ST. MARY'S UNIVERSITY SCHOOL OF LAW

PROPERTY I
Fall Semester 1993

FINAL EXAMINATION
Professor Douglas R. Haddock

INSTRUCTIONS

1. Some, but not all, of the problems on your Final Examination will refer to the following Factual Information, comprised of four pages, excluding this page of instructions but including two pages labeled "Rules of Law" referred to in paragraph 2 of these instructions. Some additional facts will be included with some of the problems, but the Factual Information gives you general background and numerous clues as to problems that might be presented in the Examination. For reference purposes, the paragraphs in the first two pages of this Factual Information are numbered from 1 to 7. Some of the information provided here is substantially the same as the "Examination Facts" used in the Practice Examination earlier this semester.

2. Included in the attached materials are "Rules of Law." For reference purposes, these rules are identified by letters from a to m. In responding to all of the problems on the Examination you are to assume that these Rules are in force now and, except as qualified in the rules themselves, at all pertinent times.

3. Prior to taking the Examination, you are allowed to get assistance from any and all resources, including the assigned problems and readings, your notes, and your colleagues, in studying and reviewing the Factual Information. You are encouraged to study the Factual Information thoroughly, individually and, if you desire, in groups, and to analyze questions you anticipate from reviewing the course.

4. During the three-hour Examination period, you will be allowed to use any printed or written material you wish, including the text, your notes and your outlines. You are advised, however, that this allowance will not necessarily help you. Undue reliance on the fact that this is an "open-book" examination, either before or during the Examination, will almost certainly hamper your performance. You are not allowed, of course, to get help from other persons during the Examination period and your responses to the problems must be your own work, composed and written during the Examination period.
[1] Pablo Piccolo is a moderately famous sculptor. About ten years ago he purchased all of Shirley Swarf's interest in ten rural acres ("Blackacre"). Shirley Swarf had inherited her interest in Blackacre from her husband, Stephen Swarf, when he died intestate in 1975. In 1960, Stephen had inherited a fee simple absolute in Blackacre from his father. Shirley and Stephen were the parents of one child, Samuel, but he died in 1973, survived by his parents, his wife and two children. Samuel had no other children.

[2] Blackacre is located a few miles outside of Midtown, a city with about 60,000 residents. For the past ten years, Pablo has resided on Blackacre and has used the property for his artistic work. One reason he decided to purchase Blackacre was the presence of many rocks of various sizes on the property. In fact, an abundance of rock, appropriate for Pablo's work, is found along the back edge of both Blackacre and Greenacre. The rocks have been on the premises for centuries and are more plentiful on Greenacre than on Blackacre. Over the past ten years, Pablo has periodically brought rocks from that area (both Blackacre and Greenacre) to his studio and he has, from time to time, used those rocks in creating various works of sculpture. Until about seven months ago, most of Pablo's artistic activity had been confined to a studio he built on the property when he first moved there ten years ago. During much of that time he has been engaged in creating relatively small metal and rock sculptures.

[3] Pablo has not transferred any of his interest in Blackacre. He has, however, executed a will in which he leaves Blackacre "to my wife for life and then to my children, provided that my studio and any and all artwork contained in the studio at my death shall not be disturbed during the lives of my children and grandchildren." The will further provides that the studio shall be maintained as a museum memorializing his work as long as any of his children and grandchildren live, and that "in the event the studio ceases to be so maintained while any of my children and grandchildren are living, the property [all of Blackacre] shall pass to the National Museum of Art." Pablo's will would also establish a trust fund for the purpose of maintaining the studio as a museum.

