

Scott Pearce's Master MBE Method

Real Property

Real Property - Official National Conference of Bar Examiners Outline of Testable Issues

- I. Ownership
 - A. Present estates
 - 1. Fees simple
 - 2. Defeasable fees simple
 - 3. Life estates
 - B. Cotenancy
 - 1. Tenancy in common
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 - C. Future interests
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 - d. Periodic tenancies
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 - 5. Surrender, mitigation of damages, and anticipatory breach
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- B. Some security relationships
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- C. Transfers by mortgagor
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- D. Transfers by mortgagee (including effect of Article 3 of UCC)

- E. Discharge and defenses

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- B. Conveyancing by deed
 - 1. Types
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- D. Priorities and recording
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Question 1

Lord leased a warehouse building and the lot on which it stood to Taylor for a term of ten years. The lease contained a clause prohibiting Taylor from subletting his interest. Can Taylor assign his interest under the lease?

- A. Yes, because restraints on alienation of land are strictly construed.
- B. Yes, because disabling restraints on alienation of land are invalid.
- C. No, because the term 'subletting' includes 'assignment' when the term is employed in a lease.
- D. No because even in the presence of an express prohibition on assignment, a tenant may not assign without the landlord's permission.

Question 2

Talbot and Rogers, as lessees, signed a valid lease for a house. Lane, the landlord, duly executed the lease and delivered possession of the premises to the lessees.

During the term of the lease, Rogers verbally invited Andrews to share the house with the lessees. Andrews agreed to pay part of the rent to Lane, who did not object to this arrangement, despite a provision in the lease that provided that "any assignment, subletting or transfer of any rights under this lease without the express written consent of the landlord is strictly prohibited, null and void." Talbot objected to Andrews' moving in, even if Andrews were to pay a part of the rent.

When Andrews moved in, Talbot brought an appropriate action against Lane, Rogers, and Andrews for a declaratory judgment that Rogers had no right to assign. Rogers' defense was that he and Talbot were tenants in common of a term for years, and that he, Rogers, had a right to assign a fractional interest in his undivided one-half interest. In this action, Talbot will

- A. prevail, because a co-tenant has no right to assign all or any part of a leasehold without the consent of all interested parties
- B. prevail, because the lease provision prohibits assignment
- C. not prevail, because he is not the beneficiary of the nonassignment provision in the lease
- D. not prevail, because his claim amounts to a void restraint on alienation

Questions 3-4 are based on the following fact situation.

Orris had title to Brownacre in fee simple. Without Orris' knowledge, Hull entered Brownacre in 1950 and constructed an earthen dam across a watercourse. The earthen dam trapped water that Hull used to water a herd of cattle he owned. After twelve years of possession of Brownacre, Hull gave possession of Brownacre to Burns. At the same time, Hull also purported to transfer his cattle and all his interests in the dam and water to Burns by a document that was sufficient as a bill of sale to

transfer personal property but was insufficient as a deed to transfer real property.

One year later, Burns entered into a lease with Orris to lease Brownacre for a period of five years. After the end of the five-year term of the lease, Burns remained on Brownacre for an additional three years and then left Brownacre. At that time Orris conveyed Brownacre by a quitclaim deed to Powell. The period of time to acquire title by adverse possession in the jurisdiction is ten years.

Question 3

After Orris' conveyance to Powell, title to Brownacre was in

- A. Hull
- B. Orris
- C. Burns
- D. Powell

Question 4

After Orris' conveyance to Powell, title to the earthen dam was in

- A. the person who then held title to Brownacre in fee simple
- B. Burns as purchaser of the dam under the bill of sale
- C. the person who then owned the water rights as an incident thereto
- D. Hull as the builder of the dam

Questions 5-6 are based on the following fact situation.

