

NO. _____

FINAL EXAMINATION IN TORTS A (Law 303)

Second Semester 1954-1955

Time: 3 hours

Professor Weisiger

Part I

1. A attacked B who, in his own defense, struck C, reasonably believing that C was the one who had attacked him. If the force used against C would have been privileged if used against A, is B liable to C?

2,3,4. X slapped Y's face with his glove. Y pointed a pistol at X, whereupon X knocked Y down with a cane, fracturing Y's skull.

(a) Is X liable for slapping Y's face?

(b) Is Y liable to X for threatening X with a gun?

(c) Is X liable to Y for fracturing Y's skull?

5. X put a fence across a public highway that was seldom used. Is Y, a private citizen with no occasion to use the road, privileged to tear the fence down?

6. A lent B a book to use for two days. Three days later when B was using the book, A asked B to hand it to him. B refused. Is A privileged to use force to regain possession of the book?

7. State the circumstances under which res ipsa loquitur may be applied.

8. B used A's firewood, which he had carried off A's land. B had purchased the wood from C who B reasonably believed owned the wood and the land. Is B liable to A?

9. B asked A, an employee, to work an hour overtime. B left at the usual time and locked the office, forgetting that A was at work. A was locked up for four hours until a janitor released him. Is B liable to A in false imprisonment?

10. If B fails to clear snow and ice from the public sidewalk in front of his premises as required by an ordinance, is he liable to A who in using the walk is hurt by falling on the ice?

Part II

1. Discuss the functions of court, jury and legislature in the proof of negligence.

2. Discuss the importance of risk, duty and proximate cause in a negligence action for personal injury.

MIDSEMESTER EXAMINATION IN TORTS A (Law 303)

December 12, 1955

Professor Lewers

Since there are two questions on this examination and your time is limited to one hour, be sure to budget your time accordingly. Analyze each case carefully before beginning to write. Particular attention should be given to the analysis of issues and to clarity of expression.

I. Mrs. Agnes Anderson entered the Champaign-Urbana branch store of Superior Stores, Inc., on the afternoon of August 15, 1955. After selecting certain goods costing \$18, Mrs. Anderson gave the clerk a \$20-bill and received \$2 in change. Upon an examination of the \$20-bill which Mrs. Anderson had given him, the clerk decided that it was counterfeit and took it to the store manager, Mr. John Roberts. Roberts then went to the store entrance and told Mrs. Anderson, who was preparing to leave the store, that the bill she had given was counterfeit, that she would have to accompany him to his office, and that if she did not so accompany him he would call the police. Mrs. Anderson then went to Roberts' office where the goods she had purchased were taken from her. Roberts questioned Mrs. Anderson for a period of 90 minutes, during which time she denied that she had given a counterfeit bill but made no attempt to leave the office. At this point, Police Officer Jones entered Roberts' office for the purpose of selling tickets to the Policemen's Annual Benefit. Upon learning what had happened, Jones placed Mrs. Anderson under arrest. Mrs. Anderson was taken to the police station. It was determined that the \$20-bill was counterfeit, but Mrs. Anderson was released when it was shown that she had received this bill upon cashing a check prior to entering the branch store of Superior Stores, Inc. Does Mrs. Anderson have a cause of action against Superior Stores, Inc.? If so, what is it? Why?

II. Quality Jewelry Co. of Chicago, Illinois, employed George Able of Champaign, Illinois, on January 2, 1955, as a salesman on commission for the Champaign-Urbana area. On January 5, 1955, Quality shipped certain merchandise to Able, which he received and kept in his place of business; however, the market for this merchandise fell off, and Able was unable to sell it. On June 5, 1955, Quality wrote to Able directing him to return the merchandise to it by express. In accordance with this order to reship, Able packed the merchandise in two boxes and labeled them with Quality's address. On June 20, 1955, James Baker walked into Able's place of business and called out "National Express." Baker wore a cap, a uniform, and a badge identical with those worn by drivers of the National Railway Express Co., the country's largest express company. Able called Baker into his office and delivered to him the merchandise for shipment to Quality, receiving in return from Baker a receipt for this merchandise. Able had seen Baker similarly dressed on previous occasions and had given Baker packages for express shipment on numerous occasions. Baker left Able's place of business, taking the merchandise with him. As a result of a telephone call received by Able from National Express three hours after Baker had left, Able learned that Baker had been discharged by National Express on June 1, 1955, for misconduct. Able then set out to find Baker. Baker's car had broken down after he had left Able's place of business, and Baker was engaged in attempting to repair it when Able found him. Able demanded the return of the merchandise. Baker refused, and Able then reached into the car and took out one of the boxes in which the merchandise had been packed. Baker grabbed the box. In attempting to get the box back, Able pushed Baker, causing him to fall and to drop the box. As a result of this fall, Baker suffered a broken arm. The merchandise contained in the box which had been dropped was badly damaged.

(a) Does Quality Jewelry Co. have a cause of action against George Able, and, if so, what is it? Why?

(b) Does James Baker have a cause of action against George Able, and, if so, what is it? Why?

FINAL EXAMINATION IN TORTS A (LAW 303)

First Semester 1955-56

Professor Lewers

There are six questions on this examination. The time allowed is three and one-half (3 1/2) hours. Analyze each case carefully before beginning to write. Particular attention should be given to the analysis of issues and to clarity of expression.

I.

Mrs. Martha Johnson is the mother of one James Johnson who died on September 1, 1955. Mrs. Johnson engaged Richard Roe, who is in the undertaking business, to conduct the funeral and cremate the body. The funeral was held on September 4th at Roe's funeral home, and the charge therefor, \$400, was paid shortly thereafter. Approximately fifteen months prior to this time, in June 1954, Mrs. Johnson's son-in-law, Bob Black, had died while on a visit to Mrs. Johnson's home. Roe had had charge of that funeral also, the agreement with respect to that funeral and its cost being made by Mrs. Johnson's daughter, the wife of Bob Black. About two weeks after the funeral of James Johnson, and after the charge therefor had been paid, Richard Roe called upon Mrs. Johnson to collect for the funeral of Bob Black. Upon being told by Mrs. Johnson that she did not consider that she was responsible for that charge, Roe informed Mrs. Johnson that he was holding the body of her son, James Johnson, and that he would continue to do so until this bill was paid. Mrs. Johnson had thought that her son had already been cremated, and this news caused her much worry and loss of sleep. After repeated talks over a period of five days, Roe finally agreed to cremate the body of James Johnson, and this was done. The charge for the funeral of Bob Black was finally paid by his widow, Mrs. Johnson's daughter. Mrs. Johnson is still very angry about this matter and consults you, as her attorney, for advice concerning her "rights" against Roe. What advice would you give her? Why?

II.

Because of an unsightly growth on her left arm, Mrs. Robert Roe consulted Dr. John Blank, a famous surgeon, concerning the possibility of having this growth removed. Dr. Blank advised Mrs. Roe that it would be possible, through surgery, to remove the growth from her arm. Mrs. Roe decided to have this operation performed by Dr. Blank. When Mrs. Roe arrived at the hospital on the appointed date, she found Dr. Blank and his nephew, Tom Blank, waiting for her. Tom was a pre-medical student at this time, and his uncle, Dr. Blank, had agreed to allow him to witness the operation on Mrs. Roe. In order to explain his presence to Mrs. Roe, however, Tom was introduced to her as a doctor, and his uncle continually referred to him as "Doctor." Mrs. Roe was taken to the operating room where a local anesthetic was administered. She remained conscious during the operation. Mrs. Roe showed signs of becoming nervous at the outset of the operation, and, to keep her quiet, Tom held her right hand during the course of the operation. The operation was successful. A few weeks after the operation, Mrs. Roe learned that Tom Blank was not really a doctor. Does she have a cause of action against Tom Blank? If so, what is it? Why?

III.

Mr. James Brown arrived in X City at 10:30 p.m. on August 10, 1955, by a train operated by The Illini Railroad. He had planned to catch a connecting train in X City which had been scheduled to leave at 11:00 p.m. that night. However, upon his arrival in X City, he learned that his connecting train was late and would not leave X City until 12:30 a.m. Since he was not acquainted with X City, Mr. Brown decided to wait at the railroad station which was maintained by The Illini Railroad. This railroad station was located in an undesirable part of town, and tramps and vagrants were frequently seen in and around the railroad station and the railroad yards. Shortly after midnight, Mr. Brown, who was becoming impatient over the delay, decided to walk outside on the station platform and stretch his legs. This platform, which was dimly lighted, was deserted at the time that Mr. Brown walked outside. Mr. Brown walked to the end of the platform, and, as he turned around to walk back to the station, he was struck over the head from behind and rendered unconscious. When he recovered, he discovered that all of his money had been taken. Mr. Brown consults you, as his attorney, concerning his "rights" against The Illini Railroad. What advice would you give him? Why?

IV.

In 1950, A, a resident of Peoria, Illinois, suffered a severe heart attack which caused him to lose consciousness for several hours. He was hospitalized for six weeks as a result of this attack. Dr. B, who attended A at the time of this heart attack and during his stay in the hospital, told A that he might "materially shorten his life by unnecessary physical exertion, including the driving of an automobile." Shortly after he was released from the hospital, A found it necessary for business reasons to move to Springfield, Illinois. In Springfield, A was treated for his heart condition by Dr. C. Dr. C made a monthly examination of A, but placed no restrictions on his activities. After his first attack in 1950, A suffered no stroke or attack which rendered him dizzy or unconscious until his second attack in 1955, which attack is described below. A frequently found it necessary to drive his automobile on business trips. In 1955, A was driving from Springfield to Champaign, Illinois, on a business trip. Outside of Springfield, A picked up X, a hitch-hiker who wanted a ride to Champaign. A had almost reached the city limits of Champaign when he suffered a sudden heart attack which caused him to lose consciousness. The automobile, with no one in control, ran up over the curb and struck Y, a pedestrian, and then hit a telephone post. Y was seriously injured. X, who had been asleep in the back of A's automobile, was also seriously injured. A did survive the accident, although he too was badly injured.

- (a) Does Y have a cause of action against A? Why?
- (b) Does X have a cause of action against A? Why?

V.

Mrs. Betty Rogers, the widow and personal representative of Harold Rogers, filed suit against the Alaska Airlines Co. for damages for the death of Harold Rogers. At the trial, Mrs. Rogers proved the following facts:

"Harold Rogers was a passenger on an airplane owned and operated by Alaska Airlines Co. on a flight from Alaska to Seattle, Washington. The plane was last heard from in the vicinity of Sitka, Alaska. No icing or storm conditions prevailed along this route at the time of this flight. No trace of the plane, its cargo, or its passengers has ever been found."

V. (continued)

After Mrs. Rogers had introduced the above evidence, Alaska Airlines Co. moved for a directed verdict in its favor. As attorney for Mrs. Rogers, what arguments would you make against this motion by Alaska Airlines for a directed verdict? Why?

VI.

A statute of the State of X, in which State the following events took place, provides:

"It shall be unlawful for any person having any vehicle in his custody to cause or permit any minor under the age of eighteen (18) years to drive such motor vehicle upon the public highways unless such minor shall have first obtained a license or permit as required by law."

Under the laws of the State of X, no person under the age of seventeen (17) years may be issued a driver's license or permit.

Donald Smith was the owner of a 1940 Pontiac. He advertised this automobile for sale in several newspapers. In response to these advertisements, William Clark, sixteen (16) years of age, contacted Smith regarding the purchase of this Pontiac. Clark purchased this automobile on October 1, 1955. On October 8, 1955, as a result of Clark's negligent driving of this automobile, a collision occurred and Robert Young was seriously injured. Young files suit for damages against Smith. What result? Why?

MID-TERM EXAMINATION IN TORTS A (LAW 303)

Second Semester 1955-56

(60 minutes)

Professor Lewers

Since there are two questions on this examination and you are limited to one hour, be sure to budget your time accordingly. Analyze each case carefully before beginning to write. Particular attention should be given to the analysis of issues and to clarity of expression. Begin each answer with a statement of your decision. If you think that further facts have to be assumed, assume them and say what they are. If you think that ambiguities exist, point them out and resolve them in some stated way, or deal with the question on the basis of alternative resolutions.

1. John Barlow purchased an automobile under a conditional sales contract from the Eagle Auto Corp. The contract provided that if Barlow failed to pay any installment on the purchase price when due, Eagle Corp. would take back the automobile. Several months after he had purchased the car, Barlow took the car to Jake's Garage to be repaired. The automobile was repaired, but Barlow did not pay the repair bill. On the day in question, Barlow and Carl Gordon, an employee of the Eagle Corp., went to Jake's Garage. Barlow requested Jake, the owner and manager of the garage, to make payment for him of the amount by which he was in default under his conditional sales contract with Eagle Corp. Jake, after thinking it over, refused to do so. Gordon then told Barlow and Jake that he would have to take the car back to the Eagle Corp. Upon hearing this, Jake informed Gordon that he was holding the car for the amount due him for the repairs. While they were discussing the matter, Jake's attention was called elsewhere. As Jake turned away, Gordon got into the car, turned the ignition key, which was in the car, and attempted to start the car. The noise attracted Jake's attention; he returned and attempted to get Gordon out of the car. Gordon resisted and put up a fight. Jake then called on one of his employees to help him, and together they separated Gordon from the car. But, in this altercation, Gordon kicked Jake in the abdomen, thereby causing a serious hernia and permanent injury.

Jake consults you, as his attorney, for advice concerning his rights against the Eagle Auto Corp. What advice would you give him? Why? State reasons.