[4] "Greenacre," a tract of about twelve acres adjacent to Blackacre, is occupied by Cari Chandling. She has possession under a lease from Larry Larkin. The lease provides that Cari is entitled to possession from January 1, 1978 to January 1, 1998, subject to the condition that she pay a designated amount monthly as rent. Under the lease agreement, the rent is set for the first five years but it can be adjusted every five years according to a formula provided in the agreement. The formula is tied to the inflation rate. Larry Larkin's claim to Greenacre stems from his father's will, pertinent parts of which read, "I hereby devise [Greenacre] to my son, Larry, for as long as he lives and then to his children."
[5] Can has operated a chicken farm on Greenacre for about 15 years. She supplies fresh eggs to many of the grocery stores in Midtown, and through this business has been able to provide a fairly comfortable living for herself and her family. She has noticed, however, a decline in the egg production of her chickens during the past seven months. As a result, Can has been unable to supply as many eggs to her grocery store customers as she usually does, and some of those customers have begun to purchase more eggs from other suppliers. Can anticipates a continuing erosion of her business if the egg production by her chickens doesn't return to normal. Can originally estimated that her annual net income would decrease by at least $20,000 if the decline in egg production is not reversed. Based on more recent figures, she now believes that she will lose no less than $30,000 per year if Pablo's present activities continue. In recent years, her annual income has averaged about $80,000.

[6] The decline in production by Can's chickens coincides with a change in Pablo's activities on Blackacre. About one year ago, Specialty Motors, Inc., commissioned Pablo to create two very large sculptures to be placed at the entrance of its new headquarters facilities. Specialty Motors has agreed to pay Pablo $250,000 for the completed works. Pablo believes it will take him two years of full-time work, without the help of other artists and technicians, to finish the sculptures. About $200,000 of the consideration agreed upon will be profit (net income) to Pablo. By employing one or two other persons for occasional help on the project, at an estimated expense of $30,000, Pablo believes he could complete the project in eighteen months rather than two years. In order to complete the commissioned works, Pablo has brought some large rocks and metal and various pieces of heavy equipment onto Blackacre. Because of the size of the sculptures, he is working on this project outdoors, and the equipment and work generally produce a significant amount of noise. Can believes her chickens are disturbed by the noise and that the decline in egg production can be completely attributed to Pablo’s activities.

[7] Can has discussed this matter with Pablo. He has been very pleased with Blackacre as a place to live and work, however, and he is not willing to relocate. Pablo is also unwilling to forsake the commissioned works, but he has offered to move the work on that project a bit further from Greenacre. Can does not believe that would solve the problem. Can has asked about the possibility of moving the project into an enclosed building, but Pablo estimates that it would cost at least $60,000 to construct a building large enough to house the project, and he is not willing to incur that expense. He is also not convinced that the building would solve the problem if the noise he is producing is, in fact, causing Can's losses. Can also has been generally pleased with Greenacre as a place to live and work and she too does not want to incur the trouble and expense of moving.
Rules of Law

a. The "general common law" of property, as studied in class, applies, with the explanations, qualifications, and exceptions contained in these Rules of Law.

b. Any transfer by an owner is presumed effective to convey the owner's complete interest in the subject matter of the transfer. This is a rule of construction; it raises a presumption that can be rebutted by evidence of contrary intent on the part of the grantor.

c. All estates and future interests are presumptively fully alienable, and those that have a potential duration beyond the lifetime of the owner are inheritable and devisable. This includes all presently possessory estates and all future interests (reversions, rights of re-entry, possibilities of reverter, vested and contingent remainders, and executory interests) even though they may be subject to complete or partial divestment. This rule also includes equitable interests (beneficial interests in trusts) as well as legal interests.

d. Any estate that would have been a fee simple conditional or fee tail estate under the "common law" is deemed to be a fee simple absolute, regardless of grantor's intent.

e. Executory interests are valid legal estates and therefore can be created either as legal interests or as beneficial interests under a trust (equitable interests).

f. Contingent remainders are not subject to the common law "rule of destructability."

g. The following statute has been in force since 1950:

   Possibilities of reverter and rights of re-entry for breach of condition subsequent created after the effective date of this act, where the condition has not been broken, shall not be valid for a longer period than fifty years from the date of the creation of the condition or possibility of reverter. This rule shall be effective regardless of the intention of the grantor.

h. As to transfers taking effect on or after January 1, 1964, the "Rule in Shelley's Case" and the "Doctrine of Worthier Title" have been abolished.
i. The common law Rule Against Perpetuities is in force.

j. An action to recover possession of personal property must be commenced within four years of the time the cause of action accrued.

k. An action to recover possession of real property must be commenced within twelve years of the time the cause of action accrued.

l. The applicable statute on intestate succession (inheritance) provides, inter alia:

1) If decedent is survived by a spouse and children, (a) the intestate share of the surviving spouse is a life estate in all real property and fifty percent of all personal property; and (b) the intestate share of decedent’s children is the remainder of all real property and fifty percent of all personal property.

