

MONTEREY COLLEGE OF LAW

REAL PROPERTY

Final Examination

Fall 2016

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
Midterm, Fall 2016

Question 1

Oliver owned Blackacre, a parcel of undeveloped land.

In 2010, Oliver's daughter, Alice, asked Oliver if he would give her Blackacre. He said "of course", and told her he would execute a deed transferring Blackacre to her, and that he would "keep the deed safe" until he died. The next day Oliver executed a valid deed transferring his interest in Blackacre to Alice, placed the deed in his desk, and told Alice that the deed was in his desk for safe-keeping.

In 2011, Oliver handed Charles, an employee of Oliver, Alice's deed, and instructed Charles to record the deed. Instead, Charles burned the deed from Oliver to Alice, and never told Oliver that he had destroyed the deed.

In 2016, Oliver sold Blackacre to Charles for fair market value. Oliver executed a deed to Charles for all of Oliver's interest in Blackacre, and Charles began making payments to Oliver, pursuant to their agreement.

Also in 2016 Charles, recorded his deed from Oliver for Blackacre.

This is a notice recording act jurisdiction.

What title claims can Alice and Charles make to Blackacre? Discuss.

REAL PROPERTY
Professor Justin O'Connell
Midterm, Fall 2016

Question 2

In 2000, Adam inherited Blackacre, a large parcel of land just outside of town with a home on it. Thereafter, Adam never used Blackacre for any purpose.

In 2001, Charles, moved into the home on Blackacre without Adam's knowledge.

In 2003, Adam became mentally incapacitated.

In 2004, Charles began living in a nearby apartment, but left most of his belongings in the garage on Blackacre, in boxes. He occasionally visited Blackacre to retrieve his belongings from the garage.

In 2005, David began seasonal farming on a portion of Blackacre.

In 2011, Charles began living fulltime again in the home on Blackacre, and David immediately ceased farming on Blackacre.

In 2015, Adam's regained capacity.

Discuss the rights of Adam and Charles in respect to a claim for adverse possession of Blackacre. Assume the jurisdiction has a five-year statute of limitations for claims of adverse possession.

REAL PROPERTY
Professor Justin O'Connell
Midterm, Fall 2016

Question 3

Adam is the owner of a residential apartment building. On January 1, 2014, Barbara entered into a written lease with Adam providing that she had the right to occupy one of the apartments for 6 months at a rental rate of \$1,000 per month.

After the lease expired, Barbara continued to pay her rent and Adam continued to accept her rent payments without discussing terms of a new lease.

In September of 2015, Barbara told Adam that she had bedbugs in her apartment, and asked him to take steps to exterminate them. Adam said he would, but never did. Due to the infestation, Barbara was unable to sleep in her bed.

In January 2016, Barbara notified Adam that the ceiling in her apartment had started to leak water into her hallway closet whenever the tenant upstairs flushed his toilet. Adam took no steps to correct the problem.

In July 2016, Barbara stopped paying, but continued to live in the apartment.

What rights and remedies if any does Adam have against Barbara?

What rights and remedies if any does Barbara have against Adam?

REAL PROPERTY
Professor Justin O'Connell
Midterm, Fall 2016

Question 1- Issues Key

Gift Elements

Intent

2010 – Oliver executed a deed to Alice – fact supporting intent?

2014 – Oliver sells to Charles – does this reflect a lack of intent in 2010

Delivery

2010 – Oliver kept the deed – did he have to actually hand it to her, or were his actions enough to keep it for her – physical delivery indicates an objective relinquishment of rights

2011 – Charles was instructed to record – may a third party receive delivery of a deed on behalf of the donee?

2014 – New deed delivered to Charles

Acceptance

(presumed unless item of no value)

Notice Issue

If the deed to Alice constituted a gift, Charles cannot be a BFP to receive protection because he had actual notice of the deed to Alice.

If the deed was not a gift, Charles had no notice of a claim, because no claim existed, therefore Charles owns Blackacre.