2. O owned certain land which he used for coal-mining purposes. A one-story frame building with a dirt floor was located on this land, and O used it as a warehouse for the storage of tools used in the mining operation. On several occasions, persons unknown had broken into this warehouse and had taken away some of the tools. After getting little satisfaction from the local sheriff, O decided to take certain steps. He drilled a hole three feet deep in the floor on the inside of the warehouse, and in this hole, he placed a certain amount of dynamite. The dynamite was attached to wires hooked up with the door of the warehouse so that when the door was opened, a contact would be made and the dynamite exploded. O was accustomed to handling dynamite, and he planted this dynamite in order to scare away any person opening the door. On the day in question, F, 19 years old, came upon the land and broke the lock on the warehouse door for the purpose of entering the warehouse and stealing anything in there that he could. As F opened the door, the dynamite buried in the floor exploded. F was injured to such an extent that it later became necessary to amputate his leg. T, a tramp who had wandered onto O's land in the belief that it was public land and who was

sleeping under a tree, was awakened by the sound of the explosion. T jumped to his feet and began to run toward the highway. In doing so, T bumped into O, who had heard the explosion and was hurrying to the warehouse. O, thinking that T was the one who had been attempting to enter the warehouse, pulled a revolver and fired. T was seriously injured.

- (a) Can F recover against O? Why? Give reasons.
- (b) Can T recover against O? Why? Give reasons.

FINAL EXAMINATION IN TORTS A (Law 303)

Second Semester 1955-56

Professor Lewers

TIME: Three and one-half hours

DO NOT write on the first page of your examination book. Since you are limited to 3 1/2 hours and there are 5 questions on this examination, be sure to budget your time accordingly. Analyze each question carefully before beginning to write. Particular attention should be given to the analysis of issues and to clarity of expression and organization. Begin each answer with a statement of your decision. If you think that further facts have to be assumed, assume them and state what they are. (However, note that I reserve the right to determine whether any particular assumption was justified.) Each question will be given equal weight in determining the total score.

1. Pembroke Day School, a private school in Urbanville, Illinois, for children under the age of 17 years, maintained a students' traffic patrol for the purpose of helping other children across the streets on their way to and from school. Billy, a 15-year-old boy of defective mentality, was a member of the traffic patrol and customarily guided the other children as they crossed Elm Street. On the afternoon in question, Billy was at his post reading a comic book. As Susie, a 5-year-old student, approached, Billy motioned for her to go on across Elm Street. Susie, starting across the street, stepped out from behind a parked automobile into the path of an oncoming car driven by Donald Turner. To avoid hitting Susie, Turner swerved into and struck Paul Wagner's car which was parked on the other side of Elm Street.

Wagner, whose car was seriously damaged, consults you as his attorney for advice concerning his "rights." What advice would you give him? Why? State reasons.

2. H, the divorced husband of W, entered W's home unannounced. W lives with her mother M and her child C, a boy of 11 years who is in the legal custody of W. H found W and their child C together in the living room. He closed all the doors and told W: "You are not fit to be a mother. I know that you've been hanging around with that bum, and I'm taking my child out of this. Now don't scream and don't try to get your mother in here, and you won't get hurt." H then snatched C away from W and carried him off. W has since recovered the custody of C but she has suffered intensely and is very angry and upset. She consults you as her attorney for advice as to whether she has any cause or causes of action. What advice would you give her? State reasons.

3. The Eagle Building Corp. brought this action to recover damages against the Quality Paint Co. At the trial before a jury, evidence and testimony was introduced by Eagle Building Corp. to show the following facts:

The Eagle Building Corp. owned an apartment building on Eagle Avenue, and John Lawrence occupied an apartment, as a tenant, on the top floor of this building. Lawrence had been after the Eagle Building Corp. for some time to repaint his apartment, and Eagle Building Corp. had finally made arrangements for the Quality Paint Co. to handle this job. On August 16, 1955, Betty Lawrence, John's wife, and their son were out of town on a visit, and John Lawrence was at home alone. He arose about 5:30 in the morning, prepared his breakfast, washed the dishes, and left the apartment about 7:40 a.m. to play golf. On his way out of the building, he met the janitor and left the key to the apartment with him. All of the doors and windows in the

Lawrence apartment were shut. Charles Blake, a painter employed by the Quality Paint Co., arrived at the building at about 8:45 a.m. to make an estimate of the work to be done on the Lawrence apartment. He obtained the key from the janitor and entered the Lawrence apartment. Blake remained in the apartment for about half an hour, returning the key to the janitor at approximately 9:15 a.m. When he left the apartment all the doors and windows were closed. About 9:30 a.m., someone called the janitor to tell him there was a fire in the building. The janitor then went up the back stairs, unlocked the back door of the Lawrence apartment and entered it, at the same time that the firemen were chopping down the front door. No one was in the apartment at that time. The alarm was received by the fire department about 9:30 a.m., at a fire station a mile and three-quarters away. The firemen arrived at the apartment two or three minutes thereafter and found the fire burning "pretty good." The firemen broke the doors, windows, and side walls, and opened up approximately six feet of the roof. The firemen worked on the fire about an hour and forty minutes. After the fire had been extinguished, John Kelly, the battalion chief, who had served in the fire department for 38 years, checked the wiring and found it all right. He was of the opinion that the fire had been burning about ten or fifteen minutes when the firemen arrived. John Lawrence testified that he did not smoke after breakfast that morning; that he smokes a pipe and does not smoke cigars or cigarettes. Lawrence also testified that about 1 or 2 o'clock that afternoon, Charles Blake came to the apartment and told Lawrence that he was the man who had been sent over by the Quality Paint Co. that morning. When asked how the fire could have started, he told Lawrence, "I couldn't tell you; it might have been caused from a pilot light. It could have happened if everything was sealed up." Witnesses testified to the amount of the fire loss. No evidence was offered by the Quality Paint Co.

After the introduction of the above evidence and testimony, the attorney for Quality Paint Co. moves for a directed verdict in favor of his client. As the trial judge, would you grant this motion? Why? State the reasons for your decision. (Do not be concerned about any "agency" aspects of this problem.)

4. Exploring his newly purchased farm, A, mistakenly thinking that he was on his own land, picked wild strawberries on the land of his neighbor B and placed them in his bucket. B, who at other points on his land had placed signs inviting the public to enter, saw A, whom he disliked, picking strawberries. Coming up behind A, B seized the bucket containing the berries that A had picked, poured the berries out on the ground, stamped on the bucket, and told A to "get out." A, still believing that he was on his own land, knocked B down. B retaliated by causing his dog to bite and seriously injure A.

(a) Discuss the rights, if any, of A against B. Give reasons.

(b) Discuss the rights, if any, of B against A. Give reasons.

5. On May 1, 1956, in Urbanville, Illinois, Jim Baker asked his friend John Able if he might use Able's 1949 Pontiac to drive downtown, and Able agreed to let Baker use his car. Baker, who was very deaf, was going downtown to have his hearing aid repaired. Able forgot to tell Baker that he had been having trouble with this car. Just as Baker was getting into the car, Able's 6-year-old son, Tom, came running up and asked Baker if he might go with him. Baker had difficulty in hearing the boy, but he finally caught on and said "Yes." On the way downtown, it was necessary to cross the Illini R. R. tracks running north and south. When Baker reached this crossing, he looked to the north and saw no train approaching. His view to the south was blocked by a string of Illini R. R. cars parked on a siding. However, since the warning light at this crossing was not flashing, Baker started to drive across the tracks.

At this point, the car stalled. Baker looked up just in time to see a train bearing down on them from the south. The train hit the automobile, destroying it, and seriously injuring Tom Able and Jim Baker. There was evidence that the engineer of the train had been sounding the train's whistle and bell as the train approached this crossing.

- (a) Does Baker have a cause of action against John Able? Against the Illini Railroad? Why?
- (b) Does Tom Able have a cause of action against Baker? Illini Railroad? John Able? Why?

FINAL EXAMINATION IN TORTS B (LAW 304)

Second Semester 1955-1956

Professor Lewers

TIME: 3 1/2 hours

Since there are five questions on this examination and you have three and one-half hours in which to complete it, be sure to budget your time accordingly. Analyze each case carefully before beginning to write. Particular attention should be given to the analysis of issues and to clarity of expression and organization. Begin each answer with a statement of your decision. If you think that further facts have to be assumed, assume them and state what they are. (Note that I reserve the right to decide whether any particular assumption was warranted or justified.) Each question will be given equal weight in determining the total score.

I. A is the owner of a farm, and a natural stream, called Blue Creek, runs through A's land and passes within 100 feet of A's barn. X Co., Y Co., and Z Co. are oil-producing companies operating upstream from A's farm. Crude oil, produced on the leases operated by X, Y, and Z, has been flowing into Blue Creek, and A has notified X, Y, and Z of this fact. However, no attempt has been made by X, Y, and Z to prevent this flow of oil into the stream, although it is clear that such flow of oil can be prevented by X, Y, and Z at little expense to them. On March 15, 1956, the oil floating on Blue Creek was ignited, although there is no evidence as to how this occurred. As a result of wind and the flow of the stream, the fire spread to the barn of A, and this barn was completely destroyed. Evidence is available to show that the barn and its contents had a valuation of \$3,000.

- (a) On April 15, 1956, X pays A the sum of \$1,000, in return for which A delivers to X a writing to this effect, "For \$1,000 received, I hereby release X from any and all claims, causes of action, etc., arising out of the destruction of my barn by fire on March 15th of this year. (signed) A." Can A now recover anything from Y or Z for the damages caused by the destruction of his barn? Why?
- (b) Assuming that the events stated in (a) never occurred, does A have a cause of action against X, Y, and Z? Why? If so, how would you advise A to proceed? Why?

II. On January 15, 1955, Jerry Jones purchased a baby bathinette from the Eagle Department Store. For over a year after that date, it was used for the purpose for which Eagle Store had sold it, i.e., for bathing a baby. This bathinette had a waterproof plastic top to hold the water used for bathing, and that top was supported by four legs crossed in X-shape. These legs were made of magnesium alloy with wooden extensions. The alloy was extruded to make hollow pieces one inch square which were cut into lengths suitable to support the plastic top at the desired convenient height with the upper ends fastened to the plastic top. The bathinette carried the "brand name" of "An Eagle Product", although it had been manufactured by Quality Manufacturing Co. The hollow, square pieces of magnesium alloy from which the legs had been made had been purchased by Quality Co. from the Star Metal Corp. On the morning of May 15, 1956, a fire broke out in the bathroom of the apartment where Jerry Jones, his wife Betty, and their three children lived. The bathinette was in the bathroom at that time. The cause of this fire was never

discovered, although it is known that it was not caused by the spontaneous combustion of any of the material of which the bathinette was constructed. The magnesium-alloy legs of the bathinette began to burn after they had been subjected to heat of at least 1,050 - 1,100 degrees F. When the magnesium alloy did get hot enough to burn, the fire increased in intensity and was extremely difficult to extinguish with water since the use of water not in a sufficient quantity to overwhelm such a fire will cause the release of inflammable hydrogen. This fire burned intensely, and bursts of bluish flame shot out into the air to such an extent that Betty Jones received burns from such bursts of flame when she was in her bedroom, which was separated from the bathroom by a hallway.

- (a) Does Betty Jones have a cause of action against Quality Manufacturing Co.? Why? Give reasons.
- (b) Does Betty Jones have a cause of action against Eagle Department Store? Why? Give reasons.
- (c) Does Betty Jones have a cause of action against Star Metal Corp.? Why? Give reasons.

III. William Able, a contractor, was engaged in the construction of a two-story frame house on a lot owned by him on the south side of Oak Street. The house had been enclosed, except for windows and doors, but the flooring had not been laid on the joists of the first or second floors. Able had seen children playing in and around the house on several occasions and had always told them to leave. Mr. and Mrs. Baker and their three children lived on the north side of Oak Street across from Able's construction project. On Sunday morning, March 18, 1956, the Baker children entered the construction project. A ladder had been placed inside the structure leading from the first to the second floor, and the children began to climb it. The two older Baker children, who were 9 and 16 years old, respectively, succeeded in reaching the joists on the second floor. However, the youngest child, Susie, who was 3 years old, got caught in the stepladder and began to scream. Her mother, Betty Baker, who was in the house across the street, heard the screams. Recognizing the voice of her youngest child, Mrs. Baker left her home, ran across the street, and entered the structure. In attempting to get Susie free, Mrs. Baker lost her footing and fell. As a result of this fall, Mrs. Baker's arm was broken.

A few days after this occurrence, Charles Clark noticed the construction project as he was driving by on Oak Street. Being in the market for a new house, he stopped and asked Able, who was standing nearby, if he might take a look at the house. Able gave his permission, and Clark entered the structure. He started to walk along the first-floor joists when he lost his footing and fell. As a result of this fall, Clark broke a leg.

- (a) If Susie Baker suffered injuries as a result of being caught in the stepladder, does she have a cause of action against Able? Why?
- (b) Does Mrs. Baker have a cause of action against Able? Why?
- (c) Does Charles Clark have a cause of action against Able? Why?

IV. Mr. and Mrs. Barton were camping in their house trailer in a small clearing 20 feet from a public highway. Mr. Barton was lying on a cot outside the trailer, and Mrs. Barton was inside the trailer. A delivery truck owned and operated by Steve Rogers drove by on the public highway. The truck was hauling ten-gallon cans of oil, which were loaded on the side of the truck and held in place by a side-board. There was evidence that Rogers knew that the fasteners holding the side-board in place were defective. One of the cans fell off the moving truck. When the can hit the ground, the top of the can was blasted off by an explosion, flew through the air, and struck Mr. Barton on the head as he lay on the cot, causing a very severe head wound. Mrs. Barton heard the noise and commotion incident to the accident and heard her husband say that he had been hit on the head. She immediately concluded that her husband was being attacked, jumped from her bed, grabbed a revolver, and ran to the trailer door. When she got to the door, she saw her husband stunned and bloody. Due to the shock, fright, and excitement, Mrs. Barton suffered a heart attack.

