

SAN LUIS OBISPO COLLEGE OF LAW

**Real Property**

Midterm Examination

Fall 2021

Prof. C. Lewi

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.

## **SLO Property**

**Fall 2021**

**Prof Lewi**

### **Midterm Question 1**

Father left a will that devised his land – Birdacre -- to his wife for life, remainder to his children.

Birdacre consisted of 500 acres of wilderness, including two lakes. A small house was built on one corner acre of the land. Father and his wife moved into the house on the day they were married and lived there together until Father died.

During Father's lifetime, Birdacre was left in its natural state, except for the corner acre. Father's wife made a good living as a welder, and the couple never needed to use the land as a source of income.

After Father's death, the children left home to pursue their own careers. After many years alone, the wife began to lose her mental faculties. Father's old college friend approached her with an offer to rent the lakes on her property for use as catfish farms. The wife had been having difficulty paying bills and believed that the rental income from the fish farms might ease her financial burdens. She agreed to the offer and signed the lease to that effect.

The friend's firm established farms on each of the lakes. The fish themselves had little effect on the lakes. However, to reach the lakes and monitor the fish, the friend's firm had to cut down large paths through the trees to construct roads, which he paved. The firm constructed buildings next to the lakes and built outhouses to accommodate the workers. Water was piped from the lakes to the buildings, and the wastewater was then released into the streams; the water diverted from the streams for wastewater reduced streamflow, which caused the lakes to drain. All the paving and construction created a serious runoff problem, which killed all the natural vegetation. All told, the catfish enterprise created a mess.

Father's children filed suit against their mother to stop the farming and to return the land to its previous condition.

Will the children prevail?

From the four (4) possible choices, you must select one as the correct answer and explain why. You must also explain why EACH of the remaining three (3) possible answers are incorrect. Remember to only answer the question asked and presented:

- (A) No, because, as a life tenant, the wife has the right to make reasonable use of the land.
- (B) No, because the friend created the damage, not the wife.
- (C) Yes, because a life tenant is not entitled to use the land differently from the way the grantor used it.

(D) Yes, because as holders of a remainder interest, they are entitled to receive the land in the state in which the grantor left it.

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## SLO Property

Fall 2021

Prof Lewi

### Midterm Question 1

Model Answer:

The correct answer is: (D) Yes, because as holders of a remainder interest, they are entitled to receive the land in the state in which the grantor, their father, left it.

First, children have a fully vested interest at the time of the grant – Father’s death when the will took effect. Because they take following the natural conclusion of the prior event – the end the life tenant’s life – the children’s remainder interest is immediately vested at the time of the grant; there are no contingencies and the RAP simply does not apply.

Next, do the remainder beneficiaries have an interest in Birdacre, while their mother is still alive, that they can now seek to protect? Yes.

A life tenant's rights are limited by the law of waste. The law of waste is designed to preserve the land so the remaindermen can receive the land in the same condition it was in at the beginning of the life tenancy. Thus, here, the remaindermen (the children) are entitled to damages or an injunction to stop the wife from any act that injures or diminishes the value of the property. Moreover, because wife has only a life estate in Birdacre, the lease entered into between the wife and the old college friend is only, at the longest, for as long as the wife is alive, and once she dies, the lease will “automatically” end, adding further to the children’s desire to protect waste to Birdacre.

(A) is incorrect. “No, because, as a life tenant, the wife has the right to make reasonable use of the land.”

A life tenant has a right to make reasonable use of the land, but he is not entitled to engage in waste. Waste is defined as an act that causes injury to the property. Here, the act of leasing the land to the friend caused considerable injury to the land and constitutes impermissible waste.

(B) is incorrect. “No, because the friend created the damage, not the wife.”

A life tenant is liable to the remaindermen for waste-acts that injure the property. In this case, the wife's liability is based on her lease of the property to the friend, who is an “agent” of the wife for purposes of a waste analysis; the wife is ultimately responsible in waste, though she could seek indemnity from the old college friend. Therefore, this is not the best answer.

(C) is incorrect. “Yes, because a life tenant is not entitled to use the land differently from the way the grantor used it.”

A life tenant is not obligated to use the land in the same manner as the grantor. The life tenant may make reasonable use of the land as long as that use does not constitute affirmative or permissive waste. In this case, permitting the construction of buildings, the runoff of wastewater,



the cutting of trees and the paving of roads to such an extent that the property suffered serious damage constitutes affirmative waste. Therefore, this answer is not correct.