Ohner holds title in fee simple to a tract of 1,500 acres. He desires to develop the entire tract as a golf course, country club, and residential subdivisions. He contemplates forming a corporation to own and to operate the golf course and country club; the stock in the corporation will be distributed to the owners of lots in the residential portions of the subdivision, but no obligation to issue the stock is to ripen until all the residential lots are sold. The price of the lots is intended to return enough money to compensate Ohner for the raw land, development costs (including the building of the golf course and the country club facilities), and developer's profit, if all of the lots are sold.

Ohner's market analyses indicate that he must create a scheme of development that will offer prospective purchasers (and their lawyers) a very high order of assurance that several aspects will be clearly established:

1. Aside from the country club and golf course, there will be no land use other than residential use

and occupancy in the 1,500 acres

2. The residents of the subdivision will have unambiguous right of access to the club and golf course facilities.
3. Each lot owner must have an unambiguous right to transfer his lot to a purchaser with all original benefits.
4. Each lot owner must be obligated to pay annual dues to a pro rata share (based on the number of lots) of the club's annual operating deficit (whether or not such owner desires to make use of the club and course facilities).

Question 5

In the context of all aspects of the scheme, which of the following will offer the best chance of implementing the requirement that each lot owner pay annual dues to support the club and golf course?

- A. Covenant
- B. Easement
- C. Mortgage
- D. Personal contractual obligation by each purchaser

Question 6

Of the following, the greatest difficulty that will be encountered in establishing the scheme is that

- A. any judicial recognition will be construed as state action which, under current doctrines, raises a substantial question whether such action would be in conflict with the Fourteenth Amendment
- B. the scheme, if effective, renders title unmarketable
- C. one or more of the essential aspects outlined by Ohner will result in a restraint on alienation
- D. there is a judicial reluctance to recognize an affirmative burden to pay money installments and over an indefinite period as a burden that can be affixed to bind future owners of land

Questions 7-8 are based on the following fact situation

Ogden was the fee simple owner of three adjoining vacant lots fronting on a common street in a primarily residential section of a city which had no zoning laws. The lots were identified as Lots 1, 2, and 3. Ogden conveyed Lot 1 to Akers and Lot 2 to Bell. Ogden retained Lot 3, which consisted of three acres of woodland. Bell whose lot was between the other two, built a house on his lot. Bell's house included a large window on the side facing Lot 3. The window provided a beautiful view from Bell's living room, thereby adding value to Bell's house.

Akers erected a house on his lot. Ogden made no complaint to either Akers or Bell concerning the houses they built. After both Akers and Bell had completed their houses, the two of them agreed to and did build a common driveway running from the street to the rear of their respective lots. The driveway was built on the line between the two houses so that one-half of the way was located on each lot. Akers and Bell exchanged right-of-way deeds by which each of them conveyed to the other, his heirs and assigns, an easement to continue the right of way. Both deeds were properly recorded.

After Akers and Bell had lived in their respective houses for thirty years, a new public street was built bordering on the rear of Lots 1, 2, and 3. Akers informed Bell that, since the new street removed the need for their common driveway, he considered the right-of-way terminated; therefore, he intended to discontinue its use and expected Bell to do the same. At about the same time, Ogden began the erection of a six-story apartment house on Lot 3. If the apartment house is completed, it will block the view from Bell's window and will substantially reduce the value of Bell's lot.

Question 7

In an action brought by Bell to enjoin Akers from interfering with Bell's continued use of the common driveway between the two lots, the decision should be for

- A. Akers, because the termination of the necessity for the easement terminated the easement
- B. Akers, because the continuation of the easement after the change of circumstance as would adversely affect the marketability of both lots without adding any commensurate value to either
- C. Bell, because an incorporeal hereditament lies in grant and cannot be terminated without a writing
- D. Bell, because the removal of the need for the easement created by express grant does not affect the right to the easement

Question 8

In an action brought by Bell to enjoin Ogden from erecting the apartment building in such a way as to obstruct the view from Bell's living room window, the decision should be for

