

# RETHINKING GENERATIVE AI'S PERFORMANCE ON THE BAR EXAM AND ON LAW SCHOOL EXAMS

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## TABLE OF CONTENTS

Introduction.....	1
Part I: GPT4 and Property Law Questions .....	5
A. Essay Exam Issue-Spotting Fact Patterns.....	5
B. Property Law Multiple Choice Questions.....	34
Part II: GPT4 and the Uniform Bar Exam .....	36
Conclusion .....	41

## *INTRODUCTION*

A 2023 study suggested that the large language model (LLM) GPT4 passed the Uniform Bar Exam (UBE)<sup>1</sup>. Subsequent commentary suggests that GPT's performance on the UBE was not as impressive as the original study indicated.<sup>2</sup> Our research

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1. Daniel Martin Katz, et al., *GPT-4 Passes the Bar Exam*, ROYAL SOCIETY PUBLISHING (Sep. 22, 2023), [https://www.researchgate.net/publication/378489909\\_GPT-4\\_passes\\_the\\_bar\\_exam](https://www.researchgate.net/publication/378489909_GPT-4_passes_the_bar_exam).

2. Eric Martínez, *Re-evaluating GPT-4's Bar Exam Performance*, 33 A.I. & LAW 581 (Mar. 30, 2024), <https://doi.org/10.1007/s10506-024-09396-9>. Among other critiques, Martínez makes a number of observations on score percentiles achieved by GPT4. Katz's study claimed that GPT-4 passed the bar and scored within the 90th percentile. Katz's study compared the performance of GPT-4 against those who took the Illinois Bar Exam during the February administration. Scores on the February bar are typically lower than those on the July Bar Exam because the February administration has more repeat takers who pass at a lower rate than first-time takers. Comparing GPT-4's performance to that of July test takers, GPT-4 scores below the 69th percentile overall with an essay score at about the 48th percentile. Further, comparing GPT-4's score only to first-time test takers on the July Bar Exam administration, GPT-4 scores around the 62nd percentile overall and around the 42nd

indicates that GPT4 does perform relatively well on many bar exam questions when compared to its very poor performance on some types of law school exams.<sup>3</sup> We therefore suggest that GPT4's relative success on the UBE says more about the structure of bar exam questions than it does about GPT4's ability to perform certain legal tasks more broadly.

This essay is an illustration of the difficulty in writing about a rapidly-improving technology. Much of the essay is based on testing that was done in August 2024. Preliminary tests done in August 2025 suggest that the newly-released GPT5 performed well on some of the law school exam tasks that GPT4 struggled with. We have kept the original structure of the essay to highlight the difference in GPT4's performance on different types of exam question structures. We have added updates in places to highlight GPT5's improved performance on specific tasks.

LLMs, like GPT4, function by predicting what word is most likely to follow a particular set of text. As anyone who has spent any time with an LLM can tell you, these systems perform better when they are prompted well.<sup>4</sup> Broadly speaking, prompting involves providing the model with additional context that allows it to improve its generation of predictive text.<sup>5</sup> Prompting can come in many forms. Sometimes, the user provides a specific set of text intended to point the LLM in a particular direction—some examples relevant to the context of law exam questions might include “please answer the question in the format of a law firm associate writing a memo to a partner” or “please be sure to consider the impact of *International Shoe* on your answer.” Other times, a set of text might include words that provide important context that assist the LLM in answering. For example, a set of text that describes a civil procedure problem might include the words “motion to dismiss for lack of personal jurisdiction” that would prompt an LLM, helping it generate a better answer than it

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for essays. Finally, comparing GPT-4's scores to those only those who passed the Bar Exam, GPT-4's scores drop to around the 48th percentile overall and only about the 15th percentile on the essay sections.

3. Catherine Fregosi, *Change in the Legal Writing Classroom: The NextGen Bar Exam and Generative AI*, 49 Vt. B.J. 13, 14–15 (Fall 2023).

4. Maria E. Berkenkotter & Lino S. Lipinsky de Orlov, *Can Robot Lawyers Close the Access to Justice Gap? Generative AI, the Unauthorized Practice of Law, and Self-Represented Litigants*, 53 COLO. LAW. 40, 42 (Dec. 2024).

5. Reginald A. Hirsch & Patrick A. Wright, *Techxas Stampede: Rushing Toward AI Integration in Family Law*, in 50<sup>TH</sup> ANNUAL ADVANCED FAMILY LAW COURSE 32 (Texas Bar CLE, 2024).

would have if some or all of those words were omitted from the text used to ask the LLM the question.

We took many of the same bar exam questions from the original GPT4 and the bar exam study and ran them through GPT4. We also ran a law school Property Law essay final and 98 Property Law multiple-choice questions through GPT4. We found that (a) GPT4 performed fairly well on the bar exam questions, (b) GPT4 performed poorly on the Property Law essay final, and (c) GPT4 performed slightly better but still poorly on the Property Law multiple-choice questions. Given the limited scope of our study, we want to be modest about describing the scope of our findings. Even with its limited scope, however, our study suggests the following:

- GPT4 performed reasonably well on bar exam questions because those questions are highly prompted. In other words, bar exam questions include important context that helps an LLM generate better answers than it would be able to generate without that context.
- GPT4 performed poorly on law school essay questions that contain only fact patterns that do not contain prompts that point the LLM to the correct legal issue. Spotting issues in fact patterns is one of the most important skills for lawyers, and GPT4 performed poorly on this skill for this experiment. GPT4's performance often improved with prompting, but even after prompting, GPT4 still showed a propensity for getting some answers wrong.
- GPT4 performed poorly on our set of law school Property multiple-choice questions, though its performance on the multiple-choice questions was better than its performance on the essay questions. Compared to essay questions that only have fact patterns, the answers in multiple-choice questions provide additional context that helped GPT4 answer correctly.
- GPT4 seemed to perform better on more common legal issues but not as well on less common legal issues. This should be no surprise, because the data used to train GPT4 likely contains more material on common issues than

it does on less common issues.<sup>6</sup> To be clear, the less common issues on which GPT4 struggled are not rare. They are commonly taught in law school Property Law courses, listed on the subject matter outlines that define the scope of bar exam coverage, and incorporated in the curriculum of commercial bar review courses.<sup>7</sup>

□ GPT4 sometimes just gets answers wrong. At times, this appeared to be because the LLM makes up a relevant piece of information—what is often called the problem of hallucination. Other times, GPT4 stated the law and the facts correctly but still got the answer wrong.

□ GPT4’s performance on these questions demonstrated three independent weaknesses in performing legal analysis: (a) potential inability to spot some legal issues from fact patterns without prompting; (b) potential problems with less common legal issues; and (c) potential problems in just getting things wrong.

GPT4’s performance on bar exam questions suggests that it could perform reasonably well—though not perfectly—in providing answers to highly prompted questions. GPT4’s struggles with identifying issues from fact patterns was concerning because issue spotting is a core legal task.<sup>8</sup> Even with these identified weaknesses, GPT4 could be a very useful part of a lawyer’s toolkit.<sup>9</sup> With GPT5’s improvement in issue spotting, we fully expect LLMs to be even more important tools for lawyers in the future.

In Part I, we examine GPT4’s performance on essay exam and multiple-choice questions from a law school Property Law course. We illustrate how GPT4 struggled with issue spotting and with less common legal issues but often performed better when prompted. We also provide two examples of GPT4 getting an answer wrong even after prompting. Along the way, we provide

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6. Amelia Smith Rinehart, *Accepting the Powers and Pitfalls of AI*, 58 W. VA. LAW. 10, 10–11 (Summer 2023).

7. Cade Metz & Karen Weise, *A.I. Is Getting More Powerful, but Its Hallucinations Are Getting Worse*, N.Y. TIMES (May 6, 2025), <https://www.nytimes.com/2025/05/05/technology/ai-hallucinations-chatgpt-google.html>; Maya Yang, *US Lawyer Sanctioned After Being Caught Using ChatGPT for Court Brief*, THE GUARDIAN (May 31, 2025), <https://www.theguardian.com/us-news/2025/may/31/utah-lawyer-chatgpt-ai-court-brief>.

8. See MODEL RULES OF PRO. CONDUCT r. 1.1 cmt. 2 (A.B.A. 2025) (“[p]erhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve.”).

9. Justice Brooks, *Understanding Generative AI: A Primer for the Next Step in AI and Its Legal Applications*, 84 OR. BULL. 22, 25 (Apr. 2024).

some brief updates illustrating GPT5’s improved performance. In Part II, we examine GPT4’s performance on UBE questions. We illustrate how each of the three types of UBE questions are highly prompted in ways that improved GPT4’s performance. We then conclude by suggesting how the differences in GPT4’s performance in these different contexts suggest that the structure and internal prompting of bar exam questions helped GPT4 perform relatively well on the UBE. We also conclude that GPT5 displayed a marked improvement in performance over GPT4 on both essay and multiple-choice questions.