REAL PROPERTY
Professor Justin O'Connell
Midterm, Fall 2016

Question 2 - Issues Key

Actual Possession

2001 – Charles moved into home

2004 – Charles moves, but leave behind belongings – use or property in a way a true owner might use it? Sufficient use to constitute actual possession?

2011 – Charles moves back

Exclusive Possession

2001-2005 – Charles alone used the property

2005 – 2011 seasonally farms – is this sufficient to end Charles' exclusive use?

2011 – Charles moves back and alone uses the property

Hostile

2001 – Charles – Maine/Conn/Majority views

Open/Notorious

2001 – Charles lives there

2004 – was possession still open/notorious

2011 – moves back – openness renews?

Continuous

2001 – 2004 Charles in possession, but leaves in 2003 – is moving out enough to end continuity of possession?

Capacity / tolling issues

2001 – Charles began AP when Adam had capacity

2003 – Adam lost capacity – Charles' AP is not tolled – however, if Charles' moving off the property and/or the use by David ended the initial AP period, then in 2011 when Charles moves back, his AP starts again, but is tolled this time due to the then existing incapacity of Adam – i.e. the AP starts anew and did so when Adam was incapacitated

2015 – Adam regains capacity – if Charles' initial AP never ended, Charles owns the property – if Charles second move onto the property began a new AP then Adam owns the property.

REAL PROPERTY
Professor Justin O'Connell
Midterm, Fall 2016

Question 3

Issues Key

Type of lease:

Residential

Originally lease for years. Converted to periodic after expiration of term due to acts of the parties – impliedly old terms continue in effect.

Habitability

Rule re residences

Bedbugs? Are these due to the tenant?

Water leak in closet? Sufficient inconvenience to allow tenant remedy? Toilet water?

Adam's Remedies Duties

Repair but not charge Barbara (water is due to another tenant – bedbugs though?)

30-day Notice to vacate – timing – no reason required, so long as not retaliatory

3-day notice for non-payment

Sue Barbara for eviction and damages, or sue only for damages and not terminate the lease

Barbara's Remedies Duties

Repair and deduct from rent (but still have to pay rent) – Bedbugs her issue?

Move out – claim constructive eviction as a defense to suit by Adam

Not pay rent or pay reduced rent (in a suit for damages the Court could find that a reduced amount – even no payment – was acceptable under the circumstances)

1)

Alice Gift

A gift is the irrevocable transfer of property without consideration. A gift requires three elements: (1) Present Intent to give the gift at that time; (2) Deliver; and (3) Acceptance. There are two types of gifts which may be given: (1) Intro Vivos; and (2) Causa Muertis. Intro vivos is a gift given during that persons lifetime and includes grants and deeds. Causa Muertis is a gift to be given after death. Essentially saying you can have X when I die. In order for the person to the get the item the doner must die and the doner must die from the thing that he/she thought she was going to die from. If the person dies from another cause the gift may revert back to the estate. If the person does not die they may take the gift back. If the donee already has the gift when the person dies it must be reissued become Causa Muertis.

(1) Present Intent - The donor must presently intend to give that gift to that person as that moment.

Here, Oliver advised his daughter that he would give Blackacre and keep the deed safe until he died. The fact that Oliver told his daughter that he would keep it safe until he died could be construed as a lack of intent to presently give Blackacre to her. The gift would not be Causa Muertis which allows for the gift to be given after death because there is nothing showing that Oliver was sick or believed that he was going to dies. As a result this an Intro Vivos gift. However, the present intent may not be present based upon him "keeping the deed safe." Further it could be argued that he was induced to give the gift because his daughter asked him and he felt like he couldn't say no. This would further lead one to believe that he did not truly mean to give Blackacre to her and was placating her. However, Oliver did execute a valid deed the next day and told Alice that it was in his desk. Further, a year later Oliver asked his employee Charles to record the deed. The fact that Oliver executed the deed and asked an employee to record it does lend to the fact that he did presently intend to give Blackacre to Alice. The present intent may be combated by the fact that Oliver waited a year to ask and employee to have the deed recorded. Even though recording is not a requirement it may show someone's true intent. Additionally, Oliver's past intent to give Blackacre to his daughter may be combated by the fact that he later sold Blackacre to Charles. If Oliver had truly intended to give the property to Alice why would he sell it six years later. If he had really thought of the property as Alices he would have consulted her or not sold it at all.