- (a) Does Mr. Barton have a cause of action against Rogers? Why? Give reasons.
- (b) Does Mrs. Barton have a cause of action against Rogers? Why? Give reasons.

V. At a busy street intersection in Urbanville, State of X, two motorists, A and B, both driving negligently, collided. A was rendered unconscious and thrown out into the street. B was badly shaken up, but was not otherwise hurt. B's guest, G, was also thrown out and rendered helpless by a broken leg. T, driving a truck, could have seen the collision in time to stop before entering the intersection, but his attention was diverted by some incident on the sidewalk. When T did observe the effect of the collision, it was too late for him to avoid running over A, B, and G. In this accident, A received a broken arm, G's skull was fractured, and B, who at the time was trying to drag G to the sidewalk, also received injuries. Subsequent to these events, G died as a result of burns received in a night club fire.

Assume that the statutes of State X are identical to those in force today in Illinois. Also, assume that there is no problem presented concerning the statute of limitations.

- (a) Discuss the "rights", if any, of Mrs. G, G's widow, who is the personal representative of his estate. Give reasons.
- (b) Discuss the "rights", if any, of A. Give reasons.
- (c) Discuss the "rights", if any, of B. Give reasons.

FINAL EXAMINATION IN TORTS B (Law 304)

Summer Session 1956

Time: 4 hours

Professor Lewers

There are six questions on this examination and you have four hours in which to complete it; therefore, be sure to budget your time accordingly. Analyze each case carefully before beginning to write. Particular attention should be given to the analysis of issues and to clarity of expression and organization. Begin each answer with a statement of your decision. If you think that further facts have to be assumed, assume them and state what they are. (Note that I reserve the right to decide whether any particular assumption was necessary or justified.)

I. (15 points) Mrs. Cook suffered a broken hip when she fell in the laundry room of an apartment building owned and operated by Mayfair Mansions, Inc. This laundry room was customarily used as a passageway by tenants and guests entering the building from the rear. When the accident occurred, Mrs. Cook was passing through the laundry room on her way to play bridge in the apartment of one of the tenants. Mrs. Cook's fall was occasioned by her slipping in a puddle of soapy water. This water was on the floor as a result of an overflow from the coin-operated automatic washing machine located in the laundry room. The washing machine was owned, installed, and serviced by the Solon Service Co. It can be established that if soap is put into the machine in accordance with the instructions posted in the laundry room, no overflow due to excessive soap is possible. It can also be shown that there was an occasional overflow of this machine due to excessive soap.

Mrs. Cook consults you, as her attorney, for advice concerning her "rights." What advice would you give her? Why?

II. (20 points) On June 1, 1956, A drove into X's service station to get some gas. A got out of his car and stood close by while X filled the gas tank of A's car. X was not paying attention to what he was doing, and the gasoline overflowed and splashed on A. After paying for the gasoline, A proceeded on his way and stopped in at Y's Tavern for a beer. Y served him a beer, and A took a seat at the bar. At this point, Z, a notorious practical joker who frequented Y's Tavern, attempted to give A a "hot foot." Because of the gasoline, A's clothes caught on fire, and A suffered severe burns.

- (a) Does A have a cause of action against X? Why?
- (b) Does A have a cause of action against Y? Why?
- (c) Does A have a cause of action against Z? Why?

III. (15 points) E was an employee of R at R's lumber camp in the mountains. R had constructed a road on his property near the camp. R saw E lying on this road at 8:00 p.m. one very cold night (March 15, 1956). R thought that E was drunk. In fact, E had become ill and had fainted while walking back to the camp. Another lumber-camp employee, T, who was returning to the camp in an automobile at 11:00 p.m. that night, ran over E, who was still lying in the road, and broke E's leg. E is now in a hospital recuperating from the above events. T pays E \$500, in return for which E delivers to T a writing to this effect, "For \$500 received, I, E, hereby promise that I will never sue T on any claim or cause of action arising out of hitting me with his automobile on the evening of March 15, 1956. (signed) E." Does E now have a cause of action against R for damages suffered by E in connection with the events of March 15, 1956? Why?

IV. (20 points) Eagle Aviation Corp. designed a new type of plane, the Flying Star, adapted for private civilian flying. Eagle Corp. notified the Air Sales Agency that it would accept orders for the Flying Star to be custom built. Fred Rogers ordered a Flying Star through the Air Sales Agency, and the plane was manufactured and delivered to him by Eagle Corp. Shortly thereafter, another Flying Star crashed during a test flight. After a two-week investigation, Eagle Corp. determined that there was a serious defect in the design of the Flying Star. Eagle Corp. immediately sent a telegram to the Air Sales Agency, saying: "Advise all purchasers of Flying Stars to ground planes until further notice." The Air Sales Agency, after attempting unsuccessfully to reach Fred Rogers at his home or office, called Jenkins' Airfield where Rogers kept his plane, gave Mike Jenkins, the proprietor of the airfield, the telegram message and asked him to relay it to Rogers. Jenkins agreed to do so. However, when Rogers arrived at the airfield that afternoon, Jenkins forgot to give him the message. Rogers took his Flying Star up that afternoon, and the plane crashed on this flight. Rogers was killed, and the residence of James Carter was greatly damaged as a result of the plane's crashing into it.

(a) Discuss the possibilities of tort recovery by Mrs. Rogers, Fred Rogers' widow and the executrix of his estate. Give reasons.

(b) Does Carter have any cause or causes of action? Against whom? Give reasons.

V. (15 points) On July 15, 1956, Robert Jones, an employee of Star Motor Freight Co., was making a delivery of dry goods to the Eagle Dry Goods Co. In order to reach the warehouse of the Eagle Dry Goods Co., it was necessary for Jones to use a public alley running by the warehouse. When Jones drove into the alley, he noticed a large paper box in the alley ahead of him. He did not stop, although he could have done so. The right front wheel of the truck ran over the paper box. As this happened, Jimmy Black, 8 years old, who had been playing in the alley, screamed to Jones that he had run over something. Jones stopped the truck and got out to investigate. He found that a little boy, Billy Green, 3 years old, was in the box and had been run over by the wheel of the truck. As a result of this occurrence, Billy Green suffered serious injuries. Does Billy Green have a cause of action against Star Motor Freight Co.? Why?

VI. (15 points) At a railroad crossing in Urbanville, State of X, two motorists, A and B, collide as a result of the negligent driving of A. As a result, A is rendered unconscious. B gets out of his car to examine the extent of damage of his car. C, a trespasser, is walking across the railroad tracks at a point fifty feet west of the crossing. D, the engineer of a train approaching the crossing from the east, fails to keep a lookout which would have disclosed the presence of A, B, and C in time to stop. As a result, the train runs over and injures A, B, and C.

(a) Does A have a cause of action against the railroad? Why?

(b) Does B have a cause of action against the railroad? Why?

(c) Does C have a cause of action against the railroad? Why?

FINAL EXAMINATION IN TRADE REGULATION (Law 355)

First Semester 1954-55

Professor Carlston

Time: 4 hours

Assume that you are general counsel of Williams Motors Co. The president of the company requests your attendance at an executive conference in his office. You enter the conference and the president opens the meeting, as follows:

President: As you know, gentlemen, our company's sales have been dwindling steadily. The sale of our marine engine and our general purpose engine have held our company together, but the sale of our automotive engine has declined to where we have but one buyer, an independent auto manufacturer. I referred this problem to our research department some years ago to see whether they could again make our engine competitive in the automotive field. Our research director, Dr. Baker, has an extraordinary development to report and I now turn the meeting over to him.

Dr. Baker: We conceived our problem as one of providing a revolutionary answer to the industrial needs of today. The internal combustion engine has reached the limits of its efficiency. A certain latent power in it can be developed through still higher compression ratios, but this will require costly gasolines and wasteful usage of fuel energy in the motor itself. The jet has supplanted the internal combustion in air transport. Our laboratory now has a compact, enormously powerful jet engine for automotive use in which we have solved the problems of heat control, etc., which have hitherto frustrated its development. This engine is cheap to make, cheap to operate, and will supersede the internal combustion engine in most uses today. We have it thoroughly covered by patents.

President: This company could now enter the automotive field with its own car, if we wished. However, this would mean much further engineering and would require building up a line of dealers.

I have approached both General Motors and American Motors with a view to merger. Each has made about the same proposal from the financial point of view, that is to say, each has offered comparable stock participation, but I do not need to remind you gentlemen that a share in General Motors is considerably the more attractive of the two. General Motors advises me that they prefer to keep their management all under one corporate roof and that we cannot hold out from the merger our marine or general purpose motor business. We will have to turn everything over to them except that they will let us hold out our patents and will make us an extremely attractive offer for an exclusive license of our motor for the automotive field against royalties. They will grant us and our licensees outside the automotive field a license under their improvement patents. We must on our part agree not to manufacture a motor which could readily be adapted for use in the automotive field. We must also not manufacture or license our motor for use in the air-conditioning field. What are your views on the merger and the license proposals, counsel?

(20 points) [Note: Here place on the examination paper your answer marked "1."]

President: Our vice president in charge of sales, Mr. Sell, now has some points to make.

Mr. Sell: The new motor will change our price policies in certain ways. We also have some new sales methods we would like to use. I will submit these to you as separate proposals.

Proposal 1. We will no longer need to manufacture two different motors for marine and general purpose use. Our line will be a truck motor, a passenger car motor, and a third motor which we can sell in both the marine and general purpose fields. We will call the motor generally the Dynamuve. There will be the heavy duty Dynamuve, the automotive Dynamuve, the marine Dynamuve and the general Dynamuve. The last two will be the same motor. We have had a trademark search and we find a registered mark for Dynacule for air conditioning equipment. General Motors has a Dynaflo for an automatic transmission. There is a hydraulic lift with the mark Dynamule. Does general counsel agree to our trademark proposals? Does he have any suggestions?

(20 points) /Note: Here place on the examination paper your answer marked "2."/

Mr. Sell: Proposal 2. Our present factory is located in Chicago. Our biggest buyers will be in the Midwest area. We propose to divide the country into three zones, Midwest, East and West, and to have zone prices with the Midwest price the lowest. We will explain to buyers that the price differences represent average freight cost differences and maybe they will, but we can only roughly approximate these average cost differences. We will have a different price for each of our four Dynamuves. Is this all right, counsel?

(15 points) /Note: Here place on your examination paper your answer marked "3."/

Mr. Sell: Proposal 3. We plan to exploit our line by a series of advertising campaigns. In the first the slogan will be "The End of the Line." In this we will play up the idea of obsolescence, with pictures of the Neanderthal man, the electric trolley, the old-fashioned electric passenger car, the Model T Ford, and so on. The clincher ad will show pictures of the modern internal combustion engine auto, no names, you understand, but we will use photographs of real cars, and opposite them the slogan "End of the Line." Now I would like to know, counsel, whether we can use this advertising, and how far you can give us legal protection in its use? But before you answer, I want to tell you about our second campaign, building on the first. In this we will claim that our motor has greater power, greater efficiency and greater endurance than any other motor in use today. Dr. Baker tells us it ought to have, but that the real test of any motor is in actual use. In particular, he knows nothing about its endurance because of the problem of metal fatigue with the high heat involved.

(20 points) /Note: Here place on your examination paper your answer marked "4."/

Mr. Sell: Proposal 4. Sears, Roebuck offers to handle our general purpose Dynamuve, but we will sell it to them as a motor and let them sell it as Kenmotor. We will give them no special price other than our actual savings on quantity sales, but if we do this our present principal buyer of our general purpose motor, Samson Distributing Co., will probably lose so many sales that he will probably retire from business. He is willing to agree to buy all his motors from us for a period of five years if we don't go into the Sears, Roebuck deal. In addition, he will pay us \$50,000 for such a 5-year contract if we agree to sell him all his requirements for five years.

If we accept the Sears, Roebuck proposal, we will sell our Dynamuve motor to Samson Distributing Co. but only as a part of a plan under which we will divide the country into a number of sections, with a distributor for each section. Each such distributor will be given a 5-year contract and will agree on his part not to sell outside his district and not to deal in any general purpose motor of any other manufacture. What shall we do, counsel?

(25 points) /Note: Here place on the examination paper your answer marked "5."/

FINAL EXAMINATION IN TRADE REGULATION (LAW 355)

First Semester 1955-1956

Professor Carlston

Important: You will find a number in the upper right-hand corner of this page. This will be your examination number. Your grading will be made without knowledge of your name. A list of the members of this class will be passed around. Place your examination number in the space opposite your name on this list. Do not write your name on either this question sheet or the examination book.

You will have 3 1/2 hours for answering this examination.