### *PART I: GPT4 AND PROPERTY LAW QUESTIONS*

We gave GPT4 a set of law school essay and multiple-choice questions that were used in a first-year Property Law course at Stetson University College of Law in the Spring 2024 semester. GPT4 performed poorly on both types of questions, though its performance on the multiple-choice questions was better than its performance on the essays. GPT4 struggled with identifying the correct issue in essay questions without prompting and seemed to struggle on multiple-choice questions that presented less common and/or more advanced legal issues.

#### *A. Essay Exam Issue-Spotting Fact Patterns*

Law school exams often test issue spotting—the ability of students to recognize legal issues in a fact pattern. As noted above, the ability to correctly identify the legal issues raised by a particular set of facts is a critically important legal skill. Most law school exams, especially in the first year, emphasize issue spotting.<sup>10</sup>

We ran an essay exam question from a Property Law exam through GPT4 and the results were poor. The overall question is an extended fact pattern. The call of the question simply asks the students to “Please discuss the issues raised by the following fact pattern.” As we illustrate with three example paragraphs from this question, GPT4 struggled with this type of unprompted question.

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10. Halle Hara, *Mastering Issue Spotting On Exams*, LAW SCH. PLAYBOOK, <https://www.lawschoolplaybook.com/examresources/mastering-issue-spotting-on-exams> [<https://perma.cc/TM5R-3945>] (last visited Oct. 18, 2025).

GPT4's performance, however, dramatically improved with prompting that identified the legal issue raised by the facts. Here is the first sample paragraph from the exam:

[Example 1A:]

Please discuss the legal issues raised in the next paragraph.

In 2015, Abe owned Blackacre and Beth owned Whiteacre. In 2016, Beth conveyed Whiteacre to Carl with a deed that contained a provision "reserving in Abe as the owner of Blackacre an appurtenant driveway easement for access across Whiteacre between Blackacre and Slippery Rock Road as follows [legal description of the easement boundaries]." Abe and Carl recently got into an argument. Now Carl is blocking the driveway and is claiming that Abe does not have a valid easement over Whiteacre.

This example tests the rule against reservations in third persons.<sup>11</sup> Easements can be created by grant or by reservation. When an easement is created by reservation, the owner of the servient parcel holds the easement back from the interest that they are conveying to a grantee.<sup>12</sup> In our example, Beth owns Whiteacre and is conveying Whiteacre by deed to Carl. There would be no problem if Beth reserved an easement in herself as the grantor. The rule against reservations in third persons, however, prohibits the creation of an easement by reservation in someone other than the grantor or the grantee.<sup>13</sup> In this example, Beth is the grantor and Carl is the grantee. The deed attempts to reserve an easement in a third person—Abe, who is the owner of the neighboring parcel Blackacre. The attempted reservation in favor of Abe therefore runs afoul of the rule against reservations in third persons. This rule is followed by a majority of U.S. jurisdictions and is covered in many Property Law casebooks.<sup>14</sup>

GPT4's answer to this question did not mention the rule against reservations in third persons:

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11. See D. BENJAMIN BARROS, ANNA P. HEMINGWAY & SHELLEY CAVALIERI, PROPERTY LAW 520–25 (3d ed. 2024).

12. *Id.* at 516.

13. *Id.* at 521.

14. E.g. *id.* at 520–25; JESSE DUKEMINIER ET. AL., PROPERTY 776 (10th ed. 2022); DAVID CRUMP, DAVID CAUDILL & DAVID HRICIK, PROPERTY: CASES, DOCUMENTS, AND LAWYERING STRATEGIES 584 (4th ed. 2020).

[Answer 1A:]

The legal issues raised in this scenario primarily revolve around the validity and enforceability of the driveway easement that Abe purportedly holds over Whiteacre, conveyed by Beth to Carl in 2016. Here are the key legal considerations:

1. Easement Creation and Validity: The validity of an easement depends on whether it meets the legal requirements for creation. Generally, an easement can be created by express grant, implication, necessity, or prescription. In this case, the easement was created by an express grant through the deed from Beth to Carl, reserving an easement for Abe over Whiteacre. The key issue here is whether the language of the deed clearly and effectively created the easement in favor of Abe.
2. Interpretation of Deed Language: The language used in the deed is crucial in determining the scope and nature of the easement. The provision in the deed should clearly delineate the rights and obligations of the parties involved, including the extent of the easement, its purpose, and any limitations or conditions. The legal description of the easement boundaries must be precise and unambiguous to ensure enforceability.
3. Intent of the Parties: The intent of the parties at the time of conveyance is significant in interpreting the easement. Courts will examine the circumstances surrounding the conveyance to determine whether the parties intended to create a legally binding easement in favor of Abe. Any evidence of negotiations, agreements, or discussions between Abe, Beth, and Carl regarding the easement may be considered in determining intent.
4. Enforceability Against Subsequent Owners: An easement created by deed is generally enforceable against subsequent owners of the servient estate (Whiteacre) unless there are valid defenses or challenges to its enforceability. Carl's claim that Abe does not have a valid easement over Whiteacre raises questions about the validity and enforceability of the easement against him as the current owner.
5. Interference and Remedies: Carl's actions in blocking the driveway may constitute interference with Abe's easement rights. If Abe can establish the existence and validity of the

easement, he may seek legal remedies such as an injunction to compel Carl to remove the obstruction and allow access to the driveway.

In summary, the legal issues revolve around the creation, interpretation, and enforceability of the driveway easement granted to Abe over Whiteacre. Abe would need to demonstrate that the easement was properly created, clearly delineated in the deed, and enforceable against Carl as the current owner of Whiteacre. Any ambiguity in the deed language or disputes over the intent of the parties could complicate the resolution of the matter.

This answer from GPT4 was a general list of issues that may come up in a dispute over easement validity. It did not correctly identify the relevant legal issue and did not engage with the facts in any meaningful way. It would be a failing answer to a law school Property Law exam question.

We next tried to point GPT4 in the right direction by refining the call of the question to focus on easement validity:

[Example 1B:]

Please explain whether and why the easement described in the next paragraph is valid.

In 2015, Abe owned Blackacre and Beth owned Whiteacre. In 2016, Beth conveyed Whiteacre to Carl with a deed that contained a provision “reserving in Abe as the owner of Blackacre an appurtenant driveway easement for access across Whiteacre between Blackacre and Slippery Rock Road as follows [legal description of the easement boundaries].” Abe and Carl recently got into an argument. Now Carl is blocking the driveway and is claiming that Abe does not have a valid easement over Whiteacre.

GPT4’s answer was not an improvement on its first attempt because it did not identify the rule against reservations in third persons:

[Answer 1B:]

The easement described in the paragraph appears to be valid, provided certain conditions are met:

1. Express Creation: The easement was expressly created through the deed from Beth to Carl, which contained a provision explicitly reserving an easement for Abe over Whiteacre. This means the parties intended to create a legally binding easement in favor of Abe.
2. Appurtenant Easement: The easement is described as “appurtenant,” indicating that it benefits the land owned by Abe (Blackacre) and is attached to that land rather than to any particular individual. Appurtenant easements run with the land and are transferred automatically with changes in ownership of the dominant and servient estates (Blackacre and Whiteacre, respectively).
3. Legal Description: The deed includes a legal description of the easement boundaries, which is essential for clarity and enforceability. The legal description should accurately delineate the extent of the easement and its location on Whiteacre.
4. Intent and Enforceability: The language of the deed suggests an intention to create a valid easement for Abe’s benefit. As long as the language is clear and unambiguous, and there are no indications of fraud, duress, or mistake, the easement should be enforceable against subsequent owners of Whiteacre, including Carl.

Given these factors, the easement described in the paragraph appears to be valid, assuming the deed language effectively creates the easement and the legal description accurately defines its boundaries. Carl’s claim that Abe does not have a valid easement would likely need to be based on specific legal grounds, such as challenges to the validity of the deed or the language used to create the easement. Without such grounds, Abe would likely have a legal right to enforce the easement against Carl and seek remedies for interference with his access to the driveway.

Again, this is a laundry list of issues that can come up in easement disputes. The answer misses the main issue.

Finally, we expressly directed GPT4 to the relevant legal issue:

[Example 1C:]

Please explain how the rule against reservations in a third person applies to the easement described in the following paragraph.

In 2015, Abe owned Blackacre and Beth owned Whiteacre. In 2016, Beth conveyed Whiteacre to Carl with a deed that contained a provision “reserving in Abe as the owner of Blackacre an appurtenant driveway easement for access across Whiteacre between Blackacre and Slippery Rock Road as follows [legal description of the easement boundaries].” Abe and Carl recently got into an argument. Now Carl is blocking the driveway and is claiming that Abe does not have a valid easement over Whiteacre.

