

1266. *A is the payee on a note for \$500 executed by B, and B is the payee on a note executed by A for \$1,000. The execution of each note is admitted, but each maker claims that he has paid the note that he executed. A brings action against B. Give the successive steps in the action, and when they are to be performed up to and including, final judgment in the Superior Court. The purpose of this question is to see if you know what processes should be issued and when, what pleading should be filed, and when, and how the case is tried.*

A. A should have summons issued against B returnable to the next term of the Superior Court if more than ten days after summons issued; if not, then to the succeeding term. A should file complaint during first three days of return term. B should answer during said term, denying that he owes note, and set up counterclaim. A should reply and deny that he owes note to B. Case stands for trial at succeeding term before jury, and the judgment rendered is in accordance with the verdict.

EIGHTY-ONE TRY LAW EXAMINATION

One Woman Faces Questions
Prescribed for License to
Practice Law in State

FIVE NEGROES APPLY

Questions Put Up By Associate
Justice Walker; Applicants
Declare Test Pretty Stiff.
Supreme Court Meets Today
for Argument in Cases From
First District 1917.

Eighty-one applicants for license to practice law in North Carolina yesterday faced the prescribed list of questions in the Supreme Court room and immediately dubbed it a stiff examination. The questions were put up by Associate Justice Walker, and, according to the men taking the trial, they cover the North Carolina law very thoroughly.

One of the applicants for license was a woman and five of them were negroes. Today the Supreme Court meets for the argument on appeals from the First District.

The eighty-one applicants were called upon to answer the following questions:

1. In the exercise of the power of eminent domain, is the owner of property entitled to notice before the same is condemned to a public use, and at what stage of the proceeding should notice be given, if any is required?
2. What restriction is imposed by the Constitution upon municipal corporations, when exercising the power to tax or to contract debts?
3. Can incomes be taxed in this State, and if so, under what limitation?
4. If the object for which a tax is levied by a municipal corporation comes within the general designation of a "necessary expense," who must then determine whether the expense is a necessary one in the particular case?
5. Is land covered by navigable waters subject to entry and grant, under our statute, and, if so, for what purpose and to what extent?
6. What right has a riparian owner in water flowing through or past his land—may he divert the stream from its natural course, and, if so, for what uses and to what extent?
7. How may a written will be revoked? Can it be partially canceled, and, if so, how?
8. What is meant by the republication of a will?

25. A. offers to sell B. a tract of land for \$1,000 by a description which covers two tracts. A. intends to sell one tract only, and believes that the description expresses his intent. B. accepts the offer in good faith in ignorance of A.'s mistake. What kind of a mistake is this? Will equity afford A. any relief, and if so what relief?

26. A., B., and C. are sureties on a note for \$1,000, and A. is compelled to pay the note. B. is insolvent. What are the rights of A. against C.? What is the doctrine called?

27. What is the difference between an active and a passive trust, and how does each affect the title to land?

28. What is the difference between resulting and constructive trusts, and how are they created?

29. When is a judgment an estoppel as to all matters which might have been litigated in the action and when not?

30. Give an example of an estoppel in pais.

31. Is a certificate of stock in a corporation, which owns nothing except land, real property or personal property?

32. What is a promoter, and what is his relation to the corporation?

33. Who can contest the right of a foreign corporation to do business in this State, and how?

35. A. deposits shares of stock with B. as security for a debt. A creditor of A. levies an attachment on the stock which has not been transferred to B. on the stock book of the corporation. Has B., or the creditor, priority? Give the reason.

35. Define the franchise of a corporation.

36. Distinguish between the capital stock of a corporation, its capital and the shares of stock.

37. What is meant by stock dividend and when and out of what can it be issued?

38. What is a voting trust, and is it valid?

39. Under what circumstances may a corporation insure the life of one of its officers under the North Carolina statute?

40. A policy of insurance is issued on the life of A. having as a part of it the clause making it incontestible, except for the nonpayment of premiums. A. tenders the second premium when due and the company refuses to accept it. What are the remedies of A.?

41. A. takes out an accident insurance policy and is lynched by a mob. Can there be a recovery on the policy? Give the reason.

42. Is a lunatic answerable in compensatory and punitive damages for a tort? Give the reason.

43. A. Buys a horse from B. for \$200, relying on the representation that the horse is sound, when in fact the horse is not sound and is not worth more than \$50. What are the remedies of A.? If he sues to recover damages, what is the rule for assessing?