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**Prof. Christopher C. Lewi**  
**Midterm, Fall 2021**

**Question 2**

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Acme is the owner of a multi-use 4 story commercial building – small shops on the ground floor and residential units on the 3 floors above. The building was completed in the year 2000.

In 2018, David, 29 years old and a fresh business school graduate, decides to follow his dream and open an avocado toast store, “leveraging” the high quality San Luis Obispo County avocados and other foodie riches available in the county. Because he knows he will be working long hours, David wants to live very close to his new shop. Thus, he is tickled to learn that Acme has both commercial and residential space available to lease – \$1,000/month for the shop and \$950/month for an apartment on the 3<sup>rd</sup> floor. On February 01, 2018, David signs two lease agreements with Acme – one for the shop and one for the apartment.

The lease for the shop is from February 01, 2018 to January 31, 2019, and unless agreed upon otherwise, will roll-over to month-to-month if David stays at the shop for more than one year. The lease for the apartment is month-to-month. For both leases, rent is due on the 1<sup>st</sup> of each month, with a five (5) day grace period.

Since the lease began, the apartment has had several problems. There is a lack of hot water, the windows do not close easily, the front door locks are tricky, and there are a couple electrical outlets that do not always work right. David has texted Acme about these issues, and while Acme has made some efforts to fix the problems, largely the problems still exist. David has bigger fish-to-fry (actually larger-toast-to-toast) than worrying too hard about his apartment, which after all is really just a place he sleeps, bathes, and changes clothes while he puts everything he has into the shop, so he tolerates the problems and does not make too big a deal about them with Acme, though they remain annoying.

Everything with the shop, on the other hand, is going fine – avocado toast is freaking delicious. Then . . . COVID hits, starting in March, 2020, and by June 2020, it is plain to David that his business cannot sustain itself any longer. David has to close the shop and move back into his parents' house.

On June 12, 2020, David properly delivers written 30 days notice to Acme that he will vacate both the shop and the apartment.

For many reasons, David does not actually move out until October 31, 2020. The last rent payments made by David were for May 2020 and he has not paid rent since.

Acme sues David for damages on a breach of contract theory.

Under common law principles, identify and discuss what damage claims, if any, Acme has, the strengths and weakness of those claims, and any defenses David may have. If you conclude that damages may be owing, you must do the damages calculations (the math is easy here) and explain your work. You are not required to apply specific California rules in answering this question.

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**Question 2 Issue Outline (Landlord / Tenant)**

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*Short Answer:* best analysis is that (1) David will be liable for \$5,000-\$6,000 plus court costs and atty fees (if in the lease) for the Shop lease subject to landlord's ability to mitigate, and (2) David will be liable for \$3,500-\$4,200 plus court costs and atty fees (if in the lease) for the Apartment subject to landlord's ability to mitigate.

*Long Answer:*

There are two Leases here and each needs to be addressed:

1. Shop lease is a commercial lease  
-contract terms control



-no Warranty of Habitability issues or analysis necessary

2. Apartment lease is a residential lease

-contract terms also control but . . .

-IWH will be read into contract as well and may provide a defense to David for any rent claims made against him by Acme.

3. Notice Issues:

-Was Notice given by David proper?

-Apartment?

-month-to-month tenancy period

-what does lease say?

-question is silent; assume lease does not provide an answer.

-under common law, 30 days notice is long enough

-notice was written

-3-

-the question says notice was properly delivered to Acme so service not an issue.

-but, under the common law, because the natural term of the period was from the 1<sup>st</sup> of the month and so on, there is likely an issue with the June 12 date notice as improper; David's notice would have best been given on June 1<sup>st</sup> or July 1<sup>st</sup>.

-If "improper"

-in some jdx, the notice would be void

-in other jdx, and this is the trend, the notice would be deemed to have been given on July 1 to July 31, 2020, and would then be proper.

-Thus, David would be deemed to have ended the lease properly with his last day July 31, 2020.

-Shop Lease

-analysis is the same

-except that the student will be rewarded for identifying that

the lease initially was a fixed term lease for 1 year and no notice would have been necessary had David moved out by January 31, 2020 . . . but . . .

-because David “held-over: beyond that first year, the questions tells us that the Shop lease is also month-to-month by June 12, 2020 and the same analysis as for the apartment applies.

#### 4. What About Rent Owed? – Holdover Damages:

-Shop:

-if the notice is deemed void, then David’s vacating the premises is unexcused and he breached the contract.

-David will owe rent at least for June-October, 2020

-that is 5 months @ \$1,000/mo = \$5,000

-he may also be found to owe rent for the next month (November 2020) at another \$1,000 subject to Acme’s obligations to find a new tenant and mitigate damages.

