KERN COUNTY COLLEGE OF LAW

Real Property

Midterm Examination

Fall 2025

Prof. E. Estrada

INSTRUCTIONS

This examination is 3 hours and consists of 3 essays. Each essay is worth 1/3 of your final examination score.

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ESSAY 1

Owen owned a 1,200 square-foot single-family home on a 6,000 square-foot lot in Springfield. The home is in a tract development near the Springfield Mall. The neighborhood was built in the 1970s and most of the homeowners in the neighborhood are the original owners.

In 2000, Owen's wife died. Owen and his deceased wife had three adult children who did not reside in the home. Those children are Barry, Larry, and Harry. In 2003, Owen formed a romantic relationship with Glenda and she eventually moved in with him. Glenda had one adult daughter who did not reside with Owen and Glenda.

Owen wished to leave his home to his sons upon his death, but wanted to ensure that Glenda had a place to live for the remainder of her life. Owen therefore executed a will in which he left his property as follows: My home to Glenda for as long as she lives, then to Barry, Larry, and Harry.

Owen died in 2010. His will was probated and Glenda continued to reside in Owen's home. Owen's sons, who lived out of state, did not keep in touch with Glenda after Owen passed. Glenda died on January 2, 2015. Glenda's daughter, Dorothy, sent a letter to Owen's sons at their last known address, but the letters were returned to her. Dorothy did not want Owen's house to fall into disrepair, so she rented out Owen's home to a tenant, Tara, beginning on May 1, 2015. Tara paid all rent to Dorothy and called Dorothy for all maintenance issues. Dorothy dutifully maintained Owen's home, paid for all landscaping, paid for monthly utilities, and even put a new roof on the house. Dorothy also paid all property taxes for Owen's home. Dorothy never put a fence around Owen's house.

On June 1, 2025, Owen's sons visited Springfield to check on Owen's home. They saw Tara in the front yard playing with her dog. Owen's sons asked the neighbors who Tara was. The neighbors remembered Owen and his sons and told them that Tara had been living at the home for around 10 years or so, although Tara would leave the country three weeks per year to visit family abroad.

The property is in a jurisdiction with a 10-year statutory period that also requires an adverse possessor to pay property taxes for all years of possession.

Owen's sons file an action in civil court to eject Tara and to quiet title to the property in their name. Discuss what interest Owen's sons have in the property and whether they will prevail in their quiet title and ejection action.

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ESSAY 2

Gemma owns a parcel known as Whiteacre in the town of Charming. She has a son, Jax, and a daughter, Wendy, both from a prior marriage. Wendy has a substance abuse problem. Gemma is also remarried to John and lives with John at his home.

Gemma hopes that giving Wendy a stable place to live will help Wendy in Wendy's attempts to rehabilitate her substance addiction. Gemma therefore executes and delivers a deed that transfers Whiteacre as follows: to Wendy for life, then to Jax and the male issue of Jax's body, but if Jax's male bloodline runs out, then to any living children of John.

Jax has one son named Abel, who is 3 years old. John has one child, Opie, who is 28 years old.

Gemma makes an unannounced visit to Whiteacre one day to check in on Wendy and sees that Wendy and some unsavory looking characters are cooking certain illegal substances at Whiteacre. Gemma is immediately concerned that there could be an explosion at Whiteacre. Gemma also observes that there is a chemical odor in the home and that there is damage to the walls, kitchen and bathroom cabinets, and countertops in the home. Gemma tells Jax about what she has seen at Whiteacre and asks that Jax help her remove Wendy from Whiteacre. Jax declines, believing it would result in Wendy's further descent into substance abuse. Gemma then tells John about what she has seen at Whiteacre.

Discuss the following:

1. What interests do Wendy, Jax, John, Opie, and Gemma have in Whiteacre, if any?
2. Does any person have the ability to stop Wendy from manufacturing illegal substances at Whiteacre and on what grounds?

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ESSAY 3

Leonard owns an apartment building with 10 apartment units. The building has common areas for the laundry room, stairwells, hallways, and lobby area with mailboxes.