With the addition of seven prompting words—“rule against reservations in a third person”—GPT4’s answer improved significantly, though it made a major mistake that led it to the wrong conclusion:

[Answer 1C:]

The rule against reservations in a third person applies to the easement described in the paragraph because it involves a conveyance of property (Whiteacre) from one party (Beth) to another (Carl), with a reservation of an easement in favor of a third party (Abe).

The rule essentially states that a grantor (Beth, in this case) cannot reserve an interest in the granted property (Whiteacre) for the benefit of a third party (Abe) in the same conveyance. In other words, a grantor cannot reserve an easement for someone else’s benefit when conveying property to another party.

However, there is an exception to this rule when the reservation is made in favor of the grantor or the grantor’s successors. This exception allows a grantor to reserve an easement for their own benefit or for the benefit of those who succeed them in ownership of the reserved property.

In the given scenario, Beth conveyed Whiteacre to Carl and reserved an easement in favor of Abe. Since Abe was not the grantor or a successor in interest to the grantor, the reservation would typically violate the rule against reservations in a third person. However, because Abe is the owner of Blackacre, which is adjacent to Whiteacre, the reservation may be viewed as

benefiting the land retained by the grantor (Beth) or her successors (Carl, as the new owner of Whiteacre). This exception would likely render the reservation valid.

Therefore, in this case, the rule against reservations in a third person does not invalidate the easement reserved in favor of Abe over Whiteacre. As long as the language of the deed effectively creates the easement and meets other legal requirements, Abe should have a valid easement right over Whiteacre for access to Slippery Rock Road.

The first two paragraphs of this answer were quite good. Beginning in the third paragraph, however, GPT4 started going astray. It stated that there is an exception to the rule when the reservation is made in favor of the grantor. This is not exactly correct, though not egregiously wrong. It is more precise to say that the rule only applies to reservations in third persons and does not apply to reservations in the grantor. However, the gist of this part of the answer—that reservations in the grantor are valid—is correct.<sup>15</sup>

Moving to the fourth paragraph, the first two sentences were correct—the attempted conveyance of the easement to Abe would violate the rule against reservations in third persons.<sup>16</sup> GPT4 then followed up with this: “However, because Abe is the owner of Blackacre, which is adjacent to Whiteacre, the reservation may be viewed as benefiting the land retained by the grantor (Beth) or her successors (Carl, as the new owner of Whiteacre). This exception would likely render the reservation valid.” This is simply wrong.<sup>17</sup> Beth and Carl are the former and present owners of Whiteacre, and will bear the burden, not the benefit, of the easement. It is hard to tell whether GPT4 was making up an incorrect rule or if it merely misapplied the correct rule. In any event, this part of the answer is wrong, and led GPT4 to make the incorrect conclusion in the final paragraph.

Here is GPT5’s response to the original unprompted Example 1A:

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15. See BARROS, HEMINGWAY & CAVALIERI, *supra* note 11, at 520.

16. See *id.* at 521.

17. See *id.*

This problem raises issues about the validity of an easement reservation in a deed, specifically whether a grantor can reserve an easement in favor of a third party who is not the grantee.

#### 1. Easement Basics

An easement appurtenant benefits a parcel of land (the dominant estate) and burdens another parcel (the servient estate).

Here, Blackacre (owned by Abe) would be the dominant estate and Whiteacre (owned by Carl) would be the servient estate.

#### 2. Reservation in Favor of a Third Party

At common law, the “stranger to the deed” rule applied: a grantor could not reserve an easement in a deed for the benefit of a third party who was not a party to the conveyance.

Example: If Beth conveyed Whiteacre to Carl, Beth could not in that same deed “reserve an easement” for Abe, because Abe was a stranger to the transaction. Under the traditional rule, that language would be void.

#### 3. Modern Trend

Many modern courts and the Restatement (Third) of Property: Servitudes reject the “stranger to the deed” rule as overly formalistic.

They allow a grantor to reserve an easement in favor of a third party, so long as the intent is clear and the deed is properly recorded.

If the jurisdiction follows the modern approach, the easement for Abe (benefiting Blackacre) would be valid, and Carl would have no right to block access.

#### 4. Interpretation of the Deed

The deed specifically says: “reserving in Abe as the owner of Blackacre an appurtenant driveway easement . . .”

This shows clear intent to create an easement appurtenant to Blackacre, not a personal easement.

Since the provision is in the recorded deed, subsequent purchasers (like Carl) are on notice.

### 5. Possible Arguments

Carl's Argument: The reservation is void under the "stranger to the deed" rule, so Abe has no valid easement.

Abe's Argument: Modern law enforces such reservations; the deed shows clear intent; the easement runs with Blackacre; Carl took title subject to it.

Core Issue: Does the jurisdiction follow the traditional "stranger to the deed" rule (invalidating the easement) or the modern Restatement approach (upholding the easement)?

Unlike GPT4, GPT5 correctly identified the issues from the original fact pattern without prompting.

Here is the second sample paragraph from the exam:

[Example 2A:]

Please discuss the legal issues raised in the next paragraph.

Anna bought a house located at 15 East Shore Terrace a few years ago. Last month, she entered into a contract to sell the house to Juliet. Two days ago, the house was seriously damaged in a fire. Anna and Juliet are now in a dispute about whether Juliet is obligated to close on the property in light of the damage to the house.

This paragraph raises the issue of risk of loss for physical damage to the property during the executory period of a real estate contract—that is, during the time between the signing of the contract and the closing, when the seller conveys ownership to the buyer through delivery of a deed.<sup>18</sup> Most ordinary people would think that the seller bears the risk of loss until the closing. Under the doctrine of equitable conversion, however, the buyer is deemed to be the equitable owner of the property from the time the contract is signed. Under this doctrine, once the contract is signed, the risk

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18. Alan M. Weinberger, *Equitable Conversion and Risk of Loss*, in 12 THOMPSON ON REAL PROPERTY § 99.09(a) (David A. Thomas ed., 2025).

of physical loss transfers to the buyer.<sup>19</sup> A small number of jurisdictions modified this rule by statute, typically by adopting the Uniform Vendor and Purchaser Risk Act.<sup>20</sup> The parties can (and should) allocate the risk of loss back to the seller in their contract. If they do not, the buyer bears the risk of loss and must close on the house despite the physical damage. A good answer mentions the doctrine of equitable conversion and concludes that, unless Anna and Juliet shifted the risk of loss back to Anna in the contract, Juliet bears the risk of loss and must close on the house despite the damage.

As with the first example, GPT4's answer has a laundry list of legal issues that might come up in a contract dispute, but fails to identify the key issue raised by the fact pattern:

[Answer 2A:]

The legal issues raised in this scenario revolve around the obligations and rights of the buyer (Juliet) and seller (Anna) in a real estate transaction that has been affected by an unexpected event—the serious damage to the house due to a fire. Here are the key legal considerations:

1. **Contractual Obligations:** The first issue to address is whether Juliet is obligated to close on the property despite the damage. This determination depends on the terms of the purchase contract between Anna and Juliet. Typically, purchase contracts include provisions regarding the condition of the property at the time of closing and the parties' rights and obligations in the event of property damage before closing. If the contract specifies that Juliet must proceed with the purchase regardless of any damage, she may be obligated to do so unless there are legal grounds for termination or renegotiation.
2. **Impossibility or Frustration of Purpose:** If the damage to the house renders performance of the contract impossible or significantly frustrates the purpose of the agreement, Juliet may have legal grounds to terminate the contract or seek renegotiation. The legal doctrines of impossibility or frustration of purpose may excuse performance under certain circumstances, particularly when unforeseen events beyond the

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19. *See id.* at § 99.09(b); BARROS, HEMINGWAY & CAVALIERI, *supra* note 11, at 467–68.

20. *See id.* at 468.

parties' control—such as a fire—make performance impracticable or defeat the purpose of the contract.

3. **\*\*Seller's Disclosure Obligations\*\*:** Depending on the jurisdiction and the terms of the purchase contract, Anna may have a legal obligation to disclose the fire damage to Juliet. Failure to disclose material defects or damage to the property could give rise to legal claims against Anna for misrepresentation or fraud. Anna's duty to disclose typically extends to known defects or conditions that could affect the value or desirability of the property.

4. **\*\*Insurance Coverage\*\*:** The parties' rights and obligations may also be influenced by any insurance coverage in place for the property. Anna's homeowner's insurance policy may cover the damage to the house, potentially mitigating the financial impact on both parties. The terms of the insurance policy and any subrogation rights of the insurer may affect the resolution of the dispute between Anna and Juliet.

5. **\*\*Negotiation and Resolution\*\*:** In light of the unexpected event and the resulting dispute, Anna and Juliet may attempt to negotiate a resolution to the situation. This could involve renegotiating the terms of the contract, agreeing on repairs or compensation for the damage, or mutually agreeing to terminate the contract.

