

BUSINESS LAW
MR. EVANS

EXAMINATION
SPRING

Please select one question from each of the following groups, for a total of five questions. Compose an essay in which you address the legal issues raised in each question. You should explain what you believe would be the outcome; in addition, you should explain how the law would apply to the facts of the case.

- I. Chapter 11, questions 5, 8, 9, 14
- II. Chapter 13, questions 12, 15, 19, 22
- III. Chapter 47, questions 1, 3, 9, 15
- IV. Chapter 48, questions 10, 12, 16, 17
- V. Chapter 49, questions 8, 10, 11, 14

and granted the new owners "their rights to the water of Butler Springs," but they said nothing about the access road. The ranch was subsequently sold several times, and all the owners used the access road and watering hole. In 2016, the Nelsons purchased the ranch. Shortly thereafter, the Johnsons notified the Nelsons that they had revoked the Nelsons' right to use the access road and Butler Springs. In 2017, the Johnsons closed the access road by locking the gates across the road. The Nelsons brought this action, claiming easements to both the access road and Butler Springs. Does an easement in favor of the Nelsons exist? Why or why not?

15. Clayton and Margie Gullledge owned a house at 532 Somerset Place, N.W. (the Somerset property) as tenants by the entirety. They had three children: Bernis Gullledge, Johnnie Walker, and Marion Watkins. When Margie Gullledge died in 1990, Clayton became the sole owner of the Somerset property. The following year, Clayton remarried, but the marriage was unsuccessful. To avoid a possible loss of the Somerset property, Bernis forwarded Clayton funds to satisfy the second wife's financial demands. In exchange, Clayton conveyed the property to Bernis and himself as joint tenants. In 2011, Clayton conveyed his interest in the Somerset property to his daughter, Marion Watkins. In 2011, Clayton died. Bernis died in 2017, and Johnnie Walker died in 2014. In these proceedings, Marion Watkins claims to be a tenant in common with the estate of Bernis Gullledge. The estate claims that when Clayton died, Watkins' interest was extinguished and Bernis became the sole owner of the Somerset property. Who is correct? Why?
16. By separate leases, Javins and a few others rented an apartment at the Clifton Terrace apartment complex.

When they defaulted on their rent payments, the landlord, First National Realty, brought an action to evict them. The tenants admitted to the default but defended on the ground that the landlord had failed to maintain the premises in compliance with the Housing Code of Washington, D.C. They alleged that approximately 1,500 violations of this code had arisen since the term of their lease began. Discuss the merits of this case.

17. On January 14, 2013, Fura Mae Redmon deeded land to her daughter, Melba Taylor, and two sons, W. C. Sewell and Billy Sewell, "jointly and severally, and unto their heirs, assigns and successors forever," with the grantor retaining a life estate. W. C. Sewell died on November 18, 2014, and Billy Sewell died on May 11, 2015. Mrs. Redmon died on February 17, 2017. Melba Taylor then sought a declaration that her mother had intended to convey the property to the grantees as joint tenants, thereby making her, by virtue of her brothers' deaths, sole owner of the property. Descendants of W. C. and Billy Sewell opposed the complaint on the ground that the deed created a tenancy in common among the grantees. Who is correct? Explain.
18. Fay and Loretta O'Connell were married and owned several bank accounts as joint tenants with rights of survivorship. While accompanied by Loretta's sister, Mary Ann, Fay went to the banks where Fay and Loretta had joint accounts and withdrew all the funds from those accounts. Fay deposited the funds into new accounts in his name alone and designated all but the money market account as payable on death to Mary Ann. Did Fay sever and destroy the joint tenancy? What rights, if any, does Loretta have to the withdrawn funds? Explain.

TAKING SIDES

On June 30, 2008, Martin Hendrickson and Solveig Hendrickson were married, and on January 3, 2009, a home previously owned by Martin was conveyed to them as joint tenants and not as tenants in common. Solveig Hendrickson paid no part of the consideration for the premises. On August 3, 2016, Martin Hendrickson duly executed a Declaration of Election to Sever Survivorship of Joint Tenancy by which he endeavored to preserve an interest in the premises for Ruth Halbert, his daughter by a previous marriage. On the same day, he executed his last will and testament, by the terms of which he directed that his wife, Solveig Hendrickson, receive the minimum amount to which she was entitled under

the laws of the State of Minnesota. Martin Hendrickson died with a valid will on October 9, 2016.

- a. What are the arguments that the joint ownership was severed by Martin Hendrickson's declaration, thus creating a tenancy in common?
- b. What are the arguments that the joint tenancy was not severed by Martin Hendrickson's declaration and thus the property passed to Solveig Hendrickson by survivorship upon Martin Hendrickson's death?
- c. Which argument should prevail? Explain.

any one accident. Maruchek took the order and told Adler over the telephone that he was covered and that his policy would be written by the Young Insurance Company. Later that same day and before Maruchek had informed the Young Insurance Company of Adler's application, Adler negligently operated the automobile and seriously injured Brown, who brings suit against Adler. Is Adler covered by liability insurance? Explain.

