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Unit organization of two topics in business law, "buyer and seller" and "property."

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Service Paper

UNIT ORGANIZATION OF TWO TOPICS IN BUSINESS LAW,
"BUYER AND SELLER" AND "PROPERTY"

Submitted by

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(B. S. in Education, School of Education,
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CHAPTER I

UNIT ORGANIZATION OF THE TOPIC BUYER AND SELLER

General Statement of the Unit

Buying and selling is the concern of all responsible persons. Every responsible person in the course of his daily living acts as a buyer. To buy, he must deal with a seller. Even a seller is not exclusively a seller; he has to buy goods to sell, and he has to buy goods for personal consumption.

To make a sale is a very simple matter. All one must do is pick out an article and pay for it. But is it really that simple? What happens if the article is defective? What are your rights and obligations as a buyer? What are the rights and obligations of the seller? Much financial loss and hardship could be avoided if people acquired an understanding of the legal problems created when one buys and sells.

Delimitation of the Unit

Making the Sales Contract

1. The most common contract that a person enters into is a sale.
2. "A sale is an agreement whereby the seller transfers the title to goods to the buyer for a consideration called

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the price."¹

3. An established price in terms of money is the consideration in a sale.

4. The prices agreed upon in a sale can, by agreement of the parties, be paid in any kind of personal property.

5. Goods include all personal property other than money and choses in action. "A chose in action is defined to be a thing which a man has not the actual possession of, but which he has a right to demand by action, as a debt of demand due from another."²

6. An agreement to sell is distinguished from a sale in that a sale represents an actual transfer of title, while an agreement to sell is merely a contract to make such a transfer in the future.

7. The buyer in both a sale and a contract to sell is known as the vendee. The seller is known as the vendor.

8. The Uniform Sales Act is an act which has been adopted by most of the states for the purpose of obtaining uniformity in the regulation of sales contracts throughout those states in which it is in force.

9. An illegal contract of sale or contract to sell is ordinarily unenforceable, and the parties usually

¹Babb, Hugh W. and Carl B. Everberg, Commercial Law, Second Edition, Foundation Press Inc., Brooklyn, 1949, p. 337.

²Ibid., p. 344.

cannot recover those goods which were given thereunder.

10. When a person receives unordered goods which he does not want, he may refuse to accept them, return them, or hold them subject to the seller's order.

11. A barter is an exchange of one article for another article without any mention of price.

12. A gift is a transfer of title to goods without something being received in return.

Form of the Sales Contract

1. Unless otherwise provided by statute, a contract to sell or a contract of sale may be made in writing, may be made orally, or may be implied by the conduct of the parties.

2. The Statute of Frauds provides that a contract to sell or a sale of goods or other kinds of personal property for more than a specified price will be enforceable only if

- a. the buyer has received part of the goods and accepted them.
 - 1. A receipt of goods takes place when the buyer assumes control or possession of the goods.
 - 2. An acceptance of goods takes place when the buyer expressly so states or treats the goods as his own.
- b. the buyer has given something in earnest to

bind the agreement or in part payment.

1. "Earnest is something of value, not a part of the price, given to indicate the assent of a party to the bargain."¹

2. "Part payment is something of value which is part of the price, given to indicate the assent of a party to the bargain."²

c. the parties to be charged by the agreement, or their authorized agents, have signed a written note or a memorandum of the bargain.

3. The note or memorandum required under the Statute of Frauds must be signed by the party to be charged, and must state:

- a. The names or descriptions of the parties
- b. The price, if agreed upon
- c. The nature of the goods
- d. Other material terms of the contract
- e. Which is the buyer and which is the seller

4. When a sale or a contract to sell for a price over the amount specified in the Statute of Frauds is not in writing, and the terms of the statute as to proof are not met, the contract is voidable and therefore unenforceable.

5. A contract to make for the buyer goods that are

¹Ibid., p. 364.

²Ibid., p. 364.

not salable in the seller's ordinary business is a contract for labor and materials, and is therefore not governed by the requirements in regard to contracts to sell.

6. A bill of sale is required in a few states whenever certain goods are sold.

Transferring the Title

1. One may own goods without having possession of them, and one may have possession of goods without owning them.

2. The owner of goods or his agent is the only one who has legal right to transfer title to those goods.

3. Ordinarily, a person cannot transfer a better title to goods than he himself has. However, a person can transfer a better title than he has if he is

- a. an agent of the owner
- b. a fraudulent buyer with a voidable title
- c. a possessor of a negotiable document of title
- d. a seller retaining possession of the goods

4. No title can pass until specific goods are identified as the subject matter of the sale. "Specific goods are those goods that have been definitely selected and agreed upon."¹

5. Title to specific goods passes when the parties intend it to pass. The intention of the parties may be

¹Fisk, McKee and Dwight A Pomeroy, Applied Business Law, Sixth Edition, South-Western Publishing Co., Cincinnati, 1950, p. 207.

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expressly stated in the contract, or the intention may be inferred from

- a. the terms of the agreement
- b. the conduct of the parties
- c. usages of the trade
- d. the attending circumstances

6. When the intention of the parties is not expressed and cannot be determined, courts apply the following rules in regard to the time at which the title to goods passes to the buyer:¹

- a. "Under an unconditional contract to sell specific goods in a deliverable state, the title passes to the buyer when the agreement is made.
- b. "If the seller is bound to do something to the goods for the purpose of putting them in a deliverable condition, the title does not pass until that thing is done.
- c. "When the goods are delivered to the buyer on approval, on trial, on satisfaction, or with an option to buy, the title passes when the buyer gives notice of approval.
- d. "When the goods are delivered to the buyer at the time of sale with the right to return, the title passes to the buyer on delivery.
- e. "Under a contract to sell unascertained goods

¹Ibid., p. 215.

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- by description, the title passes when goods of that description are appropriated to the contract by either party with the consent of the other.
- f. "When, in pursuance of a contract to sell, the seller delivers the goods to the buyer or to a person to hold for the buyer, title passes at that time.
 - g. "If the contract to sell requires the buyer to pay the shipping charges, the seller is presumed to have appropriated the goods to the contract by delivery to the carrier.
 - h. "If the contract to sell requires the seller to deliver the goods to the buyer or to a particular place, or to pay the charges for transportation to a particular place, title passes when the goods have been delivered or when they reach the agreed place."

7. In a cash sale, the title does not pass until the price is paid unless the seller takes a check. In such a case, title ordinarily does not pass until the check is paid.

8. The fact that an ordinary sale is made on credit has no effect on the passing of the title.

9. The direction C.O.D. has no reference to the time the title passes, but it indicates that the seller reserves control of the goods until the price is paid.

10. In an auction sale, the title to goods passes

when the auctioneer drops the hammer signifying an acceptance of the bidder's offer.

11. A merchant cannot sell and convey a good title to his stock of goods unless he complies with the Bulk Sales Act. The Bulk Sales Act requires a merchant or dealer who plans to sell his entire stock of goods to notify all his creditors some time before the sale takes place of his intention to sell.

Warranties

1. "A warranty is a guaranty that the goods shall conform to a certain standard or that certain conditions shall be fulfilled."¹

2. Every sale carries with it on the part of the seller certain express or implied warranties.

a. "An express warranty is a written or spoken statement made by the seller to the buyer regarding the kind, quantity, or quality of the goods or their fitness for a particular purpose."²

b. "An implied warranty is inferred by law and arises out of conditions or circumstances connected with the sale."³ An implied

¹Babb, Commercial Law, p. 381.

²Travers, Michael A., Ralph E. Rogers, and Clyde O. Thompson, Business Law and Procedure, American Book Co., Boston, 1949, p. 371.

³Ibid., p. 376.

warranty attaches to every sale contract

1. that the seller has a right to sell the goods, and that the buyer will have quiet possession of them free from encumbrances
2. that the goods shall be merchantable
3. that the goods shall correspond to the sample in a sale by sample
4. that the goods shall correspond to the description when they are sold by description
5. that the goods are fit for the purpose of the buyer when the buyer relies on the skill and the judgment of the seller

3. Because an agent must have authority to give warranties, it is important that the buyer determine what authority the agent has to give warranties for the goods he is selling.

4. A mere expression of opinion or a sales talk do not amount to a warranty.

5. Caveat emptor means "Let the buyer beware." In effect, it amounts to making the buyer who has had a chance to inspect goods assume the risk of any defects, unless there is an express warranty.

6. In most states, the buyer usually has four remedies for breach of warranty:

- a. He may keep the goods and claim a deduction from the price because of the breach of warranty.

- b. He may keep the goods and bring action against the seller for damages arising out of the breach.
- c. He may refuse to accept the goods if the title has not passed, and bring action against the seller to recover damages for the breach of warranty.
- d. He may rescind the sales contract or the sale, and refuse to accept the goods.

Rights and Remedies

1. The seller is under a duty to deliver the possession of the goods to the buyer or to a person designated by the buyer in accordance with the terms of the contract,

2. Even though title to goods has passed to the buyer, an unpaid seller, unless he relinquishes possession of the goods, has a lien on them for the price. The unpaid seller loses his lien on the goods

- a. when he delivers the goods to a carrier or other bailee for purpose of transmission to the buyer, unless he reserves the right of possession
- b. when the buyer or his agent lawfully obtains possession
- c. when he waives his right to the lien

3. The unpaid seller may retain possession of the goods until payment of the price

- a. when goods have been sold with no stipulation

as to credit

b. when goods have been sold on credit but the term of credit has expired

c. when the buyer becomes insolvent

4. The unpaid seller may stop goods in transit before they are delivered to a buyer who is insolvent.

5. If the buyer refuses to accept or to pay for the goods, the seller may have the right

a. to recover the purchase price

b. to enforce his lien

c. to recover damages

d. to rescind the contract

6. The buyer has the right to insist that the proper quantity of goods be delivered.

7. When the buyer has not yet examined goods that have been ordered and delivered, he is entitled to a reasonable opportunity to do so in order to determine whether they conform to the contract.

8. If the seller fails to deliver the goods, the buyer may have the right

a. to gain possession of the value of the goods

b. to recover damages

c. to compel specific performance of the contract

d. to rescind the contract

Conditional Sales

1. "A conditional sale is an agreement between seller

and buyer whereby the seller delivers the goods to the buyer at the time of the agreement, but retains the title as security for the payment of the price."¹

2. The conditional sale is helpful in that it enables the seller to give credit more freely because of the security arising out of his retention of the title of the goods.

