

MONTEREY COLLEGE OF LAW

REAL PROPERTY

Midterm Examination

Fall 2019

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.

* Faculty Answer: NOT AVAILABLE

REAL PROPERTY
Professor Justin O'Connell
Midterm, Fall 2019
Question 1

Adam owns a home in a remote wooded area. On January 1, 2019, Betty entered into a written lease with Adam providing her the right to occupy the home for 6 months at a rental rate of \$1,000 per month, and that there was no security deposit. When the 6 months had passed, Betty timely moved out, but still owed one-month's rent to Adam.

A month later, Adam leased the home to Carmen on a month-to-month basis for \$1,200 per month in a written lease that made no reference to assignment or subletting rights. Carmen moved into the home and immediately found the home heavily infested with rats. The rats had been entering the home through a small hole hidden behind the furnace. Carmen immediately notified Adam of the infestation, and the next day an exterminator hired by Adam removed all the rats and removed all the visible rat droppings, but the entry hole remained undiscovered.

The following month, Carmen told Adam that racoons were tearing open her garbage bags on the back porch "all the time," the neighbor's dog barked every night, the bathtub was draining slowly, and there were several rat droppings in attic. Adam told Carmen he'd "look into it" but never took any action to remedy these issues.

A month went by, and Carmen entered into a written assignment of her lease to Betty, who immediately moved into the home. Adam called the home to talk to Carmen and was surprised to learn Betty was living there. Betty told him that the same problems Carmen had noted remained and Adam told her, "live with it because you owe me money."

The following month, Betty did not pay rent to Adam.

Discuss the rights and remedies of Adam and Betty.

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Question 2

Oscar owned Blackacre, a parcel of land with a home upon it in which he lived. Earlier this year, Oscar came across Agnes, his daughter, while he was out shopping. They had not had any contact with each other for many years due to an argument they had. They briefly spoke, during which he told her he "really needed to get his Will updated."

The next day, Oscar signed a valid deed that granted ownership of Blackacre to Oscar's son Charles and handed the deed to Charles. As Charles was leaving with the deed, Oscar told Charles he should hide the deed and not record it so Agnes would not find out. Charles told Oscar "in that case, you should hold onto the deed so she won't find it." Charles handed the deed back to Oscar. Oscar put the deed in an envelope and wrote "4 Charles 4 Later" on the envelope. Oscar then placed the envelope in his closet.

Oscar continued to live in the home for several months until he broke his hip and had to move temporarily to live with Charles. During the move, Charles found the deed in Oscar's closet and then recorded the deed without telling Oscar.

Soon afterwards, Oscar died with a valid Will executed several days before his death devising his "entire estate to Agnes."

Discuss whether Agnes or Charles is the owner of Blackacre.

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Question 3

In November of 2013, Able bought Blackacre, which is a parcel of undeveloped, heavily forested real property bordered by a large public lake and a public road. Able inspected Blackacre before buying it but did not notice an overgrown campsite on Blackacre near the lake. Charles lived in his home on the far side of the lake from Blackacre and had been accessing Blackacre by boat to occasionally camp there over the previous three years. Able never went to Blackacre after the purchase.

Beginning in December 2013, Charles parked his truck every day at the same location along the public road across the road from Blackacre from which he carried building supplies to the campsite. At the campsite, he built a large brick firepit and worked on constructing a shelter. He worked at the site during the day and went home at night. On one occasion in April 2014 when Charles was on Blackacre, he yelled "You shouldn't be fishing here" at kids fishing just offshore of Blackacre.

By August 2014, Bob had completed the shelter, which was a 10-foot-square enclosed structure on a concrete slab. Bob then returned to accessing Blackacre only by boat, returning to the campsite once a month to clear brush during the day. He also posted a "No Trespassing" sign on the front door of the shelter.

In December 2014, Bob installed a generator at the campsite to provide electricity to the campsite. He also planted large native shrubs along the shore that provided privacy for his campsite. He established the electrical lines throughout the shelter and began residing at the campsite fulltime, coming and going only by boat.

