1968

Property (1959-1967)

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Repository Citation
4. Jason Rogers was the owner of a farm in Loudoun County containing fifty acres. By deed of Sept. 19, 1950, he and his wife granted to "the School Board of Loudoun County, Virginia" one acre of the farm, the deed describing it properly. The other pertinent parts of the deed are as follows:

"The grantors do hereby grant and convey to the School Board of Loudoun County, Va., and their successors in office, the said one acre of land for the purpose of erecting thereon a building to be used as a public schoolhouse for the benefit of County school system.

"To have and to hold said land so long as it is used as a public school and if it is abandoned for such purpose the said one acre of land goes back to the grantors."

The School Board soon thereafter erected a small building on the one-acre tract which it conducted as a public two-room schoolhouse until May, 1958, at which time the School Board completed a new consolidated County school elsewhere in the County and completely abandoned the tract deeded to it by Rogers.

By deed dated October 13, 1950, Jason Rogers and wife conveyed the entire fifty-acre farm to Horton Culpepper, which conveyance included in its description the one-acre parcel previously deeded to the School Board.

Upon the abandonment of the one-acre tract in 1958, Horton Culpepper entered upon the property and tore down the building, cultivated the entire tract and planted it in winter wheat.

As a result of this asserted claim of ownership by Culpepper, the School Board instituted suit against him which sought to enjoin him from using the property as his own. Culpepper answered, claiming fee simple ownership of the one-acre tract.

(1) What estate, if any, in the one-acre tract did the School Board receive by deed of Rogers?

(2) What estate, if any, in the one-acre tract did Rogers retain?

(3) What estate, if any, in the one-acre tract did Rogers convey to Culpepper?

(4) What estate, if any, does the School Board have after its abandonment of the property?

(PROPERTY)(1) The School Board received a base, qualified, or determinable fee. The words "so long as" indicate a limitation and not a condition and the clause starting with "if it is abandoned" merely states what the law implies anyway when a determinable fee comes to an end by its own limitation.

(2) Assuming that "estate" means "interest", Rogers retained a possibility of reverter.

(3) In Virginia any interest in land may be conveyed by deed or will under our statute of conveyances, and (also by statute) if one conveys more than he owns all that he does own passes, so Rogers conveyed his possibility of reverter to Culpepper.

(4) None, as a determinable fee ceases automatically by the expiration of its own limitation.

See 190 Va. 676 on p. 833 of Property in these Notes.

Note: It can be plausibly argued that (1) School Board received a fee simple subject to a condition subsequent because of the "if" clause. (It is "when" in the case of 190 Va. 676). Then Rogers would have retained a right to enter for condition broken also called a power of termination. Then Culpepper would have succeeded to that right, and the School Board would not have lost title until a re-entry by Culpepper had been made.
5. Wilson Burns owned a store building in the City of Buena Vista and by agreement in writing dated January 4, 1954, leased the building to Acme Insurance Corporation for a period of two years beginning on Feb. 1, 1954, and terminating on Jan. 31, 1956, the rent to be paid in installments of $100 per month the first year and $200 per month the second year. In Dec., 1955, Burns met Acme’s president on the street and agreed to permit Acme to remain in the building after January 31, 1956, at a reduced rental of $150 per month, this being the extent of their conversation.

Acme continued in possession after Jan. 31, 1956, and paid Burns the monthly rental of $150 until August 1, 1956, when the parties agreed orally that Acme would continue in possession until Feb. 1, 1959, at the same rental of $150 per month. Acme continued in possession, paid the $150 per month rent through Oct. 31, 1958, but on that date, without notice to Burns, Acme vacated the premises and has refused to pay any more rent.

Burns instituted an action against Acme in the proper court to recover rent from Acme for the period from Nov. 1, 1958, through Jan. 31, 1959, reciting the above facts, and alleging in Count (1) that under the agreement of Dec., 1955, Acme became a holdover tenant from year to year after Jan. 31, 1956, and was to pay annual rental in monthly installments; and in Count (2) that under the agreement of August 1, 1956, Acme agreed to continue as tenant until Feb. 1, 1959, at a monthly rental of $150.

Acme demurred to Count (1) of the motion for judgment on the ground that it did not allege a tenancy from year to year. It also filed a plea to Count (2) alleging that the agreement was within the statute of frauds and unenforceable.

How should the court rule on the questions raised by (1) the demurrer, and (2) the plea?

PROPERTY
(1) The demurrer to count (1) should be sustained. Since the rental was changed from $200 to $150 per month there has been no holding over under the first lease and hence the tenancy would be by the month and not by the year especially in the case of urban property. (2) This plea is not valid. Here we have an oral lease for five years or less, and not a contract to lease. No further negotiations or papers were contemplated. An oral lease for less than five years does not violate (1) the statute of conveyances, nor (2) that provision of the statute of frauds about contracts to convey realty as a term of years is less than a freehold estate and hence personalty, nor (3) that provision of the statute of frauds about contracts to lease for more than one year since this is a lease and not a contract to lease, nor (4) that provision of the statute of frauds with reference to contracts that cannot be performed within the space of one year since the landlord has already performed by giving the oral lease. See Smith v. Payne, 153 Va. 746.

5. Assuming that Jones, Jr., is the only child of Jones, Sr., what estates, if any, are created in Jones, Sr., and Jones, Jr., (a) in the absence of statute, and (b) in Virginia today, by the following language in properly executed deeds, conveying Blackacre as follows?

(1) "To Jones, Sr., and his heirs,"

(2) "To Jones, Sr., for ten years with remainder to Jones, Jr., and his heirs, if he has then married."

PROPERTY
(1) (a) Before the statute of uses no estate would have been created in anyone because there was no livery of seisin (feoffment). After the statute of uses Jones, Sr., would have a fee simple. His son nothing but an expectancy which is no estate at all. (b) In Virginia today Jones, Sr., would have a fee simple, and his son nothing but an expectancy. The words "and his heirs" are words of limitation giving Jones, Sr., a fee simple estate.

(2) (a) Before the statute of uses Jones, Sr., would have an estate for ten years after entry. Jones, Jr., would have nothing as a contingent remainder of freehold cannot exist unless the particular estate which supports it is also a freehold estate. After the statute of uses Jones, Sr., would have an estate for ten years, and Jones, Jr., would have a contingent springing executory grant in fee simple. (b) In Virginia today the result would be the same as just indicated. (It would probably not be erroneous today to call Jones, Jr.'s estate a contingent remainder since the rules about the passage of seisin at the time of the conveyance to Jones, Sr. are no longer important.)
6. In 1959, Clark brought an action of ejectment against Davis to recover a hundred acre tract of timber land. On the trial, Clark introduced in evidence his title papers beginning with a grant from the Commonwealth dated January 2, 1800, and continuing down to the deed to him dated September 3, 1950, all of which had been properly and promptly recorded.

Davis introduced a deed dated November 4, 1935, from Jones to him, conveying by metes and bounds this hundred-acre tract. Davis proved that upon receipt of this deed, which was also properly recorded, he entered on the land, believing that he owned it, cleared part of it and built a house which, with its yard and garden, he enclosed with a fence, and that he had lived on the land since the spring of 1936, claiming it as his own. The land was generally known in the community as his and was assessed for taxation in his name.

The foregoing was all the evidence in the action. Who should prevail?

(Property) Davis should win. He clearly has title to the part enclosed by more than 15 years adverse possession with all the elements thereof. He also has title to the rest of the tract under the doctrine of constructive adverse possession since he has taken possession of a part of Clark's land under a deed to the whole and no one else is or was in possession of the part not occupied by Davis. Under these circumstances possession of part is possession of the whole. See Section 969 of Minor on Real Property, 2nd (Ribble's) Edition.

7. Parent, in contemplation of an extended motor trip, called Daughter into his office and said in the presence of his secretary: "Here is my pass book for my savings account in the Planters Bank and here is my last bank statement of my checking account. These accounts are yours, I give them to you, and my secretary will be a witness to it. I may draw out some of the money in the checking account for my trip expenses, but I can't touch the savings without producing the book." Parent thereupon handed the pass book and the bank statement to Daughter, who put them in her desk.

Parent was killed while on the contemplated trip and the savings account and checking account were claimed by both Daughter and his personal representative.

What are their rights, if any, to each deposit?

(Property) Daughter wins as to the savings account. There has been a delivery of the savings bank book which constructively represents the account since its production is necessary to withdraw the funds. Personal Representative wins as to the checking account since the statement need not be surrendered and does not constructively represent the account.

5. John Scrooge, by a properly executed will, provided:

"I give and devise Greenspring Farm to my brother, Charles, for life, remainder upon the death of Charles to his widow for life, and upon his widow's death to Merit College in fee, provided it establishes a law school by that time. All the rest, residue and remainder of my estate, real and personal, I give, devise and bequeath to my brother, Robert, in fee."

John Scrooge was survived by his two brothers, Charles and Robert, who were his only next of kin, and both of whom were unmarried. Charles married Betty after the death of Scrooge. Thereafter, brother Charles died, and still later, his wife, Betty, died. Merit College had established a law school at the time of Betty's death, but not before John Scrooge's death.

Robert consults you, telling you that he wishes to claim title to Greenspring Farm under John's will, if there is any possible way of doing it successfully.

How would you advise him?