Penny is a young, single woman who rents Unit 2A in Lester's building. Lester leases unit 2B across the hall from Penny to Howard. Howard works from home and can often hear when Penny is walking down the hall. Howard is attracted to Penny and often hits on her despite Penny's repeated statements that she is not interested. Howard, however, is determined to win over Penny and has started meeting her in the hallway wearing nothing but a robe. He allows the robe to open a bit to give Penny a peek. Penny complains to Leonard that Howard incessantly makes advances at her and that he is now exposing himself to her in the hallway. Leonard talks to Howard about his behavior and Howard stops flashing Penny in the hallway. Instead, Howard simply opens his door and stands in his own apartment with his robe open when Penny passes by. He also plays sexually explicit music for two hours every night. He sings along to the music as loud as possible and sings Penny's name in the lyrics. Howard's music and singing is so loud that Penny can hear it in her apartment

Howard's continued exposures and musical stylings have caused such distress to Penny that she no longer feels comfortable walking in the common areas or even being in the apartment across from Howard. Although Howard has never touched Penny or been in her apartment, Penny finds him so creepy that she just cannot stand being in her apartment any longer. Penny terminates her 12-month lease six months early.

Discuss whether:

1) Leonard has any damage claims against Penny for early termination and whether Penny has any defenses; and
2) Penny has any claims against Leonard for Howard's harassment of her.

90

1)

ESSAY 1

Will Owen's sons prevail in their action to eject Tara and to quiet title in their name?

For an individual to gain title to land through adverse possession, her occupation of the property must be adverse and hostile, open and notorious, exclusive, continuous for a standard amount of time for that kind of property, have effected actual entry, and done so for the allotted statutory time period. Beautifully done! A great rule statement sets the tone and inspires confidence!

Did Tara even attempt to adversely possess?

Owen's sons have sued Tara to quiet title, but due to the circumstances of the fact pattern, the analysis will primarily be focused on Dorothy who, is more likely to have fulfilled the elements of adverse possession, which Tara is most certainly excluded from, as she has not paid the house' property taxes, which is required of adverse possessors in their jurisdiction, nor ever made representations claiming to own the property.

Is Dorothy's occupation of the house adverse and hostile?

For an adverse possessor's occupation to be considered adverse, she must have done so without the permission of the original owners.

Owen's sons would likely contend that because Dorothy did not receive any communication from the three brothers after Glenda's death telling her that she was there without their permission, that her occupation of the house was not adverse and hostile.

Dorothy would likely counter, arguing that precisely because she sought to inform them of the fact that they had inherited the house and never heard back is what makes the possession adverse. She was occupying the house without the permission of the real owners. Furthermore, she would argue that because ten years later, the true owners are suing for quiet title, that had the three of them received her letter after Glenda's death, they would not have given her permission to occupy the house.

It is likely that Dorothy's occupation of the house was adverse and hostile.

Did Dorothy effect proper entry?

For an adverse possessor to have actually occupied the property, she needs to have entered it.

Owen's sons would likely argue that because Tara was the person residing in the house, that Dorothy did not actually enter the house, not meeting this element of adverse possession.

Dorothy would likely counter, arguing that in order to get the house into a state to be rented out to Tara, she likely entered the property. Additionally, Dorothy would likely have had to enter the property for various reasons relating to the fact that she was operating the property as a landlord with an active tenant, be it to collect rent, meet with contractors when the roof was being replaced, or anything else associated with maintaining the property for Tara her tenant. Tara, as her agent, also has actual entry.

It is likely that Dorothy entered the property.

Was Dorothy's occupation open and notorious?

For an adverse possessor's occupation to be open and notorious, she must have made it known to all that she was occupying the property and not keeping it a secret.

Owen's sons will likely argue that because it was not obvious to the neighbors that Dorothy was claiming to be the owner (as evidenced by the fact that when they asked the neighbors who Tara was, the neighbors said Tara had been living there for 10 years), Dorothy's occupation of the property was not open and notorious. And that because she had been living there for 10 years, if anyone is actually openly and notoriously occupying the property, it is Tara, meaning that Dorothy does not fulfill this element.

Dorothy would likely counter, arguing that her occupation was open and notorious due to the fact that after Glenda's death, she passed herself off and acted like the true owner. Dorothy would have had to openly and notoriously represent herself to be the owner on many occasions since Glenda's death. This would have likely occurred when she was initially looking for a tenant, when she collected rent and discussed maintenance issues with Tara, when she paid for the landscaping and utilities, when she hired the contractors to replace the roof, and paid the property taxes. Dorothy would argue even though she did not live there, she spent 10 years openly and notoriously representing herself as the owner to her community.