In October 2019, Able sold the property to David. The following month, David discovered Charles living at the campsite.

Assume this jurisdiction has a 5-year statute to assert ownership by adverse possession. Discuss the claims of David and Charles under the theory of acquisition by adverse possession as of November 2019 (ignore any claim by David against Able).

1)

EXAM QUESTION # 1

Betty's Initial Tenancy

Type of Tenancy - Residential Tenancy for Years

A tenancy for years is a lease that is for a fixed period of time. No notice to terminate is required because the date of termination is known from the outset. A tenancy for years is expressly created.

Here, Adam, the landlord, entered into a written lease agreement with Betty, a tenant, on January 1, 2019, for a fixed period of six months. Both Betty and Adam know that the lease is to be terminated at the end of June 2019. Betty partially complied with the lease agreement when she moved out in a timely manner at the end of the six months. However, when she did so, she still owed Adam one month of rent and did not pay. Adam may have some remedies to recover the missed rent payment. And since the lease was for a home, it is a residential lease.

The court will likely find that Betty was in a residential tenancy for years.

Adam's Remedies Against Betty *at this Time*

As a landlord, Adam has the right to receive rent from his tenants. Adam may provide Betty with a three-day notice to pay. If Betty does not comply, Adam may sue her for the past rent.

At this time, the Court would likely rule in Adam's favor and compel Betty to pay the back rent.

enforceable in residential leases. In commercial leases, a landlord may not unreasonably withhold consent for an assignment.

Here, Carmen entered into a residential lease agreement with Adam that did not include a non-assignment clause. Therefore, there is nothing from prohibiting her from assigning her interest in the lease to Betty or anyone else. Carmen should be careful to assign her lease to someone who is responsible and reliable because Carmen may still be liable if her assignee misses a rent payment.

The court will likely find that Carmen's assignment of the lease to Betty was valid.

Type of Tenancy - Residential Periodic Tenancy

See Rule Above.

Here, Adam leased the home to Carmel on a month-to-month basis. Carmen's tenancy is for one month and is set to automatically renew on a monthly basis until Carmen gives notice to Adam that she desires to end the tenancy. And since the lease is for a home, it is a residential lease. When Carmen assigned her interest in the lease to Betty, she transferred the lease exactly as is. Therefore, Betty now has full interest in the lease and is in a periodic tenancy with Adam.

The court will likely find that Betty is now in a residential periodic tenancy.

Betty's Claim of a Breach of the Implied Covenant of Habitability

Under the implied covenant of habitability, a landlord has a duty to ensure that the property he is leasing or renting is in livable and habitable condition before and during a tenancy.

Here, Betty moved back into the leased home owned by Adam after Carmen assigned her interest in the lease to her. Adam called the home to speak to Carmen and learned

that Betty was living there again. Betty took the opportunity to relay to Adam the same complaints that Carmen had stated: raccoons were tearing open her garbage bags on the back porch, the neighbors dog barked nightly, the bathtub was draining slowly and there were more rat droppings in the attic. Adam responded by telling her "live with it because you owe me money." (see retaliatory conduct argument below) Based on these complaints Betty may argue that Adam breached his implied covenant of habitability due to the bathtub draining slowly and the additional rat droppings in the attic. Adam will argue that his conduct was lawful and not a breach of the covenant. He will argue that when there was a potential serious hazard, the rat infestation, he took care of it promptly. Adam will argue that a slow-draining bathtub is perhaps a minor inconvenience but it is still functional and is not sufficient to warrant a breach of the covenant. Adam will also claim that Betty's concerns over rat droppings were simply left over from the previous infestation and that she had not informed him of any actual rats in the home.

The court will not likely find that Adam breached the implied covenant of habitability.