In summary, the legal issues raised in the scenario center on the contractual obligations of the parties in a real estate transaction affected by unforeseen property damage, as well as potential legal doctrines, disclosure obligations, insurance considerations, and opportunities for negotiation and resolution. The resolution of the dispute will depend on the specific facts of the case, the terms of the purchase contract, and applicable legal principles.

Next, we modified the call of the question to specifically highlight the risk of loss issue:

[Example 2B:]

Please discuss who bears the risk of loss in the situation discussed in the next paragraph.

Anna bought a house located at 15 East Shore Terrace a few years ago. Last month, she entered into a contract to sell the house to Juliet. Two days ago, the house was seriously damaged in a fire. Anna and Juliet are now in a dispute about whether Juliet is obligated to close on the property in light of the damage to the house.

GPT4's answer again contained a laundry list of legal issues. The inclusion of "risk of loss" in the prompt led to the answer which identified the doctrine of equitable conversion, but failed to actually apply the rule or recognize that equitable conversion (rather than the other four possible issues it lists) is relevant on these facts.

[Answer 2B:]

In the situation described, the issue of who bears the risk of loss—Anna or Juliet—depends on the terms of the purchase contract and applicable legal principles. Generally, the risk of loss in a real estate transaction is allocated based on the principle of "time of risk transfer." Here are the key considerations:

1. **Contractual Provisions:** The purchase contract between Anna and Juliet may include provisions that specifically allocate the risk of loss in the event of property damage before closing. These provisions typically specify whether the risk of loss transfers to the buyer (Juliet) upon signing the contract, upon closing, or at some other agreed-upon time. If the contract explicitly addresses this issue, the parties are bound by its terms.
2. **Default Rules:** Absent explicit contractual provisions, default rules under the laws of the jurisdiction may govern the allocation of risk of loss. In many jurisdictions, the risk of loss is generally borne by the seller (Anna) until the closing of the transaction. This means that if the property is damaged before closing but after the contract is signed, the seller typically remains responsible for repairing or compensating for the damage.
3. **Doctrine of Equitable Conversion:** Under the doctrine of equitable conversion, once a purchase contract is signed, the buyer is considered the equitable owner of the property, and the seller holds legal title as trustee for the buyer's benefit. As a

result, the risk of loss often shifts to the buyer upon signing the contract, even before closing. However, the application of this doctrine may vary depending on jurisdiction and the specific circumstances of the case.

4. **\*\*Implied Warranty of Habitability\*\*:** Some jurisdictions impose an implied warranty of habitability on sellers, requiring them to deliver the property in a habitable condition at the time of closing. If the property is damaged to the extent that it no longer meets this standard, the buyer may have legal grounds to rescind the contract or seek damages.

5. **\*\*Insurance Coverage\*\*:** Insurance coverage on the property may also affect the allocation of risk of loss. If Anna has homeowner's insurance that covers the damage, she may be responsible for making a claim and using the proceeds to repair the property before closing. If the insurance coverage is insufficient, the parties may need to negotiate a resolution.

In summary, the allocation of the risk of loss in the situation described depends on the terms of the purchase contract, applicable legal principles, and any insurance coverage in place. Anna and Juliet should review the contract, consult legal counsel if necessary, and attempt to negotiate a resolution to the dispute based on their respective rights and obligations.

Finally, we modified the call of the question to specifically highlight the doctrine of equitable conversion:

[Example 2C:]

Please explain how the doctrine of equitable conversion applies to the situation discussed in the next paragraph.

Anna bought a house located at 15 East Shore Terrace a few years ago. Last month, she entered into a contract to sell the house to Juliet. Two days ago, the house was seriously damaged in a fire. Anna and Juliet are now in a dispute about whether Juliet is obligated to close on the property in light of the damage to the house.

With the correct legal issue highlighted in the question, GPT4's answer was quite good:

[Answer 2C:]

In the situation described, the doctrine of equitable conversion plays a significant role in determining the rights and obligations of Anna (the seller) and Juliet (the buyer) regarding the damaged property. The doctrine of equitable conversion holds that, upon the execution of a contract for the sale of real property, the buyer becomes the equitable owner of the property, while the seller retains legal title as a trustee for the buyer's benefit. Here's how the doctrine applies to Anna and Juliet's dispute:

1. **Equitable Ownership:** When Anna and Juliet entered into the contract for the sale of the house, equitable conversion occurred. Although legal title remained with Anna until the closing of the transaction, Juliet became the equitable owner of the property. This means that Juliet acquired an equitable interest in the property, including the right to specific performance of the contract and the assumption of the risk of loss.
2. **Shift in Risk of Loss:** Under the doctrine of equitable conversion, the risk of loss typically shifts to the buyer (Juliet) once the contract is executed, even before the closing of the transaction. Therefore, unless the contract specifies otherwise, Juliet would generally bear the risk of loss resulting from damage to the property, such as the fire that occurred two days ago.
3. **Obligations of the Parties:** As the equitable owner of the property, Juliet may be obligated to proceed with the purchase of the house despite the damage caused by the fire. This obligation arises from her equitable interest in the property and the doctrine of equitable conversion. However, the extent of Juliet's obligation may depend on the terms of the purchase contract, any applicable legal principles, and the severity of the damage.
4. **Seller's Obligations:** Although Anna retains legal title to the property, she may still have obligations to Juliet as the equitable owner. These obligations may include maintaining the property in a reasonably habitable condition until closing, making necessary repairs, or providing compensation for the damage if the contract or applicable law requires it.

In summary, the doctrine of equitable conversion establishes Juliet's equitable ownership of the property upon the execution of the contract, which may affect her obligations and rights regarding the damaged property. While Juliet generally bears the risk of loss under this doctrine, the specific terms of the contract and applicable legal principles may influence the resolution of the dispute between Anna and Juliet regarding the obligation to close on the property.

The strength of this answer showed GPT4's potential in answering legal questions. Note, however, how much GPT4's performance improved after a small, but significant, change in the question to highlight the doctrine of equitable conversion. GPT4 did not spot the correct issue in the first version of the question. With the correct issue highlighted in the prompt, it did quite well.

We ran the original Example 2A through GPT5. Again, the performance was significantly improved:

This fact pattern raises issues in real property law and contracts, specifically relating to the risk of loss between contract and closing.

#### 1. The Common Law Rule (Equitable Conversion)

At common law, once a real estate contract is signed, the buyer is considered the *equitable owner* of the property, while the seller holds legal title in trust until closing.

Under this doctrine of equitable conversion, the risk of loss (e.g., fire damage, destruction of the property) shifts to the buyer at the time of contract, unless the contract provides otherwise.

Applying this rule: Juliet would bear the risk, meaning she must still perform (close and pay the purchase price) despite the fire damage.

#### 2. Modern Reforms – The Uniform Vendor and Purchaser Risk Act (UVPRA) and State Statutes

Many states have rejected or modified the common law rule through statutes such as the Uniform Vendor and Purchaser Risk Act (UVPRA).

Under the UVPRA, the risk of loss remains with the seller until either (a) the buyer takes possession, or (b) legal title passes.

If this rule applies, then since Juliet had not yet taken possession or closed, Anna would bear the risk of loss, and Juliet could rescind or refuse to close.

### 3. Contractual Allocation of Risk

Real estate contracts often include a “risk of loss” provision specifying who bears the risk if the property is damaged before closing.

If Anna and Juliet’s contract includes such a clause, that provision would control the outcome.

If not, the dispute falls back to the common law or applicable statute.

### 4. Possible Remedies and Arguments

Anna’s Argument (if common law applies): Juliet is equitable owner, so she must pay the purchase price and take the damaged property.

Juliet’s Argument (if UVPRA or similar statute applies): Risk remained with Anna, so Juliet is excused from performance, or entitled to rescission and possibly return of any deposit.

Equity Considerations: Courts may also consider fairness—if the damage was substantial (rendering the property uninhabitable), some courts are reluctant to force the buyer to close absent clear contract language.

Core Issue: Who bore the risk of loss between contract signing and closing—the buyer (under equitable conversion) or the seller (under modern statutes like UVPRA or contract allocation)?

As with the prior example, GPT5 correctly identified the relevant issues from the fact pattern without prompting where GPT4 was unable to do so.

Here is the third sample paragraph from the exam:

[Example 3A:]

Please discuss the legal issues raised in the next paragraph.