-likely David would owe that extra \$1,000 for a total of \$6,000 because it will be very hard for Acme to release the premises in 30 days and collect any rent for Nov, 2020.

-4-

-if, however, the notice is deemed effective on July 31, 2020, what then?

-same difference, since David “”held over” and actually did not vacate premises until end of October, 2020 and had long overstayed his notice date.

-Remember: A tenant in possession must pay rent.

-David’s long stale 30 day notice should not insulate him owing November 2020 rent too.

-or, looked at another way, his 30 day notice was effectively for November 2020, meaning he would owe rent for that month.

-David will argue that his notice was effective and that his tenancy ended on Oct 31, 2020 when he moved out and that he owes no further rent.

-Apartment?

- Same analysis, different numbers
- June-Oct 2020 @ \$950/mo = \$4,500.
- Nov 2020 = \$950
- Total = \$5,450.

5. David's Defenses, If any?

-Shop?

- absent provisions in the lease, he does not have any defenses. -remember, again, a tenant in possession must pay rent.
- David will be liable for at least \$5,000 and likely an additional \$1,000 for a total of \$6,000 plus court costs (if goes to litigation) and attorney's fees (if provided for in the lease for the shop.)

-Apartment?

- Here, residential lease, so the IWH will apply on proper facts, as a defense to Acme's claims for rent.
- We are told that there were ongoing problems with the apartment that would come under the IWH as violations of applicable building codes and health and safety codes.
- hot water

-5-

- windows do not close easily
- front door locks are tricky
- a couple electrical outlets that do not always work right. -we are told by the question that none of the problems were really bad, that David tolerated them; none amounted to the kind of "rat infested" waste heap that may warrant a full offset for rent owed.
- subject to proof, David can argue that he is entitled to an offset in his rent for these problems, that he did complain to Acme, and that Acme tried but failed to make repair.

-we are not given any fact or evidence of what this offset might be in terms of dollars, so I assume that it is \$250/mo, for the entire time David lived there, since it is still not repaired. -numbers below

-David has moved out, but if he had not, he could stay, at the reduced rent – assuming he can and does pay any owed back rent – until such time that repairs were made by Acme, at which time Acme would likely be allowed to raise the rent back to full rate.

-Because David had moved out, that analysis is moot. -Numbers:

- $\$950/\text{mo}$  less  $\$250/\text{mo}$  =  $\$700/\text{mo}$  adjusted rent.

Assuming David owes rent for at least June-Oct 2020, 5 months @  $\$700/\text{mo}$  =  $\$3,500$ .

-David will be liable also for November 2020 at an additional  $\$700$ .

-for a total of  $\$4,200$  for the Apartment plus court costs (if goes to litigation) and attorney's fees (if provided for in the lease for the apartment.)



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**Midterm, Fall 2021**  
**Question 3**

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In 1967, Mom and Dad bought Greenacre, a 10,000 square foot city lot, where they built their family home, and raised their son Don and daughter Dolly. Mom and Dad left wills and a trust, the net effect of which was that upon their deaths, title to Greenacre would transfer to Don and Dolly.

Dad died in 1997; Mom died in 2000. Don and Dolly, grief stricken and at-a-loss, did not take care of their parents' post-death affairs, and instead promptly joined the Peace Corps, moved to remote postings overseas, and fell out of touch with their former lives and with Greenacre.

In 2001, Adam and Alice Polson, who describe themselves as "being in the business" of acquiring properties by adverse possession, and had done so approximately 15-20 times prior, glean from public records and a drive-by inspection, that Mom and Dad have died, the house may be vacant, and that title to Greenacre, at least as a matter of public record, does not yet reflect those deaths or Don and Dolly's title in the property. Thus, Adam and Alice decide to take action.

First, Adam and Alice move into the vacant house on Greenacre. They clean up the property, repair broken windows and doors, park their cars in the driveway, take care of the landscaping, turn on the utilities in their names, begin having mail sent there, and post "no Trespassing" signs which state that Alice is the "owner". The house and driveway are visible from the street at all relevant times.

Second, in 2002, Adam and Alice (who have a crooked notary in their service) create and record a quit claim deed from "John Smith" (a fake name) as grantor, to Alice Polson as grantee, which purports to show Alice as the record title holder and that property tax statements should be mailed to Alice at Greenacre, which they are. Alice, her name now on the tax statement, promptly pays in full 3 years of back-property taxes on Greenacre

and then makes the annual property tax payments as they come due from 2003 to 2016.

