1973

Property I (B) (January 8, 1973)

William & Mary Law School
I. Sarah Miles owns two parcels of unimproved land, Blackacre and Greenacre. Sarah inherited both parcels from her father in 1960. She is eager to clear Blackacre and to build her spinster's manor on it. She thus retained James Randolph as her general contractor; Randolph, in turn, subcontracted the clearing to Hos Kartrite. While clearing the land, Hos put a cable around a stately oak and uprooted the tree by pulling the cable with a tractor. Quite pleased with his work, Hos peered into the hole left by the tree and discovered a rusty metal box with the words, "Mr. Byrd" on it. Opening the box, he found Mr. Byrd's diary. Both Sarah and Randolph, having heard of Hos' discovery, claim to be entitled to the box and its contents.

Randolph subcontracted the task of laying the building's foundation to Styles Mason. Before Mason had completed the foundation, Sarah's mother passed away, and Sarah went to Ireland to attend the funeral. Before departing, however, Sarah gave $1,500 to Randolph and said, "Give this to Mr. Mason as soon as he finishes the foundation." Randolph unfortunately concluded that taxes were too high in the United States and departed for Switzerland with the $1,500.

Sarah returned from the funeral and learned that Randolph had swindled her. She then hired Joe Honest to finish the construction. Joe, needing a trencher to lay some pipe, rented a trencher from Acme Rental, Inc. Unknown to Joe, the last lessee of the trencher had left a diamond ring in the tool box of the trencher, which was permanently affixed to the machine. Joe, after completing the pipe work, parked the trencher on a hill and neglected to put the brake on; as a result the trencher rolled down the hill and into a swift river, the current of which opened the tool box and swept the ring into the Atlantic Ocean (assume the ring is permanently lost). The trencher also suffered severe water damage.

(a) Who is entitled to William Byrd's box and its contents? Do not overlook the possibility that William may or may not have living descendants.

(b) Is Randolph liable to Mason? To Sarah? On what theories?

(c) Discuss Joe's liability, if any.

In 1965, Sarah conveyed Greenacre to her grandsons by a deed with the following language: "I hereby grant to my grandsons, Jim and Jack, for their lives, Greenacre; upon the death of the survivor of them, I grant Greenacre to my granddaughter, Ellen."

In 1966, Festus Hagen, having retired from the Dodge City Police Department and looking for a new home, without authorization from anyone entered upon Greenacre and erected a commodious lean-to wherein he took up residence. In 1967, Festus' cousin, Lem, without the knowledge of Festus or authorization from anyone, cut down 75 cord of wood from Greenacre, which he transported to St. Louis and sold for $20 a cord. Festus heard of Lem's treachery and sued Lem for trespass. Lem defends on two grounds: (1) Festus himself was a mere trespasser, and (2) the timber had a value of only $10 a chord before it was severed and taken to St. Louis.

(d) Discuss all issues reasonably relevant in Festus v. Lem.

Assume that Festus recovered $20 per cord from Lem and spends the money in the Long Branch Saloon. Jim and Jack now learn of Lem's action and they sue him for trespass and the value of the timber. Lem pleads Festus' judgment in bar and further asserts that Jim and Jack can not maintain their suit since they do not own the fee.

(e) Discuss all issues fairly raised in Jim and Jack v. Lem.
II. Tim Murphy, who had a fear of heights, found himself about to embark on his first airplane trip. So apprehensive was he that he called his wife, Sally, and his son, Tom, into his office on the eve of his trip and stated to both of them that he feared for his life. He then said to Sally, "I want you to have these," and handed her 150 shares of I.B.M. stock, which he had previously endorsed to her. He also gave Sally the passbook to his savings account and said, "I want our grandson, Edward, to get this." Turning to Tom, Tim said, "This house is yours, but I want Sally to live here for the rest of her life," and handed him the key to the front door. To his great surprise, Tim survived the airplane trip and returned home to find that Sally had divorced him and that Tom had opened a brothel in the house. Sally also had never given Edward anything from the savings account, but instead had paid her lawyer $5,000 from the account and had transferred the balance to her personal account. Tim angrily told Sally and Tom that they were dealing with property that didn't belong to them; but, since he and Sally remarried in a short time and since Tom allowed him to use the resources of the former brothel, Tim never took any legal actions to clarify his position.

