

## Answers to Assignment 5 Questions

NOTE: These answers are provided to give students a basic understanding of acceptable types of responses. They often are not the only valid answers and are not intended to provide an exhaustive response to the questions.

### Educational Objective 1

- 1-1. Ownership is a relationship between the owner and the rest of society that includes rights of the owner specific to the property. Possession is the exercise of custody or control over property, and is not, in itself, ownership.
- 1-2. The two categories of property are real property and personal property. Real property is land including structures or rights attached to the land and the rights to water, minerals, and things attached to land, such as buildings, trees, and fixtures that have become part of the realty. Personal property is all property that is not real property.
- 1-3. Courts consider the following in determining fair use:
  - Purpose of the use
  - Nature of the work
  - Amount and substantiality of the portion used
  - Effect of the use on the work's value
  - Extent to which the use might deprive the copyright owner of economic advantage
- 1-4. The donor must intend to make a gift in the present. A promise to make a future gift is not enforceable.

### Educational Objective 2

- 2-1. A bailee may use or handle the property only to the extent necessary to preserve and protect it.
- 2-2. When the bailment is for the bailor's and bailee's mutual benefit, the bailee must exercise reasonable care under the circumstances.
- 2-3. Because of the bailee's legal duty to care for the goods and to return them to the bailor, the bailee has an insurable interest in the goods and can obtain insurance to protect that interest.
- 2-4. Negligent entrustment is leaving a dangerous article, such as a gun or car, with a person who the lender knows, or should know, is likely to use it in an unreasonably risky manner.

### Educational Objective 3

- 3-1. In joint tenancies, the estate goes entirely to the other joint tenant in the event of one joint tenant's death. Also, with two joint tenants, each must hold a one-half share. One of the joint tenants cannot be subject to a condition that does not apply to the others. The same deed must name them all as owners. Tenancies in common, however, involve no survivorship, allow parties to own unequal shares, and do not require parties to derive their interests in the same deed from the same grantor.



- 3-2. A tenancy by the entirety involves a husband and wife and differs from a joint tenancy because a sale or contract to sell does not sever the tenancy and individual creditors of either the husband or the wife cannot subject the property to a claim. Also, unless both spouses are found liable for the same tort, judgment creditors cannot execute on the marital property. Finally, neither party individually owns a portion that can be mortgaged.
- 3-3. One disadvantage is the owner's limited control over external conditions, which can lead to a deterioration of the investment. Finding a purchaser for the premises can be difficult, particularly if it is beginning to deteriorate. Additionally, if other tenants do not keep up their payments, and as a result the mortgage payments lapse, the mortgagee can foreclose on the property. In that case, all tenants can lose any equity they have built up in the property.
- 3-4. The two legal elements of condominium ownership are individual ownership of a unit, or separate, defined area, and an undivided interest in common or public areas that serve all individual units.

## **Educational Objective 4**

- 4-1. The contract must describe the premises to be sold and the price.
- 4-2. A general warranty deed, in addition to transferring whatever title the grantor has, contains the grantor's warranty that the title is free of all encumbrances, that the grantor has the title being transferred, and that no one else has a better title. A special warranty deed contains warranties against only those encumbrances and defects in the title that might have been created since the grantor took title.
- 4-3. A deed must be absolutely accurate—more so than the contract of sale because if the two conflict, the deed prevails.
- 4-4. The purpose of recording is to give notice to the world that the transfer of real property has occurred.

## **Educational Objective 5**

- 5-1. The mortgagor has the specific rights to sell, lease, or even put another mortgage on property.
- 5-2. Mortgage foreclosure is the mortgagee's remedy when the mortgagor defaults on mortgage payments. Foreclosure through public sale is the most common method.
- 5-3. A trust deed has three parties: (1) the borrower (trustor) who transfers the land; (2) the trustee, to whom the land is transferred; and (3) the beneficiaries, for whose benefit the transfer is made.
- 5-4. This is how a contract of land operates for these parties:
  - a. The buyer takes possession of the land, pays all the taxes and assessments, insures the property, repairs it, and assumes all the obligations of an owner.
  - b. The seller has only the legal title, however, if the buyer defaults the seller can declare the contract breached and repossess the property, treating the buyer as an ordinary tenant.



5-5. The general contractor must show these facts:

- Substantial performance of the contract
- Improvement of a specific piece of property under the contract
- Specific mention in the contract of the property to be improved

## Educational Objective 6

6-1. The elements required for obtaining title by adverse possession of another person's land are these:

- The adverse party must have exclusive possession of the property and occupy it in the usual way.
- Possession must be open and obvious.
- Possession must be adverse, or hostile, and without the owner's permission.
- Possession must be continuous for a statutory period, usually a lengthy period, such as twenty years or more.

6-2. A landowner can halt unauthorized intrusion into the air space over their land, such as projections from an adjoining building or utility lines stretched across the air space. Generally, planes can fly over land as long as they do not interfere unreasonably with the owner's use and enjoyment of the land.

6-3. Owners of property that has surface streams passing through can use as much water from the waterway as needed for domestic purposes but must use only a reasonable amount for industrial purposes and must consider downstream owners' needs.

6-4. Three tests determine whether property is a fixture:

- a. The article cannot be removed without substantial injury to the realty.
- b. The article is specially constructed or fitted for use in a building, or the article is installed in the building to enable people to use the building.
- c. The party who attached the item intended it to become part of the land or building.

## Educational Objective 7

7-1. Easements can be created by express words, by implication, or by prescription.

7-2. Examples of profits *à prendre* include the rights to mine coal, remove sand and gravel, or cut down trees.

7-3. Zoning laws regulate matters such as lot size, minimum building size, number of families that may reside in the buildings, maximum height of each building, and parking areas. Building codes sometimes overlap zoning ordinances but address more technical construction details, such as electrical wiring and heating.



7-4. There are two conditions for granting the petition:

- The land must be taken for public use or public benefit.
- The “Takings Clause” of the Fifth Amendment to the United States Constitution provides that the federal government cannot take private property for public use without paying just compensation to the property owner.

7-5. Bryan can place restrictions on the use of the property as long as those restrictions are not discriminatory or otherwise unenforceable, such as requiring an illegal use. However, state law may limit the restrictions to a period of years, and changed conditions, such as economic conditions in the area, can make the restrictions unenforceable. For example, if the surrounding land had been scenic and rural but then developed into a strip of businesses, including other automobile garages and the like, the restriction might end. Another example would be if employment became depressed in the area, and making glue, gun powder, or fertilizers became the most effective economic relief. Such developments could end the restrictions.

## Educational Objective 8

8-1. The landlord’s primary duty is to deliver possession of the premises to the tenant on the lease’s inception date.

8-2. A landlord’s remedies against a tenant are the right to evict a tenant or to apply to a court for help in the event of a tenant’s breach of lease. The landlord can also seize a tenant’s property and hold it for unpaid rent (a right called distraint).

8-3. A tenant’s primary right is the right to occupy the premises. A tenant’s primary duty is to pay rent and leave the premises in the same condition they were in at the lease inception, except for reasonable wear and tear.

8-4. Landlords are liable for injuries to third parties on the leased premises if the injury is the result of a landlord’s negligent acts or latent defects on the premises.