- 15 points 1. A corporate client engaged in dry cleaning clothes by a secret process and employing operators of the plant, as well as office and delivery help, asks you to prepare a secrecy covenant, to which their employees will subscribe, which will protect the company's interests. List briefly the points you will cover in such a covenant and state your reasons therefor.
- 20 points 2. A local automobile dealer consults you concerning his dealer franchise agreement which he has been asked to sign in connection with its renewal. He points out that labor unions can bargain collectively with giant corporations and asks whether he cannot start an auto dealer's association, one purpose of which will be to bargain collectively for a new standard franchise agreement. Among other things, he states, the dealers generally want some voice in how many cars are produced. They also want to support any dealer who has been forced by a finance company to buy back loans on which car buyers have defaulted. Here they have in mind listing finance companies which do not pursue such "unethical practices." What is your advice? Why?
- 20 points 3. A corporate client is engaged in the mining of a certain metal. There are four principal companies so engaged, each occupying from 10 to 15% of the national market, and nine smaller companies occupying the rest of the market. Your client is an aggressive concern which by a series of purchases of mines and mergers of small companies has pushed its percentage of the market up to 15%. Supplies of the metal are dwindling and small amounts are now being imported. Your client states that it and another company, which has about 10% of the market, wish to create a new company, in which each will have a 50% interest, the purpose of which will be to acquire foreign sources of ore. It points out that the risks of new mines and the risks of foreign business generally make such a joint sharing of risk necessary in order to carry out the foreign venture. Your client states that a French company having mines in North Africa has offered to sell it a large quantity of ore each year, if your client will grant the French company an exclusive license to use all its patents in the French territories of North Africa for a period of twenty years. What is your advice? Why?
- 20 points 4. A Company was engaged in selling flour to grocery stores in Massachusetts, Connecticut, and New York City. In the New York market other companies had cut their prices for flour to 7, 8 and 10% below those of A Company, the amount varying from company to company and from product to product. A Company put into effect a blanket 10% reduction on its flour for the New York City territory only. A competitor sues for treble

damages, alleging a violation of Section 2 (a) of the Clayton Act. Prepare a list of the points which you will have to cover in defense of A Company and state how you propose to meet the arguments of plaintiff.

25 points 5. (a) A used car dealer consults you concerning the practices of a rival. Your client's business is known as "Frantic Freddy's." Its premises are marked by three large rotating columns painted in diagonal red, white, and blue stripes, similar to a barber pole. His slogan is, "My losses drive me mad but leave my customers happy."

The rival started on the adjoining lot a used car business called "Fantastic Francis." He uses red and white banners and draped red and white bunting. His slogan is "Fantastic deals for all comers."

What, if anything, will you do to protect your client? What are his legal rights?

(b) A large oil company has a patent on a gasoline containing tri cresyl phosphate. It also procured a trademark on this product, consisting of "TCP." An independent producer with a small number of stations asks your advice on a proposal (1) to mark his gasoline pumps with the words, "Contains tri cresyl phosphate" and (2) to advertise in the press and by radio substantially as follows: "Our gasoline contains tri cresyl phosphate, commonly known as TCP." Your client states he will take his chances on patent infringement but wants your advice on other risks. What are they? What is your advice? Why?

FINAL EXAMINATION IN TRIALS AND APPEALS (Law 335)

First Semester 1954-55

Professor Bowman

Time: 3 hours

I. Charley Johnson was seriously injured by the collapse of a section of the second floor of the city hall in Paris, Illinois. He filed suit in the Circuit Court of Edgar County (Paris) against the city and the Acme Construction Company of Paris, which had recently repaired the city hall second floor. On voir dire examination juror Akins stated that he knew nothing about the case, nor the merits of the same; and that he had no knowledge of the facts of the case. The plaintiff, who had already exercised five peremptory challenges, stated that he would excuse Mr. Akins. Defendant city objected. Plaintiff stated that he was excusing Mr. Akins peremptorily. Further objection by defendant city was sustained by the court. After trial, verdict was returned in favor of both defendants. Twelve days after judgment was rendered on the verdict, plaintiff moved to vacate the judgment, to set aside the verdict, and for a new trial. In support of his motion plaintiff offered the affidavits of nine jurors that during the deliberations of the jury, Akins stated that he knew well the section of the floor that had collapsed because he had worked for defendant Acme on the city hall repair job and had actually worked on repairing the section of the second floor which had collapsed. The trial court refused to accept the affidavits and denied plaintiff's motion. Plaintiff duly perfected his appeal, assigning as error the trial court's action in

- (1) denying plaintiff the right peremptorily to challenge Akins,
- (2) refusing to accept the affidavits of the nine jurors offered by plaintiff,
- (3) denying plaintiff's motion to vacate the judgment, to set aside the verdict, and to grant a new trial.

What decision on each assignment of error? Why?

II. Ezra Hazard was a resident of Chicago in Cook County, Illinois. Mack Boone was a resident of Urbana in Champaign County, Illinois. While driving south on highway #54, Hazard collided with a car owned and driven by Boone. The collision occurred in Kankakee County, Illinois. Boone was seriously injured and subsequently filed suit for \$75,000 against Hazard in the Circuit Court of Champaign County. Process was directed to the sheriff of Cook County and returned, "June 14, 1954. Personally served this date at the within named defendant's place of business at 1508 S. Wabash Avenue, Chicago, Illinois, by explaining the contents of and leaving a copy of same with his chief bookkeeper, Albert Hopkins, a person above the age of 10 years, the defendant being then and there present in plain view, sitting in his office in conference with persons unknown. (Signed) A. O. Oscar, Deputy Sheriff, Cook County, Illinois."

Defendant Hazard received the copy of the summons from his bookkeeper and in due time filed his special appearance in the cause and moved (1) to quash service, and (2) to dismiss the suit. Both motions were denied. Defendant then answered, denying the allegations of the complaint. Trial was had before a jury in which conflicting evidence of defendant's negligence was introduced. The jury returned a verdict for plaintiff in the amount of \$25,000.

Defendant moved for judgment notwithstanding the verdict. The motion was denied and judgment was rendered on the verdict. Defendant duly appealed from the judgment, assigning as error the trial court's action in

- (1) denying his motion to quash service,
- (2) denying his motion to dismiss the suit,
- (3) denying his motion for judgment notwithstanding the verdict,
- (4) not setting aside the verdict as excessive.

Plaintiff moved to dismiss defendant's appeal.

- A. What ruling in the Appellate Court on plaintiff's motion to dismiss the appeal? Why?
- B. Assume that the appeal is allowed. What decision on each of defendant's assignments of error? Why?
- C. What should be the Appellate Court's final order disposing of the case?

III. Robert Watkins, a pedestrian, was seriously injured by an automobile owned and driven by Celia Maplewood. Watkins filed suit against Miss Maplewood for \$100,000 in the Superior Court of Cook County, Illinois. Plaintiff's complaint contained two counts. Count One alleged negligence on the part of defendant and due care and caution on the part of plaintiff. Count Two alleged wilful and wanton misconduct on the part of defendant. During trial there was conflicting evidence to sustain Count One but no evidence was introduced to sustain Count Two. After trial the jury returned a general verdict for plaintiff in the amount of \$4,600. The jury also returned its answers to special interrogatories submitted by defendant as follows:

- (1) Was defendant negligent at any time just prior to or at the time of the injury to plaintiff?

Answer: No.

- (2) Was defendant guilty of wilful and wanton misconduct at any time just prior to or at the time of the injury to plaintiff?

Answer: Yes.

Defendant moved to set aside the verdict and for judgment.

- A. What ruling on defendant's motion? Why?
- B. In the absence of further motions by either party, what should be the trial court's final order in the case? Why?

IV. The Sherman Hotel Corporation in Chicago, Illinois, sued The Wholesale Poultry Company of Champaign, Illinois, in the Circuit Court of Cook County, Illinois, for \$3,840.15 damages suffered by plaintiff due to defendant's breach of contract to deliver poultry to plaintiff. The contract had been executed in Chicago. Defendant was duly served with process and retained Ralph Hotshot, an

attorney in Champaign, to represent it in defending the suit. Hotshot drafted an answer and mailed it to the clerk of the Circuit Court of Cook County. The answer was lost in the mails and never received by the clerk. Default judgment in the amount of \$3,840.15 was rendered for plaintiff on August 15, 1949. Neither Hotshot nor the defendant received any notice of the default judgment and were under the impression that the answer had been duly filed and that they would receive notice in due course when the cause was docketed for trial. On November 29, 1951, execution was issued on the judgment and levied on property of defendant in Champaign. Defendant, through its attorney, Hotshot, filed a written motion in the Circuit Court of Cook County to set aside the levy, to quash the writ of execution, to vacate the default judgment, and to permit defendant to defend on the merits. The motion was supported by affidavits of the mailing of the answer in due time, of its non-receipt by the clerk, of due diligence, and of a meritorious defense. Plaintiff moved to strike defendant's motion. What decision

- (A) On plaintiff's motion to strike? Why?
- (B) On defendant's motion to set aside, quash, vacate, and permit a trial to the merits? Why?

FINAL EXAMINATION IN TRIALS AND APPEALS (Law 335)

First Semester 1955-1956

Professor Bowman

TIME: 3 hours

If the Illinois Civil Practice Act affects your answer to any question, your answer should be in accord with the 1955 Amendments to the Act, regardless of the dates stated in the facts.

I. On January 3, 1956, Michael Thorne, a law student at the University of Illinois, filed suit in the Circuit Court of Champaign County to enjoin the University of Illinois from enforcing its automobile parking regulation which provides that any student of the University who parks an automobile on the city streets of Champaign or Urbana between the hours of 2 a.m. and 6 a.m., except for emergency purposes, shall be subject to dismissal from the University. After hearing, on January 13, 1956, the Court entered its order refusing to grant the injunction. On January 20, 1956, Thorne filed a bond for appeal costs, approved by the clerk, in the Champaign Circuit Court and filed the record in the Appellate Court for the Fourth District on January 23, 1956. The University moved to dismiss the appeal.

1. What ruling on the motion to dismiss the appeal? Why?
2. Assuming that the motion is denied and the Appellate Court rules on the appeal, is the Appellate Court's ruling reviewable? Why?

(The substantive questions of constitutionality and the University's status as an agency of the State are immaterial to the answer to this question).

II. While crossing Wright Street in Champaign, Illinois, Susie Turnbuckle was struck and seriously injured by an automobile owned and driven by Toby Axelrod. Subsequently, she filed an action for \$175,000 damages against Axelrod in the Circuit Court of Champaign County. Her complaint contained two counts. In Count I she alleged that her injuries were proximately caused by the negligence of Axelrod while she was in the exercise of due care and caution for her own safety. In Count II she alleged that her injuries were proximately caused by the wilful and wanton conduct of Axelrod while she was in the exercise of due care and caution for her own safety. (As a matter of substantive law in Illinois, you may assume that contributory negligence is a good defense to a negligence count but is not a good defense to a wilful and wanton count.) Defendant duly filed his answer specifically denying the allegations of both counts of the complaint and demanded a jury trial.

During the course of the trial before a jury, there was considerable evidence introduced which tended to show negligence on the part of the defendant and contributory negligence on the part of the plaintiff at the time of her injuries. No evidence was introduced which tended to show wilful and wanton conduct on the part of defendant.

At the close of all the evidence and before the case was submitted to the jury, the defendant

- (1) moved the court to direct a verdict in his favor. This motion was denied.
- (2) moved the court to withdraw from the jury Count II of the complaint on the ground that no evidence had been introduced to support it. This motion was denied.

The jury returned a general verdict for plaintiff in the amount of \$135,000. The court promptly entered judgment thereon.

On the twenty-ninth day after judgment was entered, defendant filed a Post-Trial Motion requesting the following relief:

- A. That the judgment be vacated, the verdict be set aside, and judgment be entered for defendant on the ground that there was no evidence to support the wilful and wanton count of the complaint.

The court denied defendant's Post-Trial Motion. Defendant duly perfected his appeal to the Appellate Court, assigning as error the following:

1. The trial court erred in denying defendant's motion for a directed verdict at the close of all the evidence.
2. The verdict is excessive, indicating prejudice, passion or misconduct on the part of the jury.
3. The court erred in denying defendant's Post-Trial Motion.

What decision on defendant's three assignments of error? Why?

What disposition should the Appellate Court make of the case? Why?

III. Ray Segar was seriously injured in an automobile collision with a car owned and driven by Ralph Sohl on Illinois State Road 17, the center line of which constitutes the east boundary of Champaign County and the west boundary of Vermilion County, Illinois. Just prior to the collision Segar was driving south in the west lane of the road and Sohl was driving north in the east lane of the road. Segar was a resident of Champaign County and Sohl was a resident of Vermilion County. Segar filed suit against Sohl for \$75,000 damages in the Circuit Court of Champaign County, alleging that the collision occurred in the west lane of the road (Champaign County).

Summons was issued by the Clerk of the Circuit Court of Champaign County but nowhere on the writ did it state, "In the Name of the People of the State of Illinois." It did not contain the seal of the court, nor was it signed by the clerk. It was directed to the sheriff of Champaign County, who served it on the defendant by leaving a copy at defendant's usual place of abode in Danville with defendant's nine-year-old son, who delivered it to the defendant. No copy was mailed to defendant as required by statute, nor was a copy of the complaint delivered or mailed to the defendant.

Defendant appeared specially in the Champaign County Circuit Court by his attorney and filed his motion to dismiss the action for the following reasons:

1. Improper venue because the defendant is a resident of Vermilion County and the collision on which the action is based occurred in the east lane of state road 17, which is in Vermilion County.
2. Lack of jurisdiction of the person of defendant because
 - a. Defective summons
 - b. Defective service
 - c. Defendant is not amenable to process issued by a court of this state.

Defendant's motion to dismiss was denied. Defendant answered and trial was had before a jury. Verdict for \$25,000 was returned for plaintiff and judgment was entered thereon.

Defendant duly perfected his appeal from the judgment to the Appellate Court, assigning as error the denial of his motion to dismiss for improper venue and lack of jurisdiction of the person. Plaintiff moved to dismiss the appeal.