44. What is the measure of damages for wrongful death?

45. Give the legal definition of malice.

46. A friend visits a guest of a hotel and falls down an elevator shaft and is injured. Under what circumstances will the proprietor of the hotel be liable and when not?

47. A., while intoxicated, falls asleep on the track of the Southbound Railway Company and is struck by a passing train and injured. The engineer could have seen A. in time to avoid the injury, but he did not see him. Is the railway company liable? If so, upon what principle?

48. Draw the complaint in the action.

49. A. enters upon land and, with the consent of the life tenant, cuts timber thereon and sells it to B., who purchases in good faith and for value. The logs when severed are worth \$100 on the land and \$200 when they are sold to B. What remedies, if any, has the remainderman against B.? If he can recover damages, what is the measure?

50. How may implied authority of an agent arise?

52. What is necessary to show ratification of an act of an agent done without authority?

52. A. negotiates a sale of land from B. to C. under an agreement that he is to receive 5 per cent commissions from B. and the same amount from C., the agreement for commissions being made separately and without B. or C. knowing of the agreement with the other. There is no false representation made and the purchase price is fair. Can A. recover his commissions from B. or C., or both? Give the reason.

53. Give two differences between a pledge and a mortgage.

54. Draw a negotiable note from B. to A. for \$100 due six months after date.

55. Give important differences between partnerships, joint stock companies and corporations as to liability of the members and the ownership of the property.

56. What is meant by "potential existence" when used in connection with the ownership of personal property?

57. When is a party entitled to recover interest?

58. Give the four sources of quasi-contractual obligations.

59. Give the successive steps in an action in the Superior Court.

60. A. obtains judgment against B., who owns nothing except money and notes. How can A. enforce the collection of his judgment?

61. A. is the owner of a note against B., who is a nonresident, but owns property in this State. How can A. collect his debt? Give the procedure and the kind of judgment that may be rendered in this State.

THIRTY-THREE ARE SEEKING LICENSE

Usual Number of Would-Be
Lawyers Decreased by Rea-
son of War

July 7 1918.
QUESTIONS POSTED

BY JUSTICE ALLEN

Two Negroes and One Woman Take Examination

Thirty-three candidates for license to practice law in North Carolina yesterday stood the examination before the Supreme Court. Thirty-four candidates had made application, but one of those applying, a negro lieutenant now in camp at Illinois, did not arrive. One woman stood the examination and there were two negroes in the lot of candidates.

The questions in the examination were made up by Associate Justice Allen and the examination was conducted by Chief Justice Walter Clark and Justices Hoke and Allen.

The applicants for license this year are about fifty per cent of the usual number. The war is judged to be responsible for the law schools report the number of students materially decreased by reason of the Reserve Officers' Training Camp and the draft.

The questions presented yesterday, as usual, variously characterized by the applicants as difficult and easy, are the following:

1. What is the difference between a Federal and a Confederate form of government?
2. What control, if any, has the Government of the United States over the adoption of a form of government by the State?
3. Give the substance of the provision of the Constitution of the United States in reference to issuing warrants, and as to searches and seizures.
4. What is meant by the "full faith and credit" clause of the Constitution?
5. How far, if at all, is this clause of the Constitution applicable to decrees for divorce?
6. Has Congress the power to tax the salary of a State officer? Give the reason for your answer.
7. Draw a deed from A. to B. without covenants, conveying a defeasible fee in the Walker Place, consideration \$100.

8. A. is the owner of a tract of land known as the Clark Place, and B. is in the wrongful possession. Draw the complaint in an action to recover possession.

9. A. dies leaving a will in which he has devised one tract of land to his son and another tract to his nephew. The son and nephew die before A., leaving children. What becomes of the devises to the son and nephew, and why?

10. What is the difference, if any, between a covenant of seizin and a covenant of warranty as to the time for the commencement of an action for the breach?

11. What is the controlling test and distinction between covenants that run with the land and those that do not?

12. What is the difference between a conditional limitation and an estate upon condition?

13. A. agrees to sell B. a certain tract of land by parol. He signs a deed and deposits it with C. in escrow. Can B. enforce the agreement? Give the reason.