In 2017, Don and Dolly, each retire from the Peace Corps and return from overseas to find that Adam and Alice are living at the family home and have been doing so for a long time. They demand that Adam and Alice vacate Greenacre and that Alice remove the quit claim deed from title.

Adam and Alice, file a quiet title action, seeking to have title formally and finally adjudicated in their favor.

This all occurred in Los Angeles. California law applies – including the five (5) year period for any adverse possession claim to be perfected and the necessity that the adverse possessor pay property taxes for those 5 continuous years.

Assume further that the normal rules governing chain of title apply.

Assume further the doctrine of unclean hands applies. That doctrine provides " . . . that a plaintiff act fairly in the matter for which he seeks a remedy . . . He must come into court with clean hands, and keep them clean, or he will be denied relief, regardless of the merits of his claim . . . Whether the doctrine of unclean hands applies is a question of fact" but where the plaintiff engages in "bad faith, unconscionable conduct" a trial court can "reasonably conclude that is sufficient to invoke the doctrine of unclean hands" and rule against the plaintiffs' claims.

Analyze Alice's chances of success to quiet title in her name and the possible defenses that may be asserted by Don and Dolly. Remember to come to a conclusion and to structure your arguments towards that conclusion.

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**SLO Property**  
**Prof Lewi**  
**Fall 2021 Midterm**  
**Question 3 – Model Answer**

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Based on *Aguayo v. Amaro* (2013) 213 Cal.App.4th 1102, 1108. [facts in test question not exactly facts from case but pretty close.]

*Short Answer:* First, Alice Polson (AP) is the proper plaintiff because she, in her name only, has been paying the property taxes. While AP meets the "technical requirements" of adverse possession, her quiet title action "must fail as she proceeded with unclean hands in asserting her adverse interest in this property." Because the recording of a 'wild deed' – the phony quit claim deed – caused the property tax bills to be sent to AP and not the legal owner (Don and Dolly), the court was "convinced that this 'wild deed' was recorded to insure the legal owners would not receive tax bills and thereby be reminded that property taxes were due." Additionally, the court found that "[t]he act of diverting property tax bills from the true owner was a deceitful act intended to insure the legal owner would not pay their property taxes and also appears to be a criminal act per Penal Code section 115.5." *Aguayo, supra*, 213 Cal.App.4th 1102, 1108.

*Long Answer:* AP met the elements of an adverse possession claim under a claim of right theory, including paying taxes for the requisite time period.

Under a claim of right theory, the AP's good faith is not at issue and an active trespasser who meets the elements of the cause of action, does not necessarily lose her AP claim for lack of good faith. However, what the question tells us is that the doctrine of unclean hands may still void or negate AP's claim where AP actively committed a fraud or other deceitful act to deprive the true owner from knowing that their rights may be in jeopardy and that AP should not benefit from such bad-acts. Hence, the "unclean hands" defense may provide a complete defense to an AP claim. Here, we have the right facts for that defense to apply.

First, let's be clear that AP met the elements for an AP claim:



The elements of adverse possession are as follows: (1) Possession must be by actual occupation under such circumstances as to constitute reasonable notice to the owner. (2) It must be hostile to the owner's title. (3) The holder must claim the property as the holder's own, under either color of title or claim of right. (4) Possession must be continuous and uninterrupted for five years. (5) The holder must pay all the taxes levied and assessed upon the property during the period.

*Color of Title-Good Faith Requirement.*

Adverse possession under color of title is based on a written instrument, judgment, or decree which purports to convey real property but is for some reason defective. Adverse possession under color of title is codified by Code Civ. Proc., §§ 322, 323. The good faith of the occupant in relying on a defective instrument is a crucial element to establishing adverse possession based upon color of title. Because there is no good faith belief that the phony quit claim deed constitutes a legitimate conveyance, there is no color of title claim here. That the quit claim deed – a “wild deed” outside the chain of title – was recorded has no bearing here because it was AP herself that created it.

*Claim of Right-Good Faith Not Required.*

However, adverse possession under a claim of right is not founded on a written instrument, judgment or decree. Claim of right adverse possession is codified by Code Civ. Proc., §§ 324, 325. There is no good faith requirement for adverse possession based on a claim of right. A claim of right can be founded on either a deliberate trespass, or a mistake if the claimant intends to claim the area occupied as his or her land.