After the reconciliation, Tim wished to protect himself from a recurrence of Sally's indecision, transferred $500,000 of his personal funds to his brother, Fred, by a trust deed which in pertinent part provided "my trustee, Fred Murphy, shall invest these funds in blue chip stocks and bonds and shall pay to me all the income therefrom during my natural life; from my death he shall pay my spouse, Sally, $200 a month from the income for her life; at Sally's death my said trustee shall pay the principal and accrued income to my then living grandchildren. I reserve the power of revocation."

Tim then conveyed his residence by an unrecorded deed which in pertinent provided, "I grant my residence to my brother, Fred, for the term of his natural life, remainder to my heirs." Prior to Tim's death, only Tim and Fred had any knowledge of this deed.

Tim's occupation was horse trainer and shortly after he and Sally reconciled, he was training a foal owned by one of his non-resident clients. Seeing that the foal had great racing potential, Tim substituted another foal in its place and represented to his acquaintances that the first foal was his own. The foal never became a great racing horse but it did give birth to two colts. One of these colts Tim sold to Ringley Brothers Circus for $1,000, and the other he gave to Sally.

Finally, after many years of turmoil with Sally, Tim realized that he was too old to find anyone else and thereafter formed a rather fond attachment to her. To demonstrate his new-found affection, Tim wrote a letter to his stock broker, telling him to liquidate all his holdings and to put the proceeds (less the broker's commission, of course) into the Dreyfus Fund in Sally's name. The broker failed to comply with Tim's wishes.

Tim died intestate leaving Sally as his widow and Tom as his heir. His former client has learned of Tim's deception and knows of the two colts. Tim is also survived by a grandson, Edward. Fred predeceased Tim. Discuss all issues fairly raised above.

III.

1. Subinfeudation
   a. diminished the services to the lord
   b. diminished the incidents to the lord
   c. diminished both the services and incidents to the lord
   d. diminished neither the services nor the incidents to the lord

2. In the year 1250, the King conveys Blackacre to A in fee simple. A then enfeoffs
   b. If B then dies without heir,
   a. the land escheats to the King
   b. the land passes in accord with B's will
   c. the land escheats to A
   d. the land passes to B under the intestate statutes
3. Which of the following transactions was not affected by the Statute Quia Emptores?
   a. subinfeudation by one lord to another in fee
   b. conveyance by one lord, who held in fee tail, to another in fee tail
   c. the right of the King to authorize his immediate tenants to subinfeudate
   d. none of the above

4. Which of the following is not a freehold estate?
   a. fee conditional
   b. fee tail
   c. life estate
   d. term of 999 years

5. Which of the following conveyances, if any, will not be affected by the Statute of Uses?
   a. 0 to A in fee simple to the use of B for C's life
   b. 0 to A in fee simple to the use of B for 10 years
   c. 0 covenants to stand seized to A's use for A's life
   d. 0 to A for 10 years to the use of B

6. In which of the following conveyances is 0 attempting a conveyance which would cause seisen to move from him in futuro, if the conveyance takes effect in accordance with its terms?
   a. 0 to A for life, then to B and his heirs
   b. 0 to A for 10 years, then to B and his heirs
   c. 0 to A for life, then to B and his heirs if B marries C.
   d. 0 to A for 10 years, then to 0's heirs

7. Which of the following creates a determinable fee (possibility of reverter)?
   a. 0 to B and his heirs, but if B uses the property for non-residential purposes, to C and his heirs
   b. 0 to A and his heirs, but if A uses the property for non-residential purposes, then C and his heir may claim the property as theirs in fee
   c. 0 to A and his heirs so long as the property is used for residential purposes
   d. 0 to A so long as the property is used for residential purposes, thereafter to Grace Episcopal Church

