

MONTEREY COLLEGE OF LAW

**REAL PROPERTY**

Make-Up Examination

Fall 2015

Prof. Justin O'Connell

INSTRUCTIONS:

There are three (3) questions in this examination.

You will be given three (3) hours to complete the examination.

**REAL PROPERTY**  
**Professor Justin O'Connell**  
**Make Up Midterm, Fall 2015**  
**Question 1**

In 2002, Able bought a 5-acre parcel of undeveloped real property, Blackacre. Local members of the public had used Blackacre as a dumping grounds for many years, depositing trash and other refuse on the property without permission. Able inspected Blackacre after he bought it. Able did not want to develop the Blackacre, but instead to keep it as an investment.

In 2003, Charles began leaving his trash on Blackacre.

In 2005, Charles began sifting through the trash left by other people on Blackacre, and collecting and selling the trash. Charles made large piles of trash that he had separated by type, for example there were piles of scrap metal, and piles of wood refuse.

In 2006, Charles began to keep other people from depositing trash on Blackacre by posting "keep out" signs and by personally telling people to leave when they tried to deposit trash that he did not want.

In 2008, Charles placed a large sign at the front of Blackacre, facing the public street, which advertised his sale of the trash he found on Blackacre.

In 2012, Able sold Blackacre to David.

Assume this jurisdiction has a 5-year statute to assert ownership by adverse possession.

Discuss ownership claims of Charles and David regarding Blackacre at the time David purchased the property (ignore any claim by David against Able).

**REAL PROPERTY**  
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**Question 2**

Adam is the owner of a residential apartment building. On January 1, 2010, Barbara entered into a written lease with Adam providing that she had the right to occupy one of the apartments for 18 months at a rental rate of \$1,000 per month. The lease stated that Barbara would be responsible for paying for all "utility" bills.

On July 1, 2012, the lease expired, but Barbara continued to pay her rent and Adam continued to accept her rent payments.

In September of 2012, Barbara notified Adam that she had cockroaches in her apartment, and asked him to take steps to exterminate them, and that her hot water heater did not work. Adam ignored Barbara.

In October 2012, Barbara notified Adam that her internet access through her cable service provider, CableCo, had terminated. Adam ignored Barbara's request because CableCo required \$25,000 to retrofit the apartment building for new, upgraded internet access. Adam did not want to pay for the retrofit.

In November 2012, Barbara notified Adam that she would not pay rent in December 2012 because of the cockroaches, her lack of hot water and her lack of internet access. She also told Adam that the 2010 lease did not require her to continue to pay rent, since her lease expired.

What rights and remedies would Adam have against Barbara?

What rights, defenses and remedies would Barbara have against Adam?

**REAL PROPERTY**  
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**Question 3**

Oscar owned Blackacre, a parcel of land with a home upon it, in which he lived. Oscar recently reunited with his daughter, Agnes, with whom he had no contact in many years. Oscar told Agnes that he was "getting old" and needed to make an estate plan soon.

The next day, Oscar signed a valid deed transferring his ownership of Blackacre to Agnes, and he gave the deed to Charles, with instructions to record the deed upon Oscar's death. At the time Oscar gave Charles the deed, Oscar told Charles that he wanted Agnes to get Blackacre when Oscar died, and that Oscar did not want Charles to let anyone in Oscar's family know about the deed until Oscar died. Oscar also told Charles that Charles was the sole beneficiary of Oscar's will.

A few weeks later, Oscar died, and his valid will conveyed all his property he then owned to Charles. The following day, Charles told Agnes that Blackacre was hers, and he recorded the deed.

Agnes and Charles now each claim ownership to Blackacre. Discuss what theories they each might assert to support their claims.

1)

===== Start of Answer #1 (1078 words) =====

### Question 1

Adam and Bob

#### Leasehold Estate

A leasehold estate is a temporary right to possess land or property in which the leasee or tenant holds rights of rel property by some form of title, usually a rental agreement, from the lessor, or landlord. There are four types of leasehold estates; term for years, periodic tenancy, tenancy at will, and tenancy at sufferance.