Greg, Lucy, and Nelson were neighbors. Greg lived at 12 South Street. Lucy lived at 14 South Street. Nelson lived at 16 South Street. One day in 2019, all three entered into a written covenant, intended to run with the land, that none of them would ever put a satellite dish up on their house. They all promptly recorded the covenants with the local county records office. In 2020, Lucy bought 16 South Street from Nelson. In 2021, Dean bought 12 South Street from Greg. In 2022, Terri bought 16 South Street from Lucy. A few weeks ago, both Dean and Terri put satellite dishes on their roofs. An enraged Lucy has now sued Dean and Terri, seeking both money damages for her annoyance at having to look at the dishes and an injunction forcing Dean and Terri to take them down.

This question involves a restrictive covenant created by the three neighbors; it raises two distinct legal issues. The first issue is whether the covenant meets the elements needed for it to be enforced as a real covenant and/or an equitable servitude. If the covenant is enforceable as a real covenant, an owner can seek the legal remedy of money damages for a breach of the covenant.<sup>21</sup> If the covenant is enforceable as an equitable servitude, an owner can seek equitable remedies, including an injunction, for breach.<sup>22</sup> Real covenants and equitable servitudes have four elements in common, all of which were met here: (1) the covenant must be in writing (met because the question states that it was written), (2) the covenant must be intended to run with the land (met because the question states that it was intended to run with the land), (3) subsequent owners must have notice of the covenant (met because the covenant was recorded, providing constructive notice to all subsequent owners), and (4) the covenant must touch and concern the land (met because the covenant involved the use of land).<sup>23</sup> Real covenants have a fifth element, privity.<sup>24</sup> All jurisdictions require vertical privity.<sup>25</sup> A minority of jurisdictions require

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21. John H. Pearson, *Types of Redress Available*, in 7 THOMPSON ON REAL PROPERTY § 61.05 (Thomas ed., 2025).

22. *Id.*; RESTATEMENT (THIRD) OF PROP.: SERVITUDES § 8.3 (A.L.I. 2000).

23. John H. Pearson, *Creation of the Real Covenant*, in 7 THOMPSON ON REAL PROPERTY, *supra* note 16 at § 61.04(b)(5), (c), (d), (f); James L. Bross, *Elements of an Equitable Servitude*, in 7 THOMPSON ON REAL PROPERTY, *supra* note 16, at § 62.02.

24. Pearson, *Creation of the Real Covenant*, *supra* note 16, § 61.04(a)(1).

25. *Id.* at § 61.04(e)(1).

horizontal privity.<sup>26</sup> We explain these types of privity in detail in the footnote,<sup>27</sup> but for these purposes we note that vertical privity is met here but horizontal privity is not.

The second issue is whether the covenant was terminated, at least in part, under the doctrine of merger. Under this doctrine, a covenant (or other servitude) is terminated if at some point the parcels of property bound by the covenant are owned by the same person.<sup>28</sup> Here, when Lucy bought 16 South Street from Nelson, she owned both 14 South Street and 16 South Street—potentially terminating the covenant between 14 South Street and 16 South Street by merger. If the covenant did in fact terminate between these two parcels, then Lucy cannot enforce it against Terri, who is the subsequent owner of 16 South Street.

As with the previous examples, GPT4's initial answer was a laundry list of legal issues. This one mentioned some of the issues relating to the validity of the covenant, but missed the merger issue.

[Answer 3A:]

The legal issues raised in this scenario revolve around the enforceability of the covenant among Greg, Lucy, and Nelson regarding the installation of satellite dishes on their respective properties, as well as the rights and obligations of subsequent property owners (Dean and Terri) concerning the covenant. Here are the key legal considerations:

1. **\*\*Enforceability of Covenant\*\*:** The initial covenant entered into by Greg, Lucy, and Nelson in 2019 constitutes a contractual agreement among the parties to refrain from putting up

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26. *Id.*

27. There are two types of privity that may be required for a covenant to run with the land: vertical and horizontal. Vertical privity asks whether the prior and subsequent owners of each parcel bound by the covenant were in privity of estate with each other. Two people are in privity of estate if they are on opposite sides of a voluntary transfer of real estate. Because prior and subsequent owners are typically on opposite sides of a real estate transaction (an exception would be adverse possession), vertical privity is typically met. Horizontal privity asks whether the covenant was enacted as part of a transaction that involved the transfer of real estate. Horizontal privity is required only in a minority of U.S. jurisdictions. Horizontal privity is usually met in large neighborhoods governed by a homeowner's association because the covenants are typically imposed as part of the subdivision process. Horizontal privity may not be met if neighbors who already own their land attempt to impose covenants that run with the land. *See Barros, Hemingway, & Cavalieri, *supra* note 11, at 631–33.*

28. RESTATEMENT (THIRD) OF PROP.: SERVITUDES § 7.5 (A.L.I. 2000).

satellite dishes on their houses. The covenant was intended to run with the land, meaning it binds not only the original parties but also subsequent owners of the affected properties. The enforceability of the covenant depends on whether it meets the legal requirements for covenants running with the land, such as being in writing, recorded, and intended to benefit or burden the affected properties.

2. **\*\*Notice to Subsequent Owners\*\*:** The covenant was promptly recorded with the local county records office, which serves to provide notice to subsequent purchasers (such as Lucy, Dean, and Terri) of the existence of the covenant. Generally, subsequent purchasers are deemed to have constructive notice of recorded documents affecting the property's title, including covenants running with the land.

3. **\*\*Privity of Estate\*\*:** To enforce the covenant against subsequent purchasers like Dean and Terri, there must be privity of estate between the original parties and the subsequent purchasers. Privity of estate refers to a legal relationship between successive owners of the same property. In this case, since Lucy purchased 16 South Street from Nelson, who was a party to the original covenant, privity of estate exists between Lucy and Nelson, allowing Lucy to enforce the covenant against subsequent purchasers of 16 South Street.

4. **\*\*Rights and Remedies\*\*:** Lucy, as a party to the original covenant, has the right to enforce it against Dean and Terri, the subsequent purchasers who have allegedly violated the covenant by installing satellite dishes on their roofs. Lucy may seek both money damages for annoyance or diminution of property value caused by the dish installations and an injunction to compel Dean and Terri to remove the dishes. Whether Lucy is entitled to damages and injunctive relief will depend on the specific facts of the case, the language and scope of the covenant, and applicable legal principles.

In summary, the legal issues raised in this scenario involve the enforceability of a covenant among neighbors regarding satellite dish installations, as well as the rights and obligations of subsequent property owners concerning the covenant. Lucy's lawsuit against Dean and Terri seeks to enforce the covenant and obtain relief for the alleged violations.

We then modified the call of the question to specifically focus on the enforceability of the covenants:

[Example 3B:]

Please discuss the enforceability of the covenants discussed in the next paragraph.

Greg, Lucy, and Nelson were neighbors. Greg lived at 12 South Street. Lucy lived at 14 South Street. Nelson lived at 16 South Street. One day in 2019, all three entered into a written covenant, intended to run with the land, that none of them would ever put a satellite dish up on their house. They all promptly recorded the covenants with the local county records office. In 2020, Lucy bought 16 South Street from Nelson. In 2021, Dean bought 12 South Street from Greg. In 2022, Terri bought 16 South Street from Lucy. A few weeks ago, both Dean and Terri put satellite dishes on their roofs. An enraged Lucy has now sued Dean and Terri, seeking both money damages for her annoyance at having to look at the dishes and an injunction forcing Dean and Terri to take them down.

GPT4's answer did not change significantly from the first one:

[Answer 3B:]

The enforceability of the covenants discussed in the paragraph hinges on several legal principles and factors:

1. **Validity of the Covenant**: The covenant entered into by Greg, Lucy, and Nelson in 2019 appears to be valid on its face. It was a written agreement intended to run with the land, meaning it binds not only the original parties but also subsequent purchasers of the affected properties. The covenant was also recorded with the local county records office, providing notice to subsequent purchasers. However, the enforceability of the covenant against subsequent purchasers like Dean and Terri depends on various factors.

2. **Privity of Estate**: Privity of estate refers to the legal relationship between successive owners of the same property. In this case, privity of estate exists between Lucy and Nelson because Lucy bought 16 South Street from Nelson. Therefore, Lucy has the legal standing to enforce the covenant against subsequent purchasers of 16 South Street, such as Terri.

3. **\*\*Notice to Subsequent Purchasers\*\*:** Recording the covenant with the county records office serves to provide constructive notice to subsequent purchasers, including Dean and Terri, of the existence of the covenant. As a result, Dean and Terri are deemed to have notice of the covenant's existence and may be bound by its terms, subject to certain legal requirements and defenses.

4. **\*\*Enforceability Against Dean and Terri\*\*:** Lucy, as the successor in interest to Nelson, who was a party to the original covenant, likely has the right to enforce the covenant against Dean and Terri. However, the enforceability of the covenant against Dean and Terri may be subject to defenses such as lack of privity of estate, ambiguity in the language of the covenant, or challenges to the validity of the covenant itself.

