

MONTEREY COLLEGE OF LAW

**REAL PROPERTY**

Midterm Examination

Fall 2017

Prof. Justin O'Connell

Instructions:

There are three (3) questions in this examination. You will be given three (3) hours to complete the examination.

Your answer should demonstrate your ability to analyze the facts in the question, to tell the difference between material facts and immaterial facts, and to discern the points of law and facts upon which the case turns. Your answer should show that you know and understand the pertinent principles and theories of law, their qualifications and limitations, and their relationships to each other. Your answer should evidence your ability to apply the law to the given facts and to reason in a logical, lawyer-like manner from the premises you adopt to a sound conclusion. Do not merely show that you remember legal principles; instead try to demonstrate your proficiency in using and applying them. If your answer contains only a statement of your conclusions, you will receive little credit. State fully the reasons that support your conclusions, and discuss all points thoroughly. Your answer should be complete, but you should not volunteer information or discuss legal doctrines that are not pertinent to the solution of the problem.

*Professor's Answer Outline: Not Available*

**REAL PROPERTY**  
**Professor Justin O'Connell**  
**Midterm, Fall 2017**  
**Question 1**

In November of 2010, Able purchased a 50-acre parcel of undeveloped real property along the shoreline of a large public lake. Able had never been to the property, so he immediately he went out to inspect his property. During this inspection, he did not set foot on the property, instead standing on the public road that bordered the side farthest from the lake. The property was heavily forested, and nearly inaccessible due to the intense sloping of the land down toward the lake. Due to the cost of building a driveway and home on the property, Able decided not to build on the property, but to keep it as an investment.

If Able had explored the property further, then he would have found that Bob had several small boats tied to posts in the ground in the property shore. The boats were not visible from the public road. Bob had been tying his boats there for 2 years under the mistaken belief he owned that part of the shoreline. Sometimes other boat owners tied their boats there too for short periods of time, because it was common custom to tie a boat to someone else's posts without permission for short periods.

Bob kept tying his boats in this manner until November of 2012, when he began building an extensive dock facility on the property, with the intent to charge the public docking fees. When construction was almost completed, Able had a survey of the property performed and he discovered that the facility was actually being built on Able's property. Able told Bob to stop construction. Bob halted construction for several months, but then completed construction. After construction was complete, Bob began charging other boat owners docking fees, and in 2014 he built a small bait shop, next to the dock. Neither the dock nor the shop were visible from the public road, and could only be accessed by boat.

In November 2015, Able sold the property to Carroll. The following month, Carroll discovered Bob's dock and shop on the property.

Assume this jurisdiction has a 5-year statute to assert ownership by adverse possession. Discuss the rights of Bob and Carroll under the theory of acquisition by adverse possession as of December 2017 (ignoring-any claim by Carroll against Able).

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**Question 2**

Adam is the owner of a large apartment complex with many apartment units. On January 1, 2017, Betty entered into a written lease providing that she had the right to occupy one of the apartments for 6 months at a rental rate of \$1,000 per month. However, at the end of the 6-month lease, Betty continued to occupy the apartment and continued to pay Adam rent on a monthly basis. Adam and Betty did not enter into a new written lease agreement.

In September of 2017, Betty notified Adam that another tenant in the apartment complex struck a window in her apartment with a rock severely cracking the window. She asked Adam to replace the window. Three days later, Adam taped over the cracks, but never replaced the window.

Also in September 2017, the water heater in Betty's apartment began to operate improperly, and routinely overheated water to scalding temperatures. She notified Adam about the problem in mid-September. He promptly sent a service technician to repair the water heater. However, the technician found that someone had tampered with the heater, and the entire heater would have to be replaced at an enormous cost. Instead of paying for the heater to be replaced, Adam notified Betty she had to pay for the heater since she was the only person with access to the heater and therefore the ability to tamper with it. To this day, the heater has not been replaced or repaired.