Betty's Claim of a Breach of the Covenant of Quiet Enjoyment

A tenant has the right to the possession, use, and enjoyment of the leased or rented property in the manner in which it was originally intended at the time the lease or rental agreement was executed and to be free from nuisance that interferes with that use. If there is interference with that use by other tenants, and it is within the control of the landlord, then he may have a duty to act otherwise it may cause a breach of the covenant. If there is interference by the landlord causing: actual eviction, where the landlord took back possession of the property, the tenant may leave and is not liable for rent; partial actual eviction, where the landlord is occupying some space within the property, then the tenant may stay and pay a reduced rent or leave and is not liable for future rents; constructive eviction, where the landlord does not physically occupy a

space but is interfering with the tenants use of the property in a substantial manner, the tenant may leave within a reasonable amount of time and not be liable for future rent and may sue for damages for having to relocate; and lastly, interference causing no eviction, the tenant may stay and withhold rent and sue.

Here, After Betty moved back into the home, she relayed to Adam the same complaints that Carmen had stated: raccoons were tearing open her garbage bags on the back porch, the neighbors dog barked nightly, the bathtub was draining slowly and there were more rat droppings in the attic. Adam responded by telling her "live with it because you owe me money." (see retaliatory conduct argument below) Carmen may claim that Adam has breached the covenant of quiet enjoyment. Adam will argue that he does not have control over the raccoons and that that is part of the charm of living in a remote and wooded area. Adam will also claim that he has no control over the neighbors dog and can't do anything to force the neighbors to comply.

The court will not likely find that Adam breached the covenant of quiet enjoyment.

Retaliatory Conduct by Landlord

A landlord may not conduct himself in a manner that is retaliatory towards a tenant. Retaliatory conduct is indicated by behavior that fails to address the tenants concerns or acting in a hostile manner towards the tenant or behavior that suggests or urges a tenant to terminate the tenancy.

Here, Betty failed to pay Adam a month of rent in the past. After Betty moved back in and relayed some of her concerns regarding the dwelling, he responded by stating: "live with it because you owe me money." Adam based his response on her failure to pay him in the past and took no action to remedy any of her complaints. It can be inferred that it was Adam's intention to have Betty suffer since she still owed him money. Based on his statement, his conduct was improper as a landlord.

The court will likely find that Adam's behavior was retaliatory towards Betty.

Adam's Remedies Against Betty *during her second tenancy*

As a landlord, Adam has the right to receive rent from his tenants. Adam may provide Betty with a three-day notice to pay. If Betty does not comply, Adam may sue her for the past rent. Betty may respond by claiming constructive eviction because of a breach of the covenant of quiet enjoyment and implied covenant of habitability. However, if the court finds that there was no breach of the covenant, then Betty's argument fails and she may be liable for the back rent.

The Court would likely rule in Adam's favor and compel Betty to pay the back rent.

END OF EXAM

2)

EXAM QUESTION # 2

Gift of Deed to Blackacre from Oscar to Charles

Inter Vivos Gift

A gift inter vivos occurs when one living person makes a gift to another living person. A gift inter vivos is non-revocable once the gift is properly conveyed. This requires donative intent, delivery and acceptance. Donative intent occurs when a donor of a gift has the intent to make a present transfer of his interest in property to another individual. Intent does not need to be express and may be inferred from the delivery. Delivery ordinarily requires that the gift be physically delivered to the donee. However, in some circumstances, constructive or symbolic delivery is acceptable. Constructive delivery occurs when a gift, because of its size and location would be impossible to physically deliver, an object is given in its place, such as a key, that grants access to the gift. Symbolic delivery is an object that is delivered to the donee that is symbolic of the actual gift. This is typically a written instrument such as a deed to a home. And lastly, Acceptance, is presumed if the gift is of value.

Donative Intent

Here, after running into his estranged daughter Oscar remembered that he had not updated his will. He promptly signed a valid deed that granted his property, Blackacre, to his son Charles and handed him the executed deed. As Charles was leaving with the deed, Oscar advised Charles to hide the deed and to not record it so that his sister Agnes would not discover that Blackacre was gifted to Charles.

Charles then took the deed that was gifted to him and recorded it. Now, Blackacre, was fully conveyed to Charles and anyone who sought out the information would be put on notice that Charles is the true owner. Agnes will argue that Charles took the deed and secretly recorded it without Oscar's knowledge or permission and thus it was invalid. However, once the gift was properly conveyed, Charles could take whatever action he wanted with the gift as he now possessed full interest in the gift. Charles will argue that he chose to have it stored securely in his father's home until he was ready to record it, which he subsequently did.