- A. What decision on plaintiff's motion to dismiss the appeal? Why?
- B. Assume that plaintiff's motion is denied, what decision on defendant's assignments of error? Why?
- C. After ruling on defendant's assignments of error, what disposition should the Appellate Court make of the case? Why?

IV. Ruth Chadwell, formerly a resident of Chicago, Illinois, but at all times herein a resident of Tampa, Florida, owned an apartment building at 5238 Kenmore Avenue in Chicago. On December 2, 1950, she executed a first mortgage on the building to the Prudential Insurance Company to secure a loan of \$85,000. She defaulted in her payments and on January 18, 1954, Prudential filed suit against her in the Superior Court of Cook County to foreclose its mortgage. Valid summons was issued and mailed to an attorney over the age of 21 years in Tampa, Florida, with instructions for personal service. In due time the attorney made his return by affidavit, stating:

"The within writ was served by me on the within-named defendant, Ruth Chadwell, by leaving a copy of same, together with a copy of the complaint, with her, personally, at 1609 Seashore Drive, Tampa, Florida, at 12:05 p.m., Thursday, January 27, 1954."

In fact, through an error in names, the attorney had served the writ on one Ruth Blackwell. No service was made on the defendant, Ruth Chadwell, and she had no knowledge of the pending suit.

On March 30, 1954, default judgment was entered against the defendant, Ruth Chadwell, and an order of sale made. The property was sold at public auction in Chicago on June 14, 1954, to Jonathan Wilson for \$92,000. The sale was approved by the court and on September 16, 1955, Wilson received a deed to the property.

Upon her return from an extended trip abroad the latter part of September, 1955, Mrs. Chadwell learned of the above facts and comes to you for legal advice as to her rights and the procedural steps to be taken to protect them. State the advice you would give Mrs. Chadwell and the legal reasons therefor.

HOUR EXAMINATION IN TRUSTS (Law 329)

December 16, 1954

Professor Schnebly

NOTE: Organize your answers with respect to both substance and phraseology before writing is begun. Begin each answer on a new page. In all answers give particular attention to the rules of law developed in Illinois. Write in ink.

1. The will of T created a trust to pay the income of the trust fund to A for life, and to pay over the principal to B at the death of A. Three years after the death of T, the trustee presented his first report to the court of chancery of X County, Illinois. Objections were taken to the said report by A, as follows:

(a) Six months after establishment of the trust, the trustee had received a stock dividend of 25%, which he had credited wholly to the capital account. A contends that said dividend should have been apportioned.

(b) Three months after establishment of the trust, the trustee paid taxes on real estate included in the trust, for the year ending prior to the creation of the trust. This payment the trustee charged to income. A contends that it should have been charged to principal.

(c) Two years after establishment of the trust, the trustee sold real estate for \$7500. In respect to said real estate, the will of T provided as follows:

"My said trustee shall have power in his discretion to sell any real estate at such times and on such terms as he may think proper."

During the period of two years for which the trustee held said real estate, it yielded an income of only \$150, whereas the taxes for said period were \$300. The trustee credited the entire proceeds of the sale to the capital account. A contends that it should have been apportioned.

Which of the above objections, if any, are sound?

2. By her will duly executed and probated in X County, Illinois, T devised certain land as follows:

"To each of my four dearly beloved nieces, A, B, C and D, and their heirs, one equal fourth part undivided, the portion that the said A takes by this will to be held in trust for her by her mother, M."

The four nieces above named, all being of legal age, and their respective spouses, made a contract to convey the land devised to them to X. The purchaser refused to perform the contract on the ground that the nieces could not make good title. The nieces bring a suit for specific performance against X. What decree?

FINAL EXAMINATION IN TRUSTS (Law 329)

First Semester 1954-1955

Professor Schnebly

PART TWO: ESSAY-TYPE QUESTIONS

NOTE: One hour and a quarter is allowed. Organize your answers with respect to both substance and form before writing is begun. In each answer give particular attention to the rules of law developed in Illinois. Write in ink.

1. F purchased a tract of unimproved land of thirty acres, which was known as the "Leazenby" land. This tract was adjacent to a ten-acre tract owned by D, the daughter of F, and occupied by her. F at once gave D the entire and exclusive use of the Leazenby tract, and she continued to use it until the death of F about a year later.

A month prior to the death of F, D wrote to him asking for a loan of money. In reply, F wrote as follows:

"I can't send you money now. I have given you the Leazenby land, and it is yours forever for your own personal benefit, and I think that is help enough now.

Your father, F."

F died leaving a will which devised to S all his real estate. D brought a statutory action to quiet title to the Leazenby land against the claim of S. What judgment?

2. H entered into an agreement with V for the purchase from the latter of a farm of 160 acres, for the sum of \$16,000. The contract was completed and said farm conveyed to H. The consideration was paid, \$8000 in cash which H secured by mortgaging other land owned by him to M, and the balance by the duly executed conveyance to V of a farm of 80 acres owned by W, the wife of H.

Ten years after the transactions above recited, H died intestate. Thereafter W filed suit in equity for partition of the farm of 160 acres, claiming an equitable one-half interest therein, and making all interested persons parties to the suit. Is W entitled to the relief asked? What persons have interests in the land?

HOUR EXAMINATION IN TRUSTS (Law 329)

November 22, 1955

Professor Schnetzly

NOTE: One hour is allowed. Organize your answers with respect to both substance and phraseology before writing is begun. In each answer give particular attention to the rules of law developed in Illinois. Write in ink.

1. F transferred stocks and bonds of the value of \$50,000 to T on a trust set forth in a written instrument. By the terms of this trust T was directed to pay the net income to F for his life, and after his death to pay the income to D, the daughter of F, until she should have attained the age of thirty years, and at that time to transfer the principal to her. The trust instrument further provided that F should have power to modify the terms of the trust, or to revoke it in its entirety, by filing a written statement of intent with T; and that during the life of F no change should be made in the manner of investment of the trust fund without the written assent of F.

F died five years after the transfer above-stated, and T died three days after F. At the death of F, D was twenty-five years of age. The administrator of F made demand upon the administrator of T for the property constituting the trust fund, claiming the same as assets of the estate of F.

Is the administrator of F entitled? What action, if any should be taken by D?

2. The will of S contained the following gift:

"All the residue of my estate I give and bequeath to T, on trust, however, for the purposes hereinafter set forth. T shall sell any real estate that I may own at my death as soon thereafter as sale can conveniently be made, and shall invest the proceeds of said sale, together with all other personal property coming into his hands, in bonds of the United States or the State of Illinois, first mortgage loans upon real estate security, or in other equally sound investments. After payment of taxes and necessary expenses, T shall pay the net income from said trust property to my wife, W, for her life, and after her death shall divide the principal of the trust fund equally among my children."

After sale of real estate owned by S at his death, T had in his hands a fund of \$50,000. He invested \$25,000 of the fund in the stock of the X Corporation, which had been organized two years before for the manufacture and sale of automobiles. T took title to the shares in his name ("Samuel T. Smith."). This stock never paid dividends, and after having held it for two years T sold it for \$15,000. All the events recited above occurred before 1940.

Is T liable for the loss sustained on this investment? If he is liable, what is the measure of his liability?

FINAL EXAMINATION IN TRUSTS (Law 329)

First Semester 1955-56

Professor Schnebly

PART I: TRUE - FALSE QUESTIONS

Directions: Read the statements that follow each problem, and mark each statement at the left of its number with a plus sign if you think it is a true statement, and with a zero sign if you think the statement is false in whole or in part.

For each statement marked correctly you will receive a credit of one point.

Read each statement carefully, for the truth or falsity of it may depend upon the presence or absence of a single word.

Base your marking upon the law of Illinois, unless the contrary is indicated.

Use nothing but plus and zero signs.

Ask no questions.

Time allowed for this Part: Two and three-quarters hours.

I. A owes B the sum of \$1,000, for which A has given B his non-negotiable promissory note.

- _____ 1. B can constitute himself a trustee of this chose in action for the benefit of C.
- _____ 2. To make himself trustee for C, it would be necessary for B to execute a written statement of his intention to create a trust.
- _____ 3. B cannot constitute himself a trustee of this chose in action for the benefit of C unless he either executes a written statement declaring a trust, or receives a consideration from C.
- _____ 4. B can transfer his claim against A to C by merely handing over to C the promissory note with an oral statement of his intent to make a gift of the same.
- _____ 5. If B should assign his claim against A to C, and A should fail to pay the note when due, C could recover against A in an action at law.
- _____ 6. If the debt were not evidenced by a note, and if B should assign his claim against A to C, and A should thereafter pay the amount of the debt to B without knowledge of the assignment, the debt would be discharged.
- _____ 7. If B should direct A to hold the amount of the note on trust for C, and to pay the same to C at maturity of the note, and A should assent to this direction, a valid trust would be created for the benefit of C.
- _____ 8. If B should deliver the note to T with a written statement of his intent that T hold it on trust for C, and A should fail to pay the note at maturity, T could sue A in equity to recover the amount of the note.
- _____ 9. If B should deliver the note to T with a written statement of his intent that T hold it on trust for C, and A should pay the amount of the note to T at maturity thereof, and T should embezzle the money so received, A would be liable to C.

II. By his will duly executed and duly probated, T devised Blackacre to his brother, B, "on condition that he support our beloved mother, M, in comfort for the remainder of her life." All the residue of his property T devised to his son, S, who was his sole heir. T died leaving no surviving widow.

- ___ 1. If B should fail to support M, S would be able to recover Blackacre in an action of ejectment.
- ___ 2. If B should convey Blackacre to C for value, C would acquire absolute title thereto.
- ___ 3. If B should convey Blackacre to C for value, and C should take with knowledge of the provisions of T's will, and neither B nor C should support M, the latter would be entitled in equity to a sale of Blackacre and application of the proceeds of such sale to her support.
- ___ 4. If B should support M in comfort for the remainder of her life, at the death of M he would become absolute owner of Blackacre.

III. A conveyed Blackacre to B in consideration of B's promise to pay \$5,000 to C. At the date of the conveyance Blackacre and the improvements thereon were worth \$5,000. After the conveyance the house on Blackacre was destroyed by fire, and as a result the value of the premises was reduced to \$2,000.

- ___ 1. B is under a legal duty to C to pay him \$5,000.
- ___ 2. If B should refuse to pay C \$5,000, C would be entitled in equity to a sale of Blackacre and payment out of the proceeds.
- ___ 3. If B should convey Blackacre to D, and D should take with notice of the terms of the agreement between A and B, D would take Blackacre subject to an equitable interest therein in favor of C.
- ___ 4. If B should refuse to pay C \$5,000, A would be entitled to recover Blackacre in an action of ejectment.

IV.

- ___ 1. In 1944 in Illinois A executed and delivered to B a deed wherein he "conveys and quitclaims" Blackacre to B "for the use and benefit of C." C has a legal fee simple in Blackacre.
- ___ 2. The Statute of Uses converts all uses into legal interests.
- ___ 3. If A, owning a term of ten years in Blackacre, should assign said term to B "for the use of C," C would acquire only an equitable interest in the term.
- ___ 4. If A, owning Blackacre in fee simple, should make a written, but gratuitous, declaration that henceforth he will hold Blackacre on trust for B, the latter would acquire a legal fee simple in Blackacre.
- ___ 5. On the facts stated in #4, supra, B would acquire no interest in Blackacre.

- ___ 6. In the absence of special circumstances not herein indicated, when a trustee deposits cash which he holds in trust in a bank, the bank becomes a debtor to the trustee, and the interest of the beneficiary in the cash deposited is extinguished.
- ___ 7. If T should devise Blackacre to E, the executor of his will, directing E to sell Blackacre and divide the proceeds equally among A, B and C, and E should unreasonably delay a sale, A, B and C should apply to the Probate Court for an order directing E to make a sale.
- ___ 8. T devised and bequeathed the residue of his property to D, providing "my desire being that he shall use or dispose of such residue in such manner as he shall think will be most agreeable to my wishes." D holds on trust the property devised and bequeathed to him.

V. A transferred inter vivos to B a tract of land and a number of bearer bonds of the U. S. Steel Corporation, on the oral promise of B that he would pay the net income from the land and bonds to C for a period of ten years, and would transfer the land and bonds to C at the end of that period.

- ___ 1. The oral trust is wholly void.
- ___ 2. If B did not intend at the time of the transfer to perform his oral promise, it is agreed that a constructive trust will be imposed upon the land.
- ___ 3. If a constructive trust is imposed upon B on the ground indicated in #2, supra, such constructive trust will be in favor of A by the weight of authority in the United States.
- ___ 4. If a constructive trust is imposed upon B on the ground indicated in #2, supra, or on any other ground, B will be required to convey the land immediately to the beneficiary of the constructive trust thus imposed.
- ___ 5. If a confidential relation is found to exist between A and B, a trust in favor of C will be enforced as to the land.

VI.

- ___ 1. A transfers securities to B by a written instrument wherein he directs B to accumulate the income of the securities for a period of twenty years, and at the end of that period to divide the securities and the accumulated income in equal shares among the children of A then living. At the time of the transfer A has no children.
A valid trust is created for the children of A who may be born, and who shall be living at the end of the period stated.
- ___ 2. An executor will not be permitted to carry out a direction by the testator that he maintain the testator's burial lot in good condition for a period of twenty years.
- ___ 3. A direction such as is stated in #2, supra, does not create a trust.
- ___ 4. A gift to T on trust for such of the children of X as T shall select creates a valid trust.
- ___ 5. S bequeathes the sum of \$25,000 to T "in trust to distribute said amount among my friends in such proportions as he shall determine."