- A. Bell, because Ogden's proposed building would be an obstruction of Bell's natural right to an easement for light and air
- B. Bell, because Bell was misled by Ogden's failure to complain when Bell was building his house
- C. Ogden if, but only if, it can be shown that Ogden's intention to erect such a building was made known to Bell at or prior to the time of Ogden's conveyance to Bell
- D. Ogden, because Bell has no easement for light, air, or view

Question 9

The owner of Newacre executed and delivered to a power company a right-of-way deed for the building and maintenance of an overhead power line across Newacre. The deed was properly recorded. Newacre then passed through several intermediate conveyances until it was conveyed to Sloan about ten years after the date of the right-of-way deed. All the intermediate deeds were properly recorded, but none of them mentioned the right-of-way.

Sloan entered into a written contract to sell Newacre to Jones. By the terms of the contract, Sloan promised to furnish an abstract of title to Jones. Sloan contracted directly Abstract Company to prepare and deliver an abstract to Jones, and Abstract Company did so. The abstract omitted the right-of-way deed. Jones delivered the abstract to his attorney and asked the attorney for an opinion as to title. The attorney signed and delivered to Jones a letter stating that, from the attorney's examination of the abstract, it was his "opinion that Sloan had a free and unencumbered marketable title to Newacre."

Sloan conveyed Newacre to Jones by a deed which included covenants of general warranty and against encumbrances. Jones paid the full purchase price. After Jones had been in possession of Newacre for more than a year, he learned about the right-of-way deed. Sloan, Jones, Abstract Company, and Jones' attorney were all without actual knowledge of the existence of the right of way to the conveyance from Sloan to Jones.

If Jones sues Sloan because of the presence of the right-of-way, the most likely result will be a decision for

- A. Jones, because Sloan is liable for his negligent misrepresentation
- B. Jones, because the covenants in Sloan's deed to Jones have been breached
- C. Sloan, because Jones relied upon Abstract Company, not Sloan, for information concerning title
- D. Sloan, because Sloan was without knowledge of any defects in the title to Newacre

Question 10

Opus, the owner of Stoneacre, entered into a written agreement with Miner. Under this written agreement, which was acknowledged and duly recorded, Miner, for a five-year period, was given the privilege to enter Stoneacre to remove sand, gravel, and stone in whatever quantities Miner desired. Miner was to make monthly payments to Opus on the basis of the amount of sand, gravel and stone removed during the previous month. Under the terms of the agreement, Miner's privilege was exclusive against all others except Opus, who reserved the right to use Stoneacre for any purpose whatsoever, including the removal of sand, gravel, and stone.

One year after the agreement was entered into, the state brought a condemnation action to take Stoneacre for a highway interchange. In the condemnation action, is Miner entitled to compensation?

- A. Yes, because he has a license, which is a property right protected by the due process clause
- B. Yes, because he has a *profit a prendre*, which is a property right protected by the due process clause
- C. No, because he has a license, and licenses are not property rights protected by the due process clause
- D. No, because he has a *profit a prendre*, which is not a property right protected by the due process clause

Questions 11-13 are based on the following fact situation

Sue owned a five-acre tract of land, one acre of which had previously been owned by Opal, but to which Sue had acquired title by adverse possession. Sue contracted to convey the full five-acre tract to Peg, but the contract did not specify the quality of title Sue would convey. At closing, Peg refused the tendered deed and demanded return of her earnest money.

Question 11

Suppose Peg pays the purchase price and accepted a deed. Subsequently, Sue's title to the one acre proves inadequate and Opal ejects Peg from that acre. Peg sues Sue for damages. Which of the following statements applies most accurately to the determination of Peg's rights?

- A. Sue's deed was fraudulent
- B. The terms of the deed control Sue's liability
- C. The only remedy available for breach of warranty of title is rescission
- D. Peg's rights are based on the implied covenant that the title conveyed shall be marketable

Question 12

Suppose Sue's contract had called for the conveyance of "a good and marketable title." Pursuant to that contract, Peg paid the purchase price and accepted a deed from Sue containing no covenants of title. Sue's title to the one acre subsequently proved defective and Peg was ejected by Opal. Peg sued Sue. Which of the following results is most likely?