3. A conditional sale must be recorded in most states in order to protect the seller's security interest. If it is recorded, the seller has the right of replevin or trover against third persons, or he can sue them for injuries to the goods.

4. A conditional sales contract is written to protect the seller and not the buyer; it, therefore, ordinarily contains no statements for the protection of the buyer.

5. A conditional seller's interest in the goods is limited to a security interest.

6. A conditional seller, upon default of the buyer, generally may

- a. retake the goods peaceably or by process of law
- b. bring an action to recover the unpaid portion of the purchase price

7. A conditional buyer has the right to possess, use, and control the goods, and accordingly is responsible for most of the risks of ownership. He may bring an action to recover the value of the goods from any person, even the

¹Ibid., p. 354.

conditional seller, for wrongfully interfering with his possession of them.

8. The conditional buyer has no right to sell the article purchased until it is fully paid for.

9. "A chattel mortgage is an agreement by which the owner of a chattel transfers the title, but usually not the possession, to another person as security for a debt, on condition that the title shall revert to the owner upon payment of the debt."¹

Unfair Trade Practices

1. "An unfair trade practice is a method of business that lessens or destroys competition by any means other than efficiency."² Unfair trade practices may be placed into three general classes:

- a. Schemes used to induce patronage unfairly, such as false and misleading advertising, imitation of trade-marks or trade names, and conducting lotteries.
- b. Harassing tactics used against competitors, such as price discrimination, and price cutting.
- c. Various forms of misrepresentation used, such as unfair pricing methods, misbranding and mislabeling goods, and selling used or rebuilt articles as if they were new.

¹Ibid., p. 358.

²Fisk, Applied Business Law, p. 256.

2. It is not considered an unfair trade practice if, under fair trade laws, a producer of a trade-marked article fixes prices by contract.

3. The Federal Trade Commission was set up by the Federal Government to deal with unfair trade practices that arise in the course of interstate commerce.

4. The Sherman Antitrust Act, which is a Federal statute, prohibits contracts, combinations, or conspiracies in restraint of trade and monopolies or attempts to monopolize trade or commerce.

Consumer Protection

1. The Federal Government, all of the state governments, and many city governments have enacted laws that protect consumer health by providing standards, licenses, and inspections.

2. The Federal Food, Drug, and Cosmetic Act is a Federal law which prohibits the manufacture or introduction into interstate commerce of any food, drug, medical device, or cosmetic that is adulterated or misbranded.

3. The United States Food and Drug Administration, which is charged with the responsibility for enforcement of the Federal Food, Drug, and Cosmetic Act, may seize and confiscate products that do not meet the standards or requirements with respect to adulteration and labeling.

4. The Agricultural Marketing Service of the United States Department of Agriculture has set up standards for

meat, poultry, eggs, butter, fruits and vegetables, honey, and many other foods.

5. The Federal Wool Products Labeling Act requires the labeling of products containing wool.

Suggested Time Allotment

The suggested time allotment for this unit is four weeks. It is not organized for any one special class. Its function is to act as a source unit on the topic buyer and seller in business law courses.

Business law is either a one-semester or two-semester course, depending on the individual school policy. It is generally given in the twelfth grade to pupils taking the business curriculum.

Probable Indirect and Incidental Learning Products

1. To develop an understanding of the problems involved in the buying and selling process.
2. To develop an appreciation of the basic laws that govern the buying and selling process.
3. To develop an appreciation of the rights and obligations of the buyer.
4. To develop an appreciation of the rights and obligations of the seller.
5. To develop an appreciation of the importance of the buying and selling process.

- 6. To develop the ability to buy more wisely.
- 7. To form an attitude of dealing fairly with a buyer or a seller.
- 8. To develop an understanding and appreciation of the work of some of the organizations that aid the consumer.
- 9. To develop an understanding of some of the vocational aspects of selling.
- 10. To expand the pupil's vocabulary with the inclusion of legal terms of the selling and buying process.

Unit Assignment

Introducing the Unit

Any one of the following ways may be effectively used to introduce this unit to the class:

1. Ask your pupils questions such as the following:
 How many purchases did you make in the past week? What were these purchases? What difficulties were encountered? Have you any rights when you buy goods? What are these rights? Have you any responsibilities? What are these responsibilities? Such questions should lead to a discussion of the buying and selling process and into the work of the unit.

2. Bring into class a written warranty. Read it to the class. Discuss the warranty: What is a warranty? What types of guarantees does it provide? Do warranties have to be expressed to be legally effective? What is an implied

warranty? Such a discussion on warranties can be used to introduce the work of the unit.

3. Ask your pupils questions such as the following: How many of you have articles in your homes bought on the installment plan? What is an installment plan? Who holds title to the article? How many of you have ever read a conditional sales contract? What are the rights of the seller in a conditional sale? What are the rights of the buyer in a conditional sale? Such questions can be used to lead into the work of the unit.

4. Cite a recent case from a newspaper or magazine concerning the buying and selling process. Read the case to the class. Discuss the case with the class. Have the pupils render their decisions and opinions. From this type of case, you can point out why it is important to understand the laws that govern the buying and selling process.

5. Have two pupils dramatize a buying and selling situation in which difficulties arise. Discuss the dramatization: Did the class spot the difficulties? How can the difficulties be avoided? Did the seller have any rights? Did the buyer have any rights? Did the buyer or the seller have any responsibilities? Such a dramatization can readily be used to introduce the work of the unit.

Core Activities

1. If you were to buy an electric toaster for your parents, what might be some of the problems that would confront you? (2:184)

2. If you had a bicycle that you wished to sell, what might be some of the problems that would confront you as a seller? (2:184)

3. What is a sale? Is a sale a contract? Explain. (2:185; 6:328)

4. What is a contract to sell? How does it differ from a sale? (2:185; 6:328)

5. If you were to buy a fountain pen on credit, could the seller force you to pay for the pen? Explain. Would it make any difference if you purchased groceries on credit? (2:186)

6. If you owned a bicycle and exchanged it for a portable radio with one of your friends, what would such a transaction be called? How does this transaction differ from a sale? (2:187; 6:329)

7. If you gave your best friend a radio for his birthday, what would such a transaction be called? How does this transaction differ from a sale? (2:187)

8. If your father decided to buy a six-room house fully furnished, would he be right to consider this transaction as an ordinary sale? Explain. How does the sale of real estate differ from an ordinary sale? (2:188)

9. Farmer Smith agreed to slaughter one of his pigs himself and sell it directly to Mr. Franklin. The state law requires all pigs to be slaughtered at an approved slaughtering house so that they can be properly examined. After he had slaughtered the pig, Farmer Smith refused to

sell it to Mr. Franklin. Can Mr. Franklin hold Farmer Smith to his agreement? Explain. (2:189)

10. The Acme Electric Company sent Mr. Ryan an electric razor which he did not order. What courses of action are open to Mr. Ryan? (2:190-191)

11. George sold his sled to John. John told George to hold the sled for him until the following day when he would pick it up. The shed in which the sled was kept burned down destroying the sled. Must George return to John the money he received for the sled? Explain. (2:186; 6:363-364)

12. Mr. Dee agreed to buy a new automobile from an automobile dealer for \$2,250. As the dealer would not receive the car for two weeks, no papers were signed and no money was paid. When the automobile arrived, Mr. Dee refused to purchase it. Could the dealer hold Mr. Dee to his agreement? Explain. (6:345)

13. What is the Statute of Frauds? What are its requirements in your state? What are receipt and acceptance of goods? What constitutes part payment? What is necessary for a memorandum? (2:194-198; 6:345-348)

14. Mr. Brown gave Mr. Russell, a tailor, an oral order to make costumes for the coming pageant. After the costumes were completed, Mr. Brown cancelled the order. The value of the costumes was \$575. Did Mr. Brown have to pay for the costumes? Explain. (2:199; 6:348)

15. What is a bill of sale? (2:200; 6:339)

16. If John had found a pen that you had lost and

had sold it to James, would you have any legal right to regain your pen from James? Explain. What is meant by ownership? (2:206; 6:338)

17. What is the general rule of transferring title to goods? What are the exceptions? (2:206-207; 6:335)

18. Mr. Lang agreed to sell any 12 bicycles out of the 27 he had in stock to Mr. James for \$285. Before Mr. James picked out the 12 bicycles, a creditor of Mr. Lang attached all of the bicycles in stock to satisfy a judgment for the amount of a debt. Mr. James claimed that the creditor had attached 12 bicycles that belonged to him. Was he correct? Explain. What are specific goods? (2:207; 6:363) When does title to specific goods pass? (2:208; 6:363-365)

19. What rules generally apply in regard to the time at which the title to goods passes to the buyer when the intention of the parties is not expressed and cannot be inferred from their actions? (2:208-210; 6:364)

20. When does the title to goods pass in a cash sale? (2:211)

21. Mr. Childs ordered an electric iron from the Ace Electric Company. The iron was sent C.O.D. with Mr. Childs paying the transportation charges. The iron was damaged en route. Did the Ace Electric Company have to bear the loss from the damages to the iron? Explain. What rules govern C.O.D. sales? (2:211-212; 6:366)

22. Miss Andrews ordered material by a sample shown her. When the material arrived, the color was somewhat

brighter than the sample. Had she the right to refuse to accept the material? What responsibilities does the seller assume when he sells by sample? (2:212; 6:367)

23. At a public auction, bids on an antique clock were made until the highest amount reached was \$10. The auctioneer, insisting that this amount was too low, refused to accept the bid and withdrew the clock from the auction. The highest bidder claims that the title to the clock passed to him, and sues for damages. What is an auction? When does the title to goods sold at auction pass? What will the judgment of this case be? (2:213; 6:366-367)

24. Mr. Ross visited a coal yard, and ordered and paid for three tons of coal from one of the coal piles. Before the coal company had a chance to deliver the coal, the coal pile from which the coal was ordered was consumed by fire. Did Mr. Ross suffer any loss? Explain. What are fungible goods? (2:213-214; 6:363)

25. Mr. Shelby decided to sell his stock of goods along with his store. What did he have to do before he made the sale? What are the bulk sales laws? (2:214; 6:367)

26. John bought a fountain pen of which the dealer guaranteed that the ink would flow evenly and steadily. When John began using the pen, he discovered that the ink did not flow steadily. Did John have any recourse against the dealer? Explain. What is a warranty? (2:219; 6:371)

27. Mr. Thomas entered into a written contract by which he agreed to shingle Mr. Lane's house. He stated

orally to Mr. Lane that he would repair any damage to the shingles for two years free of charge. Three months later, a severe storm loosened many of the shingles. Is Mr. Thomas legally bound to repair the damage caused by the storm?