In October 2017, Betty notified Adam that she would not pay rent in November because of the window and water heater issues. She also notified him that she would not pay rent because another tenant has been noisy and always parks in front of Betty's apartment where Betty wants to park. Betty made good on her statement and she failed to pay Adam rent in November 2017, so Adam filed an eviction proceeding against her, after giving her proper notice to pay rent or quit. His suit seeks her removal from the property and damages for back rent.

Discuss the claims and defenses of Adam and Betty.

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**Question 3**

Oliver, a widower, owned Blackacre, a parcel of land with a home upon it, where he lived. At his eightieth birthday party he reunited with his niece, Alice, with whom he had had no contact in over 30 years. After the party, Alice was concerned that Oliver could die at any moment since he appeared extremely frail and no one in the family had ever lived as long.

A few weeks after the party, Oliver decided to give Blackacre to Alice. At the time, Oliver had a valid will leaving "to my three children in equal shares all the property I own at my death." Oliver did not want his children to know of the gift to Alice, therefore he asked his brother Bob, Alice's dad, for help.

Bob drafted a deed for Oliver that by its terms would effect a present conveyance of Blackacre to Alice. Oliver signed the deed, naming himself as grantor and Alice as grantee, designating Blackacre as the property conveyed, and including an accurate description of Blackacre. Oliver signed the deed and a notary acknowledged his signature.

Oliver then handed the deed to Bob and told him, "Hold this deed for Alice and record it when I die." Oliver immediately sent Alice a letter telling her she would have a "great surprise soon," but Alice never received the letter.

Several years later, Oliver left a note at Bob's house for Bob telling Bob to destroy the deed. A few hours later, Oliver died, and he had resided at Blackacre until his death. The next day, Bob found the note, but recorded the deed as Bob had previously instructed. Alice later learned of the transaction when Bob sent her a copy of the recorded deed.

Oliver never changed his will and it was in effect on the day of his death. He is survived by three children.

What ownership claim to Blackacre can be made by Alice and by Oliver's children? Discuss.

1)

### Adverse Possession

When a non owner effectuates a trespass complete with five elements then an adverse possession has occurred and the trespasser becomes the rightful owner. The policy behind adverse possession is to ensure property is used for its highest purpose. If land is not used by an owner and another utilizes the property society rewards the active user. In order to achieve adverse possession it must be actual, open and notorious, hostile, exclusive and continuous for the statutory period.

**ACTUAL POSSESSSION:** The person must have actual physical possession of the land. It must be used in the manner that the property would normally be used for. In 2010 when Able (A) first purchased and inspected the property, Bob (B) had several boats tied to the shore. This appears to be a normal use of shoreline property since it was common custom for other people to tie up boats for short periods. Bob had been tying his boats there for two years, and believed the property was his. Since he believed he was the owner, and he was using it for that purpose the element of actual possession is probably satisfied starting in 2008. In 2012, B began building on the property, this would definately satisfy the actual element because that is what people do with property they own, build structures and make improvements. If the element was not satisfied when B started tying up his boats in 08 then it would be satisfied when he started to build in 2012.

### OPEN AND NOTORIOUS:

For possession to be open and notorious it must bein a manner that would put the owner on notice. A would have noticed the boats if he had done his due diligence and conducted a proper inspection of his newly acquired property. This element can also be satisfied if the reasonable passerby would think that the adverse possessor was the true

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owner. By tying up his boats there and then starting construction, most of the locals who use the lake would assume that B was the true owner. A only went to the property one time and did a inadequate inspection. Since the public policy is to reward people like B who are making improvements and use of land while punishing landowners like A who never set foot on the property but looked at it from the road. Any reasonable owner of lakeside property would have inspected the shoreline, even if it was just to see what kind of a view he had. B will easily be able to show that his possession was open and notorious. Able finally had a survey completed two years after he purchased the property, and B's dock was discovered. If A had done a reasonable amount of due diligence he would have discovered the presence sooner.

#### HOSTILE:

In order to be hostile we must analyze the Maine, Connecticut and minority views. The Maine view rewards those who know that the land they are occupying is not theirs. The Connecticut doctrine states that the state of mind of the adverse possessor is irrelevant.

And the Minority opinion only rewards those who believe they are the true owner, by color of title or mistaken boundaries.