#### Term for Years

A term for years leasehold is an estate that lasts for some fixed period of time or for a period computable by a formula that results from fixing calendar dates for the lease's beginning and ending. Once the term is created or becomes possessory, no notice is needed to terminate the lease, as the lease terminates by it's terms. Term for years requires a writing, to satisfy statute of frauds, if the lease for over a period of one year.

#### Periodic Tenancy

A periodic tenancy continues for successive periods until the tenant or landlord give notice to terminate the lease. Periodic tenancy can be created orally, in writing, or implied. Notice is needed to terminate the lease. If the lease is longer than one year, six months notice is necessary. In California, a lease for one year or less requires a 30 day notice, and if the leasee has rented property for over one year, 60 days notice is required to terminate, and a 3 day notice to evict.

#### Tenancy at Sufferance

Tenancy at Sufferance is an agreement in which a property renter is permitted to live in the property after the term expires, but before the landlord demands the tenant to vacate the property. If tenancy at Sufferance occurs, the original lease must be met, including payment for rent. A tenant holds over when he remains in the property after the termination of tenancy. Common law gives the landlord two options regarding hold over, either the landlord evicts the renter, and may sue for damages including waste and past rent, or the landlord can allow the tenant to remain by expressly or impliedly allowing the tenant to remain, either by drafting a new agreement (express) or by cashing the rent check (implied).

### Tenancy at Will

Tenancy at will is a property tenure that can be terminated at any time by either party. The tenancy exists without a rental agreement or contract and rental payment is unspecified. Possession of the property is permissive, and notice may be required to evict or remove the tenant. Reasonable notice for a tenancy at will eviction would be 30 days.

Here, it appears Adam (A) and Bob (B) entered into a tenancy at will. This is evidenced by A giving B permission to move into an apartment that A owns. The parties did not sign a lease, and B told A to pay \$100 per month if B could afford it. All of the elements for a tenancy at will have been met; therefore, A may need to give B notice to evict him.

### Landlord's Duties

A landlord has the duty to provide the tenant a habitable property, not interfere with the tenant's quiet enjoyment of the property, and keep other tenants from interfering with the tenant's quiet enjoyment of the property.

### Tenant's Duties

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A tenant has the duty to pay the agreed upon rent at the agreed upon time, and not to commit waste. Waste is the destruction of the property or permanent fixtures within the property.

### Implied Warranty of Habitability

A landlord has the duty to provide the tenant a premises that is fit for human habitation and ensure the premises will be fit for human habitation throughout the term of the lease. If a landlord breaches this duty, the tenant may repair anything that falls within this warranty, such as a hot water heater, window, or roof, and deduct the costs from the rent. The tenant may also reduce the rent or withhold rent until the court determines the fair rental value.

### Quiet Enjoyment

A landlord has the duty not to interfere with the tenant's quiet enjoyment of the property. The tenant pays rent to use the property without the landlord's interference. An example would be that a landlord may not enter the property without giving notice. The landlord also has the duty to keep other tenants he has standing over to interfere with the tenant's quiet enjoyment of the property. If a tenant has a barking dog that interferes with the tenant's peaceful use of the property, the landlord has a duty to mitigate the dog's noise.

### Retaliation

Retaliation is a defense to the eviction process. In California, it is illegal for a landlord to evict a tenant who complained to the landlord or government agency about unsafe or illegal living situations within 180 days of the complaint.

### Bob's (B) Rights and Remedies

A formed a tenancy at will with his cousin, Bob (B). Defined supra. A has the right to

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give B a day notice to vacate; however A may have a few issues. First, the hot water heater in B's unit stopped providing B providing hot water on a consistent basis. However, B did not put A on notice by alerting A to the issue. Although this is not an element in an implied warranty of habitability. The warranty is implied, and A has a duty to provide B with hot water. A could argue that the hot water heater provided B with hot water a couple times a week, which would be satisfactory to maintain a level of human cleanliness. Furthermore, the water still worked, along with the stove, if B really needed to wash with hot water, he could have heated the water prior to bathing. Also, hot water is not an absolute requirement for bathing. Water does not sanitize until the tempertaure is well above the limits of human pain tolerance, so B would need to rely on soap, like the rest of humanity. Rats did however enter B's apartment. This is also a concern under the implied warranty of habitability. Rats get into human food, leave droppings about, and spread disease. A responded to B's complaint with, "too bad." This is a major breach of A's duty as a landlord. And B will have remedies for this breach.