All the elements for an AP claim of right have been met from at least 2003 and maybe even 2001 (she did pay back taxes for that tax year). AP occupied Greenacre as her residence in an open and notorious way from 2001 to 2017. She made no secret of living there, paid all the utilities in her name, posted no trespassing signs, etc., and gave all indicia that this was her home. AP was not the true owner and did not have permission and thus AP's use was hostile. AP paid taxes beginning in 2003, during her time of occupancy, up to and including 2016, which is far longer than the 5 years required by California law. There is an issue as to how much of Greenacre AP can claim under the claim of right argument [only that which is actually



possessed and enclosed will pass by adverse possession] but here, a 10,000 sq ft city lot which AP used in the typical fashion for such a lot will likely be found to be what she adversely possessed; the fake deed has nothing to do with it . . . unless . . .

*Unclean Hands – Deceitful Act:*

While the wrongful act of trespass cannot be the basis for an unclean hands defense to adverse possession by claim of right because if such a defense existed, adverse possession by claim of right would not be possible, still where a party claiming adverse possession engages in deceitful interference with the true owner's ability to defeat the claim, the trial court may in its discretion apply the defense of unclean hands. That is what happened here.

A court should find that the doctrine of unclean hands bars AP's quiet title claim. AP knew a quitclaim deed purporting to transfer the property to Alice was false because her husband used a fake name on the quitclaim deed – "John Smith" – and did not have title to or ownership of the property [One cannot convey that which one does not own.] The court should further find that AP, as an individual along with her husband "in the business" and knowledgeable about adverse possession, knew they did not need to record the quitclaim deed in order to satisfy the requirements of adverse possession (where no deed is necessary, especially in a claim of right), and that they created and recorded that "wild deed" for the sole purpose of diverting the tax bills away from the true owner of the property. This was the kind of bad faith, unconscionable conduct that a trial court, sitting as a court of equity, can reasonably conclude is sufficient to invoke the doctrine of unclean hands."

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1)

Will the children prevail?

A will is a transfer of property or something of value from a grantor to grantee, in this case we have a valid will.

*YES!!*  
A is incorrect because while a tenant does have a right to make reasonable use of the land, the children are entitled to receive the land in the same conditions it was devised in the will. The children may argue that the lase states the will was created to persevere the 500 acres of wilderness and the lakes, and the small house. While the mother does have a right to make reasonable use of the land, the children may argue that all the extra repairs became wasteful spending and a violation of environmental safety codes, therefore A is incorrect.

*good*  
B is incorrect because the friends had consent from the owner of the property to use the land for a catfish farm. They entered into a rent the lakes on her property and use it for catfish farms. The wife agreed to the offer and signed the lease, giving the friend consent to create the catfish farm. The friends may also argue that they relied on the agreement and word of the mother to create all the environment necessary to create a catfish farm.

*good*  
C is incorrect because a life tenant is able to use the land within reasonable means. A life tenant would be able to use the land as they choice so long as the owner allows for it, in this case the grantor the couple never needed to use the land for income, but things changed for the wife so she felt it necessary to adjust the use of the land. The facts did not stipulate that she must use the land for only a specific reason, therefore she would be allowed to use the land within the lease and laws applicable to the use of it.



D. is correct because as holders of the future interest of the land, and because they are entitled to receive the land, the children should expect the land to be given to them in the manner. The children can argue the will that was devised has been violated because Bird-acre consisted of acres of wilderness and two lakes. Since the agreement between the mother and friend occurred, the lakes dried up, large portions of trees were cut down within the 500 acres that was supposed to be on bird acre. The children can also argue that all the repairs was wasteful spending that they did not want to incur the costs of, and the financial burden of making such repairs is too great and was not worth it. They can also argue that the mother was willfully wasting away an area "created a mess" within the land and surrounding areas. The facts indicate that the firm constructed out houses and paved roads, the construction led to the killing of all natural vegetation, the roads created a serious running water problem, and the lakes ended being drained. Furthermore, they built outhouses to accommodate the workers, having multiple outhouse on a property will devalue that property. The water being released into the stream caused damage to land and in turn caused the lakes to be drained, this could be argued by the children as negligent waste because even though they had consent to create the catfish farm, they still owe a duty of care to the environment and its surroundings by not releasing wastewater into the lakes and causing them to get drained.

Conclusion

the kids should prevail.

You got it. My Sed.

**END OF EXAM**





2)

**Acme v. David**

**Leasehold Estate**

The landlord ("L") (a lessor) transfers to the tenant ("T") (a leasee) their present possessory interest in land, for valuable consideration. Here, L has transferred their present possessory interest in a commercial space and a residential space to T.