If this a state that follows the Maine doctrine. B would not become the true owner because he believed it was already his property. under the Connecticut doctrine and the minority view B would have satisfied the hostile intent because he beleived it was already his and was treating it as such.

#### EXCLUSIVE:

This requires that the adverse possessor exclude the true owner the general public and any other adverse possessors from occupying the land. Here B did allow others to tie up at the property because that was local custom. Also since they only tied up for a short period

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they would not be considered adverse possessors. Although this would not be excluding the general public this was the local custom. once he started building in 2012 he would easily satisfy the exclusive requirement. So even though he was not excluding the general public from use of the land the shore line would likely be considered a unique property and local custom would be considered as use by boat owners not the general public. not everyone in the public has a boat. This is a fine line but considering local custom, the uniqueness of the property, and that B was the only one to start building there the element would be satisfied by 2012.

CONTINUOUS:

When Able finally surveyed the property and then told B to stop construction, this may constitute a break in the continuous possession. However the facts only say that he stopped construction for a few months. It is likely that B still had his boats there and he definitely had the almost completed dock still there. Depending on how far the construction had progressed he may already have been operating it as a dock and charging docking fees, even though he halted construction. After a couple months B re-started and completed the construction. So it is a possibility that his adverse possession was not continuous and started again in November 2012.

Bob V Carroll december 2017

B will argue that by November 2012 all of the adverse possession elements were satisfied, and that by November 2017 he would be the rightful owner of the portion of the property that he had occupied which was the shoreline. Carroll (C) will argue that she discovered the dock and shop in 2015, but there is no indication that she asserted her rights as true owner at that time.

Since B's possession was actual B was building on the shore and using it as it normally would be used. Open and notorious (the lake community knew he was there occupying and building) exclusive since A never really tried to occupy, The hostile element is

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satisfied under the Connecticut doctrine and the minority view, and continuous from November 2012 until December 2017. Therefore B has obtained true ownership through adverse possession to the dock and part of the shoreline. If B were to argue that he should have ownership of the entire 50 acres he will likely fail. Since B only occupied the shoreline he will only have ownership of that.

C will argue successfully that his Adverse possession claim is valid only to the dock and not to the bait shop since the bait shop was only built in 2014. C will maintain possession of the remainder of the 50 acres.

**END OF EXAM**





2)

In order to determine the rights of the parties we must first determine what type of lease agreement exists.

A term of years is for a fixed period, with a specific start and termination date. Since there is a pre-determined termination date no notice is needed to terminate a period of years.

A periodic tenancy is one that goes for a period and renews at the end of the period. A periodic tenancy terminates by notice of either party.

At the end of a term of years if the tenant remains and continues to pay rent, and the landlord continues to accept rent, an implied periodic tenancy is created.

In January 1, 2017 Adam (A) and Betty (B) entered into a term of years for six months. That lease expired on June first of the same year and an implied periodic tenancy ensued (month to month).

Landlord duties:

Landlord had the duty to deliver possession, to ensure the covenant of quiet use and enjoyment and the implied warranty of habitability.

Quiet use and enjoyment means the landlord will not interfere with the tenant's use or enjoyment by some act or omission. The landlord is not responsible for noisy neighbors or acts by third parties, unless in extreme cases to abate nuisance.

Implied warranty of habitability ensures that people have habitable domiciles and standards usually will be provided by building codes. It includes basic amenities such as functional plumbing and electrical, secure doors and windows, roofs that don't leak.

Landlord remedies: If a tenant fails to pay rent, the landlord can start eviction proceedings or can allow the tenant to remain and sue for rent owed. A landlord can never resort to self-help remedies.

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Tenants duties:

Tenant has the duty to pay rent and to not commit waste.