(2) Delivered - Delivery may be physical (actually handing over the item), constructive (giving a person control over that item, i.e. key for a car), or symbolic (handing over a deed to land)

After having the deed executed Oliver decided to keep it in his desk for safe keeping. Because Oliver did not give the deed to Alice he never symbolically delivered Blackacre. Alice may argue that her dad gave her symbolic delivery because he told her where the deed was being kept. This argument may only hold water if Alice has access to her father's desk where the deed was kept for "safe keeping."

(3) Acceptance - If something has value it is assumed to be accepted.

It is generally presumed that acceptance has occurred if the item is something of value. Alice obviously accepted Blackacre because she asked for it and then offered no objections when her father said that yes he would give it to her.

Charles Sale/Deed

In 2016 Oliver sold Blackacre to Charles for the fair market value. He executed a fee simple absolute deed giving Charles all of Oliver's interest in Blackacre. Oliver never consulted or mentioned Alice when making this deal with Charles and Charles began payment on the property per the agreement. Additionally, Charles recorded the deed for Blackacre.

When a property has been given/sold to two people frequently the first to record holds the deed. However, notice must be taken into consideration in a notice recording act jurisdiction. There are three types of notice: (1) inquiry notice; (2) actual notice; and (3) constructive notice.

Here Charles was the first to record the deed which would give him rights in a recording race. Under notice he had actual notice that a deed had originally been made to Alice. In fact, he was the person that Oliver asked to record Alice's deed to Blackacre. Instead of recording the deed Charles decided to burn the deed and never inform Oliver. After burning the deed Charles entered into an agreement with Oliver to purchase the property and never mentioned the past deed that he had destroyed. One must assume that Charles had an interest in obtaining Blackacre when he burnt the deed and decided to destroy the document to later accomplish his goal. This would be a form of fraud and give Alice rights to Blackacre if the three elements of a gift are met. Unfortunately for Alice it does not appear that her father ever truly intended to give her Blackacre and he did not deliver

Blackacre to her. In opposition, Charles was given all of Oliver's interest in Blackacre with the deed which he subsequently recorded.

Charles is the rightful owner of Blackacre.

END OF EXAM

2)

Adam v. Charles

ADVERSE POSSESSION OF BLACKACRE

Adverse possession is a method to acquire title to property through possession. Possession can ripen into title is certain conditions are met. In order for possession to ripen into title, the adverse possession must be hostile, open and notorious, exclusive, actual, and continuous.

Hostile

Adverse possession is hostile when it is done without consent of the rightful owner. Here, Adam became the rightful owner of Blackacre when he inherited the large parcel of land with the home on it in 2000. There are not any facts which indicate that Adam provided Charles or David with permission to enter upon, use, or occupy blackacre. If Adam had provided permission to either Charles or David, the permission would defeat the hostility.

Because there are not any facts indicating that permission was granted, and Charles moved into the house without Adam's knowledge, it is likely that the adverse possession by Charles was hostile.

Open and Notorious

Adverse possession must be open and notorious, whereby it would the rightful owner on notice that his property was being used by another. Notice would be judged by the standard of a reasonable person.

Here, given that Charles inherited the property in 2000, and even again used it for any purpose, it is not likely that he would have had any actual notice of the adverse possessor on his land. However, actual notice is not required. A reasonable landowner, who had a large parcel with a home on it, would likely check on the home at least a some amount of random intervals to ensure that it was still in good repair and was free from hazards or things like broken windows or pipes. The land was just outside of time, so it seems like it would not have been too difficult for Adam, or someone on his behalf to check, which is what a reasonable landowner would be expected to do.

If Adam had acted as a reasonable landowner, would he have been on notice that Charles had moved into his house? Would it have caused a reasonable owner to remove the adverse possessor from the land?