(Property) I would advise him that the farm was his. The gift to Merit College was contingent. It is not bound to vest, if at all, within lives in being and 21 years since Charles might marry someone who was not a life in being when John Scrooge died, and such a person might outlive Charles for more than 21 years. The gift to the College thus violates the rule against perpetuities and is void. This void gift falls into the residuum which is given by the will to Robert. If the gift is void from the beginning it would be immaterial that, as events turned out, Charles did marry someone who was alive when the testator died and that the law school was established while she was still alive.
6. Silas Green, the owner of the famous Blue Grass racing farm in Culpeper County, had for many years employed as his farm manager, Bill Bear. The Last Will and Testament of Silas Green contained the following clause:

"I give and devise my Blue Grass farm to my only son, John, after the death of my faithful employee and friend, Bill Bear."

Green died on April 28, 1960, and his will was promptly probated in Culpeper County where Green resided at his death. John Green, the son, has never liked Bear and promptly discharged him as farm manager after his father's death and ordered him from the premises.

Bear comes to you and states that Silas Green had told him several times that he would see that he was taken care of in his old age. Bear asks what interest, if any, he has in the farm. What would you advise?

(Property) Assuming that testator had no other children, then John would be his sole heir. If we were to hold that John took the farm at once that would be contrary to the testator's express stipulation. If Bear does not take the farm there is thus no one who can take it until after Bear's death. In such a situation there is an implied life estate in Bear. Hence I would advise Bear that he was a life tenant of the farm. (It would not be necessary to rely on the statements of the testator). See Restatement of Property #116.

7. The plaintiff let his friend, Foster, use his automobile on a mission purely personal to Foster. Foster promised that he would return the car in good condition in a short time. While Foster was driving this automobile it was damaged in a collision with a car operated by the defendant. The collision was caused solely by the negligence of the defendant. Foster, feeling that he was bound by his agreement to return the car in good condition, paid to the plaintiff the full amount of the damage. Thereafter, plaintiff sued the defendant to recover the damage done to his automobile. The defendant set up as a defense the payment which the plaintiff had received from Foster. As between plaintiff and defendant, who should prevail?

(Property) Plaintiff should prevail. Foster did not intend to make a gift to the wrongdoer. Foster's paying the plaintiff should not excuse the defendant from paying for his wrong. (Since the question says "as between plaintiff and defendant", there is no need of going into the problem as to whether or not plaintiff would hold a recovery from defendant in trust for Foster). See 16 A.L.R. 208.

8. Green owned a vacant lot on either side of which were large store buildings owned by Easterly and Johnson. Green decided to erect an office building on his lot, and, after giving timely notice to Easterly and Johnson of this intention, secured from the municipal authorities a permit for the building. The buildings on either side extended to the respective property lines and Green proposed to occupy his entire lot with the office building. It was necessary to excavate for the basement and foundation. While preparing for the foundation, Green discovered that Easterly's foundation was weak, so he determined to strengthen it by putting concrete supports under it, a common practice in building. In order to do this, without saying anything to Easterly, Green dug under Easterly's wall, but before the concrete supports could be installed the wall sank several inches injuring Easterly's building. The excavation on the west side was entirely on Green's lot but it caused Johnson's foundation to crack and injure his building. All the work was done with reasonable care and in accordance with good building practices. There was no local ordinance regulating excavations.

Green consults you with respect to his liability, if any, to (a) Easterly and (b) Johnson. How would you advise him?

(Property) (a) Green is liable to Easterly. He was a trespasser when he dug across the line without Easterly's consent, and is liable for any damage done regardless of the amount of care used. (b) Assuming that Johnson's land would not have caved in its natural condition then there is no liability on Green if he is not negligent. It is a fair assumption here that the weight of the building caused the foundation to crack. If this is so, the loss is on Johnson and not on Green. See 50 Va.L.
2. Thorpe bought a farm in Dinwiddie County, giving as security for the purchase price a deed of trust for the benefit of the seller, Kramer. Later Thorpe wished to buy irrigation piping from Galt Machine Corporation. The corporation refused to sell the piping to Thorpe unless made subject to a lien to secure the unpaid price. Thorpe told Kramer of this demand and, on the persuasion of Thorpe and without receipt of consideration, Kramer wrote Thorpe a letter saying, "I agree that any irrigation piping which you may place on or affix to the farm shall not be subject to my deed of trust." On being shown this letter, Galt Machine Corporation sold and delivered the irrigation piping to Thorpe, who executed a lien in favor of the corporation and promptly trenched and buried the pipe on the farm. Thorpe has now become insolvent and a contest has arisen between Kramer and Galt Machine Corporation as to who has prior right to the irrigation piping. Which should prevail?

(PROPERTY)(CONTRACTS) Galt should prevail on any one of three theories, (a) Assuming that Kramer had priority he has waived such priority with full knowledge of the facts, or (b) under the doctrine of privity estoppel (Restatement 90) the agreement of Kramer needs no consideration for Galt has made a substantial change of position that could have reasonably been expected and injustice to Galt cannot be prevented in any other way than by giving effect to the agreement, or (c) all parties involved have agreed to treat the irrigation piping as personalty rather than as a fixture subject to the deed of trust on the reality. Since Kramer never relied on the piping as part of his security no injustice will be done to him. Note: In 134 Va. 34 the opinion states, "Where a party to a transaction induces another to act upon reasonable belief that he has waived or will waive certain rights, remedies, or objections, which he is entitled to assert, he will be estopped to insist upon such rights, remedies, or objections to the prejudice of the one misled."

Alfred Brent owned a farm in Franklin County which was bound on its north by State Highway No. 40 and on its west by Cripple Creek. In 1955, Brent conveyed the southern half of his farm to Cal Dodge, the deed of conveyance containing the following provision:

"In addition to the conveyance hereby made, Brent grants unto Dodge a perpetual easement of ingress and egress from the property hereby conveyed to State Highway No. 40, which easement shall be 20 feet in width and shall extend from the old pin oak situated on the northern boundary line of the property hereby conveyed along a true northerly course to the point where it intersects with such highway."

The means of access to the highway then used by Brent was a roadway which ran along the eastern bank of Cripple Creek, parallel to, and distant approximately 100 yards from, the easement granted Dodge. In October of 1960, a flash flood caused Cripple Creek to overflow its banks and wholly wash away Brent's road. Brent then consulted Dodge and requested the latter to agree to Brent's use of the easement strip as a means of travelling to the highway. This request was denied by Dodge who said that he would, under no circumstances, permit Brent to use the easement strip. Brent, correctly alleging that he had no other reasonable means of access to the highway, brought a suit for a declaratory judgment against Dodge in the Circuit Court of Franklin County praying that the Court establish Brent's right to make use of the easement strip. To what extent, if any, should the Court grant relief to Brent? (PROPERTY) The relief should be granted to the extent that Brent's use will not interfere with Dodge's use. When Brent conveyed the easement to Dodge he (Brent) still owned the fee and, as such owner, can use the right of way in any manner not inconsistent with the superior rights of Dodge. Public policy requires that everyone have some reasonable means of access to his land if such right of access does not violate the rights of others. R of Property #485.
5. John Richman owned valuable rental property situated on Bird Street in the City of Richmond, and wished to leave it to his son Brutus. It was common knowledge that Brutus, who was 22 years of age and unmarried, was wholly irresponsible and often victim of sharp practices by others. Knowing of these propensities, but feeling convinced that Brutus would soon mend his way, John Richman duly executed the following holographic will:

"I, John Richman, make the following will--

(1) I direct that all my just debts be paid.
(2) I devise my rental property situated on Bird Street in the City of Richmond to my son Brutus.
(3) Should my son Brutus attempt to dispose of such rental property within a period of five years after my death, the property shall thereby pass absolutely to my daughter Susan Richman Potter.
(4) All the rest of my property I leave absolutely to my daughter Susan Richman Potter and request that she be named the Executrix of this will.

John Richman"

John Richman died suddenly on February 14, 1959, and shortly thereafter his will was duly probated and his daughter Susan qualified as Executrix. On June 15, 1960, for a valuable consideration, Brutus executed and delivered a deed conveying the rental property to Earl Wilson. Susan has brought a suit against Wilson in the Chancery Court of the City of Richmond asking that it set aside the conveyance to Wilson, and decree that title to the rental property is now vested in her. What should be the Court's decision?

(PROPERTY) It should be in favor of Wilson. An absolute restriction on alienation of property conveyed to one in fee simple (clause 2 of the will) and not creating a spendthrift trust is void in Virginia as against our public policy. One of the incidents of a fee simple is free alienability. See 198 Va. 854 on p. 1720 of the Wills Cases in these notes.

6. Gonzales, who owned a service station on a lot in the City of Richmond, in 1959, commenced a commercial parking operation charging parking customers a dollar a day. Mrs. Nott, who had parked her automobile at Gonzales' station daily for several years before the operation was begun, was permitted by Gonzales to continue to park on the lot without charge. On October 14, 1960, a man, dressed in mechanic's overalls with the name of the well known Duncans Motor Company stamped across the back, told Gonzales that Mrs. Nott's automobile was to be serviced at Duncans. Gonzales allowed the man to take the automobile for that purpose. The vehicle was never taken to Duncans and several weeks later was found abandoned in South Carolina and in a badly damaged condition. Mrs. Nott has brought an action against Gonzales to recover for the damage to her automobile. May she recover?