13. Graham owns a building having a fair market value of \$120,000. She takes out a fire insurance policy from the Bentley Insurance Company for \$72,000; the policy contains an 80 percent co-insurance clause. The building is damaged by fire to the extent of \$48,000. How much insurance is Graham entitled to collect?
14. Phil was the owner of a herd of twenty highly bred dairy cows. He was a prosperous farmer, but his health was very poor. On the advice of his doctor, Phil decided to winter in Arizona. Before he left, he made an agreement with Freya under which Freya was to keep the cows on Freya's farm through the winter, be paid the sum of \$800 by Phil, and return to Phil the twenty cows at the close of the winter. For reasons that Freya thought made good farming sense, Freya sold six of the cows and replaced them with six other cows. After winter was over, Phil returned from Arizona. Is Freya liable for conversion of the original six cows? Why or why not?
15. Hines stored her furniture, including a grand piano, in Arnett's warehouse. Needing more space, Arnett stored Hines's piano in Butler's warehouse next door. As a result of a fire, which occurred without any fault of Arnett or Butler, both warehouses and their contents were destroyed. Is Arnett liable to Hines for the value of her piano and furniture? Explain.
16. Curtis rented a safe deposit box from Reliable Safe Deposit Company, in which he deposited valuable securities and \$4,000 in cash. Later, after opening the box and discovering \$1,000 missing, Curtis brought an action against Reliable. At the trial, the company showed that its customary procedure was as follows: that there were two keys for each box furnished to each renter; that if a key was lost, the lock was changed; that new keys were provided for each lock each time a box was rented; that there were two clerks in charge of the vault; and that one of the clerks was always present to open the box. Reliable Safe Deposit Company also proved that two keys were given to Curtis at the time he rented his box, that his box could not be opened without the use of one of the keys in his possession, and that the company had issued no other keys to Curtis's box. Explain whether Reliable is obligated to pay Curtis for the missing \$1,000.
17. A, B, and C each stored five thousand bushels of yellow corn in the same bin in X's warehouse. X wrongfully sold ten thousand bushels of this corn to Y. A contends that inasmuch as his five thousand bushels of corn were

placed in the bin first, the remaining five thousand bushels belong to him. What are the rights of the parties?

18. a. On April 1, Mary Rich, at the solicitation of Super Fur Company, delivered a \$13,000 mink coat to the company at its place of business for storage in its vaults until November 1. On the same day, she paid the company its customary charge of \$50 for such storage. After Mary left the store, the general manager of the company, on finding that its storage vaults were already filled to capacity, delivered Mary's coat to Swift Trucking Company for shipment to Fur Storage Company. En route, the truck in which Mary's coat was being transported was badly damaged by fire caused by the driver's negligence, and Mary's coat was totally destroyed. Is Super Fur Company liable to Mary for the value of her coat? Why or why not?
b. Would your answer be the same if Mary's coat had been safely delivered to Fur Storage Company and had been stolen from the company's storage vaults without negligence on its part? Why or why not?
19. Rich, a club member, left his golf clubs with Bogan, the pro at the Happy Hours Country Club, to be refinished at Bogan's pro shop. The refinisher employed by Bogan suddenly left town, taking Rich's clubs with him. The refinisher had previously been above suspicion, although Bogan had never checked on the man's character references. A valuable sand wedge that Bogan had borrowed from another member, Smith, for his own use in an important tournament was also stolen by the refinisher, as well as several pairs of golf shoes that Bogan had checked for members without charge as an accommodation. The club members concerned each made claims against Bogan for their losses. Can (a) Rich, (b) Smith, and (c) the other members compel Bogan to make good their respective losses? Explain.
20. Donna drove an automobile into Terry's garage and requested him to make repairs for which the charge would be \$125. Donna, however, never returned to get the automobile. Two months later, Carla saw the automobile in Terry's garage and claimed it as her own, asserting that it had been stolen from her. Terry told Carla that she could have the automobile if she paid for the repairs and storage. One week later, Molly appeared and proved that the automobile was hers, that it had been stolen from her, and that neither Donna nor Carla had any rights in it. Discuss whether Terry is liable for conversion of the automobile.
21. On June 1, Cain delivered his 2013 automobile to Barr, the operator of a repair shop, for necessary repairs. Barr put the car in his lot on Main Street. The lot, which is fenced on all sides except along Main Street, holds one hundred cars and is unguarded at night, although the police make periodic checks. The lot is well lit. The cars do not have the keys in them when left out overnight. At some time during the night of June 4, the hood,

knowledge or notice of the drainpipe, although it would have been apparent to anyone inspecting the premises because it was only partially buried. Later, Olson sold and conveyed lot B to Luke Lane. This deed also made no reference to the drainpipe and was promptly recorded. A few weeks thereafter, Ford discovered the drainpipe across lot A and removed it. Did he have the right to do so? Explain.

9. At the time of his marriage to Ann, Robert owned several parcels of real estate in joint tenancy with his brother, Sam. During his marriage, Robert purchased a house and put the title in his name and his wife's name as joint tenants, not as tenants in common. Robert died, within a month of his death, Smith obtained a judgment against the estate of Robert. What are the relative rights of Sam, Smith, and Ann?

C A S E P R O B L E M S

10. In 1989, Ogle was the owner of two adjoining lots numbered 6 and 7 fronting at the north on a city street. In that year, she laid out and built a concrete driveway along and two feet in front of what she erroneously believed to be the west boundary of lot 7. Ogle used the driveway for access to buildings situated at the southern end of both lots. Later in the same year, she conveyed lot 7 to Dale, and thereafter in the same year, she conveyed lot 6 to Pace. Neither deed made any reference to the driveway, and after the conveyance, Dale used it exclusively for access to lot 7. In 2017, a survey by Pace established that the driveway encroached six inches on lot 6, and he brought an appropriate action to establish his lawful ownership of the strip upon which the driveway approaches, to enjoin its use by Dale, and to require Dale to remove the overlap. Will Pace prevail? Why or why not?

11. Temco, Inc., conveyed to the Wynns certain property adjoining an apartment complex being developed by Sonnett Realty Company. Although nothing to this effect was contained in the deed, the sales contract gave the purchaser of the property use of the apartment's swimming pool. Temco's sales agent also emphasized that use of the pool would be a desirable feature in the event that the Wynns decided to sell the property.

Seven years later, the Bunns contracted to buy the property from the Wynns through the latter's agent, Sonnett Realty. Although both the Wynns and Sonnett Realty's agent told the Bunns that the use of the apartment's pool went with the purchased property, neither the contract nor the deed subsequently conveyed to the Bunns so provided. When the Bunns requested pool access passes from Temco and Offutt, the company that owned the apartments, their request was refused. Discuss whether the Bunns have a right to use the apartment's pool.