Explain. What is an express warranty? (2:219; 6:371)

28. Mrs. Ellis entered a sports store and informed the dealer that she wished to buy an infielder's baseball glove for her nephew. The dealer showed her an outfielder's baseball glove which she purchased. Did Mrs. Ellis have any recourse against the dealer? Explain. What is an implied warranty? What are the five general warranties imposed upon a seller by law? (2:222-226; 6:373-375)

29. Mr. Ayer bought a coat that he had an opportunity to inspect. Later, he noticed that the material was of a poor quality. Did Mr. Ayer have any recourse against the dealer? Explain. What is meant by "caveat emptor"? (2:227; 6:375-376)

30. If Mr. Ford, an agent of Mr. Tyler, sold you a tent guaranteeing that it was rainproof and you discovered that it was not, what rights would you have against Mr. Tyler? What rights would you have against Mr. Ford? (2:227)

31. What are the remedies for breach of warranty? (2:227-228; 6:384-385)

32. Mr. Lane bought a radio from Mr. Jones. Nothing was said about delivery. Did Mr. Lane have the right to insist that Mr. Jones deliver the radio to his home? Explain.

What constitutes delivery? What are the general rules concerning place and time of delivery? (2:233-234)

33. Mr. Alpert ordered 10 golf balls from a sports store. The store sent him 12 golf balls. What courses of action are open to Mr. Alpert? (2:234)

34. Mr. Brown ordered six kitchen chairs. He stated specifically that the chair coverings were to be genuine leather. When the chairs arrived, Mr. Brown discovered that the chair coverings were made of plastic. Did Mr. Brown have a legal right to return the chairs? Explain. (2:235)

35. Mrs. Boyle ordered a table, which she had examined, to be delivered to her home. When the table was delivered, Mrs. Boyle had changed her mind and refused to accept it. Did she have a legal right to refuse to accept the table? What constitutes acceptance? In what ways may it be shown? (2:236-237)

36. What are the general rules for payment of goods? (2:236)

37. What is an unpaid seller's lien? Under what situations does it exist? How may a seller lose his lien? (2:237; 6:379-380)

38. Mr. Ross ordered 100 beach chairs from the Acme Furniture Company. After the goods had been shipped, the furniture company learned that Mr. Ross was insolvent and was unable to pay for the chairs. The furniture company ordered the transportation company to stop the delivery and to return the chairs. Did the furniture company have the

right to stop the delivery of the chairs? Explain. (2:238)

39. What are the remedies of the buyer for failure of the seller to deliver goods in accordance with the terms of the contract? (2:238-239; 6:383-384)

40. What are the remedies of the seller when the buyer refuses to accept goods or to pay for goods delivered in accordance with the terms of the contract? (2:239; 6:383)

41. What is a conditional sale? What are two essential characteristics of a conditional sale? (2:243-244; 6:354-355)

42. Mr. Allen purchased a refrigerator from the Thomas Furniture Company under a conditional sales contract. He had the refrigerator for six months and paid all the installments as they became due. The company wants the refrigerator back. Has the company a right to reclaim its refrigerator? Explain. (2:244-245)

43. What are the common provisions of conditional sales contracts? Do these provisions favor the seller or the buyer? Why? (2:246)

44. What is a chattel mortgage? (2:247; 6:358)

45. Mr. Ellis sold a television set which was purchased under a conditional sales contract from the Alex Radio Shop. The price of the set had not been fully paid nor had the Alex Radio Shop been informed of the sale. What courses of action are open to the Alex Radio Shop? What is the advantage of recording a conditional sales contract? (2:247; 6:355-356)

46. What are the remedies of the conditional seller upon default of the buyer? (2:248; 6:356) What are the

remedies of the conditional seller against third persons?
(2:250-251)

47. What are the remedies of the conditional buyer?
(2:252)

48. Mr. Kiley offered to sell a wrist watch to Mr. Sain for \$55. He claimed that this price was the wholesale price. Actually it was the retail price. Is this an unfair trade practice? Explain. What is an unfair trade practice? (2:256)

49. The hardware stores of the town of Allenville got together and agreed to keep prices of their goods at certain fixed levels. Is this agreement illegal? What is the Sherman Antitrust Act? What are its main provisions? (2:257)

50. What is the Federal Trade Commission? What are its duties? (2:258)

51. What are some business practices that you would consider to be unfair competition? (2:258-263)

52. If your druggist developed a medicine that he believed would cure colds, would it be legal for him to go ahead and make up bottles of the medicine and to sell them to his customers? Explain. (2:267)

53. What is the Federal Food, Drug, and Cosmetic Act? Who enforces this law? (2:267-268)

54. Is the Federal Government the only government agency that protects the consumer? What are some of the methods used in the protection of the consumer? (2:268-270)

55. How has the Agricultural Marketing Service of the United States Department of Agriculture aided the consumer?

(2:270)

56. What is the Federal Wool Products Labeling Act?
How does it help the consumer? (2:271-272)

Optional Related Activities

1. Interview one of the local lawyers. Ask questions such as the following:

- a. Do you have many cases concerning the buying and selling process?
- b. Which type of case is the most common?
- c. For what reasons do people mostly run into difficulties?

2. Ask your parents, relatives, or friends whether or not they have ever encountered difficulties in the buying and selling process. What were these difficulties? How were these difficulties handled?

3. Read over a conditional sales contract. Be prepared to relate to the class the important features of the contract.

4. Interview a credit manager of some nearby store. Ask questions such as the following:

- a. How difficult is it to obtain credit?
- b. What are the advantages to the store?
- c. What are the advantages to the customer?
- d. What is the credit loss?
- e. Is it wise for the average working man to buy on credit? Why?

5. When an article bought on the installment plan is

repossessed, what are the rights of the seller? What are the rights of the buyer?

6. Choose some article about which you may desire information (for example, a fountain pen). Shop around in the stores in your locality to determine the best buy for your needs.

- a. Did you feel that the salespeople were honest in their representation of the article?
- b. Did you feel that the salespeople understood satisfactorily the features of the article?
- c. Do you feel that you can now choose the make of the article that is most satisfactory for your purpose?

7. Interview a few people who make their living by selling. Ask questions such as the following:

- a. What are some of the essential characteristics needed to become a salesperson?
- b. Is there any special education needed?
- c. How does one usually start as a salesperson?
- d. Is there personal satisfaction in this type of work?
- e. Is the pay satisfactory?
- f. What are the promotional opportunities?

8. Bring into class newspaper or magazine advertisements that you feel are truthful and helpful; bring in advertisements that you feel are false and misleading.

9. Is barter being used today? If so, where and how?

10. Write an advertisement that is to be published in your local newspaper on some article that you may wish to sell. Make the advertisement complete and attractive, remembering that the longer it is, the more it will cost.

11. Dramatize a series of selling and buying situations in which difficulties arise to determine if the class can render the correct decisions.

12. Have you ever noticed any unfair practices in your buying? If you have, describe these practices.

13. Read carefully a written warranty. Be prepared to relate to the class the important features of the warranty.

14. Prepare a report on the question: Do you believe that the provisions of the Statute of Frauds of your state are adequate?

15. Do you feel that the Federal laws protecting the consumer provide sufficient protection? Be prepared to defend your viewpoint either in a debate or in a panel discussion.

16. Name a few private institutions that inform and protect the consumer. What are the principal functions of each of these institutions?

17. Describe a situation in which you made a contract for labor and materials.

18. Did you ever attend an auction? Describe or dramatize what took place. What was the purpose of the auction? When was the sale made?

19. Caveat emptor is the rule of business today. Do you believe that this rule is a fair one? Be prepared to

defend your viewpoint.

20. Prepare a report on the question: Do you feel that the Sherman Antitrust Act is fair to business?

21. What are your opinions on the following questions concerning advertising on television?

a. Do you feel that cigarette advertising is truthful?

b. Do you feel that it is desirable?

c. Do you feel that it is necessary?

Be prepared to defend your opinions.

22. Visit the Better Business Bureau nearest your home.

a. Who are its members?

b. What are its functions?

c. How does it protect the consumer?

23. If you bought a camera which proved to be defective and the store from which you bought it refused to give you a new camera or your money back, what would be your course of action in this case?

24. Bring into class recent cases concerning the buying and selling process found in newspapers and magazines. Be prepared to discuss these cases.

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Mastery Test

True-False

Directions

Read the following statements to determine whether they are true or false. If you believe the statement is true, place the letter "T" in the space provided at the left of the number of the statement. If you believe the statement is false, place the letter "F" in the space provided at the left of the number of the statement.

- ___ 1. The law of sales is merely an application of the law of contracts to the buying and selling of tangible personal property.
- ___ 2. The subject matter of a sale includes goods, wares, and real estate.
- ___ 3. If John buys goods that have been found, and he is ignorant of this fact, John acquires a valid title.
- ___ 4. When the parties to a sale mention no price, the law assumes that they have agreed upon the market price.
- ___ 5. A sale that is unenforceable is not necessarily void.
- ___ 6. A contract for labor and materials does not come within the scope of the Statute of Frauds.
- ___ 7. Part payment and something given in earnest are really the same thing.
- ___ 8. A fraudulent buyer may not transfer a better title

than he already has.

- ___ 9. One may own goods without having possession of them, or one may have possession of goods without owning them.
- ___ 10. If a dealer ordered ten dozen golf balls and he received only eight dozen, he has no legal right to refuse to accept these eight dozen.
- ___ 11. When the buyer has not yet examined goods that have been ordered and delivered, he must examine the goods in front of the person who delivered them; otherwise, he forfeits any claim that may result against the seller.
- ___ 12. An unpaid seller has a lien on goods in his possession when the goods are not taken before the credit period expires.
- ___ 13. The conditional sales contract ordinarily is written for the protection of the buyer.
- ___ 14. A person is more likely to purchase clothing than furniture by the installment plan.
- ___ 15. A conditional seller may regain his goods at any time, even when the buyer has not defaulted.
- ___ 16. A conditional buyer is responsible for most of the risks and burdens of ownership.
- ___ 17. A conditional seller may sue third persons for injuries to goods even if such goods are still in the hands of the conditional buyer.
- ___ 18. An unfair trade practice is a method of business

that lessens or destroys competition by efficient means.