5. **\*\*Remedies\*\*:** Lucy's lawsuit against Dean and Terri seeks both money damages for annoyance caused by the dish installations and an injunction forcing Dean and Terri to remove the dishes. Whether Lucy is entitled to these remedies will depend on the specific facts of the case, the language and scope of the covenant, and applicable legal principles.

In summary, while the covenant appears to be valid and enforceable on its face, the enforceability of the covenant against subsequent purchasers like Dean and Terri will depend on various legal factors, including privity of estate, notice, and potential defenses. Lucy may have legal standing to enforce the covenant against Dean and Terri, but the outcome of her lawsuit will depend on the specific circumstances and legal arguments presented.

Finally, we modified the call of the question to specifically direct GPT4 to the relevant issues:

[Example 3C:]

Please discuss the enforceability of the covenants discussed in the next paragraph applying all of the elements of real covenants and equitable servitudes, including vertical and horizontal privity if applicable. Please discuss in detail whether each element is met. Please also discuss the applicability of the doctrine of merger to this scenario.

Greg, Lucy, and Nelson were neighbors. Greg lived at 12 South Street. Lucy lived at 14 South Street. Nelson lived at 16 South Street. One day in 2019, all three entered into a written covenant, intended to run with the land, that none of them would ever put a satellite dish up on their house. They all promptly recorded the covenants with the local county records office. In 2020, Lucy bought 16 South Street from Nelson. In 2021, Dean bought 12 South Street from Greg. In 2022, Terri bought 16 South Street from Lucy. A few weeks ago, both Dean and Terri put satellite dishes on their roofs. An enraged Lucy has now sued Dean and Terri, seeking both money damages for her annoyance at having to look at the dishes and an injunction forcing Dean and Terri to take them down.

As with prior examples, the prompting led GPT4 to provide a more accurate answer:

[Answer 3C:]

To analyze the enforceability of the covenants discussed in the paragraph using the elements of real covenants and equitable servitudes, we need to consider each element:

1. **\*\*Intent\*\*:** The parties explicitly entered into a written covenant with the intention that it would run with the land, as evidenced by their agreement to prevent any of them from putting up satellite dishes. This element appears to be satisfied.
2. **\*\*Writing\*\*:** The covenant was put into writing, which is a requirement for real covenants and equitable servitudes to be enforceable. The written agreement ensures clarity and certainty regarding the parties' obligations.
3. **\*\*Promise\*\*:** The covenant involves a promise by all parties not to put up satellite dishes on their houses. This promise is clear and specific, meeting the requirement for a valid covenant.
4. **\*\*Touch and Concern the Land\*\*:** The covenant directly affects the use and enjoyment of the parties' respective properties by restricting the installation of satellite dishes. Therefore, it "touches and concerns" the land and satisfies this element.
5. **\*\*Privity of Estate\*\*:**

- **\*\*Horizontal Privity\*\*:** Horizontal privity refers to the relationship between the original parties to the covenant. Here, Greg, Lucy, and Nelson had horizontal privity as they all mutually agreed to the covenant.

- **\*\*Vertical Privity\*\*:**

- Between Lucy and Nelson: Vertical privity exists because Lucy purchased 16 South Street from Nelson, maintaining the relationship between the original parties to the covenant.

- Between Terri and Lucy: Terri purchased 16 South Street from Lucy, maintaining the vertical privity required for the enforcement of the covenant.

6. **\*\*Notice\*\*:** The covenant was promptly recorded with the local county records office, providing constructive notice to subsequent purchasers. This satisfies the notice requirement for enforceability against subsequent purchasers like Dean and Terri.

7. **\*\*Enforcement\*\*:** Lucy, as a party to the original covenant and the subsequent seller of 16 South Street to Terri, likely has standing to enforce the covenant against Dean and Terri. However, the enforceability of the covenant may be subject to potential defenses or challenges.

#### Applicability of the Doctrine of Merger:

The doctrine of merger states that when the interests of both the dominant and servient estates merge into the hands of one owner, the covenant is extinguished because there is no longer a need for it. In this scenario, when Lucy purchased 16 South Street from Nelson, there was a merger of the interests of the dominant (Lucy) and servient (Nelson) estates. As a result, the covenant may be considered extinguished as it pertains to Lucy's property. However, the subsequent sale of 16 South Street by Lucy to Terri reinstated the separate interests of the dominant and servient estates, preserving the enforceability of the covenant against Terri.

In summary, the covenant appears to meet the elements of real covenants and equitable servitudes, including intent, writing, promise, touch and concern the land, horizontal and vertical privity, and notice. However, the doctrine of merger may affect

the enforceability of the covenant when the dominant and servient estates merge but remains applicable when the estates are subsequently separated again. Lucy likely has standing to enforce the covenant against Dean and Terri, but the outcome of the lawsuit may depend on potential defenses raised by Dean and Terri.

The first part of this answer, discussing the elements needed to enforce the covenant was reasonably good, though it had some flaws—for example, it failed to recognize the different elements needed to enforce a covenant in law and in equity, and the horizontal privity answer is incorrect.<sup>29</sup> The first part of the merger analysis was also pretty good. It ended the analysis, however, with this sentence: “However, the subsequent sale of 16 South Street by Lucy to Terri reinstated the separate interests of the dominant and servient estates, preserving the enforceability of the covenant against Terri.” This is false, and appeared to be a hallucination—servitudes that are terminated by merger are not automatically recreated when ownership is redivided.<sup>30</sup>

Here is GPT5’s response to Example 3A:

Here’s a breakdown of the main legal issues raised by this fact pattern, organized around the doctrines of covenants and equitable servitudes:

#### 1. Existence of a Valid Covenant / Equitable Servitude

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29. GPT4 answered that “Horizontal privity refers to the relationship between the original parties to the covenant. Here, Greg, Lucy, and Nelson had horizontal privity as they all mutually agreed to the covenant.” This is incorrect. Horizontal privity involves privity of estate, not privity of contract, and requires that the promise be imposed as part of a real estate transaction. Greg, Lucy, and Nelson all owned their houses before they decided to impose the covenants, so the horizontal privity requirement would not be met. *See BARROS ET AL., supra* note 5, at 587–88.

30. *See Michael Allan Wolf, Easements May Be Terminated by Conduct of Both Parties in 4 POWELL ON REAL PROPERTY § 34.22 (2025)* (“An easement, by definition, is an interest in land that is in the possession of another. . . . This prerequisite situation ceases to exist when the owner of an easement in gross becomes the owner of the servient tenement or when the dominant and servient tenements of an appurtenant easement come into the same ownership. In each instance, the owner of the easement, having become the owner of the servient tenement, has, as such owner of the servient tenement, rights of user greater than those comprised in the easement itself. The lesser is swallowed by the greater and the easement is, under the majority view, permanently terminated by this merger.”) (citation omitted).

In 2019, Greg, Lucy, and Nelson entered into a written covenant prohibiting satellite dishes.

The covenant was intended to run with the land and was promptly recorded.

That raises the threshold question: is this covenant enforceable against successors?

For a real covenant (damages remedy):

Writing: Yes, there was a written covenant.

Intent: The parties intended it to run with the land.

Touch and concern: Restricting satellite dishes affects the use and appearance of the property, so it likely touches and concerns the land.

Privity: For damages, both horizontal privity (between original covenanting parties) and vertical privity (between successors and covenanting parties) are traditionally required. Horizontal privity is satisfied because the parties entered into a mutual burden/benefit covenant simultaneously. Vertical privity is present because successors (Dean and Terri) hold the same estate as the original covenantors.

For an equitable servitude (injunction remedy):

Writing: Yes.

Intent: Yes.

Touch and concern: Yes.

Notice: Successors had record notice because the covenant was recorded.

Thus, the covenant/equitable servitude is likely valid and enforceable.

## 2. Who Has the Right to Enforce?

Lucy is suing.

She still owns 14 South Street. That lot benefitted from the original covenant.

Enforceability depends on whether Lucy's lot retains the benefit of the restriction. Since the covenant was mutual and designed to keep all three properties satellite-dish free, Lucy's property benefits from the restriction on the neighbors' lots.

So Lucy, as the current owner of 14 South Street, has standing to enforce the covenant against the current owners of the other lots.

### 3. Defendants' Liability

Dean (12 South Street): Took title after covenant was recorded, so he had record notice. Burden runs with the land → he is bound.

Terri (16 South Street): Took from Lucy (who had merged ownership of 14 and 16 South Street for a year).

Potential Issue of Merger: When Lucy owned both the benefited and burdened parcels (14 and 16 South), the covenant as to those two lots may have been extinguished under the doctrine of merger (a servitude cannot exist when the same person owns both the benefited and burdened estates).

When Lucy later sold 16 South Street to Terri, the restriction may no longer burden 16 South, because once extinguished by merger, it does not automatically revive.

This raises a strong defense for Terri: she may not be bound at all.