2) If there are no surviving children of the decedent, but a surviving spouse, 100% of the intestate estate passes to the surviving spouse.

3) If there is no surviving spouse of a decedent, but one or more surviving children or descendants of children, 100% of the intestate estate passes to the children and/or their descendants, which descendants take by right of representation.

m. Under the applicable common law, a private nuisance exists, inter alia, when one landowner has invaded another's interest in the private use and enjoyment of land and the invasion is intentional and unreasonable. (Under the circumstances involved here, you may assume that the invasion by Pablo, if any, of Carri’s interest in Greenacre would be classified as "intentional.") An intentional invasion is unreasonable if (a) the gravity of the harm outweighs the utility of the actor’s conduct, or (b) the harm caused by the conduct is serious and the financial burden of compensating for this and similar harm to others would not make the continuation of the conduct not feasible. Factors considered in determining the gravity of the harm include the extent of the harm involved, the character of the harm, the social value that the law attaches to the type of use or enjoyment invaded, the suitability of the particular use or enjoyment invaded to the character of the locality, and the burden on the person harmed of avoiding the harm. Factors considered in determining the utility of conduct that causes an intentional invasion of another's interest include the social value that the law attaches to the primary purpose of the conduct, the suitability of the conduct to the character of the locality, and the impracticability of preventing or avoiding the invasion.
INSTRUCTIONS

1. There are ten problems on the following two pages. You will have three hours in which to complete the examination. Times suggested for each problem total two hours and forty-five minutes.

2. Problems 1-6 are based on a two-page, seven-paragraph document labeled "Factual Information"; a document labeled "Rules of Law" applies to all ten problems. These two documents, comprised of four pages accompanied by one page of instructions, were distributed during the last two weeks of class, and are not included here. Additional information is included with some of the problems. Please adhere to the following assumptions:
   a. All persons indicated by name or letter are alive unless otherwise indicated in the Factual Information or the problem.
   b. Additional information included with individual problems pertains only to the problem in which that information appears.

3. You are allowed to use any printed or written material you wish, including the text, your notes and your outlines. You are not allowed, of course, to get help from other persons during the examination; your responses to the examination problems must be your own work, composed and written during the examination period. Your answers will be graded according to how well you recognize and how thoroughly you analyze the issues raised by the problems, in light of assigned readings and class discussions. Conclusions are often important; your recognition of the questions to be asked is always important.

4. St. Mary's University School of Law prohibits the disclosure of information that might aid a professor in identifying the author of an examination. Any attempt by a student to identify herself or himself in an examination is a violation of this policy and of the Code of Student Conduct.

5. When you have finished with the examination, no later than the end of the examination period, place the examination inside the bluebook and turn both in to the proctor. Before doing so, after reading the following oath, place your exam number in the designated space. If you are prevented by the oath from placing your exam number beneath the oath, notify the student proctor of your reason when you turn in the examination.

   I HAVE NEITHER GIVEN NOR RECEIVED UNAUTHORIZED AID IN TAKING THIS EXAMINATION, NOR HAVE I SEEN ANYONE ELSE DO SO.

EXAM NUMBER
Problem I Final Examination
Problems

Fall Semester 1993

Professor Douglas R. Haddock

Problem #1
(Suggested Time: 30 minutes)

Assuming Pablo's activities (see ¶6) are in fact causing Cari's troubles with her chickens, write a memorandum discussing (a) whether Pablo's present use of Blackacre is efficient and (b) the relationship between that question and possible legal action by Cari based on the law of nuisance.