- ___ 19. The use of lotteries to market goods is considered an unfair trade practice.
- ___ 20. Only the Federal Government has enacted laws to protect the consumer's health.
- ___ 21. The Federal Bureau of Public Assistance is charged with the responsibility of enforcing the Federal Food, Drug, and Cosmetic Act.
- ___ 22. No new drugs may be introduced into interstate commerce without the approval of the Federal Government.
- ___ 23. The issuing of licenses to pharmacists is a method of protecting the consumer's health.
- ___ 24. The Agricultural Marketing Service of the United States Department of Agriculture has set up standards for foods and clothing.
- ___ 25. The Federal Wool Products Labeling Act requires articles containing wool sold in interstate commerce to be labeled or marked to show the proportion of wool and kind of wool used in the article.

Multiple Choice

Directions

At the left of the numeral of each of the following items in this test, there is provided a space. In this provided space, place the letter of your choice to each of the corresponding items.

- ___ 1. If the title to goods is transferred without something being received in return, the transaction is
- | | |
|-----------|-----------------|
| a. a sale | c. a barter |
| b. a gift | d. a conveyance |
- ___ 2. The following article that falls within the classification of tangible personal property is
- | | |
|------------------|-------------|
| a. an automobile | c. a patent |
| b. a house | d. a farm |
- ___ 3. Mrs. Thompson ordered three tons of coal from the Ace Coal Company. Neither party had mentioned any price. Mrs. Thompson had paid \$23 a ton the previous time she ordered coal. The market price of the coal was \$28 a ton. The company charged Mrs. Thompson \$36 a ton after it delivered the coal. Mrs. Thompson refused to pay this price. The legal decision would be that Mrs. Thompson has to pay
- | | |
|---------------|---------------|
| a. \$23 a ton | c. \$32 a ton |
| b. \$28 a ton | d. \$36 a ton |
- ___ 4. In the town of Allenville, the sale of liquor is prohibited by law. Mr. Kane ordered a case of

whiskey from a retail grocer in Allenville. When the whiskey was delivered, Mr. Kane refused to accept it. The grocer

- a. could sue for the price of the whiskey
- b. could sue for the expense of the delivery
- c. could sue for breach of contract
- d. could not take any legal action

___ 5. Mr. Brown received a necktie which he did not order from a local merchant. After he wore the necktie three times, he decided he did not want it. Mr. Brown

- a. has the legal right to return the tie with an explanation that he did not wish to purchase it
- b. has the legal right to return the tie subject to the seller's order
- c. has no legal right to return the tie because it was delivered to him in good faith
- d. has no legal right to return the tie because he wore it

___ 6. Mr. Ross agreed orally to buy lumber costing \$725. When the lumber company delivered a part of the lumber, Mr. Ross, after examining it, sent it back, refusing to carry out the agreement. The lumber company has

- a. the legal right to sue for damages for breach of contract
- b. the legal right to sue for the price of the lumber
- c. no legal right to sue because Mr. Ross

had not accepted the lumber

- d. no legal right to sue because Mr. Ross had a right to examine the lumber

___ 7. Mr. Howard agreed orally to purchase a piano which cost \$625 from Mr. Jansen and to give Mr. Jansen his old piano as a part payment. Mr. Howard delivered the old piano as agreed, but Mr. Jansen refused to carry out his part of the agreement, contending that it was not enforceable because of the Statute of Frauds. Mr. Jansen's contention was

- a. wrong because the old piano was given as a part payment
- b. wrong because this transaction was a sale
- c. right because this transaction was a barter
- d. right because the piano cost over \$500

___ 8. Mr. Johnston agreed orally to purchase a piano costing \$745 from Mr. Stanton. This agreement is

- a. tortious
- b. void
- c. voidable
- d. valid

___ 9. Mr. Simpson orally ordered Mr. Carson to make cabinets according to his own design to fit into his kitchen. After the cabinets which were valued at \$675 were completed, Mr. Simpson cancelled the order. Mr. Simpson was

- a. bound to pay for the cabinets because this was a contract to sell
- b. bound to pay for the cabinets because this was a contract for labor and materials
- c. not bound to pay for the cabinets because

the contract was not in writing

- d. not bound to pay for the cabinets because he cancelled the contract before he had received title to them

___ 10. Something of value, not a part of the price, given to indicate the assent of a party to a bargain is something given

- a. as a part payment
- b. as an equity
- c. in trust
- d. in earnest

___ 11. Mr. Collins agreed to buy a pair of skis which he paid for from a sports store. He requested the store to hold the skis until the following day. That night, the skis were destroyed by a fire. The loss of the skis was suffered by

- a. Mr. Collins because he had no right to expect the store to protect his goods
- b. Mr. Collins because he had received the title to the skis
- c. the store because it retained possession of the skis
- d. the store because it impliedly guaranteed that the buyer would have quiet possession of the goods

___ 12. By means of fraud, Mr. Kane induced Mr. Dean to sell him an electric toaster. Mr. Kane sold the toaster to Mr. Ellis who knew nothing of the fraud. Mr. Dean, who wants the toaster returned, has

- a. a legal right to repossess it because it was obtained by fraud
- b. a legal right to repossess it because Mr. Kane cannot transfer a good title to it

- c. no legal right to repossess it because Mr. Kane obtained a valid title from Mr. Dean
- d. no legal right to repossess it because Mr. Kane obtained a voidable title from Mr. Dean

___ 13. Title to specific goods passes when the parties

- a. intend it to pass
- b. agree on the price
- c. determine the subject matter of the goods
- d. decide on the delivery point

___ 14. Mr. Tyler delivered to Mr. Green a set of tools under an agreement that he could return the tools if he did not approve of them. Seven months later, Mr. Green decided to return the set. Mr. Tyler refused to accept the returned set and demanded payment. Legally,

- a. Mr. Tyler cannot refuse to accept the returned set because he retained title to it due to the approval provision of the contract
- b. Mr. Tyler cannot refuse to accept the returned set because he retained a lien on it
- c. Mr. Green must pay for the set because he did not return it within a reasonable time
- d. Mr. Green must pay for the set because he undoubtedly used it

___ 15. Mr. Sims of Boston agreed to purchase certain goods from Mr. Devens of New York. The contract stated that Mr. Sims was to pay for the freight from New York. The goods were damaged en route. The loss was suffered by

- a. Mr. Sims because the title to the goods passed to him in New York
- b. Mr. Sims because the goods were ascertained and determined by him
- c. Mr. Devens because the goods were legally in his possession
- d. Mr. Devens because the title to the goods could not pass until they reached Mr. Sims in Boston

___ 16. The term C.O.D. in a C.O.D. sale means

- a. claim on delivery
- b. call on delivery
- c. collect on delivery
- d. cash on delivery

___ 17. At a public auction, an auctioneer put up for sale a piano valued at \$450. The highest bid offered was \$85; this bid was refused by the auctioneer. The bidder sued for the piano. The decision will be in favor of the

- a. auctioneer because he has a legal right to refuse bids
- b. auctioneer because the bidding was not high enough
- c. bidder because the auctioneer must accept the highest bid
- d. bidder because the bidding was open to all those present

___ 18. You would most likely classify as fungible goods

- a. wheat
- b. coats
- c. furniture
- d. machinery

___ 19. The Bulk Sales Acts were enacted primarily to protect

- a. employees
- b. stockholders
- c. customers
- d. creditors

20. Mr. Jackson entered into a written contract by which he agreed to rebuild the roof on Mr. Clark's house. He orally guaranteed that he would do all necessary repairs on the roof free of charge for the following five years. A year later part of the roof was damaged in a windstorm. Legally, Mr. Jackson is

- a. bound to fix the roof free of charge because of his express guarantee to Mr. Clark
- b. bound to fix the roof free of charge because such guarantees are implied in the written contract
- c. not bound to fix the roof free of charge because the contract was in writing and the guarantee was oral
- d. not bound to fix the roof free of charge because the roof was damaged through natural causes

21. Mr. Ames told a dealer that he wished to buy a camera for his nephew. He stated that the camera was to be used to take pictures indoors. The camera he purchased took indistinguishable pictures indoors. Legally, Mr. Ames has

- a. the right to return the camera because of the warranty that goods shall conform to description
- b. the right to return the camera because of the warranty that goods purchased for a particular purpose shall be fit for that purpose
- c. no right to return the camera because he was given an opportunity to examine it
- d. no right to return the camera because the title had passed to him, and the camera

had been used by his nephew

22. The Acme Radio Shop agreed to sell to Mr. Lang a 21" Ace television set. The shop delivered to him a 19" Ace television set. The implied warranty that protects Mr. Lang in this case is the warranty
- a. that goods are merchantable
 - b. that goods are fit for the purpose for which they were purchased
 - c. that the buyer will have quiet possession of the goods free from encumbrances
 - d. that goods shall correspond to the description when they are sold by description.
23. Mr. Shelby purchased an overcoat which he tried on and examined. Later, he discovered that the quality of the material in the coat was poor. He wants to return the coat and get his money back. Legally, he can
- a. cancel the sale because of the warranty that goods shall be fit for the purpose for which they were purchased
 - b. cancel the sale because of the warranty that goods shall be merchantable
 - c. not cancel the sale because he was given an opportunity to examine the overcoat
 - d. not cancel the sale because he had obtained title and possession of the overcoat
24. Mr. Howe, an agent of Mr. Mooney, sold a plastic parlor chair to Mr. James, giving him a written guarantee that lighted matches or cigarettes could not damage the plastic. A lighted cigarette did however burn a hole in the plastic. The burden

of the damage will fall on

- a. Mr. James because he did not deal directly with Mr. Mooney
- b. Mr. Mooney because he is liable for all the acts of his agent
- c. Mr. Howe because he has a written guarantee
- d. Mr. James because he had possession of the chair when the plastic was burned

___ 25. Mr. Bond sent a notice to the Riverview News to discontinue sending him their newspaper. However, the newspapers continued to be delivered to Mr. Bond who read them. The company sent Mr. Bond a bill for the delivered newspapers. He refuses to pay the bill. He is

- a. right in his refusal because he terminated his contract by his notice
- b. right in his refusal because the company is using duress in sending their newspaper to him
- c. not right in his refusal because the company did not acknowledge the discontinuation notice
- d. not right in his refusal because he continued to treat the newspapers as his own