- A. Peg will win because Sue's deed was fraudulent
- B. Peg will win because the terms of the deed control Sue's liability
- C. Sue will win because the terms of the deed control her liability
- D. Sue will win because the deed incorporates the terms of the contract

Question 13

Suppose that before closing, the house on the property had been totally destroyed by fire. In determining the rights of Sue and Peg, the court would most likely consider the doctrine of equitable

- A. marshaling
- B. sequestration
- C. subrogation
- D. conversion

Questions 14-15 are based on the following fact situation.

Seller and Buyer execute an agreement for the sale of real property on September 1, 1971. The jurisdiction in which the property is located recognized the principle of equitable conversion and has no statute pertinent to this problem.

Question 14

Assume for this question only that Seller dies before closing and his will leaves his personal property to Perry and his real property to Rose. There being no breach of the agreement by either party, which of the following is correct?

- A. Death, an eventuality for which the parties could have provided, terminates the agreement if they did not so provide.
- B. Rose is entitled to the proceeds of the sale when it closes, because the doctrine of equitable conversion does not apply to these circumstances.
- C. Perry is entitled to the proceeds of the sale when it closes.
- D. Title was rendered unmarketable by Seller's death.

Question 15

Assume for this question only that Buyer dies before closing, there being no breach of the agreement by either party. Which of the following is appropriate in most jurisdictions?

- A. Buyer's heir may specifically enforce the agreement.
- B. Seller has the right to return the down payment and cancel the contract.
- C. Death terminates the agreement.
- D. Any title acquired would be unmarketable by reason of Buyer's death.

Questions 16-18 are based on the following fact situation.

Owen held in fee simple Farmdale, a large tract of vacant land. The state wherein Farmdale is situated has a statute which provides, in substance, that unless the conveyance is recorded, every deed or other conveyance of an interest in land is void as to a subsequent purchaser who pays value without notice of such conveyance. The following transactions occurred in the order given.

First: Owen conveyed Farmdale, for a fair price, to Allred by general warranty deed. Allred did not immediately record.

Second: Leon executed a mortgage to secure repayment of a loan concurrently made to Owen by Leon. Leon had no notice of the prior conveyance to Allred and promptly duly recorded the mortgage.

Third: Owen, by general warranty deed, gratuitously conveyed to Niece, who recorded her deed.

Fourth: Allred duly recorded his deed from Owen.

Fifth: Niece, by general warranty deed, conveyed Farmdale to Barrett. Barrett had no actual notice of any of the prior transactions, paid full value, and promptly duly recorded the deed.

Question 16

Asserting that his title was held, free of any claim by Barrett, Allred instituted suit against Barrett to quiet title to Farmdale. If Barrett prevails, it will be because

- A. Allred's prior recorded deed is deemed to be outside Barrett's chain of title
- B. Barrett's grantor, Niece, recorded before Allred
- C. as between two warranty deeds, the later one controls
- D. Barrett's grantor, Niece, had no notice of Allred's rights

Question 17

Asserting that his title was held free of any claim by Leon, Allred instituted suit against Leon to quiet title to Farmdale. Judgment should be for

- A. Allred, because Leon is deemed not to have paid value
- B. Allred, because a mortgagee is not a subsequent purchaser within the meaning of the statute mentioned
- C. Leon, because he recorded before Allred
- D. Leon, because he advanced money without notice of Allred's rights

Question 18

Assume for this question only that Niece had not conveyed to Barrett. After Allred recorded his deed from Owen, Allred, asserting that Allred's title was held free of any claim by Niece, instituted suit against Niece to recover title to Farmdale. Judgment should be for

- A. Niece, because she had no notice of Allred's rights when she accepted the deed from Owen
- B. Niece, because she recorded her deed before Allred recorded his
- C. Allred, because Niece was not a bona fide purchaser who paid value
- D. Allred, because he had paid value for Farmdale and had no actual or constructive notice of the deed to Niece

Question 19

The following facts concern a tract of land in a state which follows general United States law. Each instrument is in proper form, recorded, marital property rights were waived when necessary, and each person named was adult and competent at the time of the named transaction.