VII. X devised and bequeathed the residue of his estate to T on trust, providing as follows: "T shall have authority to sell any and all real or personal property and invest the proceeds of sale; he shall pay the net income of the trust property to A for his life, and at the death of A shall transfer the principal to B and C in equal shares."

Included in the residue was a dwelling house, ten years old, valued at \$10,000, which was rented for \$75 per month.

- ___ 1. If T himself should desire to purchase the house mentioned, and should be willing to pay \$11,000 for the same, and should make a deed as trustee conveying the premises to himself individually for the consideration mentioned, the transfer could not be set aside at the suit of B.
- ___ 2. Three years after the death of X, T has the house painted on the outside at a cost of \$375, which expense he charges wholly to the income account. Such a charge is proper.
- ___ 3. An assessment of \$500 is levied against the house and lot for paving of the street on which the house fronts. T pays said assessment and charges it wholly against the capital account. Such a charge is correct.
- ___ 4. It is the duty of T to sell the house above mentioned.
- ___ 5. The residue of X's estate includes fifty shares of the common stock of the Pennsylvania Railroad. T may sell said shares if he thinks it expedient so to do.
- ___ 6. No facts are indicated which would make it the duty of T under the present Illinois statute to sell the shares mentioned in #5 supra.
- ___ 7. T might properly invest \$10,000 of the trust fund in a loan secured by first mortgage on a store building in Champaign valued at \$15,000.
- ___ 8. If T should purchase the interest of B under the trust, B being an adult, and B should subsequently sue in equity to set aside the transfer to T, the burden would be on B to show that the price paid by T was inadequate, or that T had failed to disclose to B some material fact.
- ___ 9. If A, B and C are all adults, and if all convey their interests under the trust to P, the latter can require an immediate conveyance of the legal title from T.
- ___ 10. If the will of X had directed T to pay the net income of the residue to A until he should have attained the age of 30, and at that time to transfer the principal to him, A would be entitled in Illinois to termination of the trust upon attainment of 21.

VIII. Assume that each of the following provisions is contained in a will:

(a) I bequeath the sum of \$10,000 to T on trust, to apply the income therefrom to payment of the salary of an organist for the X Church in Champaign.

(b) I bequeath the sum of \$10,000 to T on trust, and direct him to apply annually the income therefrom to the support of a student in the University of Illinois. Such student shall be selected by T, but must be a white male, of American birth and Protestant religion, and between the ages of 20 and 25.

(c) I bequeath to T on trust the sum of \$50,000 to be distributed by him among such charitable institutions in the cities of Champaign and Urbana as he shall select.

(d) I bequeath the sum of \$5,000 to T on trust, the same to be expended by T in promotion of the candidacy of General Eisenhower for the Presidency of the United States.

(e) I bequeath the sum of \$5,000 to T on trust, the income therefrom to be expended in the purchase of pictures of distinguished jurists, which shall be hung in the corridors of Altgeld Hall at the University of Illinois.

- ___ 1. The gift in (a) creates a valid charitable trust.
- ___ 2. The gift in (b) creates a valid charitable trust.
- ___ 3. The gift in (c) creates a valid charitable trust.
- ___ 4. The gift in (d) creates a valid charitable trust.
- ___ 5. The gift in (e) creates a valid charitable trust.
- ___ 6. If the provision in (c) should be held to create a valid charitable trust, and if T should die before having made any distribution of the trust fund, the charitable trust would fail according to the weight of American authority.
- ___ 7. If in (a) T should die in the life of the testator, the trust would not fail by reason of that fact.
- ___ 8. If the provision in (e) should be held to create a valid charitable trust, and if the time should come when there is no more room in the corridors of Altgeld Hall for pictures of distinguished jurists, a court of chancery should order the income of the fund to be applied to the payment of the tuition fees of one or more students in the College of Law, rather than to order application of said income to the purchase of additions to the Law Library.
- ___ 9. If in (d) a court should be of the opinion that the gift does not create a valid trust, it should refer the case to a master for framing of a scheme for cy pres application of the fund.

IX. X devised the residue of his estate to T on trust, directing T to keep the same safely invested "in sound securities," to pay the net income to A for life, and to transfer the principal to B at the death of A. It was further provided that T might in his discretion retain any property received by him from X.

Included in the residue was a house standing upon a large lot located at the corner of G and H Streets, and fronting on G Street. This house T rented to a tenant on a yearly lease.

T entered into a contract with M for the making of certain repairs necessary to maintain the house in tenantable condition. T signed this contract, "T, Trustee."

Thereafter T conceived the idea of securing additional income from the premises by building a second house on the rear of the lot, facing on H Street. He entered into a contract with N for the construction of this house, signing the contract, "T, as trustee for A, and not individually."

- ___ 1. T is personally liable on the contract made with M.
- ___ 2. T is personally liable on the contract made with N.
- ___ 3. T may properly apply to the discharge of his contract with M any sums of income in his hands.
- ___ 4. If T should refuse to pay to M the amount due under his contract, M should bring suit against T in a court of equity.
- ___ 5. If T should not make payment to N at the date stipulated in the contract with him, N may recover out of trust property by a suit in equity.
- ___ 6. If T should die before payment becomes due upon the M contract, and TT should be appointed successor trustee, and TT should refuse to pay the sum required to satisfy the M contract at the date fixed for payment, M could not recover a judgment at law against TT.
- ___ 7. On the facts stated in #6 supra, M could maintain a suit in equity against TT and recover out of the trust property.
- ___ 8. If T had signed the contract with N in this manner, "T, Trustee," and if N had recovered judgment at law against T, and had execution returned unsatisfied, then N could sue in equity and recover payment out of the trust fund.
- ___ 9. A is not personally liable on either the M or the N contract.
- ___ 10. Even if judgment should be recovered at law against T on the M contract, and execution should be returned unsatisfied, M could not recover against A personally at law or in equity.
- ___ 11. If T should negligently fail to make repairs to the first house mentioned above, and should thereby incur a personal liability for injuries sustained by the tenant thereof, T would be entitled to exoneration out of the trust fund.
- ___ 12. If T should employ a competent servant to cut down a tree upon the trust property, and said servant should negligently cause the tree so to fall as to damage a house upon an adjoining lot, T would be personally liable for such damage.

X. T held Blackacre on trust for B, said trust being evidenced by a written instrument not on record. By the terms of this trust T did not have power to convey Blackacre.

On January 20th P entered into a contract with T to purchase Blackacre, and paid down the sum of \$2,000. On April 1st P completed this contract by payment of \$4,000, and received a deed of conveyance from T. P did not know that T held Blackacre on trust.

- ___ 1. P takes Blackacre free of any equity in B.
- ___ 2. Since the trust for B was not on record, it was wholly void.
- ___ 3. If P had been informed on March 1st of the existence of the trust, but had taken the conveyance from T notwithstanding, he would be entitled to retain legal title until reimbursed for the \$2,000 paid on January 20th.

- ___ 4. If P had not made the initial payment indicated on January 20th, but had taken the conveyance from T on April 1st in satisfaction of an antecedent debt of \$6,000 owed by T in his individual capacity, without knowledge of the fact that T held Blackacre on trust, P would have taken subject to B's equity.
- ___ 5. If P's attorney had examined the trust instrument and had advised P that T was authorized to sell Blackacre, the conveyance of April 1st would have cut off B's equity.
- ___ 6. If, upon completion of the contract on April 1st, P had given to T his negotiable promissory note for \$4,000 instead of that sum in cash, the conveyance from T to P would have cut off B's equity.
- ___ 7. If P should convey Blackacre to Q on May 1st, the latter having notice that on January 20th the land was held by T on trust for B, Q would take subject to an equity in B.

XI. X provides by will as follows: "I devise Blackacre to A and his heirs. It is my intention, however, that A shall take no benefit from this gift so long as B shall live. During the life of B he shall hold Blackacre in trust for B, paying over to him the rents and profits thereof." The will contained no residuary clause.

- ___ 1. A holds Blackacre on trust for B, so long as B shall live.
- ___ 2. A has no beneficiary interest in Blackacre.
- ___ 3. Upon the death of B, A will hold Blackacre on a resulting trust for the heirs of X.

XII. A and B agreed to make contributions of \$5,000 each toward the purchase of Blackacre, legal title to be taken in the name of A alone. Finding difficulty in raising his portion of the purchase price, B borrowed the sum of \$2,000 from C, giving his promissory note wherefor, payable a year from date.

Blackacre was then purchased for the sum of \$15,000, the sum of \$10,000 being paid in cash, and title taken in the name of A. The balance of \$5,000 was secured by a purchase money mortgage on Blackacre, the note for the same being signed by A and B jointly.

When the note for \$5,000 fell due, A and B could provide but \$2,000 each for its payment. They made an oral agreement with D that he should provide the additional \$1,000 required, and that he should have a proportionate interest in Blackacre. In this manner the note was paid and the mortgage released.

- ___ 1. A holds the legal title to Blackacre subject to a resulting trust for B.
- ___ 2. C is entitled to a 2/15th equitable interest in Blackacre.
- ___ 3. D is entitled to an equitable interest in Blackacre.
- ___ 4. B is entitled to demand of A an immediate conveyance of legal title to an undivided one-half interest in Blackacre.

FINAL EXAMINATION IN TRUSTS (LAW 329)

First Semester 1955-1956

Professor Schnebly

PART TWO: ESSAY-TYPE QUESTIONS

NOTE: One hour and a quarter is allowed. Organize your answers with respect to both substance and form before writing is begun. In each answer give particular attention to the rules of law developed in Illinois. Write in ink.

1. John Wade died leaving a will duly executed, which contained the following provision:

"All the residue of my property, both real and personal, I leave to my three children, William, Thomas, and Mary, in equal shares. The share of Thomas, however, shall be held on trust for him by William, and only the net income therefrom shall be paid to Thomas during his lifetime."

P is a creditor who has obtained a judgment at law against Thomas for a debt. Included in the residue devised by the will of John Wade was certain real estate. P seeks your advice as to whether Thomas has such an interest in this real estate as can be reached in satisfaction of P's judgment.

2. P handed to a teller in the X Bank the sum of \$2900 and received in exchange therefor an instrument which read as follows:

"\$2900.00

The X Bank
Chicago, Illinois,
May 27, 1893

"P has deposited in this bank twenty-nine hundred dollars (\$2900) payable to the order of herself, on return of this certificate.

X Bank"

On June 1, 1893, P went to the X Bank with the intention of exchanging this certificate for \$200 in cash and a new certificate for \$2700. On arriving at the bank, P made observations which aroused her suspicion as to the soundness of the bank. She conceived the idea that she ought to withdraw the whole amount of the certificate, but after a conversation with an officer of the bank she decided that she would accept a new certificate for \$2700, said officer promising that he would put into a separate package the sum of money represented by the new certificate and keep the same in such manner until P should call for it. This promise was never fulfilled. On June 3, 1893, the X Bank became insolvent. P claimed that she was entitled to priority over general creditors of the bank. Was this contention correct?

HOUR EXAMINATION IN WILLS (Law 320)

Section A

April 18, 1955

Professor Schnebly

NOTE: Organize your answers with respect to both substance and phraseology before writing is begun. In each answer give particular attention to the rules of law developed in Illinois. Write in ink.

1. In 1920, T was seventy years old, and was operating a farm in Illinois. In that year he wrote a letter to his son, S, who was then living in Iowa, asking S to return home and assume responsibility for management of the farm, stating that if S would so return and manage the farm, and provide a home for him during the remainder of his life, he would leave a will devising the farm to S. In response to this proposal, S moved from Iowa back to the Illinois farm and operated the same until the death of T in 1929.

On T's death the following instrument, written wholly by T in his own hand (except for signatures of the witnesses), was found among his papers:

"I, T, do hereby devise and bequeath all my property, real and personal, to my son, S, and do designate him as my executor, to serve without bond.

"Witnesses: A
B"

T died leaving three children, including S, surviving him, but leaving no surviving widow. S consults you as to the appropriate legal action for him to take. What do you advise?

2. By his will duly executed, T devised Blackacre to his son A; he gave one hundred shares of stock in the Pennsylvania Railroad to his son B; the sum of \$5000 to his daughter C; and all the residue of his property to his daughter D.

At his death T left the following items of property: Blackacre, valued at \$9000; the hundred shares of Pennsylvania stock, valued at \$3000; a savings account with a credit balance of \$2000; and a house and lot valued at \$5000.

Debts duly proved and allowed, together with costs of administration, amounted to \$11,000.

How would you advise the executor to proceed in paying the debts and costs, and in making distribution?

FINAL EXAMINATION IN WILLS AND ADMINISTRATION (Law 320)
(Section A)

Second Semester 1954-1955

Professor Schnebly

PART TWO: ESSAY-TYPE QUESTIONS

NOTE: One hour is allowed. Organize your answers with respect to both substance and phraseology before writing is begun. Give particular attention to the rules of law developed in Illinois. Write in ink.

1. T died on September 19, 1927, at the age of eighty-three years. For several months prior to his death he had been confined to his bed. He left surviving him a son, Charles, and a daughter, Anna Christman, and several grandchildren who were children of Charles or Anna.

By his will T gave all his property to Dan Seybert and Anna Bechtel, reciting that they had cared for him for many years, would take care of him for the remainder of his life, and manage his funeral and burial. After this will had been probated in Kankakee County, the son and daughter filed suit to contest.