___ 26. Mr. Ryan ordered certain goods from the Acme Tool Company. While the goods were in transit, the company learned that Mr. Ryan was insolvent and was unable to pay for the goods. It ordered the goods to be stopped in transit and returned. The company had

- a. the right to pursue this action because

the buyer was fraudulent in attempting to buy goods for which he could not pay

- b. the right to pursue this action because the buyer was insolvent and could not pay for the goods
- c. no right to pursue this action because the goods were not in the legal possession of the company
- d. no right to pursue this action because the title to the goods passed to the buyer when they were delivered to the transportation company

___ 27. An unpaid seller has a lien on the goods in his possession when

- a. goods are delivered to an insolvent buyer
- b. credit is not given
- c. the sale is conditional
- d. an agreement to sell is not in writing

___ 28. To bring an action to recover possession of personal property unlawfully detained is

- a. a replevin
- b. a lien
- c. a covenant
- d. a devise

___ 29. An action for damages arising out of the wrongful exercise of dominion over property of another is

- a. a trespass
- b. a writ
- c. a breach
- d. a trover

___ 30. A seller's interest in the goods of a conditional sale is known as

- a. a security interest
- b. a conditional interest
- c. a seller's interest

- d. an equity interest
- ___ 31. The conditional sale enables the seller
- a. to sell his goods at a lower price
 - b. to give credit more freely
 - c. to have a larger sum of cash on hand
 - d. to cut down his selling expenses
- ___ 32. Mr. Peck purchased a refrigerator under a conditional sales contract from the Ace Furniture Company. Before the refrigerator was fully paid, it was destroyed by fire. The company sues for the money due on the refrigerator. Mr. Peck will
- a. have to complete the payments because in all respects the refrigerator was treated as his own
 - b. have to complete the payments because in a conditional sale, the buyer becomes a bailor
 - c. not have to complete the payments because the title to the refrigerator was not transferred to him
 - d. not have to complete the payments because the seller still had a security interest in the refrigerator
- ___ 33. Agreements that are illegal under the Sherman Antitrust Act are
- a. agreements among competitors to sell the same types of goods
 - b. agreements to buy in large quantities
 - c. agreements among competitors to fix prices
 - d. agreements to advertise unknown products
- ___ 34. The Federal Agency that was set up to deal with unfair trade practices that arise in the course

of interstate commerce is the

- a. Sherman Antitrust Commission
- b. Federal Marketing Service Commission
- c. Federal Trade Commission
- d. Federal Standards Commission

___ 35. Of the following, the one that is an unfair trade practice is

- a. selling goods at a wholesale price
- b. conducting "stock-taking" sales
- c. a producer fixing the price of his own trade-marked merchandise
- d. price discrimination

Key to Mastery Test

True-False

- 1. True
- 2. False
- 3. False
- 4. True
- 5. True
- 6. True
- 7. False
- 8. False
- 9. True
- 10. False
- 11. False
- 12. True
- 13. False
- 14. False
- 15. False
- 16. True
- 17. True
- 18. False
- 19. True
- 20. False
- 21. False
- 22. True
- 23. True
- 24. False
- 25. True

Multiple Choice

- 1. b
- 2. a
- 3. b
- 4. d
- 5. d
- 6. c
- 7. a
- 8. c
- 9. b
- 10. d
- 11. b
- 12. d
- 13. a
- 14. c
- 15. a
- 16. c
- 17. a
- 18. a
- 19. d
- 20. c
- 21. b
- 22. d
- 23. c
- 24. c
- 25. d
- 26. b
- 27. b
- 28. a
- 29. d
- 30. a
- 31. b
- 32. a
- 33. c
- 34. c
- 35. d

CHAPTER II

UNIT ORGANIZATION OF THE TOPIC PROPERTY

General Statement of the Unit

Everyone owns property. A person expects and usually takes it for granted that he will enjoy free and exclusive use of his own property. But what happens if some other person claims possession of his property? What then? What are his rights? What are his obligations?

In a few years, many students will be involved in the process of renting or buying a home. Will they merely go out haphazardly and select any house that seems pleasing? What problems confront a person renting a home or a person buying a home? What rules and regulations govern the use and the sale of property?

To understand and to be able to apply the fundamental principles and rules that govern property are essential to young men and women who are to take their rightful place in our society.

Delimitation of the Unit

Nature and Acquisition of Property

1. Property consists of the legally enforceable rights that a person has in anything which is subject to ownership.

These rights include:

- a. the right of possession, use, and enjoyment

- b. the right of disposal during life
- c. the right of disposal after death
- d. the right of inheritance

2. The Constitution of the United States provides that no person shall be deprived of his property rights without due process of law.

3. There is, in a strict sense of the term, no such thing as the absolute ownership of property. The right of an absolute owner freely to use, enjoy, and dispose of his property is subject to certain restrictions:¹

- a. "A person is not permitted to use his property in such a manner that an injury results to another.
- b. "The state and its subdivisions have the right to take private property for public use upon making a just compensation.
- c. "The state has the right to compel a citizen to give up as much of his property as may be necessary for the maintenance and administration of government.
- d. "The state has, within certain limits, the right to control the use of property by its owners.
- e. "All property is liable for the payment of its owner's just debts, unless it is exempt by

¹Fisk, McKee and Dwight A. Pomeroy, Applied Business Law, Sixth Edition, South-Western Publishing Company, Cincinnati, 1950, p. 543.

statute."

4. Property may be classified as real property and personal property.

- a. "Real property consists of the rights of absolute ownership or ownership for life in land, things imbedded therein, and, generally speaking, things attached thereto."¹
- b. "Personal property consists of rights in land when less than absolute ownership or ownership for life, of rights in things that are movable, and of certain rights in intangible things."²

5. The ownership of property is known as tenancy; it may take any one of several forms:

- a. Severalty exists when property is owned by one person only.
- b. Joint tenancy exists when two or more persons have the same interests in property, with the right of survivorship.
- c. Tenancy in common exists when two or more persons own undivided shares or interests in a thing, without the right of survivorship.
- d. Community property exists in several states where the law provides that a husband and his wife own an undivided half interest in all

¹Ibid., p.551.

²Ibid., p.551.

property acquired after marriage.

6. The most common methods by which property may be acquired are:

- a. by contract
- b. by gift
- c. by accession
- d. by intellectual labor
 - 1. "A copyright is a grant to an author, an artist, or a composer of the exclusive right to possess, use, and dispose of his intellectual production."¹
 - 2. "A patent is a grant of the exclusive privilege to make, use, and sell an invented product, or to authorize others to do so."²
- e. by inheritance
- f. by finding
- g. by bankruptcy
- h. by eminent domain

Real Estate

- 1. Real estate consists of freehold interests in lands, buildings, and fixtures.
 - a. Lands are designated as whatever is above or beneath the surface of the earth.
 - b. Buildings have to be attached to the land and

¹Ibid., p. 549.

²Ibid., p. 549.

be of a permanent nature.

- c. Fixtures are personal property which have been permanently attached to the real estate or intended to be permanently used therewith.

2. "A freehold estate is an estate in land that lasts during a particular life or indefinitely."¹

3. An estate in fee simple is a freehold estate that lasts forever; it is the largest estate in land and usually equivalent to absolute and unconditional ownership.

Characteristics of a fee simple estate are:

- a. A fee simple estate is transferable during the life of the owner.
- b. It is transferable by a will.
- c. It descends to the heirs of the owner unless it is transferred by a will.
- d. It is subject to dower and curtesy.
 1. "Dower is that life estate in lands of her late husband, to which a widow is entitled at common law."²
 2. "Curtesy is that life estate in lands of his late wife, to which a surviving husband is entitled by the common law."³

¹Travers, Michael A., Ralph E. Rogers, and Clyde O. Thompson, Business Law and Procedure, American Book Company, Boston, 1949, p.483.

²Babb, Hugh W. and Carl B. Everberg, Commercial Law, Second Edition, Foundation Press Inc., Brooklyn, 1949, p.945.

³Ibid., p.947.

e. It is liable for the debts of the owner.

4. "A life estate is a freehold estate in land that is to extend during, but not beyond, the life of one or more designated persons."¹ It may be created by an express grant, a will, or the operation of the law. Characteristics of a life estate are:

- a. A life estate is transferable to the extent of its duration.
- b. A life estate does not descend to the heirs unless it is an estate for the life of a person other than the tenant.
- c. It cannot be transferred by a will when it is an estate for the life of the tenant.
- d. It is liable for the debts of the tenant to the extent of his interest.
- e. The tenant is liable for injuries to the property caused by his fault.

5. A trust estate exists when one person holds the legal title to property for the benefit of another.

- a. "The person who holds the title to the property and who is under a duty to apply the proceeds for the benefit of another is called the trustee."²
- b. "The person for whose benefit the trust is

¹Fisk, Applied Business Law, p.557.

²Ibid., p.559.

established and who is to enjoy the proceeds is called the beneficiary."¹

6. Statutes have been passed in many states creating a homestead law whereby certain real estate is exempt from sale for debt, generally the home and a few acres of land not to exceed a certain value.

Transfer of Real Property

1. In the transfer of the title to real property, certain formalities are required by law that are not necessary in the transfer of the ownership of personal property.

2. The transfer of title to real property takes place with the execution and delivery of an instrument called a deed.

3. The three principal types of deeds of conveyance are:

- a. Quitclaim deeds. "A quitclaim deed purports to convey merely the interest that the grantor may have in the property and nothing more."²
- b. Bargain and sale deeds. "A bargain and sale deed requires a money consideration and conveys the land itself, not merely the interest of the grantor."³

¹Ibid., p. 559.

²Ibid., p. 569.

³Ibid., p. 569.

c. Warranty deeds. "A warranty deed purports to convey title and contains warranties that certain facts are true or that certain things will be done."¹

4. The usual steps in the buying and selling of real property are:

- a. Survey the property.
- b. Write up an agreement.
- c. Obtain an abstract of title.
- d. Obtain a mortgage.
- e. Transfer the title.
- f. Record the deed.

5. As soon as a deed is accepted, it should be recorded in the public register of the county in which the land is situated.

6. When a deed is executed by a married person, the wife or husband should join in the conveyance.

7. Insuring titles is now often followed in this country because an abstract of title does not always show defects in the title.