12. On January 1, Mrs. Irene Kern leased an apartment from Colonial Court Apartments, Inc., for a one-year term. When the lease was entered into, Mrs. Kern asked for a quiet apartment, and Colonial assured her that the assigned apartment was in a quiet, well-insulated building. In fact, however, the apartment above Mrs. Kern's was occupied by a young couple, the Lindgrens. From the start of her occupancy, Mrs. Kern complained of their twice-weekly parties and other actions that so

disturbed her sleep that she had to go elsewhere for rest. After Mrs. Kern had lodged several complaints, Colonial terminated the Lindgrens' lease effective February 28. The termination of the lease was prolonged, however, and Mrs. Kern vacated her apartment, claiming that she was no longer able to endure the continued disturbances. Colonial then brought this action to recover rent owed by Mrs. Kern. Will Colonial prevail? Has Mrs. Kern been constructively evicted? Explain.

13. In 1974, a deed for land in Pitt County was executed and delivered by Joel and Louisa Tyson "unto M. H. Jackson and wife Maggie Jackson, for and during the term of their natural lives and after their death to the children of the said M. H. Jackson and Maggie Jackson that shall be born to their inter-marriage as shall survive them and their heirs and assigns in fee simple forever." Thelma Jackson Vester, a daughter of M. H. and Maggie Jackson, died in 2016, survived by three children. M. H. Jackson, who survived his wife, Maggie Jackson, died in 2017, survived by four sons. The children of Thelma Jackson Vester brought this action against M. P. Jackson, a son of and executor of the will of M. H. Jackson. The children of Vester contended that through their deceased mother, they were entitled to one-fifth interest in the land conveyed by the deed of 1974. The executor contended that the deed conveyed a contingent remainder and only those children who survived the parents took an interest in the land. Discuss the contentions of both of the parties.
14. Robert and Majorie Wake owned land that they used as both a cattle ranch and a farm. Each spring and autumn, the Wakes would drive their cattle from the ranch portion of the operation across an access road on the farmland to Butler Springs, which was also on the farmland. In December 1994, the Wakes sold the farm to Jesse and Maud Hess but retained for themselves a right-of-way over the farm access road and the right to use Butler Springs for watering their livestock. In 2001, the Hesses sold the farm to the Johnsons, granting them uninterrupted possession of the property "excepting only that permissive use of the premises" owned by the Wakes. The Wakes continued to use the access road and Butler Springs until 2002, when they sold their ranch

13. Carolyn Murphy, a welfare recipient with very limited education and with four minor children, responded to an advertisement that offered the opportunity to purchase televisions without a deposit or credit history. She entered into a rent-to-own contract for a twenty-five-inch console color television set that required seventy-eight weekly payments of \$16.00 (a total of \$1,248, which was two and one-half times the retail value of the set). Under the contract, the renter could terminate the agreement by returning the television and forfeiting any payments already made. After Murphy had paid \$436 on the television, she read a newspaper article criticizing the lease plan. She stopped payment and sued the television company. The television company has attempted to take possession of the set. Decision?
14. Albert Bennett, an amateur cyclist, participated in a bicycle race conducted by the United States Cycling Federation. During the race, Bennett was hit by an automobile. He claims that employees of the Federation improperly allowed the car onto the course. The Federation claims that it cannot be held liable to Bennett because Bennett signed a release exculpating the Federation from responsibility for any personal injury resulting from his participation in the race. Is the exculpatory clause effective? Explain.
15. In February, Brady contracted to construct a house for Fulghum for \$206,850. Brady began construction on March 13. Neither during the negotiation of this contract nor when he began performance was Brady licensed as a general contractor as required by North Carolina law. Brady was awarded his builder's license on October 22, having passed the examination on his second attempt. At that time, he had completed two-thirds of the work on Fulghum's house. Fulghum paid Brady \$204,000. Brady brought suit, seeking an additional \$2,850 on the original contract and \$29,000 for "additions and changes" Fulghum requested during construction. Is Fulghum liable to Brady? Explain.
16. Robert McCart owned and operated an H&R Block tax preparation franchise. When Robert became a district manager for H&R Block, he was not allowed to continue operating a franchise. So in accordance with company policy, he signed over his franchise to his wife June. June signed the new franchise agreement, which included a covenant not to compete for a two-year period within a fifty-mile radius of the franchise territory should the H&R Block franchise be terminated, transferred, or otherwise disposed of. June and Robert were both aware of the terms of this agreement, but June chose to terminate her franchise agreement anyway. Shortly thereafter, June sent out letters to H&R Block customers, criticizing H&R Block's fees and informing them that she and Robert would establish their own tax preparation services at the same address as the former franchise location. Each letter included a separate letter from Robert detailing the tax services to be offered by the McCart's new business. Should H&R Block be able to obtain an injunction against June? Against Robert?
17. Michelle Marvin and actor Lee Marvin began living together, holding themselves out to the general public as man and wife without actually being married. The two orally agreed that while they lived together, they would share equally any and all property and earnings accumulated as a result of their individual and combined efforts. In addition, Michelle promised to render her services as "companion, homemaker, housekeeper and cook" to Lee. Shortly thereafter, she gave up her lucrative career as an entertainer in order to devote her full time to being Lee's companion, homemaker, housekeeper, and cook. In return, he agreed to provide for all of her financial support and needs for the rest of her life. After living together for six years, Lee compelled Michelle to leave his household but continued to provide for her support. One year later, however, he refused to provide further support. Michelle sued to recover support payments and half of their accumulated property. Lee contends that their agreement is so closely related to the supposed "immoral" character of their relationship that its enforcement would violate public policy. The trial court granted Lee's motion for judgment on the pleadings. Decision?
18. Richard Brobston was hired by Insulation Corporation of America (ICA) in 2006. Initially, he was hired as a territory sales manager but was promoted to national account manager in 2010 and to general manager in 2014. In 2016, ICA was planning to acquire computer-assisted design (CAD) technology to upgrade its product line. Prior to acquiring this technology, ICA required that Brobston and certain other employees sign employment contracts that contained restrictive covenants or be terminated and changed their employment status to "at-will" employees. These restrictive covenants provided that in the event of Brobston's termination for any reason, Brobston would not reveal any of ICA's trade secrets or sales information and would not enter into direct competition with ICA within three hundred miles of Allentown, Pennsylvania, for a period of two years from the date of termination. The purported consideration for Brobston's agreement was a \$2,000 increase in his base salary and proprietary information concerning the CAD system, customers, and pricing. Brobston signed the proffered employment contract. In October 2016, Brobston became vice president of special products, which included responsibility for sales of the CAD system products as well as other products. Over the course of the next year, Brobston failed in several respects to perform his employment duties properly, and on August 13, 2017, ICA terminated Brobston's employment. In December 2017, Brobston was hired by a competitor of ICA who was aware of ICA's restrictive covenants. Can ICA enforce the employment agreement by enjoining Brobston from disclosing proprietary information about ICA and by