**Form of Leasehold Estate**

A leasehold may come in the form of four types: (1) a term of years; (2) a periodic tenancy; (3) a tenancy at will; and (4) a tenancy at sufferance. A term of years leasehold estate is defined by the definite end of the tenancy. A periodic tenancy is one without a definitive end, but one which renews periodically, allows the tenant or landlord to terminate with appropriate notice at some point in relationship. A tenancy at will allows either the landlord or the tenant to terminate the relationship on their whim (lease will provide if this is a unilateral or bilateral decision). A tenancy at sufferance denotes a hold-over tenant, in which the tenant has stayed past the termination of the leasehold estate, and the landlord must either evict or the leasehold will convert to a periodic tenancy.

**Form of Leasehold Estate - Commercial**

Rule, see above.

Here, T's shop was originally a term of years leasehold because there was a lease, which stated definitely the end time of the lease. The lease, after one year, allowed the parties to continue the tenant's leasehold, but converted the manner of lease from a tenancy of years to a periodic tenancy because, after the one year, the facts provided that the lease



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would "roll over to month-to-month" and rent is due monthly. This is an implied periodic tenancy because there is no formal lease announcing that it is a periodic tenancy, but the terms of the term of year lease will apply in the future because they agreed that it would "roll over to month-to-month."

Therefore, during the time period of February 1, 2019 to July 31, 2020 the property was a periodic tenancy. From August 1, 2020 to October 31, 2020, the property was a tenancy at sufferance because the tenant refused to pay rent and was a holdover because they remained in violation of their duties, after the notice period expired at the end of July 2020. From February 2018 to Jan. 31, 2019, the lease was a term of years.

### Form of Leasehold Estate - Residential

Rule, see above.

Here, the facts provide that the lease for the apartment is "month-to-month" and that rent is due monthly. These factors mean that the leasehold was in the form of a periodic tenancy, because there is no definitive end point, and rent is payable monthly. Therefore, this is a periodic tenancy, up until David gave notice and until July 31, 2020. After July 31, 2020 and until he vacated the property, David is in a leasehold of sufferance.

### David's Notice

Notice is required to terminate a periodic tenancy. Modernly, the length of the periodic tenancy prescribes the length of the notice requirement (i.e. month-to-month requires 30 days).

Here, David gives notice of 30 days in the middle of the month. Because David pays rent on the first of the month, David is giving notice in the middle of his tenancy period. As such, the notice length of 30 days does not begin ticking until the start of the subsequent

month (July) and will run to the end of the month because David gave notice in the middle of the period. → You got it.

**Renter Duties**

A renter has two distinct obligations entering a lease. The first, the duty to pay rent. The second, the duty to make ordinary repairs. ? ... ah, I see ...

**Renter Duties - Commercial**

Rule, see above.

The facts provide that "everything with the shop... is going fine" indicating that there is no failure of T to make ordinary repairs. An ordinary repair is a repair that is minor, and can be done by a reasonably skilled individual.

The facts do provide however, that tenant failed to pay rent beginning with the month of June, and ending with T's abandonment of the property at the end of October. T failed to pay rent in the amount of \$1,000 per month, resulting in \$5,000 worth of past-due rent owing to the landlord. Damages are owing for T's failure to pay rent, and there are no justifications for failing to do so, as we will see below. → good

**Renter Duties - Residential**

Rule, see above.

good  
Ordinary Repairs: The facts provide that there are numerous small, and major issues, with the residential property. T has no obligation to make repairs to any of the problems listed because all of the repairs require skill that a reasonably skilled individual likely doesn't possess. Lack of hot water requires licensed labor (plumber, perhaps electrician); windows "do not close easily" requires perhaps a carpenter; front door locks require a

locksmith; whereas electrical issues certainly require an electrician. A tenant would not be expected to make these repairs because they require skill beyond that of a reasonably skilled person, and the risk of harm to the individual or the building preclude tenants from being required to undergo such repairs. The landlord is potentially liable for failing to correct these issues (see below) but the tenant has not breached their duties in the tenant-landlord relationship.

Rent: The facts provide that T paid all rent until they did not, beginning with the month of June, 2020. Tenant occupied the space for 5 months without paying rent (as provided in the facts) resulting in \$4,750 worth of damages to the landlord. As we will see below, T will attempt to claim some defenses for failing to pay, but these will fail. T owes \$4,750 to landlord.

→ good

**Landlord Duties**

The landlord owes to any tenant several obligations. There is an implied covenant of habitability (see below), the implied covenant of quiet enjoyment, and possession of the premises. Under the American rule (the minority rule modernly), the landlord must convey only legal possession of a leased premises to the tenant, where as the English rule (now the majority rule) requires that the landlord provide actual possession of the land to tenant.