8. The Torrens System, which has been adopted by some states, allows anyone to have his titles to land examined and registered by an official examiner of title. If the title is valid, the examiner issues to the owner a certificate of title. Any transfers of the property thereafter require

¹Ibid., p.569.

only examination of records from the date of registration and official certification.

9. A person may, under certain circumstances, acquire the title to land by adverse possession. In order for a person to have a valid claim of adverse possession, the occupancy of the property must meet the following requirements:

- a. The occupancy must be contrary to the claim of the owner.
- b. It must be open and known.
- c. It must be exclusive and undisturbed.
- d. It must be continuous for a period of years.

Landlord and Tenant

1. "A lease is an agreement by which the right of possession of real property is transferred by the owner, called the lessor or landlord, to another party, called the lessee or tenant; for the use of which the lessee usually pays rent in money, goods, services, or otherwise."¹

2. No particular form of language is generally necessary in a lease; however, it should state in plain language all material terms of the agreement so that a misunderstanding cannot arise later. A formal lease usually contains:

- a. The date of execution.
- b. An identification of the parties.
- c. A description of the property.

¹Travers, Business Law and Procedure, p.521.

- d. The length of the period of the tenancy.
 - e. The amount of and the manner of paying the rent.
 - f. A statement of covenants and conditions, including any special rights or restrictions such as a promise of the landlord to redecorate or repair the premises.
 - g. The signatures of the parties.
3. The length of time for which a lease runs depends upon its terms.
- a. A lease that exists for a specific period of time is known as a tenancy for years.
 - b. A lease that exists for an indefinite period of time with rent due at stated intervals is known as a tenancy from year to year.
 - c. A lease that exists so that the occupation of the property may be terminated at the will of the landlord or the tenant, or both is known as a tenancy at will.
4. A lease may be terminated in the same way as other contracts.
5. If a lease creates a tenancy from year to year, the party seeking to terminate the tenancy must notify the other of this fact. The notice is usually required to be in writing and to be given a certain number of days before the expiration of the term.
6. The usual obligations of a tenant are as follows:
- a. A tenant must pay the rent which is agreed upon.

- b. A tenant must make those repairs that are required to keep the premises in approximately the same condition as they were at the time of his occupancy.
 - c. A tenant must take reasonable care of the premises.
 - d. A tenant must use the premises lawfully and properly.
 - e. Since a tenant is in exclusive control of the property, he is generally liable for any injuries that may occur to third persons because of the condition of the property.
7. The usual rights of a tenant are as follows:
- a. A tenant is entitled to the exclusive possession of the leased property, and may recover damages if the landlord refuses such possession.
 - b. Unless a tenant is forbidden to do so by an agreement, he may use the leased property for any purpose for which it is adapted or is usually used.
 - c. Unless a tenant is prevented from doing so by the terms of the lease, he may assign his lease or sublet the premises or any part of them.
8. In general, the duties of a landlord are as follows:
- a. A landlord is usually required to keep a leased house in a habitable condition.

- b. A landlord is no more entitled to enter upon the premises of his tenant than are strangers.
 - c. A landlord is required to pay the taxes and assessments on leased property.
9. The usual rights of a landlord are as follows:
- a. A landlord has always the right to collect rent on the leased property.
 - b. A landlord has the right to take possession of fixtures added to the property by the tenant if such fixtures have become a permanent part of the property.

Wills and Intestacy

1. "A will is an instrument by which a person during his lifetime makes disposition of his property, both real and personal, to take effect after his death."¹

2. A person who makes a will is known as a testator.

3. Personal property that is left by will is known as a bequest or a legacy.

4. A gift of real property that is left by a will is known as a devise.

5. The drawing of a will is a technical matter and one that should be entrusted only to an experienced lawyer. In general, there are four requisites of a valid will:

- a. The testator must be legally competent.
- b. The will must be in writing and must conform

¹Ibid., p. 502.

in every detail to the requirements of statutes.

- c. The will must be signed by the testator or by someone for him in his presence and at his express direction.
- d. It is essential that a will be witnessed by the required number of witnesses who should not be beneficiaries under the will.

6. The maker may revoke his will by intentionally destroying it or making a new one. He may revoke certain provisions in a will by adding an amendment known as a codicil.

7. The limitations on the right to dispose of property by will are generally the following:

- a. The right of creditors may not be defeated by will.
- b. The dower right of the wife and the curtesy right of the husband may not be defeated except with the consent of the party concerned.
- c. Most state laws do not allow a testator to prohibit a devisee from disposing of property for a period longer than the life time of an individual living at the time plus twenty-one years.
- d. Statutes of a few states provide that a testator may not devise or bequeath more than a certain proportion of his estate to charitable, religious,

educational, or similar institutions.

8. A person who dies without leaving a will, or whose will is declared invalid, is called an intestate.

9. The laws governing the division of the real property of an intestate are known as the laws of descent.

10. Laws of distribution are those laws that govern the division of personal property of an intestate.

11. A will may appoint an executor to distribute the property of the deceased according to the terms of the will. When the will does not name an executor or when there is no will, the property is distributed by an administrator appointed by the court.

12. The laws of both the Federal Government and of most of the states provide for the levying of taxes on estates transferred at death that exceed more than a certain minimum value.

13. Everyone with any property should make a will because of the following reasons:

- a. It is generally less expensive to have property distributed when there is a will than when there is not.
- b. If there is a will, the property is distributed according to the wishes of the testator.
- c. When there is a small estate, the administration of the funds available may be greatly simplified by a will.

Suggested Time Allotment

The suggested time allotment for this unit is three weeks. This unit is not organized for any one special class. Its function is to act as a source unit on the topic property in business law courses.

Business law is either a one-semester or two-semester course, depending of the individual school policy. It is generally given in the twelfth grade to pupils taking the business curriculum.

Probable Indirect and Incidental Learning Products

1. To develop an appreciation of the rights and obligations of a tenant.
2. To develop an appreciation of the rights and obligations of a landlord.
3. To develop an appreciation of the problems involved in buying real estate.
4. To realize and appreciate the importance of the rules and regulations pertaining to real and personal property.
5. To form the attitude of treating properly other people's property.
6. To develop an understanding of rent-control laws.
7. To develop an understanding of the vocational aspects and possibilities in the real estate field.

8. To develop an appreciation of the importance of making a will.

9. To develop the ability to recognize situations in which the services of a lawyer should be sought.

10. To develop the pupil's vocabulary.

Unit Assignment

Introducing the Unit

Any one of the following ways may be effectively used to introduce this unit to the class:

1. The teacher may ask his students questions such as the following: What type of property do you own? What rights do you have in the property? What obligations do you assume in owning the property? These questions should lead to the question, "Why is it important to understand the basic laws governing property?"

2. Bring into class a newspaper article of a recent case concerning property. Discuss the case with the class. Have the pupils give their opinions and decisions. This type of discussion should lead the pupil to realize the importance of his understanding the basic laws governing property.

3. Have two pupils dramatize a situation in which a dispute over property develops. (Example: The picking of apples from branches that overhang on your property from an apple tree that belongs to your neighbor.) Discuss the

dramatization with the class. Ask questions such as: Which party was right? Why? What are the rights and obligations of each party? How are these rights and obligations determined? These questions should lead to the question, "Why is it important to understand the basic laws governing property?"

4. Have the pupils jot down on a piece of paper the procedures they would follow if they were interested in buying a home. Discuss these procedures, pointing out the problems that may arise. This type of discussion should lead to the realization that it is important to understand the legal aspects of property.

5. Bring into class and have the pupils examine a properly filled-out will. Discuss the will with the class. Ask questions such as: What are the important features of the will? Are all these features necessary? Why? Do you think that this person was wise to make out a will? Why? What would have happened to this person's property if no will had been made? This type of discussion should lead the pupil to realize the importance of understanding the legal aspects of will as it concerns property.

Core Activities

1. If John found a fountain pen which you had misplaced, would you have any right to recover the pen? What is property? What are your rights as an owner? (2:543)

2. Mr. Waters who has a cottage on the seashore with

his own private beach has taken legal action against his neighbors to prevent them from rowing their boats within fifty yards of the shore line off his beach. He bases his action on the claim that his property extends fifty yards into the ocean. Is his claim valid? Explain. (2:544; 6:479)

3. The neighbors of Mr. Jansen complain that his riotous parties which usually break up about 3:00 a.m. keep them awake a good part of the night. Mr. Jansen ignores the complaints saying that he can do whatever he wants on his property. Is this statement true? What is absolute ownership of property? What are the restrictions generally associated with property? (2:544; 6:32)

4. Mr. Irwin bought a tract of land from Mr. James. After the sale, Mr. Irwin claimed that all the trees standing on the land belonged to him. Was Mr. Irwin correct? What is real property? (2:545; 6:30)

5. Mr. Jackson bought a farm from Mr. Kane. After the sale, Mr. Jackson claimed that the barbed-wire fence surrounding the farm belonged to him. Is he correct? What is personal property? (2:546; 6:30)

6. What are the forms of ownership? What is meant by the right of survivorship? (2:546-547; 6:31)

7. Mr. Gage promised to give his nephew a new home as a wedding present. Can Mr. Gage be legally held to his promise? Explain. In what ways may property be acquired? (2:548-549)

8. What is a copyright? Is it property? Explain.
(2:549; 6:521)
9. What is a patent? Is it property? Explain.
(2:549; 6:521)
10. The Commonwealth of Massachusetts needed a strip of Mr. Roger's farm to build a highway between Springfield and Pittsfield. Mr. Roger refused to give up the strip of land. Can the Commonwealth force Mr. Roger to sell the strip of land? Explain. What is eminent domain? (2:550; 6:32)
11. What is an estate? What is real estate? (2:554; 6:483)
12. A few branches of an apple tree on land owned by Mr. Sawyer hang over the land of Mr. King. Mr. King picked apples off these overhanging branches claiming that he was within his legal rights since the branches hang over his property. Is Mr. King's claim correct? Explain. What does the term "lands" designate? (2:554-555)
13. What is a fixture? How do courts generally determine what a fixture is? (2:555; 6:479)
14. Mr. Best built a garage on land that he had been leasing. He claims now that the garage belongs to him, and that it is not part of the land. Is he correct? Explain.
(2:556; 6:527)
15. What is an estate of freehold? (2:557; 6:483)
16. What is an estate in fee simple? What are the characteristics of such an estate? (2:557; 6:483)