14. What is the difference in effect on an after-acquired title between an estoppel by deed and a rebutter?

15. Is an action to recover a penalty in contract or in tort? Give the reason.

16. A. invites B. to take dinner with him and B. accepts. Is this a contract? Give the reason.

17. What is an option, and when is it binding so that it cannot be withdrawn?

18. Suppose an offer is made by letter and is accepted by letter. When is the contract complete?

19. If a letter withdrawing the offer is mailed, but not received, before the letter of acceptance is mailed, is there a contract? Give the reason.

20. A. agrees to sell the timber on a tract of land for \$4 per thousand feet. They agree upon a competent man to measure the timber, who reports in good faith 200,000 feet, and B. pays A. It is afterwards discovered there are only 100,000 feet of the timber. Has B. any remedy? Give the reason.

21. When is a sale of goods complete, if the seller and buyer live at different places and the goods are to be transported from one to the other by a common carrier on an open bill of lading?

22. A., living at Raleigh, sells goods to B., living at Goldsboro, believing B. to be solvent. The goods are delivered to a common carrier and are carried to Goldsboro, but before actual delivery A. learns that B. is insolvent. What right, if any, has A., and how is it exercised?

23. Give the different kinds of property to which the doctrine of specific performance applies.

24. When will a court of equity restrain the commission of a trespass?

44. What is the original and what are the appellate and the supervisory jurisdiction of the Supreme Court as prescribed by the Constitution?

45. What jurisdiction can the Legislature confer on courts inferior to the Supreme Court?

46. In what court must letters of administration be taken out?

47. What is a Special Proceeding, and in what court must it be instituted?

48. Prior to 1868, when an action was brought in the wrong county, was the error jurisdiction? How is it now? And what is now the effect of an error in venue?

Jury.

49. In what cases does the Constitution guarantee a right of trial by jury, and in what cases may it be waived?

50. Is the trial of a party in a recorder's court, without indictment by a grand jury and without a jury, for a crime less than felony, valid or not, and why?

51. Can a State by its Constitution authorize a trial jury to consist of less than twelve, and dispense with the requirement of unanimity?

52. Is the disallowance of a challenge to a juror ground for exception or not when the defendant has not exhausted his peremptory challenges? Give the reason.

Taxation.

53. What is the requirement of our Constitution in regard to uniformity in the assessment and taxation of property?

54. What six other kinds of taxes can and does the Legislature levy or authorize counties and town to levy, besides the property tax?

55. As to the poll tax, what restrictions does the Constitution impose as the limit of the amount that can be levied by the State and county and as to the purposes for which it can be used?

56. What is the equation of taxation, and is the Legislature required to observe it when a tax is not levied for ordinary expenses of State and county government?

57. Is the upkeep of public roads necessary expense of a county government?

58. For what purposes can a county, township, city, or town incur a debt or levy a tax without the vote of a majority of the qualified voters therein?

Homestead.

59. What is the effect of a docketed judgment upon the homestead when there is no property in excess thereof?

60. When the owner of an allotted homestead against which there are docketed judgments sells the homestead, what is the effect upon the judgment lien?

Married Women

41. State succinctly what were the property rights of married women prior to the Constitution of 1868, and what provision in that regard is made there-

42. In what cases may a wife sue without joining her husband? And in what cases may she be sued without joining her husband?

43. What was the dower right in this State from 1784 down to 1868, and what change was made by the statute in that year? Or was the change made by the Constitution?

44. Has a married woman the right to her personal earnings by her needle or otherwise, and how was this until recently? Was the change made by statute, by the Constitution, or judicial decision?

45. Has a married woman the right to contract without her husband's assent and make her property, real and personal, liable for such contract without specifically charging it? And if so, has this change been made by statute or judicial decision?

46. Has a married woman the right to recover in her own name and for her own use and without joining her husband for her personal injuries, as, for instance, for the loss of her limb and for loss of her time, and mental and physical anguish caused thereby? If so, has the change been made by statute or judicial decision?

47. Does the husband retain the common law "right to chastise his wife with a switch no larger than his thumb" (which was long since abolished in England); and if not, when was it abolished, and was it done by statute or judicial decision?

48. If lands are devised or granted to two persons how do they ordinarily hold, and who receives the income? If the two persons happen to be man and wife, how do they hold, and who receives the entire income from the property during their joint lives, and can it be sold for debt? Was this estate by entireties created in this State by statute, or is it a "survival" created by some judge in England (where it has long since been abolished)?

Real Estate.