**Landlord Duties - Habitability - residential**

IWH

The implied covenant of habitability is a defense that T will try to claim against L in this case. The implied covenant of habitability requires that L provide a residential or ~~commercial~~ space in such a way as to not violate reasonable standards of use, consistent with the nature of the property. Violation of housing codes or building codes, may be de facto violations of this implied covenant. Failure to maintain a habitable space allows for

no, not commercial spaces for IWH.



the tenant to make repairs themselves and withhold rent for the cost of those repairs or leave and sue for damages. To sue for damages, the tenant must have actually been harmed by the conditions of the leased premises.

Here, there are several habitability issues occurring. The main issue is the hot water not working. Every tenant is entitled to hot water because it is a basic human necessity of life. The other issues are minor as do not necessarily amount to habitability issues. All of the other issues are minor because they do not impact the basic foundational necessities of life, and are annoyances, rather than something actually harmful. T could potentially have sued on this ground, but (as we will see below), is unable to now use this as a defense.

**Landlord duties - habitability - Commercial**

→ Perhaps a breach of  
- contract but no  
implied warranty...

Rule, see above.

There is no indication that there were any habitability issues provided in the facts, "everything in the shop... is going fine." →

yes

**Landlord Duties - Quiet Enjoyment - Residential**

The implied covenant of quiet enjoyment means that in each lease, there is a promise from the landlord to the tenant for the landlord to deliver land which is useable by the tenant. Usability is determined by the freedom of T to employ the premises, to receive what they bargained for.

Here, the landlord has not breached this covenant because they did not interfere with the actual possession of the tenant through an affirmative or permissive act. Here, while there is a lack of hot water, tenant still occupied the land and was able to utilize it despite the annoyances.

→ good

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**Landlord Duties - Quiet Enjoyment - Commercial**


See above.

No indication of interference with this right because the facts provide "everything was going fine." David was able to utilize the commercial space, and all of it, to make as much avocado toast as he desired. → good

**Constructive Eviction - Commercial/Residential**

Constructive eviction requires that there be a substantial interference with the tenant's possession of the property, that the tenant provide notice of the deficiency, the landlord is allowed a reasonable amount of time to remediate the deficiencies, and then, upon the failing of the landlord to repair the property's deficiencies, the tenant must actually leave.

Here, the landlord has substantially interfered with T's interest in the land by failing to provide hot water heater. Hot water is a substantial necessity in occupying a space, and as violative of the implied covenant of habitability, is a determinative factor for this element because the interference with the renter's enjoyment of the property is so severe.

Additionally, T provided adequate notice ("David has text Acme about these issues") and a reasonable period of time lapsed in which L could have made the repairs, assuming they existed at the beginning of the tenancy, the problems existed for over a year. As such, L is violating these two elements of constructive eviction also. The element which fails for David however, is the final element. David *remained* in the property during the entire period, therefore meaning that David was not constructively evicted. → 

**Conclusion**

David owes the full amount of rent during the time in which he was in possession, which is \$9,750. David *will* attempt to claim that the conditions of the apartment were such that

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he is entitled to withhold some reasonable amount from paying this, but this argument will fail because David did not pay out of pocket for the repairs and he *remained* in the property, despite its faults. David was not damaged by his tenancy there, but instead damaged the landlord by failing to uphold the tenant's basic duties to pay rent. David's issues in his apartment did not impact any responsibilities he had to make payment for his commercial space, these are separate contracts.

**END OF EXAM**

This is excellent work.  
One error in law  $\Rightarrow$  IWT does  
NOT apply to commercial, but  
that is immaterial on the fact here.  
Good Work

84

3)

YES !!!

Greenacre

**Adverse Possession**

A person can gain title of land through adverse possession. Adverse possession requires that possession be actual, open and notorious, hostile, exclusive, and continuous. In California, there is a sixth requirement that the possessor pay property taxes. Here, Mom and Dad left Greenacre to Don and Dolly upon their death title to Greenacre was to transfer. However, too grief stricken, both, Don and Dolly, joined the Peace Corps, moved to remote postings overseas and fell out of touch with their former lives. They left Greenacre untouched for over 15 years.