It is likely that Dorothy's occupation was open and notorious.

Was Dorothy's occupation exclusive?

For an adverse possessor's occupation to be exclusive, she must have in some way not allowed others to occupy the property, usually through a fence or other types of barriers.

Owen's sons will likely argue that because Dorothy did nothing to indicate that the property was exclusive, such as build a fence, that her occupation of the property was not exclusive.

Dorothy would likely counter, saying that for a residential lot with a tract house, building a fence is not required, as in a tract development in a residential area, the boundaries of the lots are well understood through their very nature. Additionally, in such a property, occupation of the house implies exclusive occupation of the entire lot. No reasonable person sees someone living in a tract house and assumes that person has not laid exclusive claim to the front yard, especially since many cases houses in tract neighborhoods have no fence in the front yard. She would also say that the fact that she charged rent to Tara implies that she enforced this exclusivity herself. When you charge someone rent, it is implied that you as the landlord have exclusive ownership over the property, and that if rent is not paid, the delinquent tenant will lose her right to be on the property.

It is likely that Dorothy's occupation was exclusive.

Was Dorothy's occupation continuous?

For an adverse possessor's occupation to be continuous, she must have occupied the property for an amount of time consistent with normal use for that type of property.

Owen's sons will likely argue that because Dorothy rarely stepped foot in the house, if at all, following Glenda's death and rented it out to Tara, that her occupation was not continuous for a residential dwelling such as a tract house like Owen's property. They would also likely contend that in Tara's case, because she would leave the country three weeks a year to visit family members in foreign countries, that she also was not continuously occupying the house.

Dorothy would argue that first, Tara's occupation was properly continuous through the fact that leaving the country for three weeks a year does not make her occupation in the house non-continuous. Many people who live in similar dwellings may have even more time away from the property if they go on vacation more than a few times a year. Additionally, she would argue that because she performed all of the duties of a landlord for 10 years, that her doing this made Tara her proxy through which she was occupying the property. Seeking a tenant and renting a place out is one of the rights afforded to someone who owns a property, and Dorothy was the de facto owner for many years.

It is likely that Dorothy's occupation was continuous.

Did Dorothy's occupation last long enough to comply with the statutory period for Adverse Possession? Did she comply with any other statutory requirements for adverse possession in her jurisdiction?

For an adverse possessor to satisfy the statutory requirement, their occupation must exceed the time required by statute. Additionally they must also comply with any other statutory requirements, such as paying the property taxes.

Dorothy would likely argue that she occupied the house from May 1, 2015, where she passed herself off as the owner when Tara became her tenant, which is 10 years and one month from the date that Owen's sons brought suit to quit title against Tara. She would also raise that she paid all the property taxes, which is a requirement her jurisdiction for adverse possessors.

It is likely that Dorothy complied with the statutory period and other statutory requirements.

Owen's sons will likely not prevail in their action to quiet title against Tara, as Tara is not attempting to adversely possess the house, and Dorothy has fulfilled the statutory and common-law requirements for adverse possession in her jurisdiction.

I would have given you a 95 if you had addressed the first question asking what interests Owen's sons had: a vested remainder in fee simple, giving Dorothy a fee simple through A.P.

Otherwise, the organization is perfect, the rule statements precise and well-stated, and analysis thoughtful.

Well done!

95

2)

1) Present and Future Interests

A. What interest does Wendy have in Whiteacre?

Life estate - Wendy

Life estate is a present possessory interest that gives ownership measured in lifetime terms and not term of years. The words "for life" signal the grantor's intent to give for life.

Here, Wendy has life estate because the words "for life" signal Gemma intended to give Wendy a life estate. I love this. You gave me what a life estate is and words of creation. ♡

B. *What interest does Jax have in Whiteacre?*

Vested remainder fee tail male

The remainder is vested when the recipient is known at the time of conveyance and there is no precedent conditions. The fee tail male gives certain guarantees that the male descendants will inherent the estate.

Here, Jax and the fee tail male are one class gifts and not two. This is vested remainder because Jax is known at the time the conveyance was created and he does not have any precedent conditions needed to get the estate after Wendy naturally terminates it. This is a remainder and not an executory interest because Jax must wait for Wendy's life estate to end naturally, he cannot defease(divest) her interest. It is a fee tail male because if Jax's bloodline continues only his sons can inherit the estate otherwise the interest fails. Not a class gift, but otherwise perfect! The rule statement is precise and analysis complete.