The evidence showed that for about twenty years prior to the death of T, Dan Seybert and Anna Bechtel had lived with him; that on July 22, 1927, Seybert had notified an attorney, Legris, that T desired to see him on business; that Legris called upon T that day; that T on that occasion told Legris that he desired to transfer all his property to Seybert and Anna Bechtel, as he had already given enough to the children, and asked Legris how such a transfer could be accomplished; that Legris then advised him that he could make either a conditional deed or a will; that on July 26, Anna Bechtel called Legris, telling him that T wished to have him draw some papers; that on that day Legris called upon T, conferred with him in private, and then drew the will in accord with T's instructions; that Legris, after the will had been prepared, summoned Anna Bechtel from another room of the house, and asked her to procure another witness; that Seybert, who was elsewhere about the premises, brought in a neighbor woman; that Anna Bechtel and Seybert helped T to sit up in bed while he signed the will; that Legris and the neighbor woman subscribed it as witnesses.

Upon completion of the testimony, the proponents of the will requested the court to instruct the jury to find that the will offered for probate was the valid last will and testament of T. Should such instruction have been given?

2. P brought an action in ejectment in the Circuit Court of Marion County, Illinois, to recover a certain tract of land. He sought to make out title by introducing in evidence the will of Ann Quinn, who had died in the year 1876. In 1881 her heirs at law had conveyed their interest in the land in question to D, the defendant in the ejectment action. About two months after said conveyance, the will of Ann Quinn was admitted to probate in the probate court of Marion County.

D contends that it was error for the court in the ejectment action to admit the will in evidence. He also offers to prove that the said will was procured by undue influence, and that he had no knowledge of its existence at the time of his purchase from the heirs of Ann Quinn.

Was it error to admit the will in evidence, and to reject the proof tendered by D?

HOUR EXAMINATION IN WILLS (Law 320)

April 9, 1956

Professor Schnebly

NOTE: Organize your answers with respect to both substance and phraseology before writing is begun. In each answer give particular attention to the rules of law developed in Illinois. Write in ink.

1. On January 3, T orally instructed his attorney, A, to prepare for him a will devising and bequeathing all his property to his brother, B. At this date T was a widower and had one child, S. Since T had neither seen nor heard from S for a period of fifteen years, he believed that S was dead.

On January 5, T suffered a stroke of paralysis that deprived him of the use of his right arm.

On January 10, A brought to T the finished draft of the will, prepared according to T's instructions. At this time T was mentally competent to make a will. Without having read the will, or having heard it read, T made with his left hand an "X" at the end of the will. Two witnesses, C and D, were present at this time, and both subscribed the will in the presence of T. T's name appeared nowhere on the paper on which the will was written.

On January 25, T died. His will was duly admitted to probate in Champaign County, Illinois, where T resided, after the usual testimony had been offered in court by C and D.

On February 5, S returned from his travels. Upon learning the facts above recited, he now seeks your advice whether he shall file suit to contest the said will.

2. T died domiciled in Champaign County, Illinois, leaving a will which made the following gifts:

"I devise to A my farm in Champaign County, Illinois.

"I bequeath to B all my shares of stock in the United States Steel Corporation.

"I give to C the sum of \$5,000.

"All the rest and residue of my property, real and personal, I devise and bequeath to D."

T left no surviving spouse. He left the following property: a farm in Champaign County valued at \$10,000; shares in the United States Steel Corporation valued at \$5,000; an unimproved lot in the City of Champaign valued at \$3,000; and miscellaneous personalty of the value of \$1,000.

Claims filed against the estate and costs of administration amounted to \$5,500. How should said claims and costs be paid, and how should the remaining assets be distributed by the executor?

FINAL EXAMINATION IN WILLS & ADMINISTRATION (Law 320)

2nd Sem. 1955-56

Professor Schnebly

PART I: TRUE - FALSE QUESTIONS.

Directions: Read the statements that follow each problem, and mark each statement at the left of its number with a plus sign if you think it is a true statement, and with a zero sign if you think the statement is false in whole or in part.

For each statement marked correctly you will receive a credit of one point.

Read each statement carefully, for the truth or falsity of it may depend upon the presence or absence of a single word.

Base your marking upon the law of Illinois.

Use nothing but plus and zero signs.

Ask no questions.

Time allowed for this Part: One and one-half hours.

1. In January of 1935 C was duly appointed conservator for T by the County Court of X County.

While the conservatorship was still in effect, T prepared an instrument in the form of a will which began with this clause, "This is the last will and testament of T, of the County of X and State of Illinois." This instrument was wholly in the handwriting of T, whose name appeared only in the clause above quoted.

On April 1, T called at the home of A, where he presented the said instrument to A and requested him to sign it as a witness. T did not state the nature of the instrument to A, nor did A see the name of T on said instrument. A subscribed the paper as a witness.

On April 5, T called at the home of B, where he presented the said instrument to B, stating that it was his will, and requested B to sign it as a witness. B subscribed as a witness.

On both dates above mentioned the conservatorship was in full force and effect.

- ___ 1. Since T was under a conservatorship at the time the will was executed, he lacked the mental capacity required to make a valid will.
- ___ 2. Evidence of the existence of the conservatorship is not admissible in proceedings in the Probate Court.
- ___ 3. A suit in equity to contest the will may be brought at any time within one year after the will has been admitted to probate.
- ___ 4. The will is invalid because not signed by T.
- ___ 5. The will is invalid because not signed by T at the end thereof.
- ___ 6. After this will has been admitted to probate it cannot be contested on the ground that it was not properly signed by T.
- ___ 7. Even if the will was properly signed, it is invalid because T did not acknowledge the instrument to witness A in the manner required by statute.
- ___ 8. Even if the will was properly signed, it is invalid because it was not acknowledged by T to both witnesses while present at the same time.



- _____ 9. The will is invalid because not signed by T in the presence of the witnesses.
- _____ 10. The will is not invalid by reason of the fact that the witnesses were not informed of its provisions.
- _____ 11. The will is invalid because T did not inform witness A of the character of the instrument.
- _____ 12. The will was not validly executed.
- _____ 13. If the facts stated show a defect in the execution of the will, it is a defect that could have been cured by an appropriate statement made by T to the witnesses.
- _____ 14. The will is invalid because witness A did not see the name of T on the instrument.
- _____ 15. If the will had been typed by T's secretary during T's absence from his office, its invalidity would be clear beyond possibility of argument.

II. On June 1, 1930, T duly executed a will containing the following provisions:

"I give the sum of \$50,000 to my intended wife, W, and I give all the residue and remainder of my estate to my brother, B."

On June 20, 1930, T married W.

On August 10, 1931, a child, C, was born of this marriage.

On October 5, 1932, T duly executed an instrument entitled "Codicil to my Will of June 1, 1930," in which he made this provision:

"I give the sum of \$500 to my dear friend, F."

On November 1, 1940, T procured a divorce from W on the ground of adultery.

On December 1, 1941, T died leaving W, C, E, and F surviving him. Both the will and the codicil above mentioned were found among his papers. After payment of all debts and costs of administration, T's estate will consist of \$25,250 in personal property and \$75,000 in real estate.

- _____ 1. Both the will and the codicil are entitled to probate.
- _____ 2. If the codicil of 1932 had not been executed, probate of the will would be denied.
- _____ 3. When T procured a divorce from W, his will was revoked.
- _____ 4. When T procured a divorce from W on the ground of her adultery, W lost all rights under the will of T.
- _____ 5. The will is ineffective as against C.
- _____ 6. C is entitled to two-thirds of all the real and personal property of T remaining after payment of debts and costs of administration.
- _____ 7. If the codicil of 1932 had not been executed, W could not claim the full amount of her legacy of \$50,000, even though the estate should consist of \$100,250 in personal property.



- _____ 8. The gift to F is a specific legacy.
- _____ 9. This will contains no specific devise.
- _____ 10. F is entitled to receive the sum of \$500 from the estate of T.
- _____ 11. W is entitled to receive only the sum of \$25,000 from the estate of T.
- _____ 12. This will charges legacies on real estate.
- _____ 13. If for any reason the legacies to W and F cannot both be satisfied in full, they must abate pro rata.
- _____ 14. If W had predeceased T, C would have been entitled to the legacy of \$50,000 given to W.
- _____ 15. If F had predeceased T, the legacy of \$500 given to him would have fallen into the residue given to E.

III.

- _____ 1. X dies intestate leaving surviving him W, his wife; A, B, and C, children; and E and F, grandchildren who are children of a deceased child, D. E and F together are entitled to an undivided one-fifth of the real and personal estate of X.
- _____ 2. X dies intestate leaving surviving him W, his wife, and B, his brother. He leaves no descendants surviving.
W is entitled to all the personal property of X and one-half of each parcel of real estate in which she fails to perfect dower.
- _____ 3. T dies leaving a will wherein he makes no provision for W, his wife. He is survived by W and one child.
W is entitled to renounce the will and claim one-half of all the real and personal property of T.
- _____ 4. X dies intestate leaving neither spouse nor descendants surviving. His nearest relatives are his grandfather on his father's side, and an aunt on his mother's side.
The grandfather and the aunt are entitled to share equally the property of X.
- _____ 5. X conveyed Blackacre without the joinder of W, his wife. He dies intestate leaving no descendants, but leaving W surviving him.
W is entitled to dower in Blackacre, but is not entitled to claim one-half thereof in fee.
- _____ 6. D dies domiciled in X County. A files a petition in Y County for letters of administration on the estate of D. The Probate Court of Y County finds that D died domiciled in Y County and issues letters to A. A brings an action against B in Z County to recover a debt owed by B to D.
B can successfully defend this action by showing lack of jurisdiction in the Probate Court of Y County to issue letters.

7. There is no limit of time within which the will of a decedent must be probated.
8. T dies leaving a will wherein he names E as executor. E declines to serve. T leaves no surviving spouse. His nearest relatives are S, a son living in Philadelphia, and N, a nephew living in Chicago. S is entitled to nominate a properly qualified person to act as administrator with the will annexed, and the Probate Court must issue letters to the person so nominated.
9. Letters of administration on the estate of D were duly issued to A on the supposition that D had died intestate. Later a will duly executed by D was offered for probate. The letters issued to A were thereupon revoked, the will was admitted to probate, and letters testamentary were issued to E. Before revocation of A's letters, X had paid to A a debt owed to D. X's payment to A discharged the debt.
10. D wrote defamatory matter concerning P which constituted libel. Thereafter D died intestate and A was appointed administrator of his estate. P brought an action against A to recover for the libel. P cannot maintain the action against A.

FINAL EXAMINATION IN WILLS AND ADMINISTRATION (Law 320)

Second Semester 1955-1956

Professor Schnebly

PART TWO: ESSAY-TYPE QUESTIONS

NOTE: One hour and a quarter is allowed. Organize your answers with respect to both substance and form before writing is begun. Give particular attention to the rules of law developed in Illinois. Write in ink.

1. An instrument purporting to be the will of T was offered for probate. It purported to bear the signature of T, and the signatures of A and B as witnesses.

A testified at probate that he subscribed the instrument on January 20, 1940, in the presence of T, at the latter's request; that he did not at that time know the nature of the said instrument; that T did not sign the will in his presence, and that he did not see the signature of T upon the said instrument.

B testified that he subscribed the instrument on January 25, 1940, in the presence of T, at the latter's request; that only he and T were present on this occasion; that he was not informed by T of the nature of the instrument; that T did not sign the instrument in his presence, and that he was unable to recall whether or not he saw the signature of T upon said instrument.

Both witnesses testified that they believed T was mentally competent when they attested.

The alleged will named the X Bank & Trust Company as executor. Witness A was cashier of, and a shareholder in, the said corporation.

Should the instrument be admitted to probate as the will of T?

2. H executed a will in 1925, wherein he devised all his estate in equal shares to his brothers, A and B.

In 1928 H married W. In 1930 he executed an instrument attested by two witnesses wherein he declared that he confirmed his will of 1925; that since his wife had ample property of her own, he made no provision for her in his will.

In 1932 a child, C, was born to the marriage. H died in 1935.

What persons are entitled to share in H's estate, and in what proportions?

HOUR EXAMINATION IN WILLS (Law 320)

July 12, 1956

Professor Schnebly

NOTE: Organize your answers with respect to both substance and phraseology before writing is begun. In each answer give particular attention to the rules of law developed in Illinois. Write in ink.

1. T gave oral instructions for his will, including a legacy of \$1000 for A, as well as several other pecuniary legacies and several devises of land. By oversight of the attorney who prepared the will, the legacy for A was omitted in the finished draft. After having read said draft, T duly executed the same, and it was attested and subscribed by witnesses in due form.

Among the devises of the will was a devise to B of "my farm of 160 acres in Section 3, Township 10, etc." T owned no land in the section mentioned. He owned but one farm of 160 acres, which was located in Section 8 of Township 10. This farm was not otherwise specifically devised in the will, which contained a general residuary clause covering real and personal property.

The facts above recited come to light upon the death of T. Neither A nor B is an heir of T. A and B seek your advice. Would you advise them (a) to oppose probate of the will; (b) to file suit to contest the will after probate thereof; or (c) to seek some other form of relief?

2. T died in 1903, a resident of Cook County, Illinois, leaving a will executed in 1902. The 9th paragraph of said will provided as follows:

"It is my further will that any note or notes signed by me in favor of any person or persons and made payable by the terms thereof after my decease, be recognized and treated as bequests in behalf of the payees therein, respectively designated, and my executor is hereby fully authorized to pay the amount of the principal of such notes out of my estate and property or the proceeds thereof."

Three sisters, four nieces and two nephews presented claims against the estate of T, based on notes executed in their favor by T, and found among his papers at his death. Some of these notes bore dates prior to the date of T's will, and some, dates subsequent thereto. What is your opinion as to the rights of the claimants?

