

KERN COUNTY COLLEGE OF LAW

REAL PROPERTY

Midterm Examination

Fall 2019

Prof. Lisa Holder

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.

Question 1

Orie owns Blackacre in fee simple absolute.

Orie's will provides: "I hereby leave Blackacre to Ace for life, and upon the death of Ace, to Bly for life, and upon the death of Bly, to Ace's grandchildren."

Bly is Ace's only child. Bly has two children, Xena and Yule. When Orie dies, Ace is 75 years old, Bly is 55 years old, Xena is 21 years old, and Yule is 18 years old.

The state where Blackacre is located follows the common law.

Questions

1. Describe the estates held by Ace, Bly, Xena, and Yule, and why.
2. Does any part of Orie's devise violate the Rule Against Perpetuities? Explain.
3. If Orie's devise violates the Rule Against Perpetuities, what language in the devise could have saved the devise?

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Question 2

Greenacre is a tract of 100 acres owned by Obe in fee simple. Obe executes a deed conveying Greenacre to Ann in fee simple. Obe put the deed in a drawer in his desk. Subsequently, Obe dies. Obe's will states: "I leave all of my real and personal property to Blake." Blake lives in another state and does not seek to occupy or otherwise make use of Greenacre. Blake does not grant permission to anyone to enter or to use Greenacre.

Shortly after Obe's death, Ann discovers the deed in Obe's desk. Ann is not aware of the provisions of Obe's will. There is a house on Greenacre, which sits inside a fenced area of five acres. Beginning in Year 1, Ann enters Greenacre and takes up residence in the house. Ann maintains the house and the five-acre fenced area, but does nothing with the rest of Greenacre.

Ann kept the deed in the same desk drawer where Obe left it. Ann resides in the house for 10 years, then dies. During those ten years, Blake was incarcerated for four years. Ann's will provides: "I leave all of my interest in any real property to Clair." Clair immediately moves into the house on Greenacre and lives there for another 6 years before Blake discovered Clair was living in the house on Greenacre and filed a lawsuit against Clair. The statute of limitations for ejectment is 15 years.

Question

1. What interest, if any, does Clair have in Greenacre? Explain.

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Question 3

Ally, Bonny, and Cory own Rosedale in equal shares as joint tenants. In Year One, a judgment lien is entered against Ally for \$50,000 in favor of Ally's creditor, Kelly. Under applicable law, the lien attaches to Ally's interest in any real property for 10 years, or until the lien is satisfied.

Ally lives on Rosedale, while Bonny and Cory do not. During Year One, Ally discovers coal on Rosedale. Ally immediately begins to mine and sell the coal. By doing so, Ally earns \$250,000 in profit. Bonny and Cory ask Ally for a share of the coal profits, but Ally refuses.

In Year Two, Cory conveys all of his interest in Rosedale to Dory. Dory immediately mortgages his interest in Rosedale to Yessy for \$100,000.

At the end of Year Three, Dory dies. Dory's will devises Dory's property as follows: "All interests in real property held by me at the time of my death shall pass to Elly." Dory's estate does not have sufficient funds to pay his debt to Yessy. The remaining obligation on Dory's note to Yessy is \$100,000.

Despite Yessy's request, Elly refuses to make payments on the mortgage, and Yessy forecloses on Elly's interest in Rosedale. At the foreclosure sale, Elly's interest is sold to Zippy for \$500,000. At the time of the sale, there are no encumbrances against Rosedale other than the judgment lien and the mortgage.

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Questions

1. What rights, if any, do Bonny and Cory have to the coal profits? Explain.
2. Did Yessy have an enforceable interest in Rosedale after Dory's death? Explain.
3. After the foreclosure sale, what interests in Rosedale are held by Ally, Bonny, and Zippy, respectively? Explain.

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1)

What interest does Ace hold?

A fee simple absolute is an estate in land that may be conveyed while alive or devised in a will. An estate for life is an estate that may be alienated while alive, but terminates upon the death of the grantee.

Orie may devise Blackacre through a valid will. For the sake of the analysis, we will assume that Orië's will is valid.

The words in Orië's will "Blackacre to Ace for life" creates a life estate to Ace that may be alienated and terminates upon Ace's death.

Ace has a life estate in Blackacre.

What interest does Bly hold in Blackacre?

An estate for life is an estate that may be alienated while alive, but terminates upon the death of the grantee. A life estate is naturally followed by a reversion to the grantor, however the property may be conveyed to a third party at the termination of the previous life estate. If the future interest does not automatically vest at the termination of the previous estate, the interest is destroyed. A future life estate is a remainder for life.

Orie's will devises the estate "to Ace for life," which is a life estate. The estate would naturally revert to Orië upon Ace's death, but the will provides that upon Ace's death, the estate will not revert, and will instead go "to Bly for life." The words of the will create a life estate in Bly upon Ace's death. This interest will naturally vest upon the termination of the previous estate and is therefore not destroyed by the common law destructibility doctrine. Because the interest is not yet present possessory, Bly has a remainder for life.