1. In 1940 Oleg, the owner, conveyed his interest in fee simple "to my brothers Bob and Bill, their heirs and assigns as joint tenants with right of survivorship."
2. In 1950 Bob died, devising his interest to his only child, "Charles, for life, and then to Charles's son, Sam, for life, and then to Sam's children, their heirs and assigns."
3. In 1970 Bill died, devising his interest "to my friend, Frank, his heirs and assigns."
4. In 1972 Frank conveyed his quitclaim deed "to Paul, his heirs and assigns whatever right, title and interest I own."

Paul has never married. Paul has contracted to convey marketable record title in the land to Patrick. Can Paul do so?

- A. Yes, without joinder of any other person in the conveyance.
- B. Yes, if Charles, Sam, and Sam's only child (Gene, age 25) will join in the conveyance.
- C. No, regardless of who joins in the conveyance, because Sam may have additional children whose interests cannot be defeated.
- D. No, regardless of who joins in the conveyance because a title acquired by quitclaim deed is impliedly unmerchantable.

Question 20

Odum owned Brightacre (a tract of land) in fee simple. He conveyed it “to Pike, his heirs and assigns; but if Farley shall be living thirty years from the date of this deed, then to Farley, his heirs and assigns.” The limitation “to Farley, his heirs and assigns” is

- A. valid, because Farley's interest is a reversion
- B. valid, because the interest will vest, if at all, within a life in being
- C. valid, because Farley's interest is vested subject to divestment
- D. invalid

Question 21

Homer conveyed his home to his wife, Wanda, for life, remainder to his daughter, Dixie. There was a \$20,000 mortgage on the home, requiring monthly payment covering interest to date plus a portion of the principal. Which of the following statements about the monthly payment is correct?

- A. Wanda must pay the full monthly payment.
- B. Wanda must pay a portion of the monthly payment based on an apportionment of the value between Wanda's life estate and Dixie's remainder.
- C. Wanda must pay the portion of the monthly payment which represents interest.
- D. Dixie must pay the full monthly payment.

Question 22

Testator devised his farm “to my on, Selden, for life, then to Selden's children and their heirs and assigns.” Selden, a widower, had two unmarried adult children.

In appropriate action to construe the will, the court will determine that the remainder to the children is

- A. indefeasibly vested
- B. contingent
- C. vested subject to partial defeasance
- D. vested subject to complete defeasance

Questions 23-24 are based on the following fact situation.

In 1945 Owen, owner of both Blackacre and Whiteacre, executed and delivered two separate deeds by which he conveyed the two tracts of land as follows: Blackacre was conveyed "To Alpha and his heirs as long as it is used exclusively for residential purposes, but if it is ever used for other than residential purposes to the American Red Cross." Whiteacre was conveyed "To Beta and her heirs as long as it is used exclusively for residential purposes, but if it is used for other than residential purposes prior to 1965, then to the Salvation Army." In 1950 Owen died leaving a valid will by which he devised all his real estate to his brother, Bill. The will had no residuary clause. Owen was survived by Bill and by Owen's daughter, Delia who was Owen's sole heir.

For the purpose of this set of questions, it may be assumed that the common law Rule Against Perpetuities applies in the state where the land is located and that the state also has a statute providing that, "All future estates and interests are alienable, descendable, and devisable in the same manner as possessory estates and interests."