C. *What interest does John have in Whiteacre?*

John does not have anything because the estate is conveyed to all his living children. Also perfect!

D. What interest does Opie have in Whiteacre?

Shifting Executory Interest

Executory interest is a future interest in a transferee that divests another's interest. A shifting executory interest cuts of the interest of the grantor. An executory interest always follows a fee.

Here, Opie's future interest is divested in the interest of whether or not Jax's male bloodline runs out or not. If Jax's male bloodline runs out only then can Opie divest his interest and because he is able to divest and does not have to wait it is an executory interest. Opie has a shifting interest because it cuts the interest of Jax's and his male bloodline's(guarantee) interest and not Gemma's(grantor) interest, therefore Opie has shifting executory interest.

Rules of Perpetuities

If a future interest may be vested more than 21 years after the death of the last identifiable life being at the time of conveyance than it is void. Rules of perputies apply to executory interest, contingent remainders, and vested remainder subject to open.

1) Jax and the male issue of his body

Because Jax has vested remainder fee tail male the RAP does not apply to this interest.

2) Opie

Because Opie has a shifting executory interest RAP does apply here. Here, Opie is 28 years old at the time the interests were conveyed by Gemma and Abel is 3 years old. RAP requires that future interests to be vested within the 21 years of the last identifiable life in being at the time of conveyance. Here, we don't know at what age Opie will get his shifting executory interest and how long he will live to keep that interest therefore it is highly unlikely and too doubtful that Abel future interest will vest within the 21 years of when the interest was conveyed and because of this RAP is violated.

This would exclude the clause "then to any living children of John" and only leaves Gemma-> to Wendy for life, then to Jax and the male issues of his body, but if his male bloodline runs out then reversion to Gemma.

E. What interest does Gemma have if any in Whiteacre?

Reversion

If all future interests fail or terminate then the estate is given back to the grantor or his/her estate.

Wendy :)

Here, if Louise's life terminates naturally and Jax's male bloodline runs out, then Gemma would get a reversion because all of the future interests in guarantees have failed or terminated.

2) Can the future interests stop Wendy from Waste on Whiteacre?

A life tenant is entitled to use and profit from the property, but cannot do something that injuries the future interests. If the future interests find that the life tenant has been commit waste they can sue for damages. There are 3 types of waste.

A) Voluntary waste

Willful destruction of the estate such as natural resources.

Here, Jax and Opie can argue that because Wendy has been cooking illegal substances it can cause an explosion which would destroy the natural resources of the property. they could also argue the chemical odor could also cause destruction of natural resources in the estate. Though, Wendy will likely argue that because she is a life tenant she is entitled to use the estate in any way she sees fit. This arguments will likely not prevail because the destruction of the natural resources would cause injury to future interests therefore they can seek damages against Wendy under voluntary waste.

B) Permissive waste

Neglectfulness to maintain the estate

Here, Opel and Jax will likely argue that there is damage to the walls, kitchen, bathroom, cabinets and countertops which were neglected and not maintained on the property. Though, again Wendy will likely argue that she is in possession of the estate therefore she is entitled to any use from it. This argument will likely fail because again if the use such as the damages to the property causes future interest harm, then she could be liable for permissive waste.

C) Amelortive Waste

Making substantial changes, even if they increase value, but without the permission of the future interests.

Here, because Wendy has not made any substantial changes such as to increase the value of the estate it is unlikely that ameroltive waste will apply.

Therefore, Opie and Jax and sue Wendy under voluntary and permissive waste for committing waste on the estate because they have a future interest on the estate. And they can put an injunction on Wendy to stop the use of the premises and recover damages.

In this essay, you gave me almost everything I asked for. Well done!

3)

Leaseholds

A lease is a K between two parties and governs both the landlord and tenants over the term of the leases. Under common law: If one party breached the K, they could seek damages, but could not terminate the lease. Under modern rule, Ii one party's breach is material then the other party can terminate the lease. Here we will focus on the modern rule.

1) Does Leonard have any damage claims against Penny?

A) Landlord Remedies

If the tenant breaches there lease K then the landlord can seek certain remedies.

i) Damages

Landlord can seek damages for breach of K by the tenant.