Problem #2
(Suggested Time: 30 minutes)

Assuming it can be proved that some of the rocks Pablo is incorporating into the sculptures for Specialty Motors, Inc., were taken from Greenacre (see ¶¶ 2 & 6), discuss whether Cari would be entitled to reclaim those rocks, and what claims, if any, Larry Larkin and/or his children might have against Pablo and/or Cari. Assume Larry has two children.

Problem #3
(Suggested Time: 20 minutes)

Pablo has agreed to produce two sculptures for Specialty Motors, Inc. (See ¶ 6.) Write a short essay discussing whether the law should bestow upon Pablo any rights of "property" in those sculptures. Assume the sculptures have been delivered to Specialty Motors and Specialty has paid the contract price of $250,000.

Problem #4
(Suggested Time: 5 minutes)

In terms of "estates" doctrine, describe briefly the state of affairs that would exist between Larry Larkin and Cari Chandling if Cari failed to make December's rent payment because of her decreasing income. (See ¶ 4.)

Problem #5
(Suggested Time: 5 minutes)

Who owns Blackacre? Briefly explain your answer.

Problem #6
(Suggested Time: 10 minutes)

Who owns Greenacre? Briefly explain your answer. Assume Larry has no children.
Problem #7
(Suggested Time: 20 minutes)

By will, Gary Grant, now deceased, left property in which he owned a fee simple absolute "to Mary and John Doe as long as either of them is alive and then to their children." In another clause in his will, Grant left "all property owned by me at my death and not otherwise disposed of" to the Midtown Historical Preservation Commission (MHPC). How would you describe the estates created as a result of these will provisions, assuming the following alternative variations in the facts? Briefly explain your answers.

a. Mary and John are married but have not yet had any children.

b. Mary and John were married, have not had any children, and are now divorced.

c. Mary and John are married and have had three children, Matt, Nancy and Oliver. Matt recently died intestate (without a will disposing of his property), survived by his parents, his sister and brother, and his wife (Maria) and two children (Louis and Joanne).

Problem #8
(Suggested Time: 5 minutes)

By deed, Roberto Sanchez (Grantor) transferred real property "to the Evening Dispatch Publishing Company (Grantee) as long as Grantee, its successors or assigns, publish a daily newspaper on the property." Briefly describe, in estates terminology, the ownership of this real property.

Problem #9
(Suggested Time: 10 minutes)

Molly MacGuire transferred property by deed "to Alice Ariens and then to her children for life and then to her grandchildren forever." Alice is now eighteen years of age and has had no children. Briefly describe and discuss the interests created as a result of this transaction.

Problem #10
(Suggested Time: 10 minutes)

In 1955, Adam Arnold died. By his will, he devised certain real property "to my wife Marie for life and then to her heirs." In 1993, Marie died, survived by three children, Morris, Marguerite, and Martin. By her will, Marie devised all of her property to Marguerite. Briefly describe and discuss the interests created as a result of these events.
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PROPERTY I
Fall Semester 1993

FINAL EXAMINATION
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ANALYSIS AND COMMENTS

The following remarks give some indication of what was expected in this examination. They do not necessarily include everything that might be said about each problem. The answer to the first problem is from a student's examination paper.

Problem #1

(The following response to this problem was judged to be one of the best student answers. Part (b) of this question was designed in part to test responsiveness, i.e., how well and precisely students address the specific assignment given. That assignment was to discuss "the relationship between [the question of whether Pablo's present use of Blackacre is efficient] and possible legal action by Cari based on the law of nuisance." Very few students really responded to that question. Most discussed whether Pablo's activities constituted a nuisance rather than telling me what I asked for, which was discussion concerning the relationship between efficiency and the law of nuisance.)

(A) Is Pablo's use of Blackacre efficient?

Assuming Pablo's activities are in fact causing Cari's troubles with her chickens, an argument can be made that Pablo is not presently operating efficiently. As I see Pablo's present use, he is acting inefficiently in at least two respects.