Thus, Dean is likely bound, but Terri probably is not.

### 4. Remedies

Lucy seeks damages and an injunction.

Damages: Real covenants can support damages. Lucy could claim that the presence of the dishes diminishes the value or enjoyment of her land. However, damages for mere "annoyance" might be limited.

Injunction: As an equitable servitude, an injunction is possible against Dean. Against Terri, the merger issue is likely fatal, so Lucy probably cannot enjoin her.

#### Conclusion

The covenant was validly created and recorded.

Lucy has standing as owner of 14 South Street.

Dean (12 South Street) is bound and could be subject to both damages and injunction.

Terri (16 South Street) has a strong argument that the covenant was extinguished by merger when Lucy owned both 14 and 16 South Street. Thus, Lucy probably cannot enforce the covenant against Terri.

As with the prior two examples, GPT5 was able to spot issues without prompting. GPT5 omitted the element of notice for its real covenant analysis but included it for equitable servitude analysis. Otherwise, this is a quite good answer that correctly identifies the merger issue.

Interestingly, when we ran Example 3A through GPT5 for a second time, it gave a much weaker answer:

Here are the main legal issues raised by the fact pattern:

#### 1. Nature of the Covenant

In 2019, Greg, Lucy, and Nelson entered into a negative covenant (a promise not to do something) restricting satellite dishes.

Because the covenant was in writing and recorded, the formalities for a real covenant are satisfied.

The intent language (“intended to run with the land”) supports both real covenant and equitable servitude analysis.

#### 2. Benefit and Burden: Who is Bound?

To enforce the covenant, we must look at whether the covenant runs with the land (at law) or can be enforced in equity as an equitable servitude.

Burden (on Dean and Terri): For the covenant's burden to run with the land at law, it requires:

1. Writing (present)
2. Intent (present)
3. Touch and concern (aesthetics arguably touch enjoyment and value of land)
4. Horizontal and vertical privity (may be an issue)

Alternatively, for equitable servitude enforcement, only writing, intent, touch and concern, and notice are required (no privity). Since Dean and Terri had record notice from the recorded covenant, they may be bound in equity even if the legal covenant burden does not run.

Benefit (for Lucy): The question is whether Lucy, who no longer owns 14 South Street (she sold it when she sold 16 South Street to Terri), still has the benefit of the covenant.

The benefit of a real covenant or equitable servitude usually runs with the land, not with a former owner personally, unless expressly reserved as a personal right.

When Lucy sold her property, she lost the benefit unless the covenant was phrased as a personal right (which it was not here).

Thus, Lucy may lack standing to enforce the covenant against Dean and Terri.

### 3. Successive Ownership and Standing Problems

In 2020, Lucy bought 16 South Street from Nelson. At that point, she owned two burdened lots (14 and 16).

In 2022, she sold 16 South Street to Terri. After that, she owned no property in the subdivision.

Because enforcement of restrictive covenants typically requires ownership of land that benefits from the restriction, Lucy—who no longer owns land—likely cannot sue.

#### 4. Remedies

Lucy seeks damages and an injunction.

Even if she could enforce, damages for “annoyance” may be questionable, since covenant damages usually relate to economic harm, not personal irritation.

Injunctive relief is the usual remedy for restrictive covenants, but only if the plaintiff has standing.

#### 5. Conclusion

The covenant was validly created and recorded, so successors like Dean and Terri are bound.

However, Lucy no longer owns land in the development, so she likely lacks standing to enforce the covenant.

If a current landowner (say, the owner of 14 South Street, assuming Lucy sold it) sued, enforcement might succeed. But Lucy herself probably cannot recover damages or an injunction.

This answer is seriously flawed. Most importantly, GPT5 correctly noted that at one point, Lucy owned both 14 and 16 South Street, but then incorrectly concluded that Lucy no longer owned any property in the subdivision after she sold 16 South Street to Terri – when in fact she still owned lot 14. The difference between GPT5’s two answers to the same question are an illustration of the phenomenon that LLMs do not always answer the same question the same way.<sup>31</sup> It also provides an example of GPT5 answering a question in one instance but answering it incorrectly in another.

Together, three examples show that GPT4 had major problems identifying legal issues from fact patterns without prompts. All three of the initial answers would have received

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31. See, e.g., Ed Chater, *Why Do AI Models Give Different Answers to the Same Question?*, EVERTUNE.AI (Apr. 1, 2025), <https://www.evertune.ai/research/insights-on-ai/why-do-ai-models-give-different-answers-to-the-same-question>.

failing grades in the law school context because they did not correctly identify the issues presented by the fact patterns. When the prompts were modified slightly to identify the correct legal issue, GPT4's performance improved markedly. Some parts of the answers were quite good. In two of the three examples, however, GPT4 made serious errors that led to incorrect conclusions. GPT5, in contrast, was able to spot the issues without prompting in all three examples, though it went awry in its second answer to Example 3A.

Before proceeding, we again want to highlight the important characteristic of the three initial examples—each fact pattern raised legal issues that would be clear to a law student but that lacked any internal prompting that GPT4 needed to identify those issues. In our discussion of UBE questions below, we will highlight the internal prompting that helped GPT4 answer those questions.

### B. Property Law Multiple Choice Questions

We ran 98 multiple-choice questions from a Property Law course through GPT4. GPT4 answered 54 of these questions (55 percent) correctly. This would have been an extremely low score in the Property Law course.

As we discuss more fully below in the context of Multistate Bar Exam questions, the answers in multiple-choice questions provide additional prompting that helps improve GPT4's performance. Even with this additional prompting, GPT4's performance was poor overall and seemed to be uneven. The biggest thing that stood out from GPT4's performance is that it seemed to do better on more common and/or basic questions and did worse on less common and/or more advanced questions. Here are a few examples:

- GPT4 did well on basic adverse possession questions but struggled with problems involving the application of a disability statute. The text of the statute was provided as part of the question.
- GPT4 did well with basic present and future interest problems that ask the examinee to correctly identify the interests created by a particular conveyance. This type of question has a clear correct answer and is the type of question on which we would expect an LLM to excel. Somewhat surprisingly, GPT4 struggled with more advanced problems involving simultaneous death, the Rule

Against Perpetuities,<sup>32</sup> and applying the concept of per capita by generation to an inheritance problem. We were a bit surprised that GPT4 struggled with the Rule Against Perpetuities problems. The Rule Against Perpetuities is notoriously hard for people to apply,<sup>33</sup> but the questions have clear answers that a well-trained LLM should be able to identify.

- GPT4 was able to correctly answer some basic concurrent interest questions involving tenancy in common, joint tenancy, and tenancy by the entirety. It struggled, however, with many basic concurrent interest topics, including the rights of co-owners, partition, and joint tenancy severance.
- GPT4 was able to correctly answer some basic landlord-tenant questions, but not others, including some simple questions involving tenancy at will and delivery of possession. It struggled with more advanced issues such as assignments and subleases.
- GPT4 performed reasonably well, though not perfectly, on basic real estate questions involving recording issues and the seller's duty to disclose physical defects. It did poorly on many other real estate questions, including those involving inquiry notice, advanced priority issues, marketable title, and deed warranties.
- GPT4 performed unevenly on servitudes questions involving easements and covenants, sometimes getting one question on a particular topic right while getting another question on that same topic wrong. Perhaps unsurprisingly given the essay results described above, GPT4 struggled with multiple-choice questions that raised the rule against reservations in third persons and horizontal privity.

We are hesitant to make broad claims about the reasons for GPT4's poor performance on these sets of multiple-choice questions. For the purposes of this essay, it is most notable that GPT4 performed relatively poorly on multiple-choice questions

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32. The questions noted that the common law Rule Against Perpetuities applied.

33. *Lucas v. Hamm*, 364 P.2d 685, 690–91 (Cal. 1961) (noting that the Rule Against Perpetuities is so complex that even competent lawyers may reasonably make mistakes in applying it).

that lacked the structural characteristics, discussed below, that help the LLM with Multistate Bar Exam questions.

In January 2025, we ran the same multiple-choice questions through the then-new version of GPT, GPT4o. GPT4o's performance was a modest improvement, getting 62 answers correct (63%) as compared to GPT4's 54 (55%). In August 2025, we did the same thing with the newly released GPT5. GPT5 answered 92 (94%) questions correctly.