(PROPERTY) (TORTS) No. The rule in Virginia is that a gratuitous bailee is liable only if grossly negligent. This answer is based on 178 Va. 350 (p. 814 of the Property Cases in these notes) in which the fact situation was similar. Note: It could also be plausibly argued that even a gratuitous bailee delivers at his peril, or that there was only a gratuitous license in this case and hence no liability unless there was gross negligence, and that even if there were a misdelivery at the bailee's peril, the remedy would be an action for the conversion of the car and not for the damage done to it.
Decedent died intestate, owning real estate valued at $100,000, and personality valued at $5,000; he owed Smith a debt amounting to $20,000. There survived him the following people: His wife, Anne; an illegitimate son, Nash; his father, William; and a brother, John.

Assuming the above amounts to be net after the payment of taxes and costs of administration, what are the rights of the foregoing parties? (PROPERTY) His wife, Anne, takes the whole subject to the rights of his creditor, Smith. The $5,000 will first be used to pay Smith since it is personal property at large. A wife is in second place ahead of the father (3rd place) and a brother (4th place) in the law of intestate succession. The illegitimate child of a man has no standing. Smith can maintain a creditor's suit, if necessary, to subject the land to the payment of the balance of his debt. In this case Anne probably recovers more by claiming the whole in fee subject to Smith's debt than she would by taking dower in one third for life ahead of the debt with balance subject to the debt. See V § 64-27.

Hannibal, a devout and gentle man, died in 1961, at the age of 93, leaving a will containing the following provision:

"All of my property, both real and personal, I devise and bequeath to such grandchildren of mine as shall take holy orders, share and share alike. I specifically intend to exclude my son, Scipio, whose degenerate life has been a great source of disappointment to me."

Hannibal was survived by Scipio, his sole heir at law, and Scipio's two sons, Romulus and Remus. Scipio seeks your advice as to whether the provision in the will is valid and whether he may claim his father's estate. How would you advise him? (PROPERTY) Scipio is entitled to all the property. The gift to the grandchildren violates the rule against perpetuities and is hence void. The reason it violates the rule is that the gift was subject to a condition precedent which might possibly happen more than 21 years and lives in being since Romulus and Remus may die today, Scipio may conceive a child a month thereafter, he and his wife might die the day this child is born and this child might take holy orders twenty five years later. An heir is not disinherited by a statement that he takes nothing, as a testator cannot change the intestate laws. In order to disinherit Scipio there would have to be a valid disposition of the property to another by the testator, Hannibal.

When his only two children, Abe and Zeke, were unmarried young men, Will Jones concluded to give them an inducement to continue farming the family farm Greenhill, which Will had inherited from his father. Accordingly, Will prepared a deed by his own hand in which he recited his affection for the two sons and conveyed Greenhill "to Abe and Zeke Jones, and the interest of whichever one dies first goes to the other." The sons accepted the deed and recorded it in Princess Anne County, Virginia, wherein Greenhill was located.

After several years of unrewarding labor on the farm, Abe opened an automobile sales agency in Kemsupville, and without Zeke's knowledge he conveyed by deed and for valuable consideration "my interest in Greenhill" to Rutter. Rutter instituted a suit by bill in chancery in the Circuit Court of Princess Anne County, to compel partition of the farm between himself and Zeke, and in which suit he alleged the above conveyances. Zeke demurred to the bill on the grounds (1) that Rutter had no estate in Greenhill to be partitioned, since Zeke had not joined in Abe's deed to Rutter; and (2) that, even if Rutter did have an estate in Greenhill, it was not subject to partition.

How should the court rule on grounds (1) and (2) of the demurrer? (PROPERTY) Will's deed made Abe and Zeke joint tenants of Greenhill with survivorship as at common law. Joint tenants own by the whole and by the part, and, (unlike tenants by the entirety) can sell their interests without the consent of the other joint tenants. When Abe sold his part to Rutter he broke two of the unities of joint tenancy (time and title) thereby making Rutter and Zeke tenants in common. Under V § 64-270 tenants in common are entitled to partition.
In 1939, Hershel Weed, a mountain boy from Kentucky, moved to Southwestern Virginia in search of a place to raise his large family. Weed found a large expanse of mountain land which was uncultivated and uninhabited and he immediately fenced off 100 acres, cleared the land and built a small home, and at all times openly claimed that the land belonged to him. The land upon which Weed settled was part of 10,000 acres of mountain land owned by Colonel Cathcart Julep, of Richmond. Weed and his family lived on this tract until 1947, at which time his bitter enemy, Borden Crabgrass, who had been searching for him for years, found his new home and forcibly dispossessed Weed and his family and occupied the house and land which Weed had possessed and claimed as his own. One year later Weed, with the help of his two grown sons who had returned from the Army, dispossessed Crabgrass and again occupied the property.

In 1940, Colonel Julep had been adjudged insane and was confined in a sanitarium. He remained there until his death in 1945. Colonel Julep died intestate, leaving as his only heir at law his daughter, Amanda Julep, who was seventeen years of age at the time of her father's death. In March of 1961, Amanda consults you, inquiring whether she can dislodge Hershel Weed from the 100 acre tract occupied by him in southwestern Virginia. She has become highly concerned over his presence since she has recently married and has made elaborate plans to turn the whole area into a mountain resort. How would you advise her?

(PROPERTY) I would advise her that she is entitled to the land if she acts before Weed gains title by adverse possession. Since Weed's first possession was not continuous, the statute of limitations would have started to run again in 1948, but for the fact that at that time Amanda was an infant, so it did not begin to run until the next year when Amanda became of age. Since the statutory period is 15 years the statute has not run in June of 1961. The fact that the statute of limitations was ten years west of the Alleghanies in 1949 is immaterial as Weed has no vested right in the old statutory period and he had not acquired title by adverse possession in 1954 when the period was made the same (15 years) for all Virginia. Weed cannot tack Borden's possession onto his own as there was no legal priority (such as ancestor and heir, grantor and grantee) between them.

In May of 1960 Frog, a lumberjack, was gravely injured when struck by a falling tree. While arrangements were being made to carry him to the hospital he gave a trunk key to Toad, his foreman, and told him to keep it and, in the event that he died, to give it to Tadpole, the infant daughter of his old friend, Bullfrog, it being his wish that all of his worldly possessions, which were contained in the trunk, should go to Tadpole if he died. After being moved to the hospital Frog took a turn for the worse and died within a few hours. When the trunk was opened it was found to contain a certificate for a number of shares of Coca-Cola stock, the present value of which was estimated at more than $100,000, a deed, dated May 1, 1940, by the terms of which a 100 acre tract of land, known as "Swamp Acre", was conveyed to Frog, and a will, dated March 10, 1945, which was in the handwriting of Frog and signed by him and contained the signatures of two witnesses, which will was as follows:

"This is my last will and testament.

"Everything I have I give to my nephew, Watersnake.

/s/ Frog"

Frog owned no property other than that described above. Who is entitled to his property?

(PROPERTY) There has been a valid gift causa mortis of the stock. The delivery of a key under these circumstances is delivery of the personality in the trunk. This delivery may be made to an independent third party for another. The gift causa mortis is effective from the time of the gift so that there is no stock belonging to the testator when he dies. But since there can be no gift causa mortis of realty, it passes under Frog's will to his nephew, Watersnake.
6. Devon Corp. purchased a strip of unrestricted real property in the City of Richmond on the North side of Park Avenue, which it subdivided into twenty building sites, all fronting on Park Avenue. A plat of the subdivision, entitled "Devon Manor", was prepared and duly recorded in the proper Clerk's Office, but it contained no reference to a building set-back line. Also, Devon Corp. did not offer for record any declaration of restrictions pertaining to the property.

Sutton saw an advertisement of Devon Corp. in a Richmond newspaper, which stated: "Now is the time for you to own a site in Devon Manor! 50-foot building set back line from Park Ave."

Sutton purchased a lot from Devon Corp., the deed to which contained the following: "The grantee agrees not to construct any building on the lot hereby conveyed nearer than 50 feet to Park Ave."

Blunt likewise purchased a lot in Devon Manor, and his deed contained the same restriction with respect to his lot as that contained in Sutton's deed. The remaining eighteen lots were sold, each deed containing a similar restriction. Sutton conveyed his lot to Tabb, and the deed contained the same restriction as that contained in the deed of Devon Corp. to Sutton.

Tabb commenced the construction of a residence on his lot but only 30 feet from Park Ave. Blunt instituted a suit in the proper court to enjoin the construction.

Assuming that a suit for injunction is the proper proceeding to test Blunt's interest in the restriction on Tabb's property, how should the court rule on Blunt's prayer for an injunction?

(PROPERTY) The injunction should be granted. The building restriction was meant for the benefit of all the lots as shown by similar provisions in all deeds and in the advertisement. It was not a mere personal agreement between the grantor and grantee. Since Tabb had notice of the restriction he is bound thereby. See 148 Va. 26.

Note: It can be argued that the above facts were not enough to show such an intention and an earlier case, 132 Va. 115, gives support to such an answer.

7. Hobo, while wending his way along Market Street in the City of Alexandria late at night, found a $500 bill on the sidewalk. Fearful of his impulse to spend the money foolishly, but more fearful of having it stolen from him, Hobo asked Cook, a counter man at an all-night diner, to hold the bill for Hobo until he called for it. Cook agreed to do so, and placed the bill in the diner's cash drawer. Later in the night Cook was showing the bill to his customers and carelessly dropped it on the stove. The bill caught fire and was totally consumed, its ashes disappearing up the chimney.