Charles had moved into the house, and had his belongings in the garage. This infers that Charles was coming and going from the property on a regular basis, if not to come and go from work, but to come and go to the grocery store and the like.

However, Adam will assert that this was not necessarily open and notorious, considering that the house was just outside of town, it could be that there were not many neighbors nearby and that the house may have been isolated well within the large parcel, and the activity was concealed.

Given that Charles had been living in the house for a three year period, from 2001-2004, it is likely that regular living activities would make the adverse possession open and notorious.

Exclusive

An adverse possessor must be in exclusive possession of the land. Use by the rightful owner may break the chain of possession and defeat an adverse possession claim.

The adverse possessor must not only be in exclusive possession from the rightful owner, but also from the general public and from other adverse possessors.

Here, it appears that Charles was in exclusive possession against the rightful owner, and nothing indicates that the general public was using the land. However, the fact that Charles began living in an apartment in 2004 (to be discussed below), while still leaving his belongings in the garage on Blackacre- occasionally visiting, and failed to exclude David from using the land raises a concern that he did not have exclusive possession of Blackacre.

David began using a portion of Blackacre to seasonally farm the land in 2005. Unless David and Charles were working in consort, or were in privity, Charles was no longer in exclusive possession in 2005.

Actual

An adverse possessor must actually possess the land in question. Physical or literal entry is required, and a symbolic entry or assertion is not sufficient.

Here, Charles was in actual possession of Blackacre beginning in 2001. In 2004, when he moved to a nearby apartment, and only occasionally visited the garage on Blackacre, his actual possession becomes questionable. Occasional visits or occasional possession of blackacre is not sufficient to be continuous (discussed below) nor is it sufficient to be considered actual. The property in question is a land parcel of land with a home on it. If Charles were to claim that this land's primary use was as a vacation home because it was located just outside of town, he may be able to assert that occasional use is sufficient. However, because he had lived in the home for a three year period prior to moving to the

nearby apartment, he will not likely prevail on that argument.

In addition, if Blackacre was located in a jurisdiction following the Maine Doctrine, he would need to know that he was adversely possession property that did not belong to him. If the jurisdiction followed the Connecticut Doctrine, Charles knowledge as to whether or not he had rights to Blackacre would be irrelevant, and the Minority view would only consider Charles and adverse possessor if he subjectively believed that he had rights to Blackacre.

The facts here are silent as to whether or not Charles had any knowledge or lack thereof to any rights on Blackacre. Facts do state that Charles moved in without Adam's knowledge, but not that Charles was aware of Adam's lack of knowledge or even of Adam's ownership in the property.

If Charles were possession Blackacre under color of title, where he had a document which erroneously purported to give title to the land, he may prevail under a Minority view jurisdiction. He may also be able to acquire rights to the entirety of Blackacre, not just the portion he actually possessed.

If he did not have knowledge and knew that he was on property that did not belong to him, and was not operating under color of title, than he may be able to prevail under the Connecticut or the Maine doctrine.

Continuous

Lastly, adverse possession of land must be continuous for the statutory period in order for a claim of adverse possession to prevail.

Here, Charles was in continuous possession of Blackacre from 2001-2004, for a three year period of time. Since this jurisdiction has a 5 year statute of limitations (SOL), this first three years will not satisfy the SOL. In 2004, Charles began to live in a nearby apartment. But he left belonging in the garage. If the occasional visits and the belonging in the garage are considered to be continual possession, meeting allow of the criterial above, Charles would have remained in continual possession. If Charles was in consort or privity with David, and allowed David to use the property for seasonal farming while Charles was in his apartment, this use would not interrupt the exclusivity requirement, and Charles would be able to continue his adverse possession up to and including when he returned to living on Blackacre in 2011-- whereby he would have been in possession of Blackacre from 2001 to 2011, for a 10 year period of time. The 10 year period of time would exceed the 5 year SOL and Charles would have acquired title to Blackacre.