- restraining him from competing with ICA? If so, for what duration and over what geographic area?
19. Henriouille, an unemployed widower with two children, received public assistance in the form of a rent subsidy. He entered into an apartment lease agreement with Marin Ventures that provided "INDEMNIFICATION: Owner shall not be liable for any damage or injury to the tenant, or any other person, or to any property, occurring on the premises, or any part thereof, and Tenant agrees to hold Owner harmless for any claims for damages no matter how caused." Henriouille fractured his wrist when he tripped over a rock on a common stairway in the apartment building. At the time of the accident, the landlord had been having difficulty keeping the common areas of the apartment building clean. Will the exculpatory clause effectively bar Henriouille from recovery? Explain.
 20. Emily was a Java programmer employed with Sun Microsystems in Palo Alto, California. Upon beginning employment, Emily signed a contract that included a noncompete clause that, within three months of terminating her employment, prevented her from taking another Java programming position with any of five companies Sun listed as "direct competitors." Later that year, Emily resigned and two months later accepted a position with Hewlett-Packard (HP) in Houston, Texas. HP was listed in Emily's contract as a "direct competitor," but she argues that due to the significant geographic distance between both jobs, the contract is not enforceable. Explain whether the contract is enforceable.
 21. Between 2012 and 2017, Williams purchased a number of household items on credit from Walker-Thomas Furniture Co., a retail furniture store. Walker-Thomas retained the right in its contracts to repossess an item if Williams defaulted on an installment payment. Each contract also provided that each installment payment by Williams would be credited *pro rata* to all outstanding accounts or bills owed to Walker-Thomas. As a result of this provision, an unpaid balance would remain on every item purchased until the entire balance due on all items, whenever purchased, was paid in full. Williams defaulted on a monthly installment payment in 2017, and Walker-Thomas sought to repossess all the items that Williams had purchased since 2012. Discuss.
 22. Universal City Studios, Inc. (Universal), entered into a general contract with Turner Construction Company (Turner) for the construction of the Jurassic Park ride. Turner entered into a subcontract with Pacific Custom Pools, Inc. (PCP), for PCP to furnish and install all water treatment work for the project for the contract price of \$959,131. PCP performed work on the project from April 2016 until June 2017 for which it was paid \$897,719. PCP's contractor's license, however, was under suspension from October 12, 2016, to March 14, 2017. In addition, PCP's license had expired as of January 31, 2017, and it was not renewed until May 5, 2017. California Business and Professions Code Section 7031 provides that no contractor may bring an action to recover compensation for the performance of any work requiring a license unless he or she was "a duly licensed contractor at all times during the performance of that [work], regardless of the merits of the cause of action brought by the contractor." The purpose of this licensing law is to protect the public from incompetence and dishonesty in those who provide building and construction services. PCP brought suit against Universal and Turner, the defendants, for the remainder of the contract price. Explain who should prevail.
 23. Octavio Sanchez worked as a delivery driver at a Domino's Pizza restaurant owned by Western Pizza. He drove his own car in making deliveries. His hourly wage ranged from the legal minimum wage to approximately \$0.50 above minimum wage. Western Pizza reimburses him at a fixed rate of \$0.80 per delivery regardless of the number of miles driven or actual expenses incurred. Sanchez brought this class action against Western Pizza, alleging that the flat rate at which drivers were reimbursed for delivery expenses violated wage and hour laws and that the drivers were paid less than the legal minimum wage.
 Sanchez and Western Pizza are parties to an undated arbitration agreement. The agreement states that (1) the execution of the agreement "is not a mandatory condition of employment"; (2) any dispute that the parties are unable to resolve informally will be submitted to binding arbitration before an arbitrator approved by both parties and "selected from the then-current Employment Arbitration panel of the Dispute Eradication Services"; (3) the parties waive the right to a jury trial; (4) the arbitration fees will be borne by Western Pizza, and except as otherwise required by law, each party will bear its own attorney fees and costs; (5) small claims may be resolved by a summary small claims procedure; and (6) the parties waive the right to bring class arbitration. Should Sanchez be compelled to submit to arbitration to resolve his complaint? Explain.

T A K I N G S I D E S

EarthWeb provided online products and services to business professionals in the information technology (IT) industry. EarthWeb operated through a family of Websites offering information, products, and services for IT professionals to

use for facilitating tasks and solving technology problems in a business setting. EarthWeb obtained this content primarily through licensing agreements with third parties. Schlack began his employment with EarthWeb in its New York City office.

to Gilchrist to show that he used ordinary care in protecting the vehicle while in his care.