Here, Leonard is likely to argue that Penny terminated her lease early without notice therefore she should be liable for damages such as monetary damages which would compare the value of the rent to the lease agreement. Though, Penny will likely counter this by stating that she had not been able to use the common areas and had been harassed by one of the other tenants which the landlord knew about, it is unlikely that Leonard's claim will prevail.

b) security deposit

The landlord can cut the rent from the security deposit if there is a breach of the contract.

Here, again Leonard will likely argue that Penny terminated her K before the termination date and breached her duties as a tenant to pay rent. Though, this argument is weak because Penny did not feel safe on the landlord's premises due the harassment she was getting from Howard.

Therefore, it is unlikely that Leonard has any damage claims against Penny for early termination.

B) Whether Penny has any defense defenses?

i) Constructive failure of quiet enjoyment

A failure to provide quiet enjoyment which results in the tenant not being able to use part of the premises, tenant is relieved of all liability of rent.

Here, Penny will likely argue that she was not able to enjoy walking in front of her apartment while leaving or coming back to the apt. She was not able to enjoy the common areas which all the tenants have access to and she was not able to enjoy her apt because Howard played his music so loud that she could hear it in her apartment. Though, Leonard will likely argue that he spoke with Howard after penny told him about Howard's conduct. This will likely not suffice because landlord's have duty and promise in the K that neither they nor anyone else will interfere in the tenants quiet enjoyment of the property possession. And because Howard continuously interfered in Penny's quiet enjoyment, the landlord breached his duty.

Therefore, Penny is likely to prevail for constructive failure of quiet enjoyment against Leonard.

ii) Tenant Remedies

Upon landlord's breach tenant has remedies such as termination of lease, reformation, monetary, consequential, special, or punitive damages.

Here, because Penny's Quiet enjoyment was interfered she is not in breach of her K when she terminated her lease early because that is one of the remedies the law provides tenants when the landlord breaches his duty under modern rule.

Penny could also seek monetary and consequential damages. Here, Penny could ask damages for rent paid compared to the value of the defected premises she had to live at due to harassment. Penny could also ask for consequential damages meaning for the harm that caused her to terminate the lease. Meaning due to the landlord's breach of not fixing the problem it caused her injury and therefore she should recover damages.

2) Whether Penny has any claims against Leonard for Howard's harassment of her?

A) Fair Housing Act

The landlord is liable for discriminatory harassment (sexual, slurs, race, ethnicity, ect.) of other tenants if the landlord knew or had reason to know the harassment occurred and did not act.

Here, Penny will likely argue that she was harassed by Leonard's other tenant for a lengthy period of time and although, the landlord spoke with the tenant the tenant continued the harassment and the landlord did not do anything after that to stop or evict the other tenant for sexual harassment.

Although, Leonard had already spoke to Howard once and told him to stop, as a landlord it was his duty to make sure that Howard did not continue the harassment and because he had reasonable knowledge of the previous harassment he should have foreseen the continued harassment. Therefore, it is likely that Penny has a claim against Leonard for breaching his landlord duties.

B) Common Area

Under Landlord's duties, the Landlord must provide a sufficient and safe common area for all tenants.

Because the landlord has a duty to provide a safe common are a for all tenants and Penny was not able to use the common area due to Howard's harassment Leonard could be liable for breach of landlord duties.

C) Tenant Remedies

Upon landlord's breach tenant has remedies such as termination of lease, reformation, monetary, consequential, special, or punitive damages.

Here, because Leonard violated FHA and breached his landlord duties of not keeping the common area safe, Penny as the tenant had sufficient right terminate her lease early as a remedy against the landlord's breaches. Therefore, she will likely not be liable for early termination of her lease.

Penny could also seek monetary, consequential damages for Leonard's breach of his duties

D) Retaliatory Eviction

If the tenant reports violations of housing or building code the landlord cannot retaliate by eviction within the 90 to 180 days of the complaint.

Here, Leonard would not be able to dispute Penny's claims of early termination by stating that he evicted her lawfully because due to FHA violations and other landlord duty violations as well as constructive failure of quiet enjoyment it would be clear that he is relating against Penny and that the eviction was not actually lawful. Therefore, Leonard could not dispute against Penny under this provision.

END OF EXAM