B also complained to A regarding the loud music a neighbor was playing late into the night. A also replied to this with, "too bad." This was a

(computer died, had to use blue book to continue)

===== End of Answer #1 =====

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QUESTION 1 CONTINUED DUE TO COMPUTER MALFUNCTION.

BREACH OF B'S DUTY TO PROVIDE A WITH

QUIET ENJOYMENT OF THE PROPERTY. B'S

REMEDY COULD BE TO TERMINATE

THE LEASE, OR B COULD LIVE RENT

FREE FOR THE DURATION OF THE AGREEMENT,

HOWEVER, THERE IS NO AGREEMENT, ~~AND~~

THUS THIS WOULD NOT BE A SUITABLE

REMEDY.

IN OCT. 2015, A TOLD B THAT HE

NEEDED TO RENT B'S UNIT TO

SOMEONE ELSE. A EVEN OFFERED

TO MOVE B TO ANOTHER, BETTER

SUITED UNIT, BE B DECLINED.

INSTEAD, B COMPLAINED TO GOVT.

REGARDING THE BUILDING CODE

VIOLATIONS AT A'S APT. BUILDING,

IF A CHOOSES TO EVICT B NOW,

B CAN CLAIM RETALIATION AS

A DEFENSE TO THE EVICTION

PROCEEDING.

A'S RIGHTS AND REMEDIES

A CAN GIVE B A 3 DAY

EVICTION NOTICE, SINCE THIS IS

A TENANCY AT WILL SITUATION.

B PAID SPORADIC RENT, PRESUMABLY

UNDER FAIR RENTAL VALUE, \$100.

B ALSO FAILED TO NOTIFY A OF  
THE HOT WATER ISSUE IN B'S UNIT.

A CAN EVICT B, BUT SINCE B  
WILL CLAIM RETALIATION, A WILL  
MORE THAN LIKELY NEED TO FOLLOW  
A ~~WALK~~ LONGER, 30 OR 60 DAY  
EVICTION PROCESS AND PLEAD HIS  
CASE BEFORE A JUDGE.

# Blue Book

NAME ~~XXXXXXXXXX~~

SUBJECT Real Property

INSTRUCTOR Justin O'Connell

EXAM SEAT NO SECTION Q2 BB 1 of 1

DATE Dec. 10, 2015 GRADE

10<sup>7/8</sup> x 8<sup>1/4</sup>

25 - 24 PAGE

## Real Property Q2

### Adam - Charles - David

In order to determine the rights of A, C, + D, we must determine which party has adequate title to Blackacre.

### Adverse Possession

Under adverse possession, an individual's possession of property for a statutory specified amount of time can ripen into actual title when certain elements are met.

The policy behind this is to reward people for using otherwise vacant property. To gain title, the AP's possessor must be continuous, open + notorious, actual, exclusive, and hostile.

Here, A is the owner while C + D are the APs.

### Continuous

The AP must be continuously using blackacre for its intended purpose, and the possession must be uninterrupted.

When there is privity b/w two potential AP's, they may be able to tack their time to be continuous and add up to the state's statute of limitations time frame.

Here, in 2003, C + D began periodically coming to B. Then in 2004 they built a shack together + put money into it. Together, they would go to B

on weekend trips w/ friends. Then, C stopped going in 2008 + D put up a lock. Then in 2015, C told D he couldn't come onto B anymore.