17. What is a life estate? What are the characteristics of such an estate? (2:558; 6:484)

18. Mr. Grant left a will in which he left all of his property to his children. His wife claims title to part of the property. Has she a legal right to her claims? What is dower? What is curtesy? (2:558-559; 6:485-486)

19. What is a trust estate? (2:559)

20. What is the purpose of the homestead laws? What do these laws generally provide? (2:560; 6:486)

21. Mr. Kane executed a deed to his home, and delivered it to his lawyer with instructions that the lawyer was to turn the deed over to his son at his death. Could Mr. Kane transfer title to his home in this manner? How is real property transferred? (2:563; 6:496)

22. Every year for the past twenty years, Mr. Taylor has farmed free of rent on a lot of land owned by his neighbor. Now, Mr. Taylor claims title to the lot of land by adverse possession. Does Mr. Taylor have a legal claim to the lot? What are the requirements in order to have a valid claim of adverse possession? (2:564; 6:498)

23. What are the usual steps followed in the buying and selling of real property? Explain each step. (2:564-565; 6:492-494)

24. Mr. Grant executed and delivered a deed for a certain lot of land to Mr. Collins. Mr. Collins did not have the deed recorded. Later, Mr. Grant executed and

delivered another deed for the same lot of land to Mr. Ryan who was a bona fide purchaser without knowledge of the fact that a deed to the lot had already been delivered to Mr. Collins. Who has the legal right to the lot of land? Explain. (2:565-566; 6:496)

25. What are the three principal types of deeds of conveyance? Describe each type? (2:566; 6:496-497)

26. What is the type of deed ordinarily used in most states? What are the usual covenants of this type of deed? (2:566; 6:497)

27. Why is it wise to insure titles to real property? (2:568; 6:493)

28. What is the Torrens System? (2:568-569; 6:494)

29. Why is it wise to have both the husband and the wife join in the signing of the deed? (2:569; 6:493)

30. Mr. Brown orally agreed to lease Mr. Jackson's summer cottage for two months. At the end of the first month, Mr. Brown attempted to end the agreement claiming that it was unenforceable because it was not in writing. Was Mr. Brown correct? Explain. What is a lease? (2:572; 6:521)

31. What are the kinds of leases? Describe each kind. (2:573-574)

32. A tenant requested to have the front porch of his apartment screened. The landlord who had the porch screened sent the bill for the screening to the tenant. Did the

tenant have to pay the bill? Explain. What are the obligations of a tenant? (2:574-575; 6:523-524)

33. Mr. Smith was injured when he tripped on a broken step while visiting Mr. Sanders, a tenant in a home owned by Mr. Lake. Mr. Smith is suing Mr. Lake for negligence. Is he correct in suing Mr. Lake? Explain. (2:576; 6:524)

34. Mr. Lind leased an automobile repair garage for three years from Mr. Kiley. After six months, Mr. Kiley demanded that Mr. Lind stop greasing automobiles on the leased property. Could Mr. Kiley legally have his demand enforced? What are the rights of a tenant? (2:576-577; 6:523-524)

35. Mr. Drake leased to Mr. Allen a building that was to be used as a grocery store. Mr. Allen sublet a portion of the store to Mr. Egan, who used this portion to sell meats. Did Mr. Allen have this right to sublet to Mr. Egan? Explain. What is an assignment? What is subletting? (2:577; 6:525)

36. Mr. Bensen leased a building to Mr. Cassidy to be used as a garage. The hydraulic lift in the building was badly damaged and needed to be replaced. Did Mr. Bensen have to replace the lift? Explain. What are the duties of a landlord? (2:577-578; 6:524)

37. Mr. White's tenant has failed to pay his rent for three successive months. What courses of action are open to Mr. White? (2:578-579; 6:525)

38. In what ways may a lease be terminated?
(2:580; 6:526-527)

39. Mr. Howe had repeatedly promised his oldest daughter that, when he died, he would leave his home to her. After his death, his oldest daughter claimed that his promises were sufficient to give her complete ownership of the home. Was her claim valid? Explain. What is a will?
(2:583; 6:502-503)

40. Mr. Ryan made a will in which he left all of his property to his favorite nephew. Although the will was not witnessed, it was in writing and signed by Mr. Ryan. Is this a valid will? What are the requirements of a valid will?
(2:584-585; 6:502-503)

41. Mr. Lang made a will in which one of the witnesses was a beneficiary? Was the will valid? Explain.
(2:585; 6:503)

42. Mr. Thomas made three wills: one in 1940; one in 1944; one in 1947. In the will of 1944, he stated that this will revoked all other wills and that it was his final will. The will of 1947 made no mention of the other wills. Which one of his wills will the courts enforce? Why?
(2:586; 6:504)

43. When Mr. Jansen died, he was heavily in debt. His will which accurately described how his property should be disposed of did not make any provisions for paying off his debts. Could his will defeat the rights of his creditors?

What limitations generally exist in the right to dispose of property by will? (2:586-588)

44. What is intestacy? (2:588; 6:505)

45. Mr. York died without making a will. He left a wife, a son and his two children, and his deceased daughter's three children. In what proportions would his estate be divided? What are laws of descent? (2:588-589; 6:506-507)

46. Mr. Fox died without making a will. What will most likely happen to his personal property? What are laws of distribution? (2:589; 6:507)

47. What are the duties of an executor of an estate? (2:590; 6:504-505)

48. What are estate taxes? (2:591)

49. Mr. Ross owns his home and has \$3,155 in the bank. He claims that no advantage will be gained by his making a will. Do you agree? Explain. (2:591-592)

Optional Related Activities

1. Prepare an inventory of all the personal property that you own. What are your rights concerning your property? Are your rights the same for each article in the inventory? Explain.

2. Be prepared to recite that part of the Constitution that provides that no one can be deprived of his property without due process of the law. Why do you believe this provision was put into the Constitution? How has this provision been interpreted at the present time?

3. Assuming that you are interested in buying a home, prepare a list of questions that you would ask a real estate agent.

4. Interview a real estate agent in your neighborhood to determine the occupation possibilities in the real estate field. Ask questions such as the following:

- a. How much and what type of education is necessary?
- b. How does one start in this field?
- c. What characteristics are desirable?
- d. What are the promotional opportunities?
- e. What is the average yearly salary in this field?

5. Look at the homes for sale in the classified advertising section of your newspaper. Do you feel that these ads are sufficiently attractive and informative? Choose those ads that you feel would be of most interest to you. Why did you make your selections?

6. Assuming that you wish to sell one of your possessions, prepare an ad for your local newspaper. Make the ad brief, informative, and attractive.

7. Assuming that you were to sell the house you now live in, what steps would you follow?

8. Visit the Office of Rent Stabilization in your neighborhood. What are its duties? How does it operate?

9. Do you believe that rent control is desirable at this time? Be prepared to defend your views. You may have a debate or form a panel discussion on this issue.

10. Assuming that you have an estate worth \$15,000, prepare a will that you feel will be accepted by the courts.

11. Prepare a report on the topic, "Why Make a Will."

12. Prepare a report on the topic, "Why Buy a Home."

13. Assuming that you are to lease a piece of property, write up a lease. Be certain that the lease is inclusive, and that it will be legally enforceable.

14. Read over a quitclaim deed, a bargain and sale deed, or a warranty deed. Be prepared to describe what is contained therein.

15. Draw sketches that depict legal situations that pertain to property.

16. Dramatize a series of situations that involve legal decisions. Have the class discuss and give its decision on each situation.

17. Write a brief history on the term "freehold."

18. Prepare a report on real estate lobbies.

- a. What are their purposes?
- b. How do they operate?
- c. Who finances the lobbies?
- d. How influential are they?
- e. What are their effects on the general public?

19. Have a debate or a panel discussion on the topic, "Is Federal Housing Desirable."

20. Bring into class newspaper clippings pertaining to wills and property. Be prepared to discuss the subject matter of each clipping.

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Mastery Test

True-False

Directions

Read the following statements to determine whether they are true or false. If you believe the statement is true, place the letter "T" in the space provided at the left of the number of the statement. If you believe the statement is false, place the letter "F" in the space provided at the left of the number of the statement.

1. The Constitution of the United States provides that no person can be deprived of his property without due process of law.
2. The state has no right to compel a citizen to give up any of his property for the maintenance and administration of government.
3. The legal rules and principles governing real property are actually the same as those governing personal property.
4. If a tenant installed a furnace in a home which he had leased, the furnace would generally had been considered a fixture.
5. A life estate is a freehold estate in land that gives the owner the right to use, enjoy, and dispose of the land freely and substantially without limitation.
6. At common law, the wife by right of dower acquires

for life one-third of all the real property that her husband owned during their marriage.

- ___ 7. The lack of an abstract of title will invalidate a deed.
- ___ 8. The best type of deed that one can generally obtain is a warranty deed.
- ___ 9. It is wise to have a wife join in a conveyance, even though the conveyance is only in the husband's name.
- ___ 10. For a lease to be valid, it is generally necessary in most states to use a particular, government form.
- ___ 11. Property that is leased under a tenancy at will cannot be assigned to a third person.
- ___ 12. According to law, rent must be paid in money.
- ___ 13. A tenant is obligated to take reasonable care of the premises he has leased.
- ___ 14. A tenant has no right to stop his landlord from entering upon the premises he has leased.
- ___ 15. Unless specified in the terms of a lease, a tenant has the right to sublet any part of the leased premises.
- ___ 16. If a man dies without having made a will, his property is divided equally amongst his wife and children.
- ___ 17. It is necessary to have an ordinary will properly witnessed.
- ___ 18. If a man makes two wills, the latter will will

revoke the earlier will, even though no mention is made of the earlier will in the latter will.

- ___ 19. The first claims against property left in a will are those of creditors.
- ___ 20. One reason why everyone who owns property should make a will is because it is generally less expensive to have property distributed when there is a will than when there is no will.

Multiple Choice

Directions

At the left of the numeral of each of the following items in this test, there is provided a space. In this provided space, place the letter of your choice to each of the corresponding items.