49. It is not enough to know the law, but we should know the reason thereof. The "highly technical" rule in Shelley's case is in derogation of the intent expressed in the gift or conveyance and was adopted nearly 3 1-2 centuries ago (in 1581) by judicial decision, and not by statute, in England for the purpose, as law writers tell us, of preserving, under the system of Feudal Tenures, to the lord the right of wardship and other feudal profits which would have been ousted by the heir taking as purchaser and not as successor. Feudal Tenures were totally abolished in 1660. The rule now serves an entirely different but beneficial public policy in this State. What is it?

50. What is the only instance in which the State Constitution requires privy examination of the wife, and is that as to the conveyance of property of the husband or of the wife?

Divorce.

51. What is the difference, if any, which still subsists in regard to the grounds of divorce as to the wife and as to the husband?

52. What is the tenor of the affidavit required in actions for divorce, and can the parties confess judgment or waive a jury trial in any other manner?

53. What is alimony, and when is it allowed and by whom is the amount fixed, by the judge or the jury? Is the amount subject to review on appeal? Can it be increased or diminished by another Superior Court judge on motion?

Trial.

54. The competency of a witness is a matter of law for the court, and his credibility is for the jury. Can one charged with a capital felony be convicted upon the unsupported testimony of an accomplice?

55. In both civil and criminal cases, can the jury render their verdict upon the unsupported testimony of the parties themselves, or upon that of near relatives, if such testimony is believed by the jury?

56. In an indictment for seduction under promise of marriage, in which the testimony of the woman is competent, is the jury forbidden by our statute to take it as true if unsupported? If so, does our law, in any other instance, deny the jury the right to act upon testimony which may be believed by them to be true and which the law makes competent?

Appeals.

57. When there is an appeal from the judgment of the clerk, to what court is it taken, and is the appeal heard at chambers or at term?

58. When an appeal is taken from the clerk in a matter of which he had no jurisdiction or jurisdiction only in part, or when by amendment matter is added of which the clerk would not have jurisdiction, what course may the judge take in his discretion?

59. If a party convicted before a justice of the peace for a crime of which the justice had no jurisdiction, appeals, must the Superior Court dismiss the case, or can the court hold the defendant and direct a bill to be sent before the grand jury?

Usury.

60. The law prescribes a penalty of forfeiture of the entire interest when a greater rate than 6 per cent is charged and that when such greater rate has been paid the debtor may recover twice the interest paid and also can plead such penalty as a counter-claim in any action to recover the debt, but it has been held that if the debt is secured by a mortgage the debtor cannot prevent the property from being sold thereunder unless he releases the penalty and pays full interest. Is such exemption in favor of usurious mortgages and mortgagees to be found in the statute, or is such exemption created by a ruling of the court?

Intoxicating Liquors.

61. What is the purport of the Webb-Kenyon law and of the Reed law, in regard to transporting intoxicating liquors into prohibition States?

62. In the Federal Court, when there is a violation of the law against the illicit sale or distilling of intoxicating liquors, or in smuggling articles across the border, the team and wagons and any other instrumentalities used are forfeited as against the owners and mortgagees of such instrumentalities, though they had no knowledge of the intention to use the property for such purpose. Is this true when there is violation of State law by the conveyance of intoxicating liquor across the State line or from point to point within the State for illicit sale?

Criminal Law.

63. Does the distinction between principals and accessories before the fact in capital cases still obtain, or are the accessories before the fact now in effect co-principals and triable as such?

64. How many grand jurors must concur in finding a true bill? Must the grand jury be unanimous?

65. Before 1868 the courts, upon conviction for certain offenses, could impose sentences of corporal punishment, such as whipping, branding with hot irons, and cutting off the offender's ears. What provision did the Constitution adopt in regard to such punishment? For what crimes, even after our State Constitution of 1776, was punishment by being burnt alive at the stake still inflicted by the courts under authority of our laws?

66. In Blackstone's Commentaries he says that "To deny the possibility, nay, the actual existence of witchcraft and sorcery is at once flatly to contradict the revealed Word of God in various passages both of the Old and New Testaments, and the thing itself is a truth," and that these "crimes are punishable with death by fire." Is this now, or has it been at any time held, the law in North Carolina?

9. A. devises land to B., and if B. dies without leaving children to C. If B. dies leaving children, will they take the land, and, if so, in what right—by purchase, under the will, or by descent from their father? Give your reason.