Gilchrist impounded the cars in a storage lot surrounded by a chain link fence. There was an individual on the clock at all times. The person on duty spent time in the office and only visited the storage lot to check on it. The vandal cut a hole in the fence and broke into six to eight cars on the night

in question. The fact the guard was not on duty at the impound lot and, considering the only other security for the vehicles was the chain link fence, the magistrate and Circuit Court judge could have concluded Gilchrist failed to exercise ordinary care. . . .

Accordingly, the order of the Circuit Court is AFFIRMED.

QUESTIONS

1. In January, Roger Burke loaned his favorite nephew, Jimmy White, his valuable Picasso painting. Knowing that Jimmy would celebrate his twenty-first birthday on May 15, Burke sent a letter to Jimmy on April 14 stating:

Dear Jimmy,

Tomorrow I leave on my annual trip to Europe, and I want to make you a fitting birthday gift, which I do by sending you my enclosed promissory note. Also I want you to keep the Picasso that I loaned you last January, and you may now consider it yours. Happy birthday!

Affectionately,
/s/ Uncle Roger

The negotiable promissory note for \$5,000 sent with the letter was signed by Roger Burke, payable to Jimmy White or bearer, and dated May 15. On May 21, Burke was killed in an automobile accident while motoring in France.

First Bank was appointed administrator of Burke's estate. Jimmy presented the note to the administrator and demanded payment, which was refused. Jimmy brought an action against First Bank as administrator, seeking recovery on the note. The administrator in turn brought an action against Jimmy, seeking the return of the Picasso.

- a. What decision in the action on the note?
 - b. What decision in the action to recover the painting?
2. Several years ago, Pierce purchased a tract of land on which stood an old, vacant house. Recently, Pierce employed Fried, a carpenter, to repair and remodel the house. While Fried was tearing out a partition to enlarge one of the rooms, he found a metal box hidden in the wall. After breaking open the box and discovering that it contained \$2,000 in gold and silver coins and old-style bills, Fried took the box and its contents to Pierce and told her where he had found it. When Fried handed the box and the money over to Pierce, he said, "If you do not find the owner, I claim the money." Pierce placed the money in an envelope and deposited it in her safe deposit box, where it presently remains. No one has ever claimed the money, but Pierce refuses to give it to Fried.

Will Fried be able to recover the money from Pierce? Why or why not?

3. Gable, the owner of a lumber company, was cutting trees over the boundary line between his property and property owned by Lane. Although he realized he had crossed onto Lane's property, Gable continued to cut trees of the same kind as those he had cut on his own land. While on Lane's property, he found a diamond ring on the ground, which he took home. All of the timber Gable cut that day was commingled. What are Lane's rights, if any (a) in the timber and (b) in the ring?
4. Decide each of the following problems:
 - a. A chimney sweep found a jewel and took it to a goldsmith, whose apprentice removed the stone and refused to return it. The chimney sweep sues the goldsmith.
 - b. One of several boys walking along a railroad track found an old stocking. All started playing with it until it burst in the hands of its discoverer, revealing several hundred dollars. The original discoverer claims all of the money; the other boys claim it should be divided equally.
 - c. A traveling salesperson leaving a store notices a parcel of bank notes on the floor. He picks them up and gives them to the owner of the store to keep for the true owner. After three years, they have not been reclaimed and the salesperson sues the storekeeper.
 - d. Frank is hired to clean the swimming pool at the country club. He finds a diamond ring on the bottom of the pool. The true owner cannot be found. The country club sues Frank for possession of the ring.
 - e. A customer found a pocketbook lying on a barber's table. He gave it to the barber to hold for the true owner, who failed to appear. The customer sues the barber.
5. Jones had fifty crates of oranges equally divided between grades A, B, and C, grade A being the highest quality and C being the lowest. Smith had one thousand crates of oranges, about 90 percent of which were grade A, but some of which were grades B and C, the exact percentage of each being unknown. Smith willfully mixed Jones's crates with his own so that it was impossible to identify any particular crate. Jones seized the whole lot.

Smith demanded nine hundred crates of grade A and fifty crates each of grades B and C. Jones refused to give them up unless Smith could identify particular crates. This Smith could not do. Smith brought an action against Jones to recover what he demanded or its value. Judgment for whom and why?