However, If when Charles left in 2004, his occasional use and the stored belongings were not considered continual possession he would have had a break in possession unless he

was in privity and consort with David, and David's use met all of the requirements above-
- Then David's use may back been tacked to Charles'

Tacking

Additionally, if David's possession in 2005, was successive to Charles' possession (12/31/2004 and then 1/1/2005) and Charles and David were working in consort or where in privity, David and Charles may have successively continued the adverse possession of Blackacre, and the time that each of them adversely possessed Blackacre would fall under the Tacking provision.

Here, David's use of the seasonal farming would also have to be open and notorious, would have to be actual, exclusive, and hostile. Although David was only using the land seasonally for farming, if the land was the type of land that was not able to be used for farming on a year round basis, the seasonal use could be considered continuous if it was done each successive season.

Under these considerations, Charles would have acquired title to Blackacre because the adverse possession would have exceeded the 5 year SOL requirement.

No Tacking

If David and Charles time was not successive, and there was a break between the time that Charles left in 2004 and David began farming in 2005 then there would be a break in the chain of possession and Charles would not gain title to Blackacre.

Disability

Lastly, where a rightful owner is under a disability the statutory period may not begin to run.

Here, Adam became mentally incapacitated in 2003. In order for the mental incapacitation to prevent the statutory period from beginning to run, the incapacity would have had to been in place at the inception of the adverse possession.

If Charles' adverse possession is considered to be from 2001-2004, Adam's incapacity did would not have prevented the clock from running because it was not in place at the inception of the adverse possession.

However, if there was in fact a break in possession between Charles and David, and Charles began a new period of adverse possession when he returned to live on Blackacre in 2011, then the statutory clock would not have started to run because Adam was under a mental capacity at the inception of the adverse possession. Here, the statutory clock would not have started to run until 2015, when Adam's disability lifted.

If Charles continued to adversely possess Blackacre until 2020, without Adam taking action to remove him, then Charles may have a acquired title to Blackacre.

Defenses

Permission is a defense to Adverse Possession.

If Adam is able to claim that he gave permission to Charles to use Blackacre, that would defeat any claim that Charles has to Blackacre.

Here the facts do not indicate any permission, in fact that indicate that Charles moved into the home without Adam's knowledge.

If the prior rightful owner's that Adam had inherited Blackacre from had granted permission to Charles to use Blackacre in the matter described in the facts, there may be further discussion of the rights that Charles and Adam each have to Blackacre.

Based on the facts provided, it is not likely that permission was granted.

END OF EXAM

3)

Adam and Barbara

In order to determine the rights of the parties we must first determine the type of lease belonging to Barbara. As this is a residential lease, the rules that apply to residential leases will apply.

Types of Leases

There are four types of leasehold estates: (1) the tenancy for years; (2) the periodic tenancy; (3) the tenancy at will and; (4) the tenancy at sufferance. A tenancy for years is a lease that has an exact beginning and ending. It can be terminated by death, and no notice is needed to terminate at the end of the lease. A periodic tenancy is one in which there is no exact ending date— the arrangement can continue on a month to month (or some other period) basis, until one party gives notice, or until one party dies. The tenancy at will is not contractual, and does not need to involve payment. It is simply one person letting someone else live somewhere. It can be terminated at any time by the person giving permission, or the tenant can simply leave. If the tenant does not leave at the end of any of these types of leases, the tenancy becomes one at sufferance. When this is the case the landlord can bring an eviction proceeding, or continue to accept rent, thereby beginning an implied periodic tenancy after one months time.

Here, B's lease was for a fixed period of six months. She knew at the start that she would need to leave at the end of July. Because of this, she had a tenancy of years for those six months. After the six months ended, she did not leave. This made her, for the space of one month, a holdover, and thus a tenant at sufferance. However, because she kept paying rent, and A took her payments for more than one month following, the lease turned into an implied periodic tenancy. This meant that she would need to give notice to leave, or A would need to give her notice. (30 days in most states, 60 in a few.)

