

### **Module Three – Allocation**

**Question 9.** Mr. Paul Pursuer has been chasing a fox all day with the best fox hunting dogs available anywhere. Twenty minutes ago, Paul wounded the fox with a shot from his rifle, which slowed but did not stop the fox. Now, Paul, continuing his pursuit, has the fox cornered in a quarry and is about to enter the quarry to take the fox in the next thirty seconds. Ms. Ingrid Intruder, however leaps into the quarry first and kills the fox moments before Paul would have done the same. Under Livingston's approach (effectively, the dissent) in *Pierson v. Post*, which of the following statements is most correct regarding the likely outcome of a suit over property in the fox.

- a. Paul wins because he wounded the fox and had reasonable certainty to take the fox.
- b. Ingrid wins because first in time is first in right.
- c. Paul wins because his intention was to take the fox.
- d. Ingrid wins because killing the fox is necessary to obtain property in it.
- e. None of the above answers are correct.

**Question 10.** In *Johnson v. M'Intosh*, what is the effect on M'Intosh's claim to title if the treaty ending the revolutionary war between Great Britain and the United States merely transferred the powers of government to the United States rather than additionally transferring right of title in the land?

- a. M'Intosh's claim can only be good if he had petitioned the United States government for the land after the Native Americans sold it to Johnson.
- b. M'Intosh's claim will be successful by reverting to a secondary basis for taking title under the doctrine of riparian rights.
- c. M'Intosh's chain of title is broken because it traces backward to the United States.
- d. M'Intosh's claim will be unsuccessful because the Native Americans have a full and complete right to alienate the land they possess.
- e. All of selections *a* through *d* are correct characterizations.

**Question 11.** Using the principles from *Keeble v. Hickeringill*, what distinguishes competition the law favors versus competition that the law disfavors?

- a. The key distinguishing principle is harmful effects, that is, whether a proprietor's activity creates detriment for the other proprietors, and if so, that activity is favored.
- b. Disturbance of another proprietor's productive activity is disfavored, but disturbance does not include engaging in the same activity to supply the same market.
- c. The nature of the competitive acts distinguishes favored versus disfavored activity and the law seeks to create incentives for the acts most effective, regardless of means, at advancing one proprietor's position over another.
- d. Disturbance to another proprietor's activity that is unavoidable because the disturbance arises from the nature of the resource is disfavored and should be punished to the greatest extent under the law.
- e. None of the above are correct characterizations.

**Question 12.** Dan Diverter builds a weir to take sixty percent of the water flow in the Coffin river for a beneficial use. The Coffin river is a small tributary in the Western United States. Dan's sixty percent is calibrated for a year of normal rainfall. Long after Dan establishes his diversion, Paul Peculiar begins taking thirty percent of the Coffin river water flow for a beneficial use, again calibrated for a year of normal rainfall. Which of the following statements is most correct regarding the law applicable between Paul and Dan.

- a. In a year when rainfall is half of the normal amount, resulting in a reduction of water flow by half, Dan and Paul must each reduce their usage of water from the Coffin river by half.
- b. If Dan's beneficial use of the Coffin river water is for land in a different watershed, then Dan's rights are not superior to those of Paul for Coffin river water.
- c. In a year when rainfall, and thus river flow, is reduced by less than forty percent, Paul's ability to exercise his right of usage will be impacted negatively, but Dan's will not.
- d. If Paul can destroy Dan's weir within the first twenty years of its use, Paul will have superior rights as compared to Dan for thirty percent of the Coffin river flow.
- e. In a year when rainfall is fifty percent more than normal, causing river flow to increase by the same percentage, both Dan and Paul must use a correspondingly greater amount of the Coffin river flow.

### **Module Three – Allocation – Answer Key**

Question Number	Correct Answer
9	a
10	c
11	b
12	c