Hobo demanded return of the bill the next day from Cook, and learning that it had been destroyed he instituted an action against Cook to recover the sum of $500.

Is Hobo entitled to recover?

(PROPERTY) Since Hobo found the bill in a public place he has good title as against all the world but the true owner, and this is a sufficient property interest to permit him to sue those who negligently or intentionally interfere with his rights as such owner. Cook is a voluntary gratuitous bailee who owes a duty not to be grossly negligent. It is at least a jury question whether or not he has violated this duty, so an argument or conclusion either way on this point is proper.
What estate, if any, is created in A in Virginia today by the following language in a deed conveying Blackacre with covenants of general warranty?

(a) "To B with remainder to A."
(b) "To A for life with remainder to the heirs of his body."
(c) "To B for ten years and at the expiration of that time if A has married C, then to A in fee."
(d) "To D for life, then to C for life, then to B for thirty years, then to A and his heirs, A, B, C and D being now living."
(e) "To B for life, providing that if he wishes to do so, he may sell or otherwise dispose of the land herein conveyed, but if any be left, then to A."

(Property) (a) Since words of inheritance or limitation are not necessary (as a result of V#8-11) to create a fee B has the whole fee and A nothing. Note: It is arguable that since V#8-11 further states that the fee passes unless the conveyance shows a different intent, that this conveyance does show a different intent, and hence that A has a vested remainder in fee following an implied life estate in B.

(b) Since this would have been a fee tail in A in 1776, V#55-12 converts it into a fee simple, so A has a fee simple absolute. Note (To reach this result one must apply the Rule in Shelley's case. While that rule was abolished in 1850 its abolition was not retroactive. Hence in determining the law of 1776 no effect should be given to a non-retroactive statute passed in 1850)

(c) A has a contingent springing executory limitation in fee. It is not a remainder because a contingent remainder of freehold cannot be supported by a less than freehold particular estate.

(d) A has a vested remainder in fee simple so there is no violation of the rule against perpetuities.

(e) Under V#55-7 which modifies the holding of May v. Joynes, A has a vested remainder in fee subject to partial or total divestment by B's exercise of his power. The words "for life" cause V#55-7 to be applicable. This section of the Code saves the gift over to A if the first taker, B, is given a life estate, except to the extent that the life tenant, B, lawfully exercises the power.

John Smith, a rather reckless bachelor, inherited "Redlands" from his father. Pedestrian obtained and docketed a judgment against John for personal injuries in the sum of $5,000. John thereafter borrowed $5,000 from The Tenth Bank to finance his approaching wedding to Miss Demure. Shortly after the marriage, John borrowed $10,000 from the Next National Bank to build a cottage. Neither bank was paid and two years after the marriage, both banks on the same day obtained and docketed judgments against John. In addition to the above, John owed open store accounts of $20,000. Faced with these responsibilities, John "took an overdoes of sleeping pills, and died intestate, owning no property but "Redlands," then worth $30,000, and leaving surviving him his widow and an only brother.

What are the respective priorities, if any, by way of lien or otherwise, in "Redlands" of, (a) Pedestrian? (b) Tenth Bank? (c) Next National Bank? (d) Store and other creditors? (e) John's widow?

(Property) (Creditors' Rights). Pedestrian is ahead of every one. He obtained his lien prior to John's marriage so John was never seised of the land free from the lien at any time during coverture. John's widow's dower is next to the extent of a one third interest for life. The two banks are next equally. Their judgments were docketed on the same day, and there is no reason to prefer one to the other just because the clerk entered one on the docket before the other. And, last of all, come the general creditors pro rata.
Grandma Moses owned a small safe at her home, in which she kept her money and securities. One day while her brother Bart was visiting her, she, though feeble but still able to walk into the next room where the safe was located, informed Bart of the combination to the safe and made the statement: "I want you to have everything in the safe in the next room. You now have the combination and everything belongs to you." Grandma Moses died a short time later without either of them having opened the safe. Subsequently, Bart opened the safe and took the contents, consisting of money and bonds payable to Bearer. Mr. Tutt, as Administrator of Grandma's estate, is seeking to recover the contents of the safe from Bart. Must Bart surrender the money and securities?

(Property) Yes. There was no valid delivery of any sort of the subject matter of the gift. Telling Bart the combination to the safe did not deprive Grandma Moses of her ability to exercise control over the contents of the safe as effectively as before the alleged gift. It is analogous to delivering a duplicate key to the intended donee when the intended donor retains a key in his own possession, or telling the intended donee the secret hiding place of valuables. There was no reason why an actual delivery of the contents could not have been made, and hence we do not have as good a delivery (if indeed there was any delivery at all) as was reasonably possible under the circumstances. For general principles see 199 Va. 871.

Whiteacre was conveyed to Jack and Jill as follows: "to Jack and Jill, husband and wife, as tenants by the entirety with the right of survivorship." Jack, a drunkard, became hopelessly in debt and left home. In order to secure funds with which to buy more whiskey, Jack sought to have Whiteacre partitioned to get "his part." At the same time, judgment creditors of Jack attempted to subject Jack's undivided portion to the payment of his individual debts.

Jill became concerned and seeks your advice on two questions, namely, (1) can Jack demand partition, and (2) may Jack's creditors subject Whiteacre to the liens of the judgments against him?

(Property) (1) Jack is not entitled to partition as long as the marriage lasts. Jack and Jill are tenants by the entirety and they each own by the whole and not by the part. (2) No. Whiteacre can only be reached for the joint debts of Jack and Jill. See 192 Va. 735, and 9 M.J. Husband and Wife #29.

The following conveyance was made:

"To Earl Jones and Amanda Jones, husband and wife, as joint tenants, with the right of survivorship for and during their joint lives and during the life of the survivor of them, remainder at the death of the survivor of said joint tenants to the issue of said Earl Jones and Amanda Jones begotten of the said marriage of the said Earl Jones and Amanda Jones."

At the time of the above conveyance, one child of the marriage, Thomas, was living.

(1) What estate was created in Earl and Amanda Jones?
(2) What estate, if any, was created in Thomas?

(Property) Earl and Amanda have a joint life estate (or tenancy by the entirety) with survivorship. Thomas has a vested remainder in fee simple subject to opening up and letting in subsequently born children of this marriage, if any. (This would not have been a fee tail in 1776 since the word "issue" in a deed as distinguished from a will was not then the equivalent of "heirs of the body").
Dem and Pythias owned adjoining properties. Damon planted an ordinary privet hedge on his own land about a foot from the boundary line. Pythias planted a rose bed on his own land next to the boundary line. After several years, Pythias noticed that the roses were not doing well and upon examination found that the roots of the privet hedge had extended themselves across the boundary line and were sapping the strength of the rose bushes' roots. He called this situation to the attention of Damon and asked him to correct it. The reply was: "There isn't anything that I can do; the roots are growing according to nature." Pythias then cut the roots along the boundary line, and as a result the hedge died.

Damon sued Pythias for damages because of the loss of the hedge and Pythias counter-claimed for injuries to his rose bushes. What, if any, is the liability of each of them?

(Property) There is no liability on either of them. A privet hedge is not a poisonous or noxious growth. The harm done is trivial and law suits over such things should be discouraged. An owner of land is privileged to use self help and cut back encroaching roots and branches to the boundary line. See 174 Va. 2d 492 on p. 310 of the Property Cases of these Notes.

Alfred White took his antique china cabinet to "Carter's Fix-It Shop" for repair. The Shop was owned and operated by Tom Carter as sole proprietor. Two weeks later, White having been telephoned by Carter that the repairs had been made, went to the Shop to obtain the cabinet. Carter told White he could not let him have the cabinet until he paid him the $136 repair charge. Although White felt that the charge was fair, he told Carter that he was very short of funds and could not then pay the charge and asked whether Carter would let him take the cabinet on credit. This Carter refused to do and told White that he must pay the charge within the following month. With that White became quite angry and left the establishment. White not having paid during the following month, Carter thereafter showed the cabinet to Arthur Creech who bought it at the reasonable price of $1500. Carter mailed his check for the balance of $1364 to White. When White received Carter's check, he did not cash it, but came to see you and inquired whether he could compel Creech to surrender to him possession of the cabinet. What should your advice have been?

(Property) He may compel Creech to surrender possession of the cabinet. An improver's common law lien merely allowed the improver to keep the article until he was paid. While this rule has been modified by statute, the statute must be followed to entitle one to its benefits. Carter should have foreclosed his lien pursuant to Va. § 33-3h. Hence Carter was a converter of the cabinet and may have even lost his right to the $136 repair bill. He may then proceed to sell the property, must follow statutory procedure.

On April 20, 1963, a widower, James Jones, executed and delivered a deed which recited the conveyance to Sam Smith with general warranty of title a tract of timber land situated in Fluvanna County. Simultaneously Jones received from Smith the latter's certified check for $10,000 in payment of the agreed price. Smith at once had the deed properly recorded. Unknown to Smith, at the time of the transaction the property was not owned by Jones but by Rufus Bott. On May 14th, Bott properly conveyed the property to Jones. On May 21st, Jones duly executed and delivered to Thomas Huntley a deed to the property, Huntley paying the agreed purchase price and not knowing of the prior transaction between Jones and Smith.