10. What is the test by which to determine whether a remainder is vested or contingent?

11. Can a fee be given after a fee in a deed or a will, and, if so, by what kind of limitation?

12. If a testator devises a tract of land to A. for life and then to his heirs, are the "heirs" those who are such at the testator's death or at the expiration of the life estate?

13. If an estate is granted to A. for the life of B., and A. dies before B., who takes the estate?

14. Is there such an estate now as tenancy by the curtesy in title, giving your reason? When did an estate by the curtesy become consummate at common law, and when does it vest in right and possession under the present law?

15. What is necessary to constitute a good and effective delivery of a deed?

16. What is an escrow, and when does the title pass thereunder from the grantor to the grantee?

17. Who may make entry upon land for the breach of a condition, and is the right of entry assignable by grant or other conveyance? Give your reason.

18. If a condition annexed to an estate—precedent or subsequent—be void, what is the legal effect upon the estate granted?

19. A. devises land to B. for her life, and at her death to the heirs male of her body by her husband, C., what estate does B. get by the devise?

20. What is meant by a covenant running with the land, and what covenants do run with the land?

21. Husband and wife are seized of an estate by the entirety in hand, and the husband, having secured a divorce, remarries. He then dies intestate, his divorced wife and his second wife surviving him. What are the rights, if any, of such survivors and the husband's heirs, in the land? State your reason.

22. A. owns land which is bounded on one side by a highway and on the other by a nonnavigable stream, and conveys it to B. Does the latter acquire any interest in the highway or in the stream, and if the stream had been navigable, what would be his rights therein, at common law?

23. A. conveys land to B. upon a parol agreement that the latter will hold the same for A., the grantor, and convey the legal title to him when requested to do so. Is the trust an enforceable one?

24. What is a defeasance?

25. What is the difference between an assignment of a lease and a sub-letting, and how, if at all, are the assignee and sub-lessee affected by the covenants in the original lease?

26. What is a base or determinable fee, and how does it differ from a conditional limitation?

27. A. leases a house to B. by a written agreement, in which there is no covenant as to repairs and during the tenancy the roof leaks, so as to render the upper story of the house uninhabitable. Who must make the repairs?

28. Distinguish between a general, a specific, and a demonstrative legacy, and in what order do they abate?

29. When is a legacy said to be adeemed and when lapsed? And what is the legal effect of a legacy being void or lapsed?

30. If A. deals with B. as principal in a contract, when in fact he is the agent of C., what are B.'s rights as against A. and C. in respect to the transaction, and what is their liability to him if there is a breach of the contract?

31. Is parol evidence admissible to show that an apparent principal in a note is really a surety?

32. Can a bill of exchange be accepted before it is drawn?

33. Define a special indorsement and state how it affects an instrument payable to bearer or which has before been indorsed in blank.

34. What is an acceptance for honor or supra protest?

35. What is the difference in the liability of a common carrier with respect to goods and passengers; and, as to goods, when does the liability as carrier end and that of warehouseman begin?

36. If goods are carried to their destination and there stored by a common carrier in his warehouse, will he be liable for their destruction by fire while so stored?

37. A forged will is duly admitted to probate and B., a debtor is the testator, pays his debt to the executor, who has qualified. The genuine will is afterwards found and duly probated, and the executor, having qualified thereunder, sues E. for the recovery of the same debt. Is he entitled to judgment, and would he be, if the first will had been procured by fraud or undue influence?

38. A. brings an action against B. for the conversion of personal property, and judgment goes against A. on the ground that he had sold the property to B. Can A. recover in another action for the price reserved or for any other amount, or is he estopped by former judgment?

39. When and how will equity afford relief when bonds or other written instruments are lost?

40. What is the remedy of a surety against his principal after the debt has become due and before it is paid?

41. What is an injunction and what are the difference kinds?

62. A. buys a tract of land at execution sale under a parol agreement that he will convey the land to C. upon payment to him of the amount of his bid, and interest. The deed is made to A. and C. at once tenders the amount bid and interest and demands a deed, which A. refuses to execute. Is the interest of C. subject to sale under execution? Give the reason.

63. A. persuades B. to cut off his hand in order that he may ply his trade as a beggar more successfully. Is B. guilty of a crime? Give the reason.

64. Is drunkenness ever a defense in a criminal action, and, if so, when and to what extent?

65. A married man, resident of this State, goes to another State and obtains a decree for an absolute divorce, the summons being served by publication.