8. At common law, A dies intestate survived by his widow, a granddaughter (who is the daughter of a deceased son who was A's second born child), and two daughters (one of whom was A's first born child and the other of whom was his third born child), and a grandson (who is the son of A's deceased son who was his fourth born child). Who inherits A's realty?
   a. his widow
   b. the two surviving daughters equally
   c. the grandson
   d. the granddaughter

9. Under the fee simple conditional, which of the following was true?
   a. the mere birth of issue alive to the holder of such an estate permitted the holder to convey a fee simple absolute
   b. to enable the holder of such an estate to pass a fee simple absolute, he had to die survived by issue
   c. the holder of such an estate could acquire a fee simple absolute by suffering a fine and recovery
   d. until the Statute De Donis Conditionalibus, the holder of such an estate could do nothing with the property except use and enjoy it during his life

10. The Statute De Donis Conditionalibus provided that
    a. all fee simple conditionals be treated as fee simple absolutes
    b. there be a preference for indefinite failure of issue
    c. that the issue of the holder of a fee tail be guaranteed their succession upon the holder's death
    d. the holder of an estate in tail be permitted to acquire a fee simple absolute upon suffering a common recovery
11. Which of the following, if any, violates the Rule against Perpetuities?
   a. 0 to A for life, then to A's widow for life, then to A's children in fee who survive A's widow
   b. 0 to A for life, then to B for life, then to B's children in fee
   c. 0 to A for life, then to A's children for their joint lives, then to A's surviving grandchildren in fee
   d. none of the above

12. A rents an apartment to B "for one year." At the end of the year, A refuses to
   vacate the premises.
   a. B is now a trespasser, and A may have him evicted
   b. B has hold-over, and he can not be evicted until the end of another year
   c. A has the option of treating B as a trespasser or as a tenant for another year
   d. B can not be evicted without first being given one month's notice

13. At common law, what interest would A acquire under conveyance which provided
   "to A and B and their heirs."
   a. a common tenancy
   b. a joint tenancy
   c. a fee simple
   d. a concurrent life estate

14. O conveys property to "A and B and their heirs" in 1960. The property is
   located in State X, and A resides in State Y. In 1961 B enters the property
   and lives in a house on the property until 1970; during this same period B
   leased 5 acres of the property to C for an annual rent of $5,000. In 1970,
   A learns of B's action; which of following actions may A take?
   a. partition the property
   b. sue B for half the rental value of the house
   c. sue B for half of the rental of the 5 acres
   d. all of the above

15. A and B are common tenants. C held a mortgage to the property and threatened
   to foreclose it until A paid the mortgage off.
   a. A can compel B to pay half of the amount paid by A to discharge the mort-
      gage
   b. A is subrogated to C and can now foreclose the mortgage in his own right
   c. A is a volunteer and entitled to no contribution
   d. A should not have paid C more than half of the balance due under the mort-
      gage

16. O conveys land to A and B as joint tenants with the right of survivorship. A
   conveys his interest in the land to C.
   a. B and C are new common tenants
   b. B and C are new joint tenants
   c. C has no interest in the land unless B consents to the conveyance
   d. if B and C are husband and wife, they hold as tenants by the entirety

17. Prior to the Statute of Uses, what was B's interest under a conveyance providing,
   0 to A so long as used for residential purposes, then to B in fee."
   a. a vested remainder
   b. a contingent remainder
   c. a possibility of reverter
   d. nothing

18. Prior to the Statute of Uses, what is B's interest under the following convey-
   ance: 0 to A for ten years, then to B in fee if A dies without issue.
   a. vested remainder
   b. contingent remainder
   c. fee tail
   d. nothing
19. Prior to the Statute of Uses, O conveys to A for life, remainder to A's children who reach 21 years of age. A then dies survived by one child who is 10 years old.
   a. the child now has a vested remainder
   b. the child now has a contingent remainder
   c. the child has an expectancy
   d. the child has nothing