Bly has a remainder for life in Blackacre.

What interests do Xena and Yule hold?

An estate for life is an estate that may be alienated while alive, but terminates upon the death of the grantee. A life estate is naturally followed by a reversion to the grantor, however the property may be conveyed to a third party at the termination of the previous life estate. a conveyance of an estate to two or more individuals which does not include a right of survivorship creates a tenancy in common. Tenants in common have the right to present possession of 100% of the property. Class gifts to children close only upon the death of the parent, regardless of the age of the parent.

At the termination of Bly's life estate, the estate would naturally revert to the grantor, Ori; however, the will provided that upon the termination of Bly's life estate, the property would pass "to Ace's grandchildren." Xena is the daughter of Bly, who is Ace's only child, making Xena a grandchild of Ace. The language does not qualify the conveyance, so it is an interest in fee simple absolute if there are no other grandchildren. Because Yule is also a child of Ace, and therefore a grandchild of Ace, the conveyance is to two or more individuals and creates a tenancy in common between Yule and Xena, with each owning a 50% interest in Blackacre and the right to possession of the entirety. Because the interest is not present possessory, it is a remainder.

Because the conveyance is to a class of people (the grandchildren of Ace), and both Ace and Bly are still alive, the conveyance is a class gift subject to open, and the interest is subject to partial divestment.

Xena and Yule have a remainder for 50% of Blackacre as tenants in common, subject to partial divestment.

Does the will violate the rule against perpetuities?

An interest in property must vest, if at all, within 21 years of a life in being at the creation of the interest. The life in being that serves as the measuring life does not need to be directly identified in the document creating the interest, nor do they need to benefit from the interest. An interest created by will is "created" at the time of the testator's death. Classes may not be used as measuring lives if they are subject to open.

The lives in being at the time of the creation of the interest are Ace and Bly, both of them having been directly named in the document that created the interest. Ori cannot be a life in being because the interest was not created until his death. Xena and Yule cannot be lives in being because they are members of a class subject to open and were not identified by name in the document.

Ace is the only measuring life because, while Ace still lives he may have additional children which may beget additional grandchildren, and the conveyance is to the class of Ace's grandchildren. Though it may seem that Bly may be a measuring life, it is entirely possible that Ace has a child who lives for more than 21 years after the death of Bly and has children who would be members of the class of "Ace's grandchildren. In this scenario, the death of Bly would not automatically resolve the members of the class, unless no other children are born to Ace. The rule against perpetuities only cares about the possibility of late vestment, not the actuality of it. Because Ace could have more children (holding the class of Ace's grandchildren open), and those children could have children more than 21 years after the death of Bly, the conveyance to Ace's grandchildren is void for the rule against perpetuities.

The term "to Ace's grandchildren" violates the rule against perpetuities.

if the will violates RAP, what language can save the devise?

A term that would violate the rule against perpetuities may be saved by the aptly named "perpetuities savings clause", which says, "if the interest does not vest or fail within 21 years of a life in being at the creation of the interest, then the remaining interest goes to X."

A devise that is saved against RAP may say: "To Ace for life, then to Bly for life, then to Ace's grandchildren. If this interest does not vest or fail within 21 years of a life in being at its creation, then all remaining interest to the grandchildren of Ace then living." This language automatically cuts off unborn grandchildren of Ace that may violate RAP, and immediately disburses the interest to the then-living grandchildren of Ace. This effectively forces the court into a "wait and see" approach because, by its terms, it is going to vest or fail within 21 years.

END OF EXAM

2)

Was Greenacre properly conveyed by gift to Anne?

A donative transfer requires a valid deed, donative intent, delivery and acceptance.

DEED

Here, we have a deed which satisfies the statute of frauds requirement for transfer of real property to be by a written instrument. We do not know the contents of the deed but assuming the deed has the name of the parties, the description of the land being conveyed, language that would convey a present intent to transfer Greenacre and Obe's signature it would be valid. The fact pattern is silent as to these factors but we will presume the elements of a valid deed are met.

DONATIVE INTENT

The grantor must have an intent to convey a present interest in the property. Intent can be analyzed by looking at the express or implied communication or behavior of the grantor.

Here, Obe simply put the deed in a drawer. There are no other facts to indicate any behavior that would suggest he had the intent to convey a present interest in the property to Ann, otherwise he would have given her the deed or told someone about it.

DELIVERY

The deed must be delivered to the grantee. Delivery could be actual, constructive, symbolic and even done by third party agents.

Here, Obe simply puts the deed in a drawer. Ann could argue this was constructive delivery because he knew she would look in that specific drawer after his passing but there are no facts to indicate that she knew he had left her a deed in the drawer. Further, a gift via deed would have to be an inter vivos transfer since the donative intent aspect would require that the grantor give the grantee a present possessory interest, future interests are not allowed for gifts.