Adam and Alice Polson, having lots of experience with acquiring property through adverse possession, took advantage of the opportunity. They met all the requirements: took actual possession and moved into the vacant house; they fixed up the property and acted as if it was truly their own making the possession open and notorious; they did not ask either Don or Dolly permission to take over the property; they put up a no trespassing sign to ward off any other people; they lived on Greenacre for 17 years before Don and Dolly returned; and they paid property taxes. Adam and Alice have a strong argument for acquiring Greenacre through adverse possession. However, Don and Dolly could argue the Doctrine of Unclean Hands. They could argue that Adam and Alice acted in bad faith because in order to satisfy the requirement of paying property taxes in California, they forged a quit claim deed which granted Alice record title holder. Alice's filing of the quiet title action will fail because she, in bad faith, transferred the property to herself satisfying the application of the doctrine of unclean hands.

Actual

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This requires that the adverse possessor to have actual possession over the property. Here, Adam and Alice moved into the home on Greenacre. They made it their own by fixing up the property, repairing damaged windows and doors, tended to the land, paid utilities, and parked in the driveway like they had full and complete ownership. All these activities goes to show that Adam and Alice had actual possession. ✓

### Open and Notorious

Open and notorious requires that the possession be in a manner that would put the owner on notice. Here, if Don and Dolly would have been around Greenacre or perhaps even in the states, they would have been on notice. Perhaps even neighbors or friends could even ask them about who was living at the property. Adam and Alice were not hiding their stay at Greenacre, nor were they quietly living there. In fact, they fixed up the place and paid bills like they owned the property. These types of activities would put an owner on notice. ✓

### Hostile

Hostility is where the adverse possessor uses the property without the owner's permission or consent. Knowledge or intent is not required. Here, Adam and Alice did not ask Don and Dolly for permission to use Greenacre as their own. Adam and Alice sort of cased out the place doing drive-by inspections of the house to ensure that it was vacant. They went through public records and learned that Mom and Dad were dead, and that title of Greenacre had not transferred (to Don and Dolly). Alice and Adam had acquired properties by adverse possession about 15-20 times prior, so they knew the signs of the properties they should be targeting. They were purposefully using the property without the owner's permission. → ★ ✓

### Exclusive

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The possession must exclude the true owner, the general public and any other adverse possessor. Here, we are given no facts to indicate that the property was being possessed by Don and Dolly, by the general public, or another adverse possessor. In fact, Adam and Alice put up a post "No Trespassing" sign which stated Alice as the owner. Furthermore, their activities in and around Greenacre, the house and driveway being seen from the streets, puts all else on notice that they exclusively controlled the property. This all satisfies the requirement of exclusivity.

### Continuous

This requires that possession be continuous and uninterrupted for a certain amount of time which varies by state. In California, it is a 5 year period. Here, Adam and Alice cased the place out and moved in at or around 2001. They created a quit claim deed that transferred title to Alice in 2002. And in 2017, Don and Dolly retired from the Peace Corps and returned to Greenacre. For 13-16 years Adam and Alice possessed Greenacre (depending on if counting from property tax payment or time moved in). This satisfies the requirement in California for possession to be a continuous 5 year period.

### Property Taxes

YES!!!  
In California, for one to satisfy the adverse possession requirements the possessor must pay property taxes. Here, Adam and Alice had title transferred through a quit claim deed to Alice. Her being the record title holder, it purported that property tax statements should be mailed to her at Greenacre. The property tax statements were mailed to Alice and she paid promptly 3 years of back-property taxes on Greenacre and made annual property tax payments from 2003-2016. This would satisfy the requirement of an adverse possessor paying property taxes. However, Adam and Alice performed in bad faith and created crooked notary services which plays into the doctrine of unclean hands (see analysis below).

only Alice; she is  
the one paying<sup>0</sup>  
taxes.

### Doctrine of Unclean Hands

The doctrine provides that a plaintiff act fairly for seeking a remedy and that there must be clean hands or they will be denied relief, regardless of how strong the claim may be. If plaintiff had engaged in a bad faith activity or unconscionable conduct the court may invoke the doctrine and rule against the plaintiff. Here, ~~Adam~~ and Alice are filing a quiet title action making them the plaintiff. They do have a strong argument for claiming title to Greenacre through adverse possession. However, Adam and Alice created and recorded a quit claim deed from a fake name, John Smith. They used this to grant the property to Alice in order for them to be able to pay property taxes. This action is indeed in bad faith and the court can invoke the doctrine of unclean hands.

### **Conclusion**

In conclusion, although Adam and Alice did check all the boxes for acquiring title through adverse possession, they did so in bad faith. Thus, triggering the doctrine of unclean hands. Therefore, it is likely that Adam and Alice's filing a quiet title action will fail.

### Tacking

Adverse Possessors may combine the period time for possession creating a chain of title. The parties must have succession and privity.

Non Marketable Title -



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**END OF EXAM**

You did it ~~again~~  
Excellent work!