(1) Assuming that he has not yet engaged the help of assistants, he is not making the most efficient use of his resource of time. We are told in the facts that he has considered hiring the assistant - I would urge him to do so far the following reasons.

- working alone Pablo says he can probably finish the project in two years and profit about $200,000. [Paragraph 6] If these facts are accurate he will make $8,333 per month for 24 months.

- Pablo thinks that he will be able to finish the project in 18 months if he hires help at a cost of $30,000. If he is right, and does in fact hire the help he will make $9,444 per month for 18 months.

It is probably preferable to make $9,444 a month instead of $8,333, however, this assumes that Pablo values the 6 months he gains by hiring help more than the $30,000 he loses. Just because his monthly income increases does not mean that his over-all efficiency is
increased. He is at least more efficient during the 18 months that he uses help. I would need to know what the 6 months is worth to Pablo to be sure how much more efficient his using help would be. I am assuming that he is a rational maximizer that would choose a greater per month income for 18 months along with 6 months to pursue other things.

(2) Pablo's present use of Blackacre is also inefficient because he is not bearing the full cost of production of his artwork.

In class -- specifically in the nuisance cases -- we learned that an inefficient use of resources may exist when a producer externalizes/imposes on others costs that should be reflected in his costs of production. The loss (approximately $30,000 per year) that Cari is experiencing is due - we are told to assume this - to a cost that Pablo is externalizing.

When a producer does not bear most or all costs of production, his product is produced inefficiently. In the Orchard View case, an aluminum producer was forced to internalize some of the costs that it had been imposing on neighboring landowners. This is generally done because society has an interest in the efficient use of resources.

Thus, Pablo's artwork does not reflect the true costs of production. Specialty Motors might not get the same work of art or pay the same price for any work of art if Pablo internalizes all of his costs. If he does internalize the costs imposed on Cari in the form of paying her damages then he will have to "eat" a loss in profit or try to pass on those costs to Specialty Motors. If Cari's damages are $45,000 for the 18 month project (assuming he hires help), then Pablo must pass that cost on to Specialty Motors - increasing the price of the art to $295,000, or absorb a reduction in profit. This second solution would leave Pablo with a monthly income of about $6,944.

In order to reach optimum efficiency we need more information on Cari's losses, the actual amount attributable to Pablo, and what value Pablo places on the extra 6 months that he could gain by hiring help.

(b) I am not sure I know what kind of answer this question is involving. Here goes an attempt.

What is the relationship between Pablo's inefficient use of Blackacre and possible legal action based on nuisance law?

The law -- as it reflects the concerns of society -- is interested in assigning and protecting property rights and in assuring that users of resources do so efficiently.

In the blue book we learned of some of the different approaches that courts take in forcing landowners to internalize costs that they impose on others. With regard to the past 7
months of harm inflicted on Cari’s use, the only appropriate remedy seems to be damages. The problem is in the calculation of damages - Cari thinks it will have amounted to about $17,500 for the past 7 months.

Concerning the threat of future harm we have more alternatives. Some of the variations of remedies of damages or injunctions used by modern courts are found on page 72 of the blue book. Each of these approaches will involve determinations that require more facts. We do not know which is the more valuable use. An accurate calculation would require information as to the distributional effects of Cari’s and Pablo’s activities. It seems as though Pablo is in the best position to evaluate his costs and act accordingly - in fact he probably should have considered what effect, if any, his new activity would have on his neighbors. He might have been able to get more for his artwork from Specialty. I feel as though I'm rambling - so I will try to get back to the question at hand.

One of the ways that courts can force a landowner to internalize his costs is through injunction. If Pablo's activity is enjoined, he will be required to negotiate with Cari in order to continue his work. One drawback to this approach is that Cari may "hold out" and force Pablo to pay much more than her damages. Pablo may be willing to pay as much as $199,000 - perhaps less after he has spent money to go to court and find out that he does not have the right to make the noise. Cari does seem to be willing to negotiate and arguably granting an injunction could insure the efficient allocation of resources. We need to know how much Pablo is willing to pay and how much Cari is willing to settle for.