Charles v. Agnes

Soon after Charles recorded the deed, Oscar died and his will devised his "entire estate to Agnes." Agnes will argue that Blackacre rightfully belongs to her as it is part of her father's estate. Agnes will argue that his will trumps the invalid gift and that the court should rule in her favor because it was her father's true intention that she keep his entire estate. Charles may argue that Agnes is correct in stating that she was devised her father's entire estate but that estate no longer included Blackacre. Charles will argue that Blackacre was properly gifted to him because he was a loyal son who was not estranged from his father. Charles will claim the deed was fully recorded and in his name before Oscar died so it was simply no longer part of his estate. So Agnes' claim may be to Oscar's remaining estate: cars, money, etc., but not Blackacre.

Conclusion: The court will likely find that Charles is the owner of Blackacre.

END OF EXAM

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Adverse Possession

Adverse possession is the process by which an adverse possessor acquired title to a property against the true owner by means of statute. Adverse possession consists of actual possession, open and notorious possession, exclusive possession, hostile possession, and continuous possession. Jurisdictions can have their own statutes as to how this is applied, by manner of time. In the jurisdiction at hand, the length of time required for continuous possession is 5 years.

In the situation at hand, the adverse possessor (AP) is C, the True Owner (TO) is A, who then sells land to D

Actual

Actual possession is when the adverse possessor (AP) physically occupies the property in question. By doing so, this means the AP is trespassing against the true owner (TO).

Here, C would argue that he had actual possession of a specific portion of TO's land. Under adverse possession, it can occur for the entire property, or for a specific portion of the property. Here, C only ever went to the same specific portion of TO's property.

C physically occupied the specific portion, which was an overgrown campsite which was on the parcel that is undeveloped and heavily forested.

In order to actually possess the portion of land, the AP needs to act in a manner that an owner would, they need to exert control and dominion over the land, and maintain the land, etc.

Here, the parcel of land was described as being undeveloped and overgrown. C went back to the same spot over and over. He cleared it out, built fire pit, and a dwelling on the area, went back multiple times to clear out the brush, and installed a generator and electrical supply to the dwelling.

By being physically present, throughout the process, and by acting as an owner would, be developing and maintaining the area, it is likely that the courts will find AP to have actually possessed the portion of land.

Open and Notorious

In order for adverse possession to occur, the AP needs to do so in an open and notorious manner, it cannot occur in secret.

Here, the TO, in both A and D, would argue that it was a secluded portion of land that was already underdeveloped and overrun with forestry. That later, AP only accessed the area by boat, when it is possible to access by land. TO (meaning both A and D), would argue that by only accessing the area by boat, AP was doing so in a secretive manner, thereby not satisfying the element of open and notorious.

However, AP would argue that he accessed the land many times by vehicle from the road, that he carried supplies to the area from his truck from the road, that he was building up structures on the site, campsite and dwelling, and even posted no trespassing signs (further discussed below). AP would then most likely also state that just because he was accessing by boat, does not imply secrecy, but merely ease of access. AP would state that the nature of the land itself is that of being secluded and hidden. That the land itself

undeveloped and heavily forested, and was next to a large public lake. If the lake was public and he accessed by boat, that means other boats could not only see him, but access as well. AP would argue that the secretive nature of the property, does not translate to secretive use and access. AP was open and notorious in his use of the property for a long time. He build an underdeveloped campsite into a full functioning, full time living space. In the beginning he worked there daily, if facts are assumed accurate, from December 2013, to august 2014, leaving only at night. And then would access once a month to maintain and clean, he then ended up moving in to live full time.

Given the facts above, it is likely that the courts would find that AP did access the property in an open and notorious nature, thus satisfying this element.

Exclusive

The next factor in adverse possession is the element of exclusivity. In order for an AP to have AP, they need to exclusively use the property, and they need to exclude others.

Here, AP would argue that he had exclusivity because TO bought and inspected Blackacre one time when he purchased in November 2013, did not discover Cs campsite, and then TO never went back to the property.