## *PART II: GPT4 AND THE UNIFORM BAR EXAM*

The Uniform Bar Exam is developed by the National Conference of Bar Examiners (NCBE) and consists of three types of questions. The Multistate Bar Exam (MBE) is comprised of multiple-choice questions. The Multistate Essay Exam (MEE) is comprised of highly-structured short essay questions.<sup>34</sup> The Multistate Performance Test (MPT) is comprised of a task assigned to the examinee in a memorandum followed by a case file and legal authorities.<sup>35</sup>

Each of these types of questions has structure that assists in prompting GPT4. In MBE questions, the prompt is not just in the call of the questions but in the way that the answers are written. Consider the sample MBE question included by Katz et al., with important prompting language highlighted by us in bold:

A plaintiff **domiciled** in State A brought a **federal diversity negligence action** in State A against a defendant **domiciled** in State B. The action was based on an accident that had occurred in State C. The defendant was personally served with process at her office in State B, which is located 50 miles from the State A federal courthouse. The defendant travels to State A once each year for a week-long vacation but has no other State A **contacts**.

The defendant answered, denying all allegations. One week later, the defendant filed an amended answer, denying all allegations and including the **defense of lack of personal**

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34. See *About the MBE*, NAT'L CONF. OF BAR EXAM'RS, <https://www.ncbex.org/exams/mee/about-mee> [<https://perma.cc/5ZCD-NXVT>] (last visited August 29, 2025).

35. In the interest of disclosure, Dean Barros presently serves on the committee that drafts MPT questions for the NCBE and previously served as a guest on the committee that drafts property MBE questions.

**jurisdiction.** State A has a **long-arm statute** that permits **personal jurisdiction to the constitutional limit.**

The defendant has **moved for an order dismissing the action based on the personal-jurisdiction challenge asserted in the amended answer.**

Should the court issue the order?

(A) No, because the **defendant waived the challenge to personal jurisdiction by failing to include it in her original answer.**

(B) No, because the **defendant was personally served with process within 100 miles of the federal courthouse where the action is pending.**

(C) Yes, because the **defendant lacks minimum contacts with State A.**

(D) Yes, because **service was not delivered to the defendant at her home.**<sup>36</sup>

The body of the problem has several prompts. The most important is the repeated reference to the personal jurisdiction issue. Using legal terms of art relevant to personal jurisdiction like “domiciled” and “contacts”, rather than “lived in” and “ties”, likely also provides helpful prompting.

We suspect that the structure of the answers in MBE questions is even more important than the prompting in the body of the question. The answers to MBE questions are structured as [answer] followed by [reason]. The stated reasons give GPT4 additional context to help it find the correct answer – its task is to predict which of the sets of text in the answer is most likely to follow the text in the prompt. Together with the prompting in the body of the question, MBE questions like this one give an LLM like GPT4 a lot of context cues that direct it toward the correct issues.

MEE questions similarly are highly structured and include clear prompts. Here is the sample MEE question included in Katz et al., again with important prompting highlighted in bold:

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36. Katz et al., *supra* note 1, fig. 4.

## [July 2022 MEE Evidence Question]

Four months ago, Victim was shot and seriously wounded in City. Defendant has been charged with attempted murder. The prosecution's theory is that Victim and Defendant were both members of a criminal street gang called "The Lions," which engages in drug dealing, robbery, and murder in City. The prosecutor alleges that the shooting was the result of a gang dispute.

Defendant has brought a **pretrial motion** objecting to the prosecutor's introducing the following **anticipated evidence**:

(A) **Testimony** by a City detective who will be **offered as an expert** in gang identification, gang organizational structure, and gang activities generally and as an **expert** on particular gangs in City. The detective is expected to testify as follows:

I have been a detective on the police force for six years. Throughout that time, my primary assignment has been to investigate gangs and criminal activity in City. I have also worked closely with federal drug and firearm task forces as they relate to gangs.

Prior to becoming a detective, I was a corrections officer in charge of the gang unit for City's jail for three years, and my duties included interviewing, investigating, and identifying gang members.

Throughout my career, I have attended training sessions providing education and information on gang structure, membership, and activities. As I've gained experience and knowledge in this area, I've frequently been asked to lead such sessions. I would estimate that I've taught more than 75 such training sessions over the past three years.

Street gangs generally engage in a wide variety of criminal activities. They usually have a clear leadership structure and strict codes of behavior. Absolute loyalty is required and is enforced through violent acts. Members of particular gangs can be identified by clothing, tattoos, language, paperwork, or associations.

I am quite familiar with "The Lions." It is one of City's most violent and feared criminal gangs. Members of The Lions can be identified by tattoos depicting symbols unique to the gang.

(B) **Testimony** by a former leader of The Lions concerning a photograph of Defendant's tattooed arm. After the photograph is authenticated as a photograph of Defendant's arm, the witness is expected to testify in part as follows:

I am certain that this is a Lions tattoo. I had a similar one removed. You'll notice that it has a shield containing the numbers for the police code for homicide, and Lions' members frequently include police codes in their tattoos to indicate crimes the gang has committed. The tattoo also has a shotgun and sword crossed as an "X," and a lion. Those are symbols frequently used by The Lions. This tattoo indicates to me, based on my experience, that Defendant is a member of The Lions gang.

(C) **Testimony** by Victim, who is expected to testify for the prosecution in part as follows:

I got into an argument with a gang boss at a meeting of The Lions. I said I wouldn't participate in an attack that was planned on another gang because my cousin was in that gang. The boss looked at Defendant and nodded to him. Next thing I knew, after the meeting, Defendant pulled a gun on me and shot me. I'm sure he did it because of that argument.

The jurisdiction has adopted rules of evidence identical to the Federal Rules of Evidence.

Defense counsel's motion raises the **following objections** to the evidence described above:

1. The detective's anticipated testimony about gang identification, organization, and activities is **improper expert testimony**.
2. The photograph of Defendant's tattoo and the former gang leader's anticipated testimony about it is **inadmissible character evidence**.
3. Victim's anticipated testimony that Defendant shot him because of a gang dispute is **irrelevant**.

How should the trial court rule on each objection? Explain. (Do not address constitutional issues.)<sup>37</sup>

We want to highlight the specific structure of the call of the question used in this and other MEE questions. The call is a numbered list of three questions that raise specific issues for the examinee to discuss. There is no issue spotting involved here at all. Instead, the examinee is prompted to address a specifically identified evidence issue, with the relevant facts being set forth in a specific corresponding portion of the body of the question. Compare these questions with the Property essay questions described above. The Property questions were not prompted, and GPT4 struggled with them until it was prompted with the specific legal issue to be discussed. Once it was prompted with the relevant legal issue, GPT4's performance improved significantly. The specificity of the prompting may vary by question, but the structure of MEE questions includes a high degree of prompting in the call of the question.

Finally, MPT questions are also highly structured and prompted. For MPTs, the examinee receives a packet that has three components. First, a brief memorandum introduces the problem and specifically identifies the task for the examinee to complete – for example to write an objective memo or a persuasive argument section of a brief on a specifically-identified topic. For our purposes, the task memo provides very specific prompting to an LLM like GPT4. Second, a case file provides factual information relevant to the task. Third, a library provides relevant legal authority, typically in the format of edited statutes or cases. The examinee is expected to complete the task using the factual information in the case file and the legal authority in the library. MPT problems are written by experts and are carefully curated to provide the examinee with the material needed to successfully complete the assigned task.<sup>38</sup> In some ways, the MPT is a model of a task that an LLM can do very well – quickly and efficiently doing a text-based task when an expert lawyer has (a) designed clear

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37. *Id.* at fig. 5.

38. See *How Is the MPT Developed?*, NAT'L CONF. OF BAR EXAM'RS, <https://help.ncbex.org/hc/en-us/articles/22971476686235-How-is-the-MPT-developed#:~:text=The%20MPT%20is%20not%20a,ands%20critiqued%20by%20independent%20experts> (last visited August 29, 2025).

prompts and (b) has put together the key factual and legal sources needed to answer the prompt.

In summary, all three types of questions on the UBE are highly prompted in ways that help LLMs like GPT4 perform relatively well. None of these types of questions emphasize issue spotting. The ability of GPT4 to pass the UBE therefore tells us more about the structure of bar exam questions than it does about GPT4's ability to perform legal academic tasks such as issue spotting.

## CONCLUSION

GPT4 passed the Uniform Bar Exam but failed the essay and multiple-choice questions from a law school Property course. The differential in performance turned in large part on the prompting included in the questions used in the different exams. We have illustrated how UBE questions are highly prompted. Without prompting, GPT4 could not reliably spot relevant legal issues in a fact pattern. With a small amount of prompting to identify the legal issue, GPT4's performance improved markedly, and some of its answers were quite good. We therefore suggest that GPT4's ability to pass the UBE says more about the structure of UBE questions than it does about GPT4's ability to perform legal tasks more generally. We encourage law professors and other readers to experiment for themselves by adding and removing prompting legal questions presented to LLMs.

GPT5 showed a marked performance improvement on both essay and multiple-choice questions. It was able to spot issues in fact patterns without prompting where GPT4 could not, though in one instance GPT5 made a significant error the second time it answered a question. It was able to answer 94 percent of a set of Property multiple choice questions correctly when GPT4 was able to answer only 54 percent of those questions correctly.