Another possible solution would be for the court to award damages to Cari. This seems attractive because it lets Pablo continue -- if the damage award does not dissuade him -- his activity and compensates Cari for the harm done to her activity. However, as we learned in class, the court's determination of damages may be inaccurate. Cari is unsure of the actual loss so we cannot be sure that Pablo will internalize the right amount of costs.

- He could pay more or less than the true amount that he has been imposing and this would be inefficient.

My time for this one has expired and I'm not sure I really "got-it" on the second question. Given more time I may have tried to consider.

- Whether in injunction until Pablo can "keep" the noise on his property would be a good solution.

- What bearing if any Cari's being the first user would have.
Problem #2

In this problem, we are asked to assume that some of the rocks Pablo is incorporating into the sculptures for Specialty Motors, Inc., were taken from Greenacre, the property now possessed by Cari Chandling. The questions are whether Cari would be entitled to reclaim the rocks and what claims if any, Larry Larkin and his two children might have against Pablo and Cari. Pertinent general issues include whether Pablo has acquired title to the rocks by accession or adverse possession, and whether Larry and/or his children might successfully assert a claim against Cari for "waste."

As to title by accession, we don't have sufficient information to answer the question definitively. As we saw during the course, one who wrongly has possession of personal property owned by another can sometimes acquire superior title as a result of labor that turns the property into something different from and substantially more valuable than the original product. In this case, we do not know how much the rocks have been altered at this point. If there has been little change in them materially or in terms of value, Cari would probably be entitled to their return. But if they are now substantially incorporated into the sculpture Pablo may be able to keep them. [Many students suggested in their answers to this problem that if he knew he had wrongly taken the rocks, Pablo would not be entitled to keep them, regardless of the degree they had been altered. The authority cited for this proposition was Wetherbee v. Green, involving the conversion of logs into barrel hoops. In fact, this is not quite an accurate reading of the Wetherbee case, which technically only held that an innocent converter would be entitled to keep the changed property, not that a guilty converter would not. Even so the question of the effect of a would-be accessor's culpability or innocence is properly raised.]

We are also not given enough information to know whether Pablo might have a claim of title by adverse possession. The rules of law include provisions that an action "to recover possession of personal property" must be commenced within four years, and an action to recover real property within twelve years. In their natural state, rocks are presumably part of the land, or real property. But here they have been removed from the land and the personal property statutory period of adverse possession is arguably applicable. We don't know, however, how long Pablo has had the rocks in question. It is quite possible that he has had some of them for over four years, and some analysis of the nature of that possession -- i.e., whether it was adverse, open and notorious, continuous, etc. -- would be appropriate. Note, however, that the action is one for possession. Only Cari has been entitled to possession of Greenacre (and, presumably, the rocks) during the time Pablo has occupied Blackacre. The statute has possibly cut off Cari's claim to recover the rocks, depending upon whether all the elements of adverse possession are satisfied. The other owners of Greenacre -- Larry Larkin and his children -- have not been entitled to possession of the property during the years Pablo has occupied Blackacre. That being the case, the statutory period of adverse possession has presumably not been running against them, and when they are entitled to possession (at the end of Cari's term in the case of Larry and at the end of Larry's estate for his children) they could demand and, if necessary, sue for a return
of the rocks. Then, if less than four years have elapsed from the time Larry and/or his children are entitled to possession, Pablo probably could not make a successful claim of title by adverse possession against them. This is consistent with our learning that property is "relative" and that it consists of relationships among people as opposed to absolute rights.