Therefore AP does not have any conflicting exclusivity claims with the TO.

Next, AP would have to establish that he does not have any conflicting exclusivity claims with the public, and that he made an attempt to exclude others.

Here, AP would state that, assuming the facts given, there were no other people that occupied Blackacre, or his campsite portion specifically, this giving him his single AP claim to his used portion.

Next, AP would claim that he made the effort to act like an owner and exclude others on two specific, documented, instances. AP stated that on one occasion in April of 2014, AP found kids fishing on blackacre, and told them "you shouldn't be fishing here". And that in August of 2014, AP posted no trespassing signs on the front door of his shelter.

However TO (both A and D) would argue that he acts to exclude are not actual efforts to exclude others. That all he did was go to the same campsite. He didn't tell kids to get off "his" property, but merely told them they shouldn't be fishing here. By using that phraseology, AP could be implying that the land is owned by someone else, such a TO, and was simply being a good neighbor and letting the kids know that they are trespassing and shouldn't be here. Second, TO would argue that AP did not attempt to exclude others from the entire area, but only his specific structure/dwelling. He didn't post signs around the property to not trespass, but specifically only did it on the front door to his dwelling. TO would state that these are specific and intentional acts that imply AP was not excluding others in April 2014, and in August of 2014 from the whole area.

Therefore, given the facts above, it is likely that the court would not find that AP acted with exclusivity until at the earliest, August of 2014.

Hostile

In order for an AP to achieve ownership of property by way of adverse possession, they need to act in a hostile manner. By acting in a hostile manner, this does not mean that the AP act in a hostile manner to the TO, but instead, to act in a hostile manner to TO's right of exclusivity to the property.

Under the hostility element, there are 2 schools of thought, the Maine Doctrine and the Connecticut Doctrine. The Con Doc is the majority view, and that is what the court will most likely follow, given its majority status.

Maine Doctrine (Minority)

Under the Maine Doctrine, hostility cannot occur by mistake. That means that the AP needs to know that the land is owned not by them, but by someone else, such as a TO, and that the TO has a right to exclusivity, and that the AP is specifically being hostile against the TO's right to exclusivity.

Given the facts, there is no fact to determine that AP specifically knew that the land was owned by TO. The facts state that TO (A) bought the property in 2013, and did not notice Cs campsite, and that C had been going to the same place for years, and that the parcel was an undeveloped, and overgrown area. Given these specific facts, it is very reasonable and possible that AP did not know that it was owned by TO, and that AP was being hostile against TO's right to exclusivity.

Under the Maine Doctrine, if AP did not know that he was being hostile to TO's right to exclusivity, then the element of Hostility would not be met, and AP could not gain ownership by way of adverse possession.

Connecticut Doctrine (Majority)

Under the Connecticut doctrine, hostility occurs in the act itself, it does not matter if it is by mistake or not. This means that the simple act of merely trespassing on someone else's land, is in itself hostile.

Here, that would mean that by AP simply knowing that he himself does not own the property (fact assumed), him simply going there is itself hostile, and therefore satisfies the element.

Therefore, given the above, it is likely that under this doctrine, the element of hostility would be satisfied.

Therefore, given that the Connecticut Doctrine is the majority view, it is likely that the jurisdiction in which they are in would follow the Con Doc, and therefore likely that the court would find that AP acted in a hostile manner, thus satisfying the element.

Continuous

The next element of adverse possession is continuous. In order for AP to gain ownership by way of adverse possession, they need to occupy/operate the property in a continuous manner satisfying the specific statute of whatever jurisdiction it is in. In the case at hand, the statute states a 5 year time period. Therefore, AP needs to continuously possess the land, while satisfying the above elements, for 5 years continuously. In CA (and some other jurisdiction), the type of property can dictate how continuous is viewed, for example, a summer home only being occupied in summer. However, given that AP started working there every day, and ended up living there full time, it is likely that the court would consider this a full time requirement for continuous occupation, not a summer (or other season) only occupation requirement.