There was no valid delivery of the property.

Acceptance

Acceptance of a donative transfer is presumed when the grantee would benefit from the transaction (ie: something of value is being transferred)

Here, Ann finds the deed and enters Green Acre, this constitutes implied acceptance through her behavior. She entered upon the property and began using five acres of it and the house on the five acres.

Acceptance is presumed and in this case through her actions, implied.

Is Blake's conveyance in Obe's will valid?

Property can be given as a gift, rather than sold by deed or by will.

Here, Obe conveyed the interest in a will to Blake. Blake's interest vested at the testator (Obe's) death.

Here, Blake owns Greenacre because his conveyance by the will is proper.

ADVERSE POSSESSION BY ANN

Did Ann adversely possess Greenacre?

A person may acquire title through adverse possession if they actually possess the property in a way that is continuous, hostile, open and notorious, and exclusive for the length of the statutory period

Is Ann actually possessing the property?

Actual possession refers to the portion of the property the adverse possessor is occupying or possessing.

Ann actually possessed five acres of property and a house within a fenced border of the 100 acre parcel of land. She is not actually possessing the remainder of the property.

Ann is in actual possession of the fenced five acre portion of Greenacre.

Is Ann in continuous possession of the property?

Continuous possession occurs when the adverse possessor occupies the property in a way that is consistent with the true owner by residing there or using the property in its best use.

In this case, Ann resides on the property and maintains the portion of the fenced five acre portion and does so until her death. She continuously used the property as her place of abode for ten years.

Ann continuously possessed the property for ten years.

Is Ann possessing the property in a hostile manner?

An adverse possessor must possess the property in a way that is hostile to the true owner, by not having consent. Jurisdictions are divided on the intent factor. The

majority jurisdiction holds that the AP's intent is irrelevant. While the Connecticut doctrine would require the knowledge and intent to take the property.

Here, the fact pattern expressly states that Blake had not given anyone permission to enter or use Greenacre. The fact pattern further provides that Ann took possession by Color of Title. She relied on a document (deed) she found in the decedant's home and was unaware that the property had been devised by will to Blake.

Ann is possessing the property in a hostile manner under the majority jurisdiction.

Did Ann possess the property in an open and notorious way?

An adverse possessor must possess the property in a way that is open, so as to put the true owner on notice and notorious, so that the public would recognize the property as belonging to the adverse possessor.

Ann, took up residence in the home on the property and maintained the land around it. This means that had Blake done his due diligence, he would have noticed someone occupying the land. Here, however Blake lives out of state and does not occupy or make use of Greenacre whatsoever. Which means, he had not been by the residence or land to maintain or to make sure nobody was wrongfully occupying the land. The notorious aspect would not be a requirement in this instance, where the property is in the middle of a 100 acre parcel of land. Likely, the neighbors and community were very remote.

Had Blake done his due diligence and cared for the property, he would have noticed Ann occupying and maintaining the residence. Ann sufficiently occupied the premise in an open and notorious manner.

Did Ann possess the property in an exclusive manner?

An adverse possessor must possess the property in a way that is exclusive, which means they do not let others, even the true owner on the property.

Here, there is not mention of any of any other members of the community trying to enter the property. She had exclusive control over the five acre parcel she occupied because it was fenced in. A fence is a good indicator of exclusivity and privacy.

The fence is indicative of her exclusive possession of the five acre parcel.

Did Ann possess the property for the length of the statutory period?

The statute of limitations varies from jurisdiction from jurisdiction. Absent a statute of limitation, the default duration is 20 years.

Here, the statute of limitations is 15 years and Ann adversely possessed for 10.

Thus, she did not sufficiently occupy Greenacre for the length of the required statutory period, prior to her death. She did not gain title through adverse possession before her death.

May Clair tack her possession onto Ann's to satisfy the statute of limitations?

In order for tacking to be allowed from one adverse possessor to the next their must be privity between the parties.

Here, Clair's interest was given to her by the conveyance of a will. The will is sufficient proof to establish a privity of estate between Clair and her mother Ann. Since Ann lived in the house and adversely possessed for 10 years and Clair did for six years. Together, they have adversely possessed the property for sixteen years.

Clair may tack her possession onto Ann's to satisfy the statute of limitations and by doing so they have satisfied the statutory limit.

What defense to Clair's Adverse Possession claim does Blake have?

Does Blake's incarceration provide an excuse to toll the statute of limitations?

Tolling pauses the statutory time clock from running. Tolling may be caused by infancy, incapacity or incarceration.

Here, Blake was incarcerated for four years. The fact pattern does not suggest if the incarceration occurred at the beginning or somewhere during the adverse possession took place. Lets assume that Blake