Tenant remedies: Terminate and move out, repair and deduct from the rent, reduce the rent to a fair market value or not pay rent until problems are remedied while keepin the balance in escrow

When B notified A of her broken window he did not replace it but put tape over the window. This is not an adequate remedy by most standards. B could argue that it is a safety or security hazard, and that she is paying for a window not a taped up shattered window. A will argue that he does not need to replace the window that it is secure enough and that sufficient light comes through. Depending on what kind of tape he used and how secure it is it may be a good argument. If he used clear tape on both sides of the window it may be secure and allow enough light. If he covered it with duct tape it is likely a nuisance for B. The broken window is a simple problem. Since B is not satisfied she has the option to pay for a repair and deduct from the rent, reduce rent to a fair market value, terminate the lease and move out or not pay rent. I would advise her to repair and deduct. The repair will likely not be that expensive and then A can sort it out and B will have a new safe secure window.

A's response to the scalding hot water heater was prompt. Since the damage to the water heater was not from normal wear and tear A accused B of causing the problem by tampering with the water heater. The someone who tampered with the water heater probably was B since she had been living there for nine months. If it had been tampered with by a previous tenant A would have noticed when he inspected the apartment before leasing it to B, also if it was an existing problem B would have complained about it sooner. This is an example of affirmative waste where the tenant did an act that caused

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damage to the property. However the scalding hot water is also likely not a breach of the implied warranty of habitability because B still has hot water. Better to hot than not enough she can adjust the temperature by just using a little hot and a lot of cold water. Maybe her sinks have got two faucets one for hot and one for cold, but her shower should be fine. She will argue it is a breach of warranty and she will have the same remedies mentioned above.

B's claims of not paying rent because of a noisy neighbor do not constitute a breach of the covenant of quiet use and enjoyment. For that covenant to be breached the landlord has to actually cause the breach by depriving the tenant of the use and enjoyment. The landlord is not responsible for noisy neighbors. If one of the neighbors was conducting illegal activity then that would be a violation of the lease and the landlord could take action or call the authorities. If B's neighbors are being noisy, then she needs to ask them to quiet down or call in a noise complaint to the local police but it is not the landlord's responsibility under habitability or quiet use and enjoyment.

B is also upset because another tenant is parking where she likes to park. If there were assigned parking places then the landlord may be able to assist B with this. Assigned parking would likely be in her original lease. Now that she is a month to month tenant, those conditions in her original lease would still apply. However this is not her assigned spot just where she likes to park, and obviously her neighbor likes to park there too. This does not to be a valid reason to withhold rent.

A will argue that failure to pay rent is a breach of the lease agreement. That the reasons B has given are insufficient. By not paying rent in this case it appears she has given him proper cause to give her notice to pay or quit. B would have three days to pay and then he could start lawful eviction proceedings. If she refuses to leave she becomes a holdover tenant/ tenant at sufferance. B may claim that this is a retaliatory eviction and thus unlawful. That A is evicting her because of her constant complaining. A will be able to show that the eviction is in line with his legal rights, he tried to fix her window, he sent

the repairman, she was committing affirmative waste and has now breached the lease agreement by not paying rent.

If he A had decided to give her notice because she was always complaining that would be considered a retaliatory action. Since her periodic tenancy is a month to month lease he would have had to give her a one month notice to terminate the lease. However since she has stopped paying rent his only choice is to sue for eviction or allow her to stay and sue for the back rent.

**END OF EXAM**

3)

### Gifts:

A gift is a conveyance without any consideration.

There are two kinds of gifts, an inter vivos gift and a gift causa mortis.

*An inter vivos gift is given during one's lifetime. To be a valid inter vivos gift the grantor must demonstrate present donative intent, intent must be outwardly manifest and unambiguous. There must be delivery of the gift, either actual physical delivery when possible or if the gift is too large or impractical to deliver (land) then constructive or symbolic delivery are an acceptable substitute. Constructive delivery gives access or control of the gift. Symbolic delivery is representative of the gift such as a deed or a picture of the item. Finally there must be acceptance which is presumed when it is an item of value, however people can refuse to accept a gift.*

Causa mortis is a gift given in anticipation of impending death. If the person does not die then the gift is revocable. If the grantor does not die of the specific cause anticipated then the gift is revocable by the estate.