Intermittent use of B may be continuous if being used as the intended purpose (ex: vacation home). Here, B is an undeveloped parcel of land. The owner, A, intended it to be for 200 homes. Also, b/c C + D hunted ~~there~~, it is likely in a forestry area.

A will argue this is not continuous, as it was intended for residence not weekend hunting trips. Also, from 2008-2011 C didn't go there.

C + D will argue that b/c the land is undeveloped, the intended purpose couldn't be residential, and b/c they are in a hunting area, sporadic trips are still continuous.

~~The court will likely conclude~~

Also, C + D will argue they can tack their time of not being there (2008-2011) since they have privity. They worked + spent time + money on B together. But A will argue it ended when D put the lock on.

The ct will likely conclude C + D's possession was continuous. They only sporadically spent time there, and C didn't go at all for a few yrs. This is not sufficient under AP.

## Open + Notorious

The AP's possession must be obvious enough so that if the true owner was present, he would reasonably be aware of the AP's presence. Also, the AP must not do anything to hide or conceal their possession.

Here, C + D did not do anything to hide or conceal. They made improvements w/ the shack, went there w/ friends, and D put up a gate.

A would argue that b/c they only went there sporadically, if he had visited he would likely not see them or be aware of their presence.

C + D would argue that b/c of the shack w/ electricity + water, A would be on notice that someone was there, since it wasn't just undeveloped land.

The ct. will likely conclude their possession was open and notorious, since they took no measures to hide or conceal, and A would have seen their improvements if he was present, or he would see them on the weekend trip.

## Actual

The AP must actually be in possession of blackacre. This means the AP must be actually using the property, and not just try to claim title and then leave and never use the property.

C + D will argue they used the property b/c they ~~had~~ built the shack, added electricity + water lines, eventually put up a gate, and went there on weekends. Also, b/c they collectively put \$20,000 into the property, they were actually using it.

A will argue b/c the land was vacant more often than not, they were not in ~~pos~~ actual possession.

But C + D could argue that their money, improvements, and trips were actually putting B to use.

The court will likely conclude C + D had actual possession. Their money + improvements showed they were using an otherwise vacant + undeveloped piece of land.



## Exclusive

The AP's possession must be exclusive, meaning the ~~property~~ property is not also be used by another party.

A will argue that since C + D were both using the property during 2003 and 2015, ~~the~~ neither of them had exclusive use.

C + D will argue b/c they had privity and were possessing the property jointly, it was exclusive b/c no one besides C + D had ~~the~~ use or possession.

However, b/c in 2008, C stopped going, and then D put up a gate, and then later C asked D to never come back, their privity ended and they were now in competition for possession.

So maybe when they jointly decided to and used the property, it was exclusive, but from 2008-2015, they were adverse parties who were each trying to exclude the other from getting onto the property.

A may also argue that b/c C + D brought friends along on their weekend trips, there was no exclusivity, as those people used <sup>B</sup> just as much as C + D. However, C + D will argue since they were the only ones to put money into B + make improvements, it was exclusive.

The court will likely find C + D together had exclusive use of the property, as they jointly had sufficient control. But when they began fighting over it in 2008 - 2015, they each lost some control, making it insufficient. C couldn't get on b/c of a gate, so D took measures to exclude C, and then C told D he could never come back, which is C taking measures to exclude D.

So depending on the State of limitations & their jurisdiction, they may fail at showing exclusivity.

### Hostile

An AP's possession must be hostile, meaning they do not have the true owner's permission. In a majority jurisdiction, the focus is the true owner's state of mind only. So if the owner's state of mind is that the AP does not have permission, the AP's possession is hostile. If the owner does not expressly give consent, then ~~the~~ it is hostile, and there can be no implied consent.

Here, A did nothing to give C or D consent. He intended to build onto B, but ran out of money. So A's state of mind is likely that neither of them had permission to be on the property, or to

make the changes they made. So in the majority, their possession would be hostile.

In minority jurisdictions, the true owner must not give consent, but the AP must also not believe they have true ownership either by good faith, bad faith, or mistake. Here, C + D didn't do anything to suggest they believed they had title. They may argue mistake, that they thought it was an unowned parcel of land in a hunting area and it was up for grabs.