Rights and Duties of Adam and Barbara

Landlords have 4 duties: (1) the duty to deliver possession; (2) the duty of not interfering with a tenants quiet use and enjoyment; (3) the implied warranty of habitability and; (4) the duty not to act in retaliatory ways.



Delivery of Possession:

Under the majority (english) rule, the landlord must make actual and legal delivery to the tenant. Here, this is not at issue as Barbara had both the legal right or move in in January, and there was not anything or anyone present to interfere with this.

Quiet Use and Enjoyment:

A landlord is not to harass a tenant, or restrict them from access to the property. Any such behavior is a violation of the landlords duty of quiet use and enjoyment. This may apply to 3d parties as well, if the problem is one that arises to the level of legal nuisance, or if there are issues in a common area. Here, A could argue that he is not responsible for the problems caused by an upstairs tenant because they were violating their own duties. B would respond that he does have a responsibility to them because the water rose to the level of nuisance.

If there is a serious act or omission by the landlord that causes substantial interference with the tenants use and enjoyment, the T may sue under a theory of constructive eviction. They must notify the LL of the issue, wait a reasonable time, and then move out, if they are to sue for constructive eviction. If they do not move out, they reduce their payments under the theory of partial eviction, to the fair market value of the property minus the area that is made unusable.

Here, Barbara's ceiling had started to leak water into her hallway closet. B could argue that this was causing a substantial interference with the use of her closet, and that it was prohibiting her from having a place to put her clothes. She could argue that she paid for an apartment with a closet, and that is exactly what she should get. A could argue that it is not a substantial interference, but a minor one. He could argue that there are plenty of other places to put her clothes— like in a bag for goodwill. If Barbara really thought this was bad enough she could reduce her rent payments to the FMV minus the closet under a theory of partial eviction. B did give notice to A about the bedbugs, and he did n not respond. She could not sue for constructive eviction however, because she never moved out after complaining and waiting.

Implied Warranty of Habitability:

When a LL rents a living space there is an implied warranty that it is habitable for basic human dwelling. This is something that is supplied by local housing codes, or if not,

something that involves basic needs such as water, sewage, and heat. Here, Barbara would argue that this was breached due to the bedbugs in her room. She would argue that being able to sleep is a basic human need, and that any interference with this is akin to making the place uninhabitable. (see A's response below) If she felt this was a breach of that warranty, she could do one of four things: remain and sue, move out and sue, reduce the rent, or pay for the extermination and deduct it from her rent.

Retaliatory Eviction:

If a person brings an issue to the attention of a LL, that LL may not evict them in retaliation for the complaint. There is not any evidence of that happening here, but Adam should keep this in mind when evaluating his options.

Tenants have 2 main duties: (1) the duty to pay rent and; (2) the duty to repair and not commit waste.

Pay Rent:

If a tenant does not have a lawful reason (as discussed above) for withholding rent, the LL has different options depending on whether the T is present or absent. If absent they can consider the lease surrendered, re-let and sue for the balance, or ignore and sue for the whole amount. That is not the case here, as B is still present. In that case, A can begin an eviction proceeding and sue for the amount past due, or he can keep collecting rent. Here, A would argue that none of the items complained of were sufficient reason for the withholding of rent, because they were B's responsibility. (See below)

Repair and Not Commit Waste:

A tenant has a duty to maintain the premises, and to not commit waste that is affirmative (intentional), permissive (negligent) or ameliorative (improvements that change the nature of the dwelling.) Here, A would argue that the reason that the bedbugs were in B's room was because she was not maintaining the premises in a clean way. He could argue that washing your sheets and not eating haagen-daz bars in bed are a good place to start with the problem. He would argue that she was not keeping her part of the bargain, and that she should pay for the problems that she was causing. She would argue that she was very clean and tidy, and hated haagen-daz— never touched the stuff.

In Sum

Barbara still has to pay rent for the months she lived in the apartment, though she may be able to deduct some to bring the payments down to fair market value, or to repair the issues that she had. Likewise, Adam still has the right to collect some of what he is owed, but he must relinquish portions of the rent that are used by Barbara to make repairs, or that are above the fair market value.

END OF EXAM