Meanwhile, Larry and/or his children may have a claim against Cari under the doctrine of waste. Owners of future interests are entitled to protection of those interests. Based on the facts given in paragraph [4] of the Factual Information and the problem itself, Larry owns a reversion as long as he lives and his two children own a remainder interest in fee simple. (Although the facts don't explicitly say so, I am assuming that Larry's father has died.) As the owners of these future interests, Larry and his children are entitled to receive possession of the property in essentially the condition it was in at the time of the transfer to Cari. In other words, Cari is responsible for "waste" that occurs as a result of changes she makes in the property, either as a result of commission of some act or neglect of a duty she has to take care of the property. Her failure to prevent Pablo's taking of rocks from Greenacre could be the basis of an action for waste.

**Problem #3**

In this problem, students were asked to write a short essay discussing "whether the law should bestow upon Pablo any rights of 'property' in [the] sculptures." Words in this question were carefully chosen, but not necessarily carefully read. Many students interpreted this question as a simple invitation to discuss whether the law recognizes any right of property. In fact, the intent was to elicit the students' opinions as to whether the law ought to (the word "should" in the question was used for this purpose) recognize any property rights in an artist who has transferred "title" to a commissioned work of art. There were, of course, no right or wrong answers to this question but some were certainly more responsive to the question asked than others.

On the one hand, the artist might be viewed as any other merchant who is selling a commodity, in this case a sculpture. Title could be viewed as relatively absolute, at least as against the seller; assuming that the full purchase price has been paid, as in this case, such an exchange should be final. Retention of any "property" rights by the artist would be too much of an intrusion on the purchaser's "property." Indeed, even the economic self-interest of the artist might suggest that this is a viable conclusion. If the law did not allow artists to relinquish complete control over their work by exchange for consideration, people might be less willing to pay substantial sums for those pieces of art. The more limited the property, the less people will be willing to pay for it.

Another point of view, however, focuses on the artists' interest in the integrity of their work. This was illustrated in class with the example of Diego Rivera and Rockefeller Center in
New York City. Even when she sells her works, an artist arguably retains a legitimate interest (if not based on law, perhaps based on "morality") in the integrity of those works. In other words, one might contend that the purchaser should not be entitled to do anything and everything, including destruction or mutilation, to that "property." We have studied property as relationships among people, and art may transcend the individual commercial transaction between artist and consumer; it is possible that society shares with the artist a legitimate concern for the preservation of the artist's work, and that that concern should be translated into some legal limitation on a purchaser's power to whatever he or she will with purchased works of art. This limitation might be formulated in terms of a property interest retained by the artist.

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The remainder of the examination problems are essentially problems of "estates and future interests." In most cases, the answers are fairly precise. Brief explanations were also called for.

Problem #4

In terms of "estates" doctrine, Can would probably still own a "term of years" if she failed to make December's rent payment. We are told that under her lease she is entitled to possession from January 1, 1978 to January 1, 1998. This definite beginning and ending tells us that her estate is a term of years. We are also told, however, that her estate is "subject to the condition" that she pay rent on a monthly basis. This would presumably make her estate subject to a condition subsequent, leaving Larry Larkin with a "right to re-enter" for breach of condition, in addition the reversion for life. Cad's estate would not automatically terminate, but because she has breached the condition, Larry would now have the power to terminate her estate if he chooses to do so. (This question asks only for the state of affairs "between Larry Larkin and Cari Chandling." A full description of the estates in Greenacre is found in Problem #6.)

Problem #5

We are told in paragraph [1] of the Factual Information that Stephen Swarf inherited a fee simple absolute in Blackacre from his father, and that Shirley Swarf inherited her interest from Stephen, her husband, when he died intestate in 1975. We are not told, however, what that interest was. We know that the one child of Shirley and Stephen, Samuel, predeceased Stephen, survived by his parents, a wife, and two children. Based on these facts, we know from paragraph l(2) of the applicable rules of law that Shirley inherited all of Stephen's interest, a fee simple absolute, because Stephen was survived by a spouse but by no children. Because Pablo Picasso purchased "all of Shirley Swarf's interest" about ten years ago, he is now the owner of a fee simple absolute in Blackacre.
Problem #6

Greenacre is also referred to in Problem #4. Cari owns a term of years (subject to condition subsequent) for the reason explained there; Larry Larkin has a reversion for life as well as a right to re-enter for breach of condition; Larry's unborn children have a contingent remainder in fee simple. Until Larry has a child, there also exists another future interest, described as either a reversion or alternative contingent remainder in fee simple, in some undetermined person(s). If the will of Larry Larkin's father disposed of this interest to some person (by a residuary clause in the will, for example), that person owns the interest. If, however, the interest was not disposed of by the will, it passed by intestate succession under paragraph l(3) of the applicable rules of law to Larry Larkin and any other children of Larry's father who were alive at the father's death.