6. Barnes, the owner and operator of Blackacre, decided to cease farming operations and liquidate his holdings. Barnes sold fifty head of yearling Merino sheep to Billing and then sold Blackacre to Clifton. He executed and delivered to Billing a bill of sale for the sheep and was paid for them. It was understood that Billing would send a truck for the sheep within a few days. At the same time, Barnes executed a warranty deed conveying Blackacre to Clifton. Clifton took possession of the farm and brought along one hundred head of his yearling Merino sheep and turned them into the pasture, not knowing the sheep Barnes sold Billing were still in the pasture. After the sheep were mixed, it was impossible to identify the fifty head belonging to Billing. Explain whether Billing will recover the fifty head of sheep from Clifton.
7. Susan permitted Kevin to take her very old grandfather clock on the basis of Kevin's representations that he was skilled at repairing such clocks and restoring them to their original condition and could do the job for \$60. The clock had been badly damaged for years. Kevin immediately sold the clock to Fixit Shop for \$30. Fixit Shop was in the business of repairing a large variety of items and also sold used articles. Three months later, Susan was in the Fixit Shop and clearly identified a grandfather clock Fixit Shop had for sale as the one she had given Kevin to repair. Fixit Shop had replaced more than half of the moving parts by having exact duplicates custom-made, the clock's exterior had been restored by a skilled cabinetmaker, and the clock's face had been replaced by a duplicate. All materials belonged to Fixit Shop, and its employees accomplished the work. Fixit Shop asserts it bought the clock in the normal course of business from Kevin, who represented that it belonged to him. The fair market value of the clock in its damaged condition was \$30, and the value of repairs made is \$220. Susan sued Fixit Shop for return of the clock. Fixit Shop defended that it then had title to the clock and, in the alternative, that Susan must pay the value of the repairs if she is entitled to regain possession. Who will prevail? Why?
8. Under an oral agreement, Hyer rented from Bateman a vacant lot for a filling station. Hyer placed on the lot a lightly constructed building bolted to a concrete slab and several storage tanks laid on the ground in a shallow excavation. Later, Hyer prepared a lease that contained a provision allowing him to remove the equipment at the termination of the lease. This lease was not executed, having been rejected by Bateman due to a renewal clause it contained. Several years later, another lease was prepared, which both Hyer and Bateman did sign. This lease did not mention removal of the equipment. At the termination of this lease, Hyer removed the equipment, and Bateman brought an action to recover possession of the equipment. What judgment?
9. Elvers sold a parcel of real estate, describing it by its legal description and making no mention of any improvements or fixtures on it. The land had upon it a residence, a barn, a rail fence, a stack of hay, some growing corn, and a windmill. The residence had a mirror built into the west wall of the living room and a heating system consisting of a furnace, steam pipes, and coils. In the house were chairs, beds, tables, and other furniture. On the house was a lightning rod. In the basement were screens for the windows. Which of these things passed by the deed and which did not?
10. John Swan rented a safe deposit box at the Tenth Citizens Bank of Emanon, State of X. On December 17, 2014, Swan went to the bank with stock certificates to place in the safe deposit box. After he was admitted to the vault and had placed the stock certificates in the box, Swan found lying on a chair in the privacy booth of the vault a \$5,000 negotiable bearer bond issued by the State of Wisconsin with coupons attached, due June 30, 2021. Swan picked up the bond and, observing that it did not carry the name of the owner, left the vault and went to the office of the president of the bank. He told the president what had occurred and delivered the bond to the president only after obtaining his promise that should the owner not call for the bond or become known to the bank by June 30, 2015, the bank would redeliver the bond to Swan. On July 1, 2015, Swan learned that the owner of the bond had not called for it, nor was his identity known to the bank. Swan then asked that the bond be returned to him. The bank refused, stating that it would continue to hold the bond until the owner claimed it. Explain whether Swan will prevail in his action to recover possession of the bond.
11. Lile, an insurance broker who handled all insurance for Tempo Co., purchased a fire policy from Insurance Company insuring Tempo Co.'s factory against fire in the amount of \$1.5 million. Before the policy was delivered to Tempo and while it was still in Lile's hands, Tempo advised Lile to cancel the policy. Prior to cancellation, however, Tempo suffered a loss. Tempo now makes a claim against Insurance Company on the policy. The premium had been billed to Lile but was unpaid at the time of loss. In an action by Tempo Co. against Insurance Company, what judgment?
12. On July 15, Adler purchased in Chicago a Buick sedan, intending to drive it that day to St. Louis, Missouri. He telephoned a friend, Maruchek, who was in the insurance business, and told him that he wanted liability insurance on the automobile, limited in amount to \$50,000 for injuries to one person and to \$100,000 for

3. Michael is interested in promoting the passage of a bill in the State legislature. He agrees with Christy, an attorney, to pay Christy for her services in drawing up the required bill, procuring its introduction in the legislature, and making an argument for its passage before the legislative committee to which it will be referred. Christy renders these services. Subsequently, upon Michael's refusal to pay her, Christy sues Michael for damage for breach of contract. Will Christy prevail? Explain.
4. Anthony promises to pay McCarthy \$10,000 if McCarthy reveals to the public that Washington is a Communist. Washington is not a Communist and never has been. McCarthy successfully persuades the media to report that Washington is a Communist and now seeks to recover the \$10,000 from Anthony, who refuses to pay. McCarthy initiates a lawsuit against Anthony. What result?
5. The Dear Corporation was engaged in the business of making and selling harvesting machines. It sold everything pertaining to its business to the ABC Company, agreeing "not again to go into the manufacture of harvesting machines anywhere in the United States." The seller, which had national and international goodwill in its business, now begins the manufacture of such machines contrary to its agreement. Should the court enjoin it? Explain.
6. Charles Leigh, engaged in the industrial laundry business in Central City, employed Tim Close, previously employed in the home laundry business, as a route salesperson on July 1. Leigh rents linens and industrial uniforms to commercial customers; the soiled linens and uniforms are picked up at regular intervals by route drivers and replaced with clean ones. Every employee is assigned a list of customers. The contract of employment stated that in consideration of being employed, upon termination of his employment, Close would not "directly or indirectly engage in the linen supply business or any competitive business within Central City, Illinois, for a period of one year from the date when his employment under this contract ceases." On May 10 of the following year, Leigh terminated Close's employment for valid reasons. Thereafter, Close accepted employment with Ajax Linen Service, a direct competitor of Leigh in Central City. He commenced soliciting former customers whom he had called on for Leigh and obtained some of them as customers for Ajax. Will Leigh be able to enforce the provisions of the contract? Why or why not?
7. On April 30, 2016, Barack and George entered into a bet on the outcome of the 2016 Kentucky Derby. On January 28, 2017, Barack, who bet on the winner, approached George, seeking to collect the \$3,000 George had wagered. George paid Barack the \$3,000 wager but now seeks to recover the funds from Barack. Result?
8. Carl, a salesman for Smith, comes to Benson's home and sells him a complete set of "gourmet cooking utensils" that are worth approximately \$300. Benson, an eighty-year-old man living alone in a one-room efficiency apartment, signs a contract to buy the utensils for \$1,450, plus a credit charge of \$145, and to make payment in ten equal monthly installments. Three weeks after Carl leaves with the signed contract, Benson decides he cannot afford the cooking utensils and has no use for them. What can Benson do? Explain.
9. Consider the same facts as in Question 8, but assume that the price was \$350. Benson, nevertheless, wishes to avoid the contract based on the allegation that Carl befriended and tricked him into the purchase. Discuss.
10. Adrian rents a bicycle from Barbara. The bicycle rental contract Adrian signed provides that Barbara is not liable for any injury to the renter caused by any defect in the bicycle or the negligence of Barbara. Injured when she is involved in an accident due to Barbara's improper maintenance of the bicycle, Adrian sues Barbara for her damages. Will Barbara be protected from liability by the provision in their contract? Explain.