Here Oliver (O) decided to make a gift of Blackacre to Alice (A). He demonstrated his intent by telling his brother Bob (B), having B draw up a deed, signing it and having it notarized. These are signs of intent however he didn't want his children to know. His children will use this to show that there was not intent at least that it was not clearly manifest and it is ambiguous. Because B is A's father, he wants A to get Blackacre he will argue that O was very clear, and unambiguous. The children will also say that having B hold the will until O dies casts a shadow on his intent. If he wanted her to have Blackacre he should have given the deed to her with the condition that it is effective on his death, or they will argue that if O wanted A to have the estate at his death then he should have

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changed his will. O lived for several years after making the deed and easily could have changed his will without the children knowing. In the end O changed his mind and left a note for B telling him to destroy the deed. B likely will never tell anyone of the note as he wants A to have Blackacre.

A will argue that delivering the deed to B is like delivering it to her as he is her father, and an uncle and father often care for a niece and daughter by safeguarding their well being. Delivery of a gift to a person's agent with a condition does constitute delivery upon the happening of the condition. However giving the gift to your own agent and telling them to deliver it on the happening of a condition does not constitute delivery. Therefore it will depend on the interpretation of B's role in the chain of events. B was acting as O's agent when he drew up the will. Then arguably he was acting as A's agent by safeguarding the deed for her. O's children will argue that the relationship of father and daughter is not the same as agent and master. They will argue that by not delivering the deed to A but to B for safe keeping that there was not actual, constructive or symbolic delivery. The letter that O sent to A also would not satisfy delivery because it did not say what the great surprise was, and A never received the letter.

Also there is a lack of acceptance. Since A did not know about the deed until B sent her a copy after O died she never accepted the gift.

There are several problems with this gift of Blackacre from O to A. O's intent is questionable, there is a lack of delivery and no acceptance. A and B's arguments will likely fail as there is too much ambiguity and society prefers clear ownership. The will gives clear ownership to the three children, and the will has been in existence for a long time without ever being altered. The policy rings true especially with real property, the law frowns on ambiguity of title.

Deeds

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A deed is an instrument of conveyance. A valid deed needs to have the names of the grantor and the grantee, an accurate description of the property, any consideration received if not a gift, and be signed by the grantor. A deed need not be physically delivered but words will suffice as delivery mechanism. Deeds need not be notarized to be valid but they must be notarized to be recorded. A deed not need to recorded to be valid but if there is a dispute between one or more title holder then the recorded deed will be preferred, depending on the statute of the jurisdiction. A deed is void if it is faulty in some way if it was a forgery, or not executed correctly due to scrivener's error or other malady.

O's deed that B drafted seems to have all the requirements of a valid deed. It has the names of the parties, the description of the property to be conveyed, it is signed by the grantor and notarized. However the deed was recorded after O's death. Once O died, the property automatically transferred to the three children by way of will. By recording the deed the day after O's death B hopes to make A the true owner as the deed was executed years previously. Even though O executed the deed several years before his death he never completed the transfer by delivering the deed to A. By not doing so his intent is unclear. Again B still argue that it is the nature of the relationship that a father safeguard a daughter's well being by keeping the deed for her. However he could have kept the deed for her and told her about it, or O could have given the deed to A in order to make her aware of the instrument and that it would be defective upon his death. By O nor B making A aware of the existence of the deed, when O died the deed became a void deed. By O's own instruction the transfer is faulty, recording it after he dies is insufficient because as soon as he dies the property transfers to his children. Since O's will was effective on the day of his death and the deed from O to A was never delivered to A the will will be a superior conveyance to the otherwise valid deed. Also since the deed was recorded the day after O died and the will was effective the day O died, the will went into effect before the deed was recorded or delivered. The children will also call attention to the fact that

the delivery of the deed did not occur for days after it was recorded. They will argue that it wasn't even the deed that was delivered but a copy of the deed. A may counter that owners rarely have actual original deeds because they are kept at the recorder's office and that a copy is sufficient. However A's arguments will likely be in vain as there are too many loose ends connected to the deed and the will is a clear and valid conveyance.

Since it is in the interest of society to have property without unclear owners, and clear title the children will be awarded the estate by will.

**END OF EXAM**