Problem #7a

Mary and John own a life estate, measured by the life of the last surviving one of them; their unborn children own a contingent remainder in fee simple; MHPC owns an alternative contingent remainder or a reversion in fee simple. Because all interests are created by the same document (Gary Grant's will) it would be appropriate to characterize the interest of MHPC as an alternative contingent remainder rather than a reversion (an interest retained by a grantor at the time of creating other interests). In that case, there is a theoretical vested reversion, which I think MHPC could also claim under the residuary clause. Calling MHPC's interest simply a reversion might therefore be simpler.

Problem #7b

The fact that Mary and John are now divorced really has no effect on the present characterization of the interests in the subject property. The description of estates and future interests would be the same as in 7a. They could still have children (as wife and husband or otherwise) and Gary Grant's will provisions are not directly affected by the divorce.

Problem #7c

The additional facts given in this part of Problem #7 do change matters somewhat. John and Mary still own their life estate, but as soon as a child was born the children's contingent remainder became a vested remainder in fee simple subject to partial divestment. This defeated or destroyed any interest MHPC had in the property. Because Matt, one of the children, has now died intestate, his one-third interest in the vested remainder in fee simple subject to partial divestment has been inherited under rule l(1) by his surviving wife and children. Their precise interests in the property depends upon whether it is real property or personal property. If the
former, Matt's wife owns a life estate (in one-third of the original remainder and subject to partial divestment) and his two children own a vested remainder (in one-third of the original remainder subject to partial divestment); if the property is personal, however, Matt's wife owns 50% and his children own 50% (again in one-third of the original remainder, subject to partial divestment).

Problem #8

The phrase "as long as" would be effective to suggest that the grantee's estate would automatically terminate upon the happening of the specified event. Assuming Sanchez owned a fee simple absolute, the Evening Dispatch Publishing Company would therefore own a fee simple determinable and Roberto Sanchez would own a possibility of reverter.

Problem #9

Alice Ariens owns a life estate; her unborn children own a contingent remainder for life; Molly MacGuire owns a reversion in fee simple absolute. Molly attempted to transfer an interest to Alice's unborn grandchildren as well as her unborn children but that part of the transaction fails because of the rule against perpetuities. The interest of Alice's unborn children does not violate the rule against perpetuities, which requires that an interest must, from the time of its creation, be certain either to vest or to fail within lives in being plus 21 years. Any and all of Alice's children will be born within her lifetime (or none will ever be born to her); we can therefore use Alice as the life in being to validate her children's remainder interest. It is not possible, however, to do the same thing with respect to the grandchildren's interest. Alice could have a child, all lives in being at the time of the transfer from Molly could end, and Alice's child could have a child (Alice's grandchild) more than 21 years later. Because there is a possibility that the grandchildren's interest will not fully vest within the time period allowed, it is void. The reversion in Molly therefore takes its place.

Problem #10

The rule in Shelley's case applies to this problem because the will took effect in 1955, before the statute abolishing that rule took effect. By that rule, a remainder purportedly created in A's heirs following a life estate created in A is converted to a remainder in A. Applied to this problem, Marie would have received not only a life estate in 1955 as a result of Adam Arnold's will, but also a vested remainder in fee simple. These two estates add up to a possessory fee simple absolute and when Marie died, having devised "all of her property to Marguerite," that fee simple absolute would pass by the terms of Marie's will to Marguerite. Morris and Martin would neither take any interest under Adam Arnold's will nor inherit any part of this property.