Either way, C + D's possession will be hostile, as A never gave express consent and neither of them believed they were the true title holder.

~~Adverse Possession~~

### Tacking

When two AP's have been in possession of a property, and they have priority, they can tack their time and meet the Sol, and then the m. last AP obtains title.

Here, C + D jointly had title, but soon each took measures to exclude one another.

C will argue b/c he was the last one there to go on a hunting trip, he should be the last

AP and get title. But D may argue that b/c he added the locked gate, C probably didn't actually get on the property to go hunting, so he is the actual last possessor.

A will argue that since they lost priority, neither of them can claim title, so title remains with him.

The ct. will likely allow them to tack title from 2003-2008, b/c any problems w/ exclusivity and possession arose. So if the SOL is 5 yrs, and the ct finds all elements were met, then C or D may obtain title.

However, b/c there are issues w/ their priority, their continuous possession, and their exclusivity, the ct. will conclude the AP elements were not met and title remains with A.

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===== Start of Answer #3 (579 words) =====

### **The Gift of Blackacre**

Oliver wants to give a parcel of real property to his favorite charity, Animal World (AW).

### **Gift**

For a gift to be valid three basic elements must be met: donative intent, delivery, and acceptance.

### **Intent**

The donor must manifest an intent to relinquish his ownership interest in the object of the gift. This can be expressed in a variety of ways, yet the intent must be clear to the parties and to any reasonable observer. Upon meeting with Charles, Oliver expressed his intent to transfer Blackacre to AW. The facts are clear that O wants AW to be the recipient of the gift and that the transfer is in fact a gift. The donative intent is satisfied.

### **Delivery**

Delivery of a gift can be actual, constructive (or symbolic), or in the case of real property, in writing via transfer of deed (per the Statute of Frauds). Actual delivery is required when it is feasible to physically hand possession of the gift to the donee. However, actual delivery may be postponed in the case of a donative intent to transfer title interest in the object yet the donor manifests an intent to reserve a possessory interest for some time. Constructive, or symbolic, delivery is applicable when it is not feasible to physically transfer an object. The common example is the gift of a car, in which the donor hands the keys to the donee, symbolizing the delivery of the object.

Real property, as the gift here is, must be conveyed in writing. Technical compliance with recording statutes is not necessary to effectuate delivery. Oliver attempts delivery of a valid deed by handing Charles the document.

### **Acceptance**

The gift must be accepted by the donee or an agent of the donee in order for the gift to be complete. Charles, fraudulent manner aside, refused acceptance. The deed was destroyed and thus the gift was not complete. At this point, Oliver remained the owner of Blackacre.

**The Next Attempt**

Upon Charles misrepresentation, Oliver gave Charles a second deed with Charles named as the donee. In this instance we lack donative intent. Oliver had no intent that Charles be the actual recipient of the gift. His intent was clearly to give the RP to AW. Although Delivery and Acceptance was satisfied in this instance, with no donative intent to place Charles as the true grantee, this deed is invalid and no gift has yet been completed. Oliver remains the owner of Blackacre.

**Startling Revelations**

It was no doubt very difficult for Oliver to discover that animals were abused at AW. We can only suspect that Charles was involved in the abuse. Nonetheless, Oliver signed "a proper deed" granting the RP to Dog Haven and placed the deed in his safe deposit box with a note stating "record when I die."

For a gift to be complete, the donor must have the intent the effect a **present** transfer of his ownership interest. The intent to give Blackacre to DH is clearly present, yet there is no delivery or acceptance. Here there is only the gratuitous promise to make a gift in the future. No actual gifting has occurred.

**Conclusion**

Only Oliver has any valid claim to the title of Blackacre. Charles has no claim, due to a lack of intent. AW has no claim due to a lack of acceptance. DH may have a future interest yet it is not vested and may be revoked by Oliver. Blackacre is still Oliver's.

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===== End of Answer #3 =====

**END OF EXAM**