In order for the "clock to start" for continuous possession, the TO needs to be deemed to have capacity. This means that the TO needs to be over the age of 18, and not have a mental or physical disorder that could prevent capacity. This does not apply here. Both TO are assumed to have capacity.

Here, AP would state that he has continuously possessed the land. At court, AP would make 4 arguments for continuous possession.

First, he would state that he has occupied the land continuously since December 2013.

First, AP would state that the clock started in December of 2013, because that was he started going to the campsite daily to begin work on the campsite, and start to develop the area.

However, TO would argue, that at this point in time, AP did not assert exclusivity. In order for adverse possession to occur, all elements need to be met

Therefore, this is not APs best stance, and the court would most likely not find this as the clock start date

Second, he would state that, if Dec 2013, is not found, he would then be considered to start the clock of continuous on April of 2014.

Second, AP would assert that the clock started on April of 2014, because that was his first attempt at exclusivity, by telling the kids fishing to leave.

However, TO would argue the above, that it was not a true act of exclusivity, and did not relate or imply that AP was excluding people off of HIS property, but merely sayign they couldnt fish here.

Therefore, this is also most likely not APs best argument for the start date of continuous.

Third, if Apr 2014 is not found, then he would say the clock starts on August of 2014

Third, Ap would state that the start date for contin. would be on August of 2014, because that was when he posted the no trespassing signs.

However, TO would argue that the no trespassing sign was only posted on the door, not directing no trespassing to the entire parcel, or the entire specific area used. TO would then state the continuous use requires continuous, owner like use. And that AP did

stopped that in August, That in August of 2014, AP stopped coming daily, and only came once a month to maintain and clean up.

AO would argue, that once a month visits were more than TO, and that owners act by maintaining their property, and that is what he did.

This is most likely that start date that the courts will use to determine adverse possession.

Fourth, if Aug 2014 is not found, he would say the clock started in December of 2014.

Fourth, if the courts find that APs once a month visits in August of 2014 inhibited the start date for continuous, then AP next argument would be for december of 2014.

Here, AP would state that at this point in time, his campsite was fully developed, dwelling and campfire built, no trespassing sign up, and that he even installed an electric generator, that supplied electricity to the dwelling. At this point in time AP also starting living there full time.

This is the safest argument for AP to use for the element of continue

Therefore, it is most likely that the court would find that AP acting in a continuous manner in either August of 2014 or December of 2014.

Privity

The element of continuous can be satisfied by privity of contract (K). When TO A sold the property to TO D. D stepped into the shoes of A, and this act did nto reset the clock. D had a duty to go out and inspect the property before and after purchase. By not doing so, AP's clock was not reset upon the sale of the property from A to D.

Tacking

When an AP has continuous possession under 2 different TO, or if AP sells, by privity of K, his AP rights to ownership to a second AP, tacking can occur. As long as if under the 2 TO, AP is not given consent, continuous is not obstructed, or AP is not evicted for trespassing, arrested etc.

In this situation, AP selling his rights is not of issue.

Here, TO A sold his property to TO D in October of 2019, and TO D discovered AP in November of 2019.

If the courts honor the August 2014 start date for continuous, then AP had 5 years and 2 months under TO A and one month under TO D, resulting in a total of 5 years 3 months unobstructed years, thus satisfying the elements of AP

If the courts honor the December 2014 start date for continue, then AP had 4 years 10 months under TO A and 1 month under TO D, resulting in a total of 4 years 11 months of unobstructed years, thus NOT satisfying the elements of AP

Conclusion

Therefore, given the above, if the courts find the August 2014 start date valid, they would then find that AP did satisfy all the elements of AP, and acquired ownership from TO D to his location in Blackacre. However, if they find August 2014 not valid, and instead find December 2014 valid, AP would then only have 4 years and 11 months of continuous possession, meaning that TO D could then have one month to evict, or if he was clever, to go tell AP (C) that he had his consent to be there, thus revoking AP. Given that he never went outside his campsite area, or exerted any control or dominion over any of

blackacre, it is likely that the courts would find AP only acquired ownership to his specific area.

END OF EXAM