You are now consulted by Smith who informs you of all these facts and asks you (a) whether he may have the deed from Jones to Huntley set aside, and (b) the nature of the rights, if any, he may have against Jones. What should you advise him?

(Property) (a) Smith cannot have the deed from Jones to Huntley set aside. It is outside the chain of title and hence its recordation was not constructive notice to Huntley. If there had been no conveyance to Huntley then Smith would have had title by estoppel in equity as against Jones as soon as Jones acquired the land. But this right was cut off by a sale of the land to a bona fide purchaser. (b) Since this was a general warranty deed without the usual English covenants of title, seisin, power to convey, etc., Smith has no action against Jones for violation of the covenant of general warranty until he is actually or constructively evicted from the premises by Huntley. See Minor on Real Property (Ribble) § 1055 and Va. § 55-105.
Herbert Homer died in 1949 leaving a holographic will which was duly probated and which provided:

"This is my last will.
1. I name my son Jerry Homer to be the Executor of this will and I direct him to pay all my debts promptly after my death.
2. I devise my residence at 1212 Clayton Street in the City of Richmond to my friend Arthur Brown for life and on his death to his son Paul Brown in fee simple should he then have become twenty-one years of age.
3. All the rest of my property I leave absolutely to my son Jerry.

(s) Herbert Homer"


A contest has now arisen between Jerry Homer and Sarah, each claiming title to the residence in the City of Richmond. Which should prevail?

(Property) Sarah should prevail. When Paul Brown became 21 his contingent remainder vested. When he died intestate Sarah inherited Paul's vested remainder which became possessory on the death of Arthur Brown.

4. (a) Octogenarian, a successful farmer, conveyed his farm by deed containing the following language:

"To my son, Anthrax, for life, with remainder over, in fee simple, to my nephews, Buster, Custer and Duster, in equal shares."

Buster consults you, advising that all grantees are living, that the farm is not susceptible of partition in kind, and stating his desire to procure the sale of the farm in a suit for partition.

May Buster successfully prosecute a suit for partition?

(b) Esau, owner of Green Acre, sold a one-half undivided interest in Green Acre to Herod. Later Esau conveyed the other one-half interest in Green Acre "to Isaac for life, with remainder to Joseph."

Isaac consults you and inquires whether he may compel partition of the land. How would you advise?

(Property) (a) No. Only co-owners of present possessory interests may compel partition. Anthrax has the right to enjoy the whole of this parcel for his life as per the conveyance to him. 85 Va.28.

(b) Yes. Herod and Isaac are tenants in Common of present possessory interests, and are entitled to partition. If this requires a sale, a court of equity can make its decree in such a way as to protect the rights of Joseph, a remainderman. 91 Va.114.

5. (a) Kodak conveyed Green Acre to Ima Light. The deed of conveyance contained the following language:

"For and in consideration of the sum of $10,000, receipt of which is hereby acknowledged, I, Kodak, do hereby grant, bargain, sell and convey Green Acre to Ima Light, her heirs and assigns forever, with general warranty."

Shortly after Light recorded her deed, Pressure, a prior judgment lien creditor of Kodak, procured the sale of Green Acre in a judicial proceeding for the satisfaction of his judgment, and Ima Light was dispossessed of the property.

Ima Light consults you, advising that she would like to sue Kodak for the breach of the warranty contained in her deed. May she recover?

(b) On January 2, 1955, Honaker conveyed the fee simple title to Black Acre to Goshen by a general warranty deed. On April 1, 1960, Kodak, believing that he had inherited the fee simple title to Black Acre upon the death of Honaker, executed and delivered a deed for Black Acre to Meter. The deed contained the following language:

"For and in consideration of the sum of $5,000, receipt of which is hereby acknowledged, I, Kodak, do hereby grant, bargain, sell and convey Black Acre to Meter, his heirs and assigns forever, I hereby covenant that I have the right to convey the said land to the grantee."

Thereafter Meter, believing himself to be the owner of Black Acre, executed and delivered to Spector a deed containing the following language:

"For and in consideration of the sum of $5,000, receipt of which is hereby acknowledged, I, Meter, do hereby grant, bargain, sell and convey Black Acre to Spector, his heirs and assigns forever."
Shortly after Spector had obtained his deed he was ousted of possession of the property by Goshen.

Spector consults you and inquires whether he may sue Kodak on the covenant contained in Kodak's deed to Meter. How would you advise?

PROPERTY (a) Yes. A covenant of general warranty is broken when the grantee is ousted by virtue of some one else's paramount rights. See 2 Minor on Real Property (Ribbles Ed.) #1055.

(b) No. Kodak's covenant of right to convey was broken as soon as it was made. Broken covenants are independent choses in action not running with the land. Hence Spector cannot recover from Kodak. 2 Minor on Real Property (Ribbles Ed.) #1056.

6. Weasel, an employee of Whales, Inc., purchased a used cabin cruiser and secretly moved it on to his employer's property. Whales, Inc., was engaged in the business of selling marine fixtures, but it did not sell boats. Without the knowledge or consent of his employer, Weasel spent most of his working hours in repairing and rebuilding the boat. He stole from his employer paint, glass for the windows, seats and plumbing equipment for the interior, brass rails and fixtures, lights, steering apparatus and other articles too numerous to mention, all of which articles he used in restoring the boat. Shortly after the work was completed, Whale, the owner of the Corporation, discovered his employee's misconduct and summoned him to his office. Whale presented an itemized list of the articles stolen and demanded that Weasel pay for all of them and, further, that Weasel reimburse the Corporation for the salary he received while he was working on the boat. Weasel refused and announced that he was quitting the company. Whale, in a rage, threw him out of the office and ordered that he be barred from the premises. Whale then executed on behalf of the Corporation a bill of sale of the boat to Swordfish, a wealthy playboy, who paid the agreed price of $4,000 and took possession of the boat.

Weasel consults you. In your investigation you find that Whales, Inc. has since become insolvent and both it and Whale are in receivership, and that Swordfish was a bona fide purchaser for value, and without notice of Weasel's ownership.

What rights, if any, does Weasel have against Swordfish?

PERSONAL PROPERTY Weasel may bring a possessory action for the cabin cruiser, or sue Swordfish for its conversion. The cabin cruiser was the principal thing, Title to the stolen articles passed to Weasel by accession as he attached them to his cabin cruiser insofar as they cannot be separated therefrom without doing damage thereto. One who purchases another's property from a thief or converter is a converter by the very act of purchase in most jurisdictions. Brown on Personal Property (2d) Ed. ##25 and 28.
1. Sandy MacHeath, widower, died possessed of a certain farm and in his will provided, "I devise my farm to my daughter Heather MacHeath, but if she should die without having any children of her own, then I want it to go to the children of my first-born son, Angus MacHeath, but to no others except the children of my son, Angus MacHeath." At the time of the making of the will, Heather was unmarried, and Angus was married and had one child, Laddie MacHeath. At the time of Sandy's death, Angus had two children, Laddie and Paddy, but Heather was still unmarried. Five years subsequent to Sandy's death, Heather, who had been living on the farm, married Tom MacDougal, and they continued living on the farm seventeen more years but had no children, and Heather died on June 26, 1964, survived only by her husband, Tom, whom she has named as her sole beneficiary in her will. During the seventeen-year period, Angus had two more children, named Harold and Lauder. Angus, Laddie, Paddy, Harold and Lauder are all now living.

Laddie and Paddy contend that they have the right to the immediate and exclusive possession of the farm.

Harold and Lauder contend that they have the right to immediate possession along with Laddie and Paddy.

Tom MacDougal contests all their claims.

What estate, interest, or right in the farm, if any, did Heather MacHeath have; and what estate, interest, or right in the farm, if any, do Laddie and Paddy MacHeath, Harold and Lauder MacHeath, and Tom MacDougal have? (PROPERTY) Heather MacHeath had a defeasible fee subject to a contingent shifting executory devise in favor of Angus' children. The four grandchildren are tenants in common in fee. There was a contingent class gift in their favor and the class did not close until their estates became possessory. They hold this fee simple subject to Tom MacDougal's curtesy. He is entitled to curtesy under the prolongation theory since his wife was seised of an estate of inheritance during coverture which issue of the marriage, if any, might possibly inherit as heirs of the wife, and the wife's estate came to an end on her death without impairment of her seisin.

2. Dowager, a childless widow, owned two large farms called the "Hill Farm" and the "Valley Farm" and also owned a large house in town, certain stocks and other intangibles, and tangible personal property of considerable value. In 1955, Dowager executed a valid will by which she provided in part:

"To Tom Jones, nephew of my late husband, I leave in fee simple all that tract of land known as the 'Valley Farm' and also my shares of stock, money, and all other intangible property after payment of charges against my estate.

"To Sally Strange, my niece, I leave all the rest and residue of my property not otherwise disposed of, whether realty or personalty."

In 1957, Dowager was adjudged mentally incompetent, and a committee was appointed to manage her affairs. In 1959, it became apparent that the two farms were to be taken by the Federal government for a reclamation project, and the committee under court direction and in a proper suit sold the timber on the "Valley Farm" for $5,000. The condemnation proceedings against the two farms were settled in 1960 with approval of the court by payment of $30,000 for the "Valley Farm" and $15,000 for the "Hill Farm." Dowager died in 1961. Tom Jones conceded that Sally Strange was entitled to the town property and tangible personalty but claimed that he, Jones, was entitled to the money realized from the sale of the timber and from the condemnation of the "Hill Farm." A suit was instituted to decide the controversy. It was stipulated at trial that Dowager was competent at the time of making her will but incompetent from 1957 to the date of her death.