Question 23

In 1955, Alpha and Delia entered into a contract with John whereby Alpha and Delia contracted to sell Blackacre to John in fee simple. After examining title. John refused to perform on the ground that Alpha and Delia could not give good title. Alpha and Della joined in an action against John for specific performance. Prayer for specific performance will be

- A. granted, because Alpha and Delia together own a fee simple absolute in Blackacre
- B. granted, because Alpha alone owns the entire fee simple in Blackacre
- C. denied, because Bill has a valid interest in Blackacre
- D. denied, because the American Red Cross has a valid interest in Blackacre

Question 24

In 1946, the interest of the American Red Cross in Blackacre could best be described as a

- A. valid contingent remainder
- B. void executory interest
- C. valid executory interest
- D. void contingent remainder

Question 25

Morgan conveyed Greenacre, her one-family residence, to “Perez for life, remainder to Rowan, her heirs and assigns, subject, however, to First Bank’s mortgage thereon.” There was an unpaid balance on the mortgage of \$10,000, which is payable in \$1,000 annual installments plus interest at 6 percent on the unpaid balance, with the next payment due on July 1. Perez is now occupying Greenacre. The reasonable rental value of the property exceeds the sum necessary to meet all current charges. There is no applicable statute.

Under the rules governing contributions between life tenants and remaindermen, how should the burden for payment be allocated?

- A. Rowan must pay the principal payment, but Perez must pay the interest to First Bank.
- B. Rowan must pay both the principal and the interest payments to First Bank.
- C. Perez must pay both the principal and interest payments to First Bank.
- D. Perez must pay the principal payment, but Rowan must pay the interest to First Bank.

Question 26

Anders conveyed her only parcel of land to Burton by a duly executed and delivered warranty deed, which provided: To have and to hold the described tract of land in fee simple, subject to the understanding that within one year from the date of the instrument said grantee shall construct and thereafter maintain and operate on said premises a public health center.

The grantee, Burton, constructed a public health center on the tract within the time specified and operated it for five years. At the end of this period Burton converted the structure into a senior citizens' recreational facility. It is conceded by all parties in interest that a senior citizens' recreational facility is not a public health center.

In an appropriate action, Anders seeks a declaration that the change in the use of the facility has caused the land and structure to revert to her. In this action, Anders should

- A. win, because the language of the deed created a determinable fee, which leaves a possibility of reverter in the grantor
- B. win, because the language of the deed created a fee subject to a condition subsequent, which leaves a right of entry or power of termination in the grantor
- C. lose, because the language of the deed created only a contractual obligation and did not provide for retention of property interest by the grantor
- D. lose because an equitable charge is enforceable only in equity.

Question 27

Martinez, a widower, owns in fee simple a ranch, Ranchacre. Martinez has one child, Enrique, who is married. Enrique has one child Ana Maria, who is also married but has no children. In an effort to dispose of Ranchacre to his descendants and to honor a request by Ana Maria that she be skipped in any disposition, Martinez conveys Ranchacre to his son, Enrique, for life with the remainder to Ana Maria's children in fee simple.

What interest, if any, is created in favor of Ana Maria's unborn children at the time of the conveyance?

- A. A contingent remainder
- B. A vested remainder subject to divestment
- C. A springing use
- D. None

Question 28

For a valuable consideration, Amato, the owner of Riveracre, signed and gave to Barton a duly executed instrument that provided as follows: "The grantor may or may not sell Riveracre during her lifetime, but at her death, or if she earlier decides to sell, the property will be offered to Barton at \$500 per acre. Barton shall exercise this right, if at all, within sixty days of receipt of said offer to sell." Barton recorded the instrument. The instrument was not valid as a will.

Is Barton's right under the instrument valid?

- A. Yes, because the instrument is recorded.
- B. Yes, because Barton's right to purchase will vest or fail within the period prescribed by the Rule Against Perpetuities.
- C. No, because Barton's right to purchase is a restraint on the owner's power to make a testamentary disposition.
- D. No, because Barton's right to purchase is an unreasonable restraint on alienation.