FINAL EXAMINATION IN WILLS & ADMINISTRATION (Law 320)

Summer Session, 1956

Professor Schnebly

PART TWO: ESSAY-TYPE QUESTIONS

NOTE: One hour and a quarter is allowed. Organize your answers with respect to both substance and form before writing is begun. Give particular attention to the rules of law developed in Illinois. Write in ink.

1. T executed a will on June 4, 1942, wherein he gave one-third of all his property to his wife, W; one-third to the X Hospital; and one-third to the Y Orphanage. He named the A Bank as executor of this will. This will was witnessed by B, the brother of T, and by C, who was cashier of, and a shareholder in, the A Bank.

On August 10, 1947, T procured a divorce from W. On October 9, 1951, T died. Among his papers was found the will of 1942, with a line drawn through the signature, and a notation in these terms in the margin of the instrument: "This will revoked September 3, 1950. (signed) T." In the same envelope with the will was found the draft of another will, dated September 3, 1950, wherein T gave one-third of all his property to the X Hospital; one-third to the Y Orphanage; and one-third to the Z School. This second will, however, was subscribed by but a single witness.

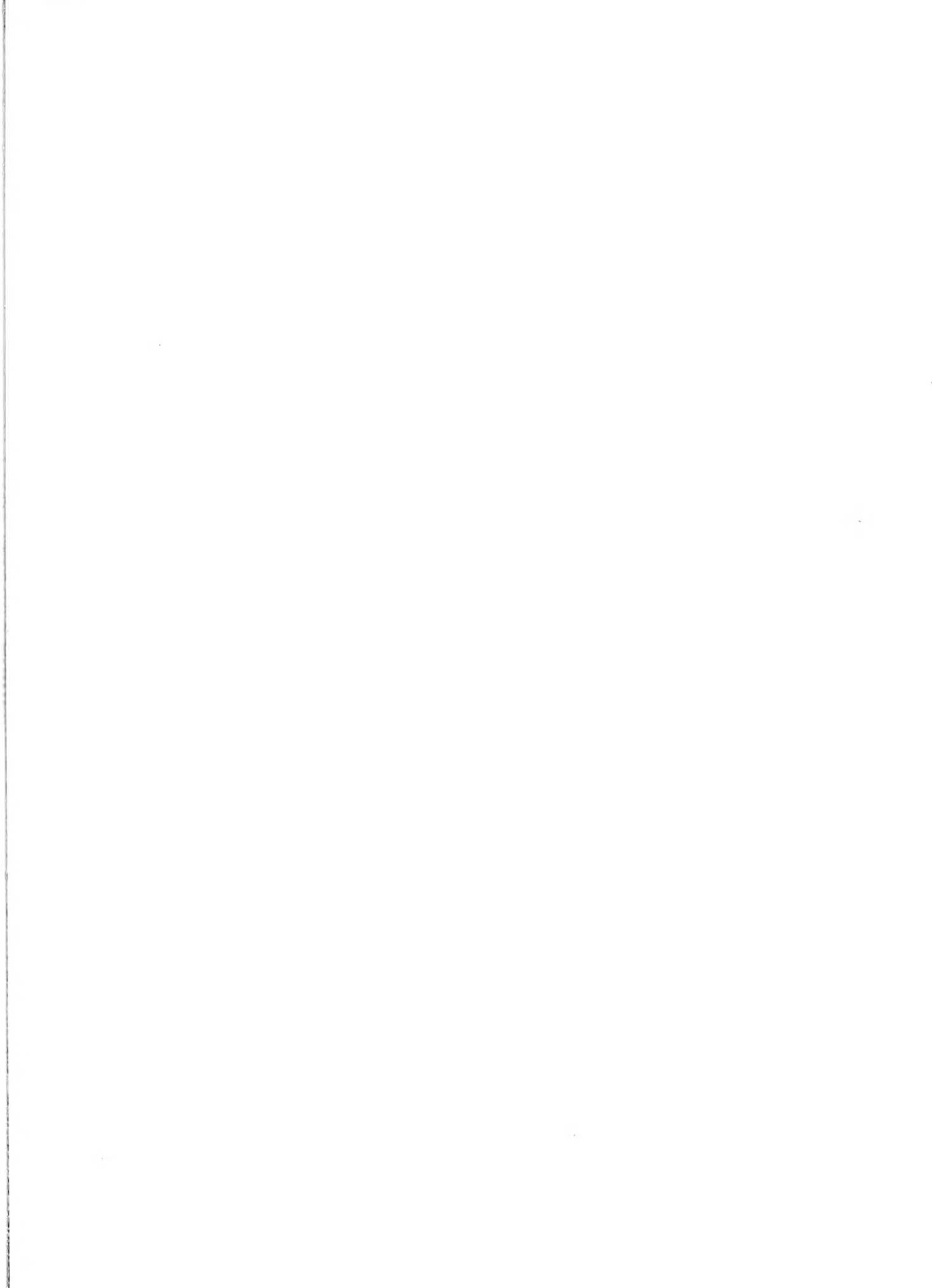
T died without leaving issue him surviving. His nearest relative at the time of his death was his brother B. W survived T.

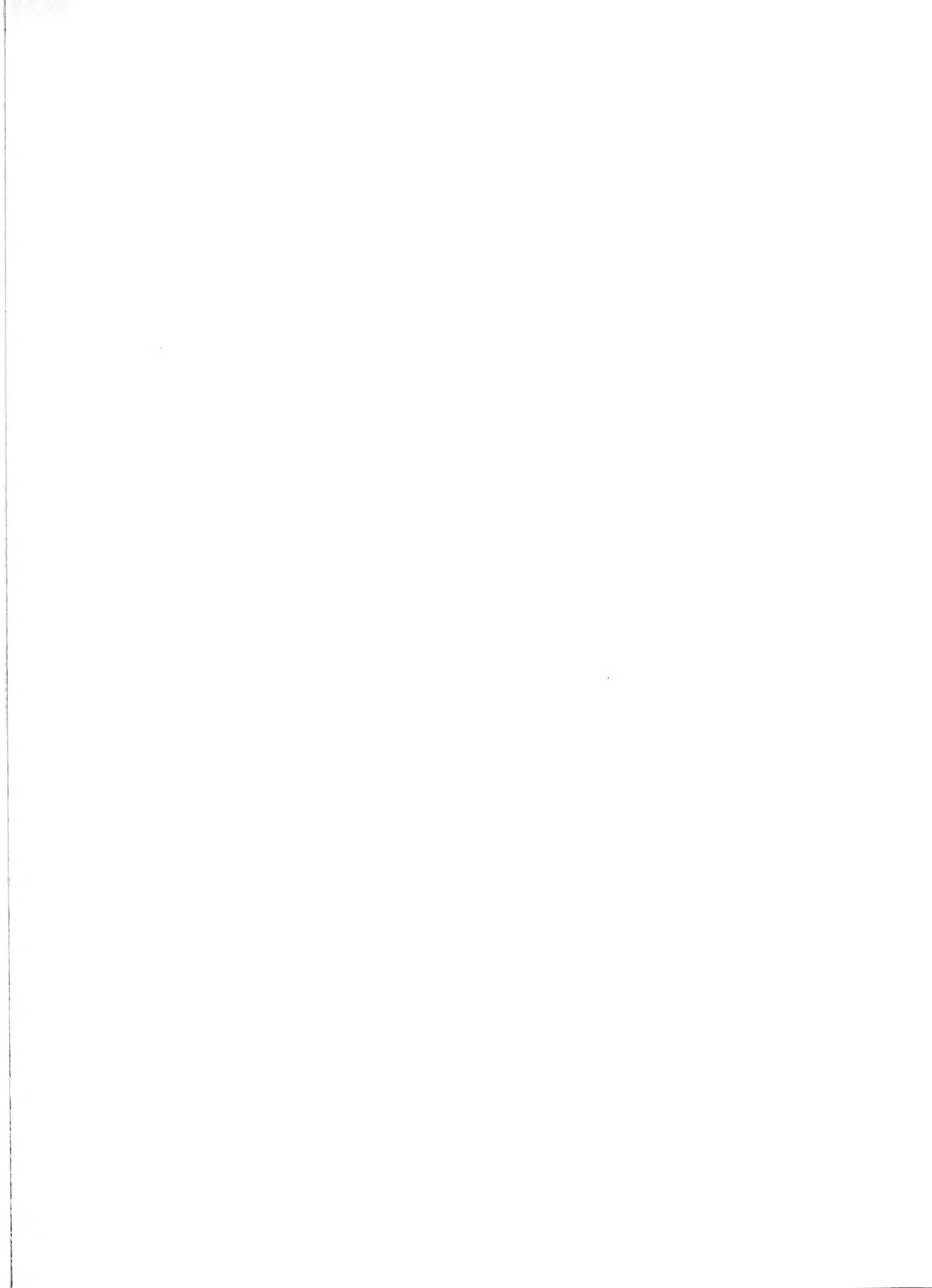
Should the will of 1942 be admitted to probate?

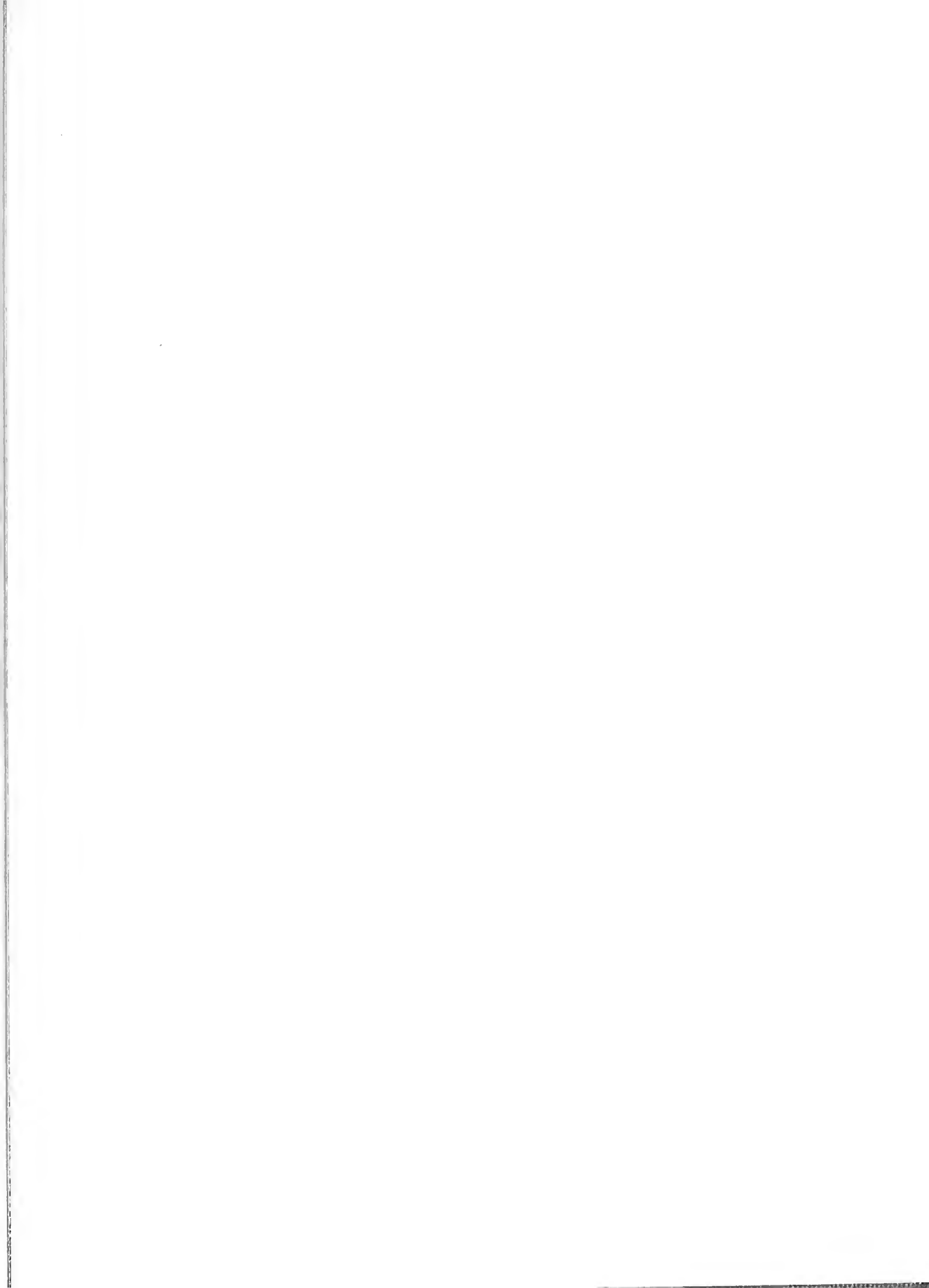
2. In a collision between two automobiles, driven by X and Y, both X and Y were killed. The collision was caused by the actionable negligence of X. X died intestate, and letters of administration were duly issued to A on October 1, 1941. Y died leaving a will, which was duly admitted to probate on October 9, 1941, letters testamentary being issued to E.

On February 2, 1942, E filed an action in the Circuit Court against A as administrator of X, seeking to recover damages for the wrongful death of Y, in which action he obtained a judgment for \$8000 on September 30, 1942. When this judgment was presented to the Probate Court as a claim against the estate of X, the Probate Court entered an order directing that said judgment be paid only out of assets discovered and inventoried subsequently to the date thereof.

Was the judgment in the Circuit Court a proper judgment so far as the disclosed facts would indicate? Was the order entered by the Probate Court a proper order?







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