Who is entitled to the $5,000 timber money and the $15,000 condemnation settlement paid for the "Hill Farm"? (PROPERTY) Sally Strange is entitled to both sums. There has been an involuntary conversion of realty to personalty under such circumstances that Dowager is powerless to change her will. The money for the timber and the Hill Farm takes the place of the timber and farm as the proceeds can be traced from the realty to the personalty. There is no reason why Tom Jones should profit at Sally Strange's expense just because the federal government needs the land. See 194 Va. 528.
6. Raymond, a businessman in Suffolk, Virginia, had finished transacting some business with an acquaintance, Starbuck, when Starbuck mentioned that he was going to Portsmouth, Va., that day. Raymond asked if Starbuck would do him a favor and take a draft for $1,000 to the Portsmouth Loan Company and bring back the money. Starbuck said he would be glad to do it but intended to do some visiting, etc., and wouldn't be coming back from Portsmouth until late at night. Upon receiving this information, Raymond, not wishing to take a chance of loss of the money by being brought back late at night, then asked Starbuck to take the draft to Taylor, another businessman in Suffolk, and ask Taylor to send the draft by some responsible person. Starbuck took the draft to Taylor, but Taylor said that he was busy and asked Starbuck to take the draft to the bus depot and give it to Williams for Williams to take to Portsmouth. Starbuck went by the bus depot, but Williams told him he was not going to Portsmouth that day.

Starbuck boarded a bus to Portsmouth and took the draft and when he arrived in Portsmouth got the money for the draft and carefully put it in his inside coat pocket. He then visited several friends, had several drinks of whiskey but never became intoxicated, and checked on the money periodically. Starbuck started home in the early morning hours, sharing a taxi with four strangers. When he arrived at his room, he discovered that the money was gone, and he was never able to find it.

Raymond brought an action against Starbuck for the $1,000. Is Starbuck liable? (PERSONAL PROPERTY) Yes. When Starbuck violated his instructions he became a wrong-doer and is absolutely liable for any loss regardless of negligence. The gratuitous bailment came to an end when Starbuck took it upon himself to act contrary to his instructions. Because of this violation the very thing that Raymond sought to avoid occurred. See 131 Va. 1479.

4. Henry Brown, in consideration of natural love and affection, conveyed a storehouse and lot in Charlottesville to "Abel Brown and Ethel Brown, husband and wife, as tenants by the entireties, with right of survivorship as at common law." Several years later Lubin secured and docketed a judgment against Abel Brown, and later Abel Brown became insolvent. Lubin consults you as to his rights, if any, with respect to the storehouse and lot. How ought you to advise him? (PROPERTY) I would advise him that he had no rights against the lot and store. Only creditors having joint claims against husband and wife can reach property held by them as tenants by the entireties with survivorship. Since each owns the whole and neither owns just a part the wife's interest in the whole cannot be taken to pay husband's creditors. See 192 Va. 737 on p. 1113 of the Creditors Rights Cases in these Notes.

5. Testator in Virginia devised "my farm to my wife, Jane, for her life, with remainder in fee to Sam my son by my first marriage." After the death of her husband, Jane consults you and asks the following questions:
   (1) Who is liable for the taxes?
   (2) Suppose mineral is found on the land, may I get the royalties on it?
   (3) If I want to sell all the timber, may I do so?
   (4) If I don't want to farm it may I just allow it to grow up in briars?
   (5) Do I have to keep the buildings on the property insured?

   How ought you to answer these questions? (PROPERTY) (1) The life tenant, Jane, is liable for current taxes since she receives current income.
   (2) No, as it would be waste to open new mines. The minerals are the corpus of the land, and not part of the current income where no mines have been opened.
   (3) No, for the same reason as above.
   (4) If ordinary reasonable husbandry under the particular circumstances would require cultivation then she would be liable for permissive waste for failure so to cultivate. See 56 Am. Jur. at p. 462.
   (5) No. The remainderman has an insurable interest and if he wants the buildings insured that is a matter for his attention.
5. What estate, if any, is created in A at common law and in Virginia today by the following language in a deed conveying Blackacre with covenants of general warranty?
(a) "To B with remainder to A."
(b) "To A for life with remainder to the heirs of his body."
(c) "To D for life, then to C for life, then to B for thirty years, then to A and his heirs, A, B, C and D being now living.
(d) "To B for life, provided that if he wishes to do so, he may sell or otherwise dispose of the land herein conveyed, but if any be left, then to A."

PROPERY

(a) At common law A would have a vested remainder for life as the words "heirs or heirs of A's body" would be necessary to create a fee simple or fee tail. In Virginia today words of limitation are no longer necessary to create a fee so that A's remainder would be in fee simple. Note: It is arguable that A has nothing since B would now have the whole. The statute (V 55-11) involved reads, "When any real estate is conveyed, devised or granted to any person without any words of limitation such devise, conveyance or grant shall be construed to pass the fee simple or other whole estate or interest which the testator or grantor has power to dispose of in such real estate, unless a contrary intention shall appear by the will, conveyance or grant."

(b) At common law A would have a fee simple because of the Rule in Shelley's Case. A would have a fee simple in Virginia because of V 55-12 which states that whatever would have been a fee tail on October 7, 1776 shall be a fee simple. Since the rule in Shelley's Case was not changed until 1850 and was not changed retroactively the abolition of that rule in 1850 had no effect on the law as it was in 1776.

(c) At common law and in Virginia A has a vested remainder in fee simple the enjoyment of which must await the expiration of the preceding estates. There is no abeyance of the seisin and the Rule against Perpetuities does not apply to vested remainders.

(d) At common law in Virginia the conveyance to A of what might be left was void for repugnancy and uncertainty. B had the whole since a life estate plus the power to dispose of it in fee in any way was really a fee in B. May v. Joynes. By V 55-7 where the first taker takes an ostensible life estate with power to defeat the gift over at his pleasure the conveyance over will not fail except to the extent that the life tenant may have exercised his power. Thus today A would have a vested remainder in fee simple subject to partial or total divestment to the extent, if any, that B should exercise his power of disposal.

6. Henry Jones and his Aunt Della, in whose home he had lived without paying board for many years, went to the First National Bank of Harrisonburg where he rented in her name a safety deposit box. While there Della signed a card directing the Bank to permit Jones to enter "my deposit box" at any time. A receipt in her name for one year's rent paid by Jones had been delivered to Jones.

Neither Jones nor Della opened the box when it was rented, but Jones then told Della that the box was hers and any money found in it would be hers. When they returned to Della's home, Jones gave her both keys to the box. She never saw Jones put any money in the box and she never entered it during his lifetime. From time to time he borrowed the keys and returned them to her without explanation. About ten days before he died, he borrowed the keys and did not return them. When Jones died, the box contained $8,000 in currency.

In an action by Jones' Administrator against Della, she claimed that the money in the safety deposit box constituted an inter vivos gift to her.

(A) Was the burden of proof upon Jones' Administrator to show that the money belonged to Jones' Estate or upon Della to establish the gift?
(B) Upon proof of the above facts, which party should prevail in this case?

PERSONAL PROPERTY

(A) The burden of proof was on Della to establish the gift. She is the one who claims that a gift has been made and the law does not presume a gift, and the fact of a gift must be shown by clear and convincing evidence.

(B) Jones' Administrator should prevail. To be an inter vivos gift there must have been an intent to make the gift at the very time of placing the money in the safety deposit box, and a sufficient delivery. Since Jones had the keys in his possession and no money was found in the box until after Jones' death there is no sufficient proof of either the intent to make a gift in praesenti or of a delivery to Della who was not even given the keys. See 199 Va. 871, or 199 Va. 877(sic) of the Property Cases on P. 850 of these notes.
4. A large farm in Rockingham County was partitioned into 2 tracts, designated as Lots Nos. 1 and 2, by the heirs in 1895. Lot No. 1, which abutted on a public road, was conveyed to Heir A. Lot No. 2 was conveyed to Heir B "together with a right of way by the present road through Lot No. 1 to the County road." The deed conveying Lot No. 1 to Heir A also provided for the right of way. The private road was not shown on the partition plat and it was described in the deeds only as "the present road."

In 1943 Realty Corporation acquired 126 acres of Lot No. 2 from Heir B. In 1947 Smith became the owner of 335 acres of Lots Nos. 1 and 2. The road traversed his portions of Lot No. 1 but not Lot No. 2. His deed was made subject to the right of way established in the aforesaid partition.

When Realty Corporation advised Smith of its intention to subdivide its tract for residential purposes and to use the road across Smith's land, a dispute arose between the parties. Realty Corporation instituted a chancery suit and sought an adjudication that it had a right of way over Smith's land. In that suit Smith contended that:

(A) As the deed to Realty Corporation did not recite a conveyance of a right of way over the private road through the property Smith later acquired, Realty Corporation could not use said road.

(B) If Realty Corporation had a right of way, it could not exceed the width of the farm road existing in 1895, the traveled portion being limited to a single track not exceeding 10 feet and the outside width, including cuts, fills, ditches and improvements, at no point exceeding 15 feet.