Question 29

Ortega owned Blackacre in fee simple and by his will specifically devised Blackacre as follows: "To my daughter, Eugenia, her heirs and assigns, but if Eugenia dies survived by a husband and a child or children, then to Eugenia's husband during his lifetime with remainder to Eugenia's children, their heirs and assigns. Specifically provided, however, that if Eugenia dies survived by a husband and no child, Blackacre is specifically devised to my nephew, Luis, his heirs and assigns."

While Ortega's will was in probate, Luis quitclaimed all interest in Blackacre to Eugenia's husband, Jose. Three years later, Eugenia died, survived by Jose but no children. Eugenia left a will devising her interest in Blackacre to Jose. The only applicable statute provides that any interest in land is freely alienable.

Luis instituted an appropriate action against Jose to establish title to Blackacre. Judgment should be for

- A. Luis, because his quitclaim deed did not transfer his after acquired title
- B. Luis, because Jose took nothing under Ortega's will
- C. Jose, because Luis had effectively conveyed his interest in Blackacre
- D. Jose, because the doctrine of after acquired title applies to a devise by will

Questions 30-31 are based on the following fact situation.

Trease owned Hilltop fee simple. By his will, he devised as follows: "Hilltop to such of my children who shall reach the age of 21; and by this provision I intend to include all grandchildren whenever born." At the time of his death, Trease had three children and two grandchildren.

Question 30

Courts hold such a devise valid under the common-law Rule Against Perpetuities. What is the best explanation of that determination?

- A. All of Trease's children would be measuring lives.
- B. The rule of convenience closes the class of beneficiaries when any grandchild reaches the age of 21.
- C. There is a presumption that Trease intended to include only those grandchildren born prior to his death.
- D. There is a subsidiary rule of construction that dispositive instruments are to be interpreted so as to uphold interests rather than to invalidate them under the Rule Against Perpetuities.

Question 31

Which of the following additions to or changes in the facts of the preceding question would produce a violation of the common-law Rule Against Perpetuities?

- A. A posthumous child was born to Trease.
- B. Trease's will expressed the intention to include all afterborn grandchildren in the will.
- C. The instrument was an *inter vivos* conveyance rather than a will.
- D. Trease had no grandchildren in living at the time of his death.

Question 32

In 1965, Hubert Green executed his will which in pertinent part provided, "I hereby give, devise, and bequeath Greenvale to my surviving widow for life, remainder to such of my children as shall live to attain the age of 30 years, but if any child dies under the age of 30 years survived by a child or children, such child or children shall take and receive the share which his, her, or their parent would have received had such parent lived to attain the age of 30 years."

At the date of writing his will, Green was married to Susan, and they had two children, Allan and Beth. Susan died in 1970 and Hubert married Waverly in 1972. At his death in 1980, Green was survived by his wife, Waverly, and three children, Allan, Beth, and Carter. Carter, who was born in 1974, was his child by Waverly.

In a jurisdiction which recognizes the common-law Rule Against Perpetuities unmodified by statute, the result of the application of the rule is that the

- A. remainder to the children and to the grandchildren is void because Green could have married subsequently a person who was unborn at the time Green executed his will
- B. remainder to the children is valid, but the substitutionary gift to the grandchildren is void because Green could have subsequently married a person who was unborn at the time Green executed his will
- C. gift in remainder to Allan and Beth or their children is valid, but the gift to Carter or his children is void
- D. remainder to the children and the substitutionary gift to the grandchildren are valid

Question 33

Andras conveyed Applewood Farm "to Bogatz, her heirs and assigns, so long as the premises are used for residential and farm purposes, then to Cohen and his heirs." The common law Rule Against Perpetuities, unmodified by statute, is part of the law of the jurisdiction in which Applewood Farm is located. As a consequence of the conveyance, Cohen's interest in Applewood Farm is

- A. nothing
- B. a valid executory interest
- C. a possibility of reverter
- D. a right of entry for condition broken