C A S E P R O B L E M S

11. Merrill Lynch employed Post and Maney as account executives. Both men elected to be paid a salary and to participate in the firm's pension and profit-sharing plans rather than take a straight commission. Thirteen years later, Merrill Lynch terminated the employment of both Post and Maney. Both men began working for a competitor of Merrill Lynch. Merrill Lynch then informed them that all of their rights in the company-funded pension plan had been forfeited pursuant to a provision of the plan that permitted forfeiture in the event an employee directly or indirectly competed with the firm. Is Merrill Lynch correct in its assertion? Why or why not?
12. Tovar applied for the position of resident physician in Paxton Community Memorial Hospital. The hospital examined his background and licensing and assured him that he was qualified for the position. Relying upon the hospital's promise of permanent employment, Tovar resigned from his job and began work at the hospital. He was discharged two weeks later, however, because he did not hold a license to practice medicine in Illinois as required by State law. He had taken the examination but had never passed it. Tovar claims that the hospital promised him a position of permanent employment and that by discharging him, it breached their employment contract. Discuss.

13. Plaintiff, Gibson, entered into negotiation with W. S. May, president of Home Folks Mobile Home Plaza, Inc., to buy Home Plaza Corporation. Plaintiff visited the mobile home park on several occasions, at which time he noted the occupancy, visually inspected the sewer and water systems, and asked May numerous questions concerning the condition of the business. Plaintiff, however, never requested to see the books, nor did May try to conceal them. May admits making the following representations to the plaintiff: (a) the water and sewer systems were in good condition, and no major short-term expenditures would be needed; (b) the park realized a 40 percent profit on natural gas sold to tenants; and (c) usual park vacancy was 5 percent. In addition, May gave plaintiff the park's accountant-prepared income statement, which showed a net income of \$38,220 for the past eight months. Based on these figures, plaintiff projected an annual net profit of \$57,331.20. Upon being asked whether this figure accurately represented income of the business for the past three years, May stated by letter that indeed it did.

Plaintiff purchased the park for \$275,000. Shortly thereafter, plaintiff spent \$5,384 repairing the well and septic systems. By the time plaintiff sold the park three years later, he had expended \$7,531 on the wells and \$8,125 on the septic systems. Furthermore, in the first year, park occupancy was nowhere near 95 percent. Even after raising rent and the charges for natural gas, plaintiff still operated at a deficit. Plaintiff sued defendant, alleging that May, on behalf of defendant, made false and fraudulent statements on which plaintiff relied when he purchased the park. Decision?

14. Columbia University brought suit against Jacobsen on two notes signed by him and his parents. The notes represented the balance of tuition he owed the University. Jacobsen counterclaimed for money damages due to Columbia's deceit or fraudulent misrepresentation. Jacobsen argues that Columbia fraudulently misrepresented that it would teach wisdom, truth, character, enlightenment, and similar virtues and qualities. He specifically cites as support the Columbia motto: "*in lumine tuo videbimus lumen*" ("In your light we shall see light"); the inscription over the college chapel: "Wisdom dwelleth in the heart of him that hath understanding"; and various excerpts from its brochures, catalogues, and a convocation address made by the University's president. Jacobsen, a senior who was not graduated because of poor scholastic standing, claims that the University's failure to meet its promises made through these quotations constituted fraudulent misrepresentation or deceit. Decision?
15. Frank Berryessa stole funds from his employer, the Eccles Hotel Company. His father, W. S. Berryessa, learned of his son's trouble and, thinking the amount involved was about \$2,000, gave the hotel a promissory note for \$2,186 to cover the shortage. In return, the hotel agreed not to

publicize the incident or notify the bonding company (A bonding company is an insurer that is paid a premium for agreeing to reimburse an employer for thefts by an employee.) Before this note became due, however, the hotel discovered that Frank had actually misappropriated \$6,865. The hotel then notified its bonding company, Great American Indemnity Company, to collect the entire loss. W. S. Berryessa claims that the agent for Great American told him that unless he paid them \$2,000 in cash and signed a note for the remaining \$4,865, Frank would be prosecuted. Berryessa agreed, signed the note, and gave the agent a cashier's check for \$1,500 and a personal check for \$500. He requested that the agent not cash the personal check for about a month. Subsequently, Great American sued Berryessa on the note. He defends against the note on the grounds of duress and counterclaims for the return of the \$1,500 and the cancellation of the uncashed \$500 check. Who should prevail? Explain.

16. Jane Francois married Victor H. Francois. At the time of the marriage, Victor was a fifty-year-old bachelor living with his elderly mother, and Jane was a thirty-year-old, twice divorced mother of two. Victor had a relatively secure financial portfolio; Jane, on the other hand, brought no money or property to the marriage.