(C) Realty Corporation could not use the road for the purpose of developing or serving the residential subdivision, and its right of way, if any, was limited to the 1895 use consisting of normal farm and residential use of not more than two single family dwellings, together with appurtenant tenant houses.

How should the Chancellor rule on the various contentions of Smith?

(PROPERTY)(A) Smith is wrong here. A deed of realty conveys appurtenances thereto even though they are not mentioned. The right of way was such an appurtenance in this instance. (B) Smith is right in this matter. A fifteen foot road cannot be made into a private easement for a 30 foot road just because changed conditions would make it desirable. If Realty Corporation has an urgent need for a 30 foot road let it take proper steps for the opening of a public road. (C) Smith is wrong here. The right of way was appurtenant to Realty Corporations' land, and may be used as a road by anyone having a possesseory interest in the land. See 20 Va. 245.

6. John Swift died intestate in 1936 leaving surviving him as his only heirs his sons, Tom and Harry. Among the property comprising the estate of the decedent was a farm known as "Rockway" in Nelson County, Va. Approximately two years before the death of John Swift, his son, Harry, had gone to the City of Norfolk to earn his living. However, Tom Swift had remained at Rockway farming it, and believing himself to be the owner of the farm following the death of his father. In 1956, Tom Swift, in exchange for the cash purchase price of $30,000, executed and delivered a general warranty deed purporting to convey the entire fee simple interest in the farm to Roger Camp. In 1959, Harry Swift died unmarried and leaving a will by which he devised and bequeathed all his property of every description to his brother, Tom. In 1964, Tom Swift died intestate leaving as his only heir his son, Ben Swift. In October 1965, Ben Swift brought a partition suit against Roger Camp in the Circuit Court of Nelson County, and in his bill alleged the foregoing facts, further alleged the property could not be divided in kind, and prayed that a decree be entered requiring a sale of Rockway farm and a division of the proceeds of sale equally between himself and Camp. Camp has demurred to the bill.

How should the court rule on Camp's demurrer?

(PROPERTY) Camp's demurrer should be sustained. When Tom conveyed property he did not own (Harry's share) by warranty deed, and later acquired title to the property he did not own, the title to the latter passes by estoppel both at common law and under Virginia Statute 55-52. Tom's son is not a bona fide purchaser for value and hence stands in Tom's shoes.
In October of 1965, Tom Seedy, a widower residing in a hotel in the City of Richmond wrote out, signed and delivered to Sam Bull the following paper:

"Having received $20,000 from Sam Bull in payment therefor, I hereby convey to him all real property owned by me in Hanover County, Va.

Witness my signature and seal this 15th day of October, 1965.

Tom Seedy"

Shortly thereafter, Paul Wood, a tenant at will on one of Seedy's three farms in Hanover County, refused to leave the farm when directed to do so by Bull. Bull then brought an action of ejectment against Wood. On the trial of the action, Bull proved his payment to Seedy of $20,000; proved the delivery to him by Seedy of the paper writing, dated October 15, 1965, but admitted on cross-examination that the writing had not been recorded. When Bull rested his case, Wood moved the court to strike Bull's evidence contending that Bull had failed to prove ownership of the farm by a valid deed from Seedy. As the grounds of such motion, Wood averred:

1. The paper writing of October 15, 1965, had not been recorded;
2. The writing did not describe the farm occupied by Wood;
3. The writing did not recite Seedy's source of title;
4. The writing contained no acknowledgment;
5. Seedy's signature to the instrument was not under seal.

How should the court rule on each ground assigned by Wood?

(PROPERTY) The Court should rule against Wood in each case. (1) Recording is unnecessary as between the parties. Hence Seedy's deed passed the legal title to Sam Bull. (2) The description, "All real property owned by me in Hanover County" includes the farm occupied by Wood. Evidence outside the deed is admissible to identify the land conveyed. (3) A deed need not set forth the grantor's source of title. (4) Acknowledgment is only necessary for purposes of recordation. (5) By Va/11-3 a writing executed by a natural person which states that it is sealed is a sealed instrument even though it has no seal.

Billings leased his large public garage building in Buchanan, Va., to Henry Tucker. The written lease provided that it was to continue for one year from the date thereof, at a total rental of $1200, said rental to be paid in monthly installments of $100 each. The lease granted to Tucker an option to purchase the property for $40,000, provided the option was exercised on or before the expiration date of the lease. The lease contained no provision for renewal upon the expiration of the lease. Tucker continued to occupy the property after the expiration of the term of the lease and paid to Billings $100 each month for a period of four months, although there was no agreement between the parties extending or renewing the lease. At the end of four months Billings received an offer from Rufus Gilbert to purchase the property for $45,000. Billings gave a thirty-day written notice to Tucker to vacate the property. Upon receipt of the notice, Tucker wrote a letter to Billings, stating that he expected to occupy the premises for the remainder of the year following the expiration date of the written lease, his occupancy to be upon the same terms contained in the written lease. Also, in his letter Tucker advised Billings that he exercised his option to purchase the property for $40,000, and that on the day before the expiration date of the new one year period, he would tender the purchase money and demand a deed for the property. Billings consults you and asks you to advise him:

1. Whether Tucker has the right to remain in possession of the property for the additional one year period upon the terms contained in the written lease; and
2. Whether Tucker's letter was an effective exercise of the option to purchase the property. How would you advise him?

(REAL PROPERTY) Holdover from lease for one year establishes new tenancy for same period of time as original lease, i.e., 1 year and not 1 month. Therefore in Part 1, Tucker has the right to remain in possession for an additional year. But, in Part 2, it was provided that the option was to be exercised on or before "the expiration date of the lease" and therefore the option expired at the end of the original term. 1 Minor, #368; Pierce, 92 Va. 753; Elliott, 127 Va. 166, Ruben, 186 Va. 786.
Robert Landacre took possession of a farm in Goochland County, Va., that was
devised to him by the will of his uncle, Virgil Scott. Shortly after taking possession
of the farm Landacre sold and conveyed it to James Greenfield, Landacre’s wife,
Maud, joining in the deed. The deed contained this covenant:

"And the said Robert Landacre and Maud, his wife, covenant that they have a
good right to sell and convey said property, and that they warrant generally
the title thereto."

Some months later James Greenfield sold and conveyed this farm to Tom Hedgerow, but
the deed contained no covenants or warranties. It later developed that Virgil Scott
did not own the farm, and that Landacre did not acquire good title under Scott’s
will. Hedgerow was dispossessed at the suit of the legal holder of title. Thereupon
Hedgerow commenced an action against Robert Landacre and Maud Landacre to recover
damages for the breach of the covenants contained in their deed to Greenfield.

May Hedgerow recover from either or both of them?

(REAL PROPERTY) General warranty runs with the land with respect to the husband, but
no action against husband on the right to convey because covenant broken when made.
Wife is not liable as to either general warranty or right to convey as Va.Code 55-41
requires that the deed expressly state that wife’s entering into such covenant or
warranty for the purpose of binding herself personally in order to hold her for
breach thereof. Minow, ## 406, 407; McDonald, 112 Va. 749.

Matilda and Dolly, mother and adult daughter, knew that they would live
together and take care of each other during the remainder of their lives.
They found a nice cottage owned by Fragile, a widower, and offered to buy
the same. Fragile’s two children, who were sole beneficiaries under his
will, were very much opposed to the sale of the property, but Fragile
ignored their protests and entered into a valid written contract with
Matilda and Dolly for the sale of the property. After the sales contract
was executed, acknowledged, and admitted to record, but prior to the time
for closing and before the deed was executed, Fragile died testate, with
the will stating that all of his property of every kind should be shared by
the two children. The two children directed First Bank, Fragile’s executor
under the will, to take no action in regard to the property, contending that
it had passed directly to them under the will.

Matilda and Dolly consult you as to their rights to have the property
conveyed to them?

4. Matilda and Dolly have a right to a conveyance of the cottage by
Virginia Statute 64-138, which provides: that if any deceased person shall
have a bona fide sale of any land and shall have given a written contract
to the purchaser to convey the same, if the written agreement has been
duly recorded, his executor or administrator may, upon payment of the price
or the balance thereof remaining unpaid and upon compliance with the contract,
execute a deed to the property conveying the title as fully as if it had
been executed by the deceased obligor.

Louise is entitled to both the heater and the rods. At any time
before the interest of third parties has intervened the owner may sever
the connection and restore a fixture to its original character of personal
property. Severance of a fixture by the owner of land may be actual, by
a detachment of the fixture, or it may be constructive by express or implied
agreement on the part of the owner of the land and his future grantee.
Here the agent of Louise and Prentis had agreed that the heater and rods
were not to be considered part of the property to be conveyed to Prentis,
thus a constructive severance was brought about. The verbal agreement does
not contradict or very the written deed, which conveyed only the real estate
as it was at the time of the delivery, at which time the heater and rods
were no longer part of it. 184 Va 454.
PROPERTY D

5. Oul resided on Oul Farm in Loudoun Country, Virginia, and executed a written contract of sale with Monroe by which he agreed to convey to Monroe "the fee simple title to Oul Farm for a consideration of $30,000." Before the closing date, it was discovered by both parties that there was an outstanding one-sixth interest in the property owned by Nash, a distant relative of Oul, who had inherited this interest from the predecessor in title. Oul, who had honestly believed that he owned the fee simple interest, did not consciously misrepresent to Monroe. However, Oul realized he could be deemed negligent in not knowing of Nash's outstanding interest before he entered into the contract with Monroe. When Nash learned of the contract and of the facts that Monroe had threatened to bring suit for specific performance, he advised Oul that if Oul attempted to convey all or any part of the farm, he, Nash, would bring a suit to enjoin him or bring an action for damaged.