- ___ 1. Mr. James is in the habit of turning on his radio loudly at 5:00 a.m. every morning before he leaves for work. The neighbors complain that the radio is disturbing their sleep and take legal action to prevent Mr. James from operating his radio so loudly at such an early hour. Legally, Mr. James
- a. has the right to use his property in any manner that he chooses
 - b. has the right to operate his radio in this manner as a radio is an accepted home appliance
 - c. has no right to operate his radio loudly because a person is not permitted to use his property in such a manner that an injury results to another person
 - d. has no right to operate his radio loudly because a radio is considered to be an entertainment device
- ___ 2. The right of the state to take private property for public use upon making a just compensation is known as
- a. eminent domain
 - b. escrow
 - c. codicil
 - d. stare decisis
- ___ 3. Mr. Kane cut down all the trees on his land before he sold the land to Mr. Ames. Mr. Ames stopped Mr.

Kane from carrying off the cut-down trees which are still on the land as he claims that the trees belong to him. Legally, Mr. Ames

- a. has title to the trees because he is in possession of them
- b. has title to the trees because these trees are considered to be part of the land that he purchased
- c. has no title to the trees because trees that are severed become personal property
- d. has no title to the trees because only minerals and waters beneath the surface of the soil are considered to be part of land

___ 4. Which of the following is generally considered to be real property?

- a. a herd of cattle
- b. a wire fence
- c. an electric pump
- d. a farm tractor

___ 5. When property is owned by one person alone, it is held in

- a. severalty
- b. survivorship
- c. escrow
- d. fiduciary

___ 6. Mr. Cain gave his nephew an automobile as a graduation gift. A month later, Mr. Cain took action to have the automobile returned to him as he claimed that he was the legal owner. Legally, Mr. Cain is

- a. right because a person cannot acquire property rights from a gift
- b. right because a gift is not considered to be a contract
- c. not right because his nephew was in possession of the automobile

- d. not right because the automobile was voluntarily transferred to his nephew and accepted by him

___ 7. A grant of the exclusive privilege to make, use and sell an invented product, or to authorize others to do so is called

- a. a gratuity c. a copyright
b. a franchise d. a patent

___ 8. Mr. Johnston who bought an automobile under a conditional sales contract from the Acme Auto Company added a bumper guard and heater to the automobile. Later, Mr. Johnston defaulted in his payments and the company repossessed the automobile. The company had also obtained legal title to the bumper guard and heater under the rules governing property acquired by

- a. contract c. finding
b. accession d. duress

___ 9. A few branches of a tree located on Mr. Kiely's property hung over the property of Mr. Jansen. Mr. Jansen cut down these branches without asking Mr. Kiely's permission. Legally, Mr. Jansen is

- a. correct because the overhanging branches interfered with his free use of his own property
b. correct because the overhanging branches were actually his own property
c. not correct because he had no right to touch property which belonged to Mr. Kiely
d. not correct because the branches were

hanging in the air above the property,
and the air belongs to no one person

___ 10. Personal property that has been affixed to land
so that it becomes regarded as real property is
known as

- a. a fixture
- b. an annexation
- c. a chattel
- d. a devise

___ 11. An absolute ownership in land that gives the
owner the right to use, enjoy, and dispose of the
land freely and substantially without limitation
is

- a. an unlimited estate
- b. a trust estate
- c. a life estate
- d. a fee simple estate

___ 12. The right to the estate granted to a wife in the
property of her husband upon the husband's death is

- a. a curtesy
- b. a dower
- c. a trust
- d. a gratuity

___ 13. The person for whom a trust is established is
known as the

- a. trustee
- b. grantee
- c. beneficiary
- d. fiduciary

___ 14. The homestead protection laws were enacted
primarily to protect

- a. creditors
- b. real estate agents
- c. home owners
- d. saving banks

- ___ 15. In order to transfer title to real property, there must be an execution and delivery of an instrument known as
- a. a codicil
 - b. a mortgage
 - c. a deed
 - d. a warrant
- ___ 16. One condition that must be met in order that a person acquire title by adverse possession is
- a. that the occupancy of the property be essential to the livelihood of the claimant
 - b. that the occupancy of the property be contrary to the claim of the owner
 - c. that the occupancy of the property be unknown
 - d. that the occupancy of the property be recorded for five successive years
- ___ 17. It is wise to record a deed in the public register of the county in which the property is situated as soon as possible because the recording of a deed
- a. validates the sale of real estate
 - b. guarantees that the seller will carry out the sales agreement
 - c. protects the buyer from dower rights of the seller's wife
 - d. gives legal notice to the public of the conveyance
- ___ 18. The type of deed ordinarily used in most states to convey title to real property is
- a. a quitclaim deed
 - b. a security deed
 - c. a bargain and sale deed

- d. a warranty deed
- ___ 19. A deed that purports to convey merely the interest that a seller may have in his property is
 - a. a quitclaim deed
 - b. a security deed
 - c. a bargain and sale deed
 - d. a warranty deed
- ___ 20. Of the following, a formal lease would most likely contain
 - a. the signatures of two witnesses
 - b. an identification of the parties involved
 - c. the government rules and regulations concerning leases
 - d. the signature and seal of a notary public
- ___ 21. A lease that exists for a specific period of time is known as a
 - a. tenancy for years
 - b. tenancy from year to year
 - c. tenancy at will
 - d. tenancy for time
- ___ 22. A lease that may be ended at the will of the landlord of the tenant or both is known as a
 - a. tenancy for years
 - b. tenancy from year to year
 - c. tenancy at will
 - d. tenancy for time
- ___ 23. Mr. Kane leased his farm land to an oil company

for the purpose of drilling for oil. The oil company which does not want any planting on the land takes legal action against Mr. Kane to stop him from planting on the land that is not being used for drilling. Legally, Mr. Kane has

- a. the right to plant because an owner has the right to use leased property that is not being fully employed
- b. the right to plant because the oil company's rights are restricted to drilling only
- c. no right to plant because the planting will conflict with the rights of the oil company
- d. no right to plant because land cannot be partially leased

___ 24. Mr. Lang's landlord replaced an old, coal furnace that was used to heat Mr. Lang's apartment with a new, oil furnace. The landlord claims that Mr. Lang has to pay for the new furnace. Legally the landlord is

- a. correct because a tenant must pay for improvements that benefit him directly
- b. correct because a tenant must take care of essential repairs and replacements
- c. not correct because a tenant is not required to make improvements in property that he has leased
- d. not correct because a tenant is not required to make any repairs or replacements so long as he pays his rent

___ 25. Mr. James leased his farm land to Mr. King for the purpose of farming. Oil was discovered on the

neighboring land, and Mr. King starts immediately to drill for oil on the leased farm land. Mr. James takes legal action to stop the drilling. Legally, Mr. King has .

- a. a right to drill because a person has a right to use leased land in any manner as long as it is not against the public interest
- b. a right to drill because a person has a right to use leased land for any other purpose besides the original purpose if that purpose is beneficial to him
- c. no right to drill because an owner of leased land must agree on the type of machinery that may be used on the land
- d. no right to drill because a person may use leased land only for the purpose for which the land was leased

___ 26. Mr. Smith occupies a second-floor apartment which has its own private stairway. Mr. Lane, a visitor, broke his ankle when he tripped over a broken step while descending the stairway. Mr. Lane who claims damages should sue

- a. the landlord because it is his responsibility to insure the safety of third parties on his property
- b. the landlord because it is his duty to make all necessary repairs on his property
- c. the tenant because it is his duty to make all necessary repairs on the leased property
- d. the tenant because it is his duty to keep the property under his exclusive control in proper condition

___ 27. Of the following, the one that is usually a right

of a tenant is the right to

- a. use the leased property for any purpose for which it is adapted or is usually employed
- b. alter the leased property for any purpose for which he may believe the property is suitable
- c. end any lease whatever with a month's notice
- d. expect the landlord to make ordinary improvements that will benefit him

___ 28. To be valid, a will must be

- a. made in the presence of a lawyer
- b. in writing
- c. signed by the beneficiaries
- d. made within five years of the death of the testator

___ 29. A gift of real property which is left by a will is known as a

- a. devise
- b. legacy
- c. bequest
- d. detinue

___ 30. A holographic will differs from the ordinary type of will in that it does not have to be

- a. made in the presence of a lawyer
- b. signed by the testator
- c. in writing
- d. witnessed

___ 31. A person who dies without leaving a will is known as

- a. a fiduciary
- c. an intestate

- b. a curtesy
- d. a demise

___ 32. Mr. Johnston who died without leaving a will leaves a wife, a brother, three children, and six grandchildren. Each of his children is entitled to

- a. one-ninth of the estate
- b. two-ninths of the estate
- c. one-eleventh of the estate
- d. none of the estate

___ 33. In the above situation (Question #32), Mr. Johnston's brother is entitled to

- a. one-third of the estate
- b. one-sixth of the estate
- c. one-eleventh of the estate
- d. none of the estate

___ 34. Mr. Harris made a will in which he left four-fifths of his estate to his children and one-fifth to his wife. His wife contests the will. The courts will decide that the will is

- a. valid because it was Mr. Harris's final wish to distribute his estate in this manner
- b. valid because a man may distribute his estate within his immediate family in any desirable manner
- c. not valid because a will cannot defeat the dower right of a wife without her consent
- d. not valid because the wife was evidently not in agreement with the terms of the will when it was made

___ 35. Mr. Kane left a will in which all of his estate was willed to his family. No mention was made of debts due to creditors which amounted to one-fifth of the estate. Legally, the creditors have

- a. a first charge on the property because the rights of creditors cannot be defeated by a will
- b. the right to sue the heirs for the amount of their debts as a will that is properly executed cannot be charged
- c. to accept a loss from the debts because a creditor cannot bring action against a deceased person or his heirs
- d. the right to charge the estate for one-half of the amount of the debts

Key to Mastery Test

True-False

- 1. True
- 2. False
- 3. False
- 4. True
- 5. False
- 6. True
- 7. False
- 8. True
- 9. True
- 10. False
- 11. False
- 12. False
- 13. True
- 14. False
- 15. True
- 16. False
- 17. True
- 18. True
- 19. False
- 20. True

Multiple Choice

- 1. c
- 2. a
- 3. c
- 4. b
- 5. a
- 6. d
- 7. d
- 8. b
- 9. a
- 10. a
- 11. d
- 12. b
- 13. c
- 14. c
- 15. c
- 16. b
- 17. d
- 18. d
- 19. a
- 20. b
- 21. a
- 22. c
- 23. b
- 24. c
- 25. d
- 26. d
- 27. a
- 28. b
- 29. a
- 30. d
- 31. c
- 32. b
- 33. d
- 34. c
- 35. a