The marriage deteriorated quickly over the next couple of years, with disputes centered on financial matters. During this period, Jane systematically gained a joint interest in and took control of most of Victor's assets. Three years after they married, Jane contracted Harold Monoson, an attorney, to draw up divorce papers. Victor was unaware of Jane's decision until he was taken to Monoson's office, where Monoson presented for Victor's signature a "Property Settlement and Separation Agreement." Monoson told Victor that he would need an attorney, but Jane vetoed Victor's choice. Monoson then asked another lawyer, Gregory Ball, to come into the office. Ball read the agreement and strenuously advised Victor not to sign it because it would commit him to financial suicide. The agreement transferred most of Victor's remaining assets to Jane. Victor, however, signed it because Jane and Monoson persuaded him that it was the only way that his marriage could be saved. In October of the following year, Jane informed Victor that she had sold most of his former property and that she was leaving him permanently. Can Victor have the agreement set aside as a result of undue influence? Explain.

17. Iverson owned Iverson Motor Company, an enterprise engaged in the repair as well as the sale of Oldsmobile, Rambler, and International Harvester Scout automobiles. Forty percent of the business's sales volume and net earnings came from the Oldsmobile franchise. Whipp contracted to buy Iverson Motors, which Iverson said included the Oldsmobile franchise. After the sale, however, General Motors refused to transfer the franchise to Whipp. Whipp then returned the property to Iverson and brought this action seeking

5. Harris owned a farm that was worth about \$600 per acre. By false representations of fact, Harris induced Pringle to buy the farm at \$1,500 per acre. Shortly after taking possession of the farm, Pringle discovered oil under the land. Harris, on learning this, sues to have the sale set aside on the ground that it was voidable because of fraud. Result?
6. On February 2, Phillips induced Miller to purchase from her fifty shares of stock in the XYZ Corporation for \$10,000, representing that the actual book value of each share was \$200. A certificate for fifty shares was delivered to Miller. On February 16, Miller discovered that the book value on February 2 was only \$50 per share. Will Miller be successful in a lawsuit against Phillips? Why or why not?
7. Doris mistakenly accused Peter's son, Steven, of negligently burning down her barn. Peter believed that his son was guilty of the wrong and that he, Peter, was personally liable for the damage, as Steven was only fifteen years old. Upon demand made by Doris, Peter paid Doris \$25,000 for the damage to her barn. After making this payment, Peter learned that his son had not caused the burning of Doris's barn and was in no way responsible for its burning. Peter then sued Doris to recover the \$25,000 he had paid her. Will he be successful?
8. Jones, a farmer, found an odd-looking stone in his fields. He went to Smith, the town jeweler, and asked him what he thought it was. Smith said he did not know but thought it might be a ruby. Jones asked Smith what he would pay for it, and Smith said \$200, whereupon Jones sold it to Smith for \$200. The stone turned out to be an uncut diamond worth \$3,000. Jones brought an action against Smith to recover the stone. On trial, it was proved that Smith actually did not know the stone was a diamond when he bought it, but he thought it might be a ruby. Can Jones void the sale? Explain.
9. Decedent Judith Johnson, a bedridden, lonely woman of eighty-six years, owned outright Greenacre, her ancestral estate. Ficky, her physician and friend, visited her weekly and was held in the highest regard by Johnson. Johnson was extremely fearful of suffering and depended upon Ficky to ease her anxiety and pain. Several months before her death, she deeded Greenacre to Ficky for \$10,000. The fair market value of Greenacre at this time was \$250,000. Johnson was survived by two children and six grandchildren. Johnson's children challenged the validity of the deed. Should the deed be declared invalid due to Ficky's undue influence? Explain.

C A S E P R O B L E M S

10. Dorothy and John Huffschneider listed their house and lot for sale with C. B. Property. The asking price was \$165,000, and the owners told C. B. that the size of the property was 6.8 acres. Dean Olson, a salesman for C. B., advertised the property in local newspapers as consisting of six acres. James and Jean Holcomb signed a contract to purchase the property through Olson after first inspecting the property with Olson and being assured by Olson that the property was at least 6.6 acres. The Holcombs never asked for or received a copy of the survey. In actuality, the lot was only 4.6 acres. The Holcombs now seek to rescind the contract. Decision?
11. In February, Gardner, a schoolteacher with no experience in running a tavern, entered into a contract to purchase for \$40,000 the Punjab Tavern from Meiling. The contract was contingent upon Gardner's obtaining a five-year lease for the tavern's premises and a liquor license from the State. Prior to the formation of the contract, Meiling had made no representations to Gardner concerning the gross income of the tavern. Approximately three months after the contract was signed, Gardner and Meiling met with an inspector from the Oregon Liquor Control Commission (OLCC) to discuss transfer of the liquor license. Meiling reported to the agent, in Gardner's presence, that the tavern's gross income figures for February, March, and April were \$5,710, \$4,918, and \$5,009, respectively. The OLCC granted the required license, the transaction was closed, and Gardner took possession on June 10. After discovering that the tavern's income was very low and that the tavern had very few female patrons, Gardner contacted Meiling's bookkeeping service and learned that the actual gross income for those three months had been approximately \$1,400 to \$2,000. Will a court grant Gardner rescission of the contract? Explain.
12. Christine Boyd was designated as the beneficiary of a life insurance policy issued by Aetna Life Insurance Company on the life of Christine's husband, Jimmie Boyd. The policy insured against Jimmie's permanent total disability and also provided for a death benefit to be paid on Jimmie's death. Several years after the policy was issued, Jimmie and Christine separated. Jimmie began to travel extensively, and Christine therefore was unable to keep track of his whereabouts or his state of health. Jimmie, however, continued to pay the premiums on the policy until Christine tried to cash in the policy to alleviate her financial distress. A loan previously had been made on the policy, however, leaving its cash surrender value, and thus the amount that Christine received, at only \$4.19. Shortly thereafter, Christine learned that Jimmie had been permanently and totally disabled before the surrender of the policy. Aetna also was unaware of Jimmie's condition, and Christine requested that the surrendered policy be reinstated and that the disability payments be made. Jimmie died soon thereafter, and Christine then requested that Aetna pay the death benefit. Decision?