(a) What are Monroe's rights against Oul as to specific performance?
(b) What are Monroe's rights against Oul in an action for damages?
(c) What are Nash's rights against Oul for an injunction?
(d) What are Nash's rights against Oul in an action for damages?

(a) In Virginia, any transaction, entered into by one who is ignorant or mistaken of his right, will be considered in equity as a mistake of fact. Although a purchaser cannot have a partial interest forced upon him, if he enters into a contract unaware of the vendor's incapacity to convey the whole, he is entitled to specific performance to the extent of the vendor's capacity and an abatement of the purchase price to the extent of the unconveyed portion. 137 Va 587. Monroe should be entitled to specific performance of 5/6 of the property and abatement of 1/6 for that part which Oul is incapable of conveying.

(b) In lieu of a suit for specific performance with an abatement, Monroe may bring an action at law for breach of Oul's contract to convey a fee simple interest. He may recover provable damages.

(c) Nash cannot enjoin Oul from selling his undivided 5/6 interest in Oul Farm to Monroe. One of the incidents of ownership of property is the right to dispose of same.

(d) Nash has no right against Oul in an action for damages if Oul only conveys his 5/6 interest to Monroe. If Oul purports to convey the entire fee to Monroe, then Nash will have a cause of action in tort for slander of title.

P. Louise decided to sell her home in Giles County, Virginia, and move to a smaller house, but since she had recently put in a new water heater and new curtain rods in the Giles house and wanted to use them in her new home, she advised the real estate agent, Maxey, that the house was to be sold without the heater and the rods. Maxey approached Prentis in regard to purchasing the house and advised that Louise, in selling the property, would reserve the heater and curtain rods. Prentis raised no objection and agreed to purchase the property. Louise executed the deed, but there was no mention in the deed of the electric hot water heater or the curtain rods. Subsequent to the conveyance, Louise obtained a plumber and came to take the heater and the curtain rods, but Prentis refused to let her have them, pointing out that the heater was connected to the hot water system, which was already in the house, was bolted to the concrete floor and could not be removed without defacing or injuring the house by cutting the pipes, and that the curtain rods would have to be unscrewed from the windows. When Prentis was reminded of Maxey's express statements, he stated that while this was true, the deed was controlling and since it did not reserve these items, they, therefore, had passed to him.

Is Louise entitled to either the heater or the rods in an action of detinue?
A deed dated January 2, 1910, and duly recorded, conveyed a farm in Virginia to William Payne "For his life and at his death to Joseph Brown." Carl Foreman took a fancy to this farm, and in 1925 bought it from Payne, receiving and recording a deed purporting to convey with general warranty the farm to him in fee simple. Pursuant to this deed Foreman took possession of the farm, lived on it and built a handsome residence on it and made other improvements, costing in all $40,000. Payne died in January, 1957, and Foreman in July, 1960.

Brown died intestate in 1912, leaving as his only surviving relative a nephew who now consults you, telling you that he knew nothing about the land transaction until last week when he accidently discovered a copy of the deed given by Payne; that the land itself is now worth $20,000, and, with the improvements which Foreman made, will bring $70,000, on today's market. Nephew asks you to advise him fully as to his rights with respect to the farm and the improvements, which are now in the possession of Kent, who purchased the property from Foreman's heirs in 1965 and now claim to be its owner. How ought you to advise him?

(PROPERTY) The nephew gets both the farm and the improvements thereon. He inherited the remainder interest in the farm, and the 15 year statute of limitations for adverse possession has not run against him, as Foreman only began holding adversely to nephew in 1957. After the death of Payne. The nephew is also entitled to the improvements, for a person holding property with notice actual or constructive, of a defect in his title, is not entitled, upon being dispossessed by the rightful owner, to recover compensation for permanent improvements made on the premises. Here the title was bad on the record when Foreman made the improvements on the premises.

Crabbed, a crusty old bachelor, but mentally competent, in 1940 delivered and had recorded a deed conveying valuable real estate in Virginia to a friend, Mary, then aged 60 years, "for forty years with remainder to the University of Virginia." Crabbed died intestate in 1956, and in 1967, his heirs at law instituted appropriate proceedings to have this deed declared void. Mary, who was still living, and the University were made parties defendant.

Assuming that the above facts were alleged and proven, how ought the Court to hold?

(PROPERTY) Mary may keep the property for life and the University will get the remainder interest after 40 years. As this is a vested remainder interest and not a contingent one, the rule against perpetuities does not apply to defeat the remainder.

Farmer included in his will the following provision: "I bequeath to my wife for her life with remainder at her death to John, son of my first marriage, the following property(a) my dairy herd, (b) my stock in the City Bank, consisting of one hundred shares, and (c) my two hundred shares of Jupiter, Inc."

Two years after Farmer's death, City Bank paid each shareholder $25.00 per share as a return of capital, and Jupiter declared a stock dividend. John and his stepmother each claim the return of capital and the stock dividend. John also insists that his stepmother must keep enough of the offspring to maintain the dairy herd at the same approximate number as it was at the time of Farmer's death.

You are consulted. How should you answer the following questions:

(a) What disposition should be made of the capital returned by City Bank?
(b) Who is entitled to the Jupiter stock dividend?
(c) Must the stepmother maintain the dairy herd at its strength as of Farmer's death?

(PROPERTY) (a) The son should get the return of capital, since, under Va. Code 55-255(2), such is a part of the corpus of the estate and should be treated as such, going to the remainder interest.
(b) The son is entitled to the Jupiter stock dividend. According to Va. Code 55-257, all dividends on share of a corporation forming a part of the principal which are payable in the shares of the corporation shall be deemed principal.
(c) Yes. Under Va. Code 55-260, when any part of the principal consists of animals employed in business, all offspring or increase shall be deemed principal to the extent necessary to maintain the original number of animals and the remainder shall be deemed income.
5. Oscar, owner of Blackacre in Albemarle County, Virginia, decided to give it to his brother, Beverly. Oscar so informed him by letter dated April 15, 1966, which letter Beverly carefully preserved. On March 15, 1967, Oscar signed a deed and acknowledged it before a notary public. The granting clause of the deed was "Grantor hereby grants and conveys Blackacre to the Grantee, Beverly." Immediately after it was executed, Oscar put the deed in his desk drawer at home. On October 10, 1967, Oscar died, leaving a will by which he devised and bequeathed all his property to his widow and son in equal shares. A few days after the will was admitted to probate, the widow found the deed in the desk drawer and gave it to Beverly, who promptly recorded it. What interest, if any, does Beverly have in Blackacre?

(PROPERTY) Beverly has no interest in Blackacre. An essential requisite to a good deed is that it be delivered by the grantor or his attorney, and the deed takes effect only from such a delivery. There can be no inference that the grantor intended the deed to become operative upon his death, since there can be no delivery of a deed by a dead hand. A deed, or such, must operate, if at all, inter vivos. (115 Va.323; 128 Va.1)

6. Abner Owner had a very fine pocket watch which he had inherited from his grandfather. While attending an outdoor concert at a public park, he lost the watch. It was found by Frank Finder who sold it to Ace Pawn Shop the next day. Ace Pawn Shop promptly displayed the watch with other timepieces and offered it for sale to the public. John Consumer, in good faith and without any knowledge of its having been lost, purchased the watch one week after it was put on display. About four months later Abner Owner, while riding in a bus, observed the watch in the possession of John Consumer. After John Consumer had refused his demand to hand over the watch, Abner Owner consults you and asks whether or not he can recover the watch.

How ought you to advise him?

(PROPERTY, PERSONAL) Owner can recover the watch from consumer. If the owner of personal property loses it accidentally, he does not part with his title, and the finder becomes a quasi depository, invested with such possessory interest as will entitle him to hold it against all the world except the rightful owner. Since a vendee can receive no greater title than that of the vendor, consumer's interest entitles him only to hold the watch against all the world except the owner. Had the owner entrusted the watch to the pawnbroker then there would be no right to recover; but in this case there was no entrustment by the owner. (185 Va.474; 69 Va.601)

9. Stone, Inc. has operated a small manufacturing plant on its property for a number of years. Four years ago, it enlarged its operation and changed its product with the result that, while it uses reasonable care to prevent it, nevertheless fumes, dust and smoke from the operation damage Neighbor's adjoining property. Neighbor, who acquired his property in 1960, consults you and asks what redress, if any, he has against Stone. How ought you to advise him?

(PROPERTY, TORTS) Neighbor may obtain an injunction and damages for nuisance. Odors which are offensive and disagreeable in such a manner as to render life uncomfortable and damage property rights constitute a nuisance. A nuisance consisting of an established plant is permanent in its character; and an action to recover damages, past and future, for such a nuisance must be brought within five years from the time the cause of action occurred. Furthermore, the importance of an industry to the prosperity of a community does not give it a right to injure those who live nearby. The question to be answered is whether the business is so conducted as to constitute a nuisance in fact. Stone has no prescriptive right because the operational change resulting in the nuisance took place only four years earlier. Nor does the fact that reasonable care was exercised influence the fact that a nuisance was in fact created. (172 Va.342,357; 119 Va.862; 203 Va.711; 8-24)