20. O conveys land to A for life, then to B if B reaches 21 years of age, then to C in fee. A conveys his life estate to C. B is 10 years of age.
   a. C has a fee simple absolute
   b. C has a fee simple subject to a contingent life estate in B
   c. C has a fee simple subject to a vested remainder in B
   d. C has forfeited his estate

21. O conveys to A for life, remainder to A's first son and his heirs, remainder to A's heirs. A has no children.
   a. Shelley's Rule gives A a fee simple absolute
   b. Shelley's Rule and the doctrine of merger give A a fee simple absolute
   c. Shelley's Rule applies, but merger does not operate
   d. A has a life estate and a reversion

22. O conveys to A for life, remainder to A's first son and his heirs, remainder to A's heirs. A has a son.
   a. Shelley's Rule gives A a fee simple absolute
   b. Shelley's Rule and the doctrine of merger give A a fee simple absolute
   c. Shelley's Rule applies, but merger does not operate
   d. Shelley's Rule does not apply

23. O conveys to A for life, remainder to O's heirs. O dies survived by B, his only heir. O left a will devising all his realty to C. Which of the following is true.
   a. B takes a remainder in fee under the intestate statutes
   b. B takes a remainder in fee under the conveyance
   c. B takes a remainder in fee under the will
   d. A takes a fee simple under the doctrine of merger

24. O conveys land to T in trust to pay the income to A for life and to pay over the corpus to A's heirs at A's death. Which of the following is true?
   a. After the Statute of Uses, T has a fee simple free of the trust
   b. A has a legal fee simple because of the rule in Shelley's case
   c. A has an equitable fee simple because of the rule in Shelley's case
   d. none of the above

25. After the Statute of Uses, O bargains and sells land to A for fifty years then in fee to A's heirs. Which of the following is true?
   a. the purported remainder in A's heir is void
   b. A takes a fee simple because of Shelley's Rule
   c. A's heirs have an enforçable contingent shifting executory interest
   d. A's heirs have an enforçable contingent springing executory interest

26. After the Statute of Uses, O bargains and sells land to A for life, then to such children of A who shall reach 21 years of age in fee. A dies survived by one son who is 10 years of age. Which of the following is true?
   a. the son has nothing
   b. the son has a springing executory interest
   c. the son has a vested remainder
   d. A has a reversion

27. After the Statute of Uses, O devises land to T for the use of A for life and then for the use of A's heirs, T to pay the income to A for life and to convey the land to A's heirs on A's death. A conveys his interest to B. Which of the following is true?
a. B can compel the termination of the trust before A's death
b. At A's death, his heirs are entitled to the land free of the trust
c. At A's death, B is entitled to the land free of the trust
d. At A's death, T is entitled to the land free of the trust

28. After the Statute of Uses, O enfeoffs A for the use of B for life, then to such of B's children as shall reach 21; if B dies without children or if none of his children reach 21, then to C and his heirs. B dies survived by one child, S, who is 10 years of age. Which of the following is true?
   a. S and C have alternative contingent remainders
   b. S and C have alternative springing executory interests
   c. S has a contingent remainder and C has a shifting executory interest
   d. O has a reversion, and C has a shifting executory interest

29. After the Statute of Uses, O enfeoffs to A and his heirs for the use of B for life. Which of the following is true?
   a. A has a legal fee simple absolute
   b. B has a legal life estate and O a legal reversion
   c. B has a legal life estate and A a legal remainder
   d. B has an equitable life estate and A a legal remainder

30. After the Statute of Uses, O bargains and sells to A and his heirs for the use of B for life. Which of the following is true?
   a. A has a fee simple absolute
   b. B has a legal life estate and O a legal reversion
   c. B has a legal life estate and A a legal remainder
   d. B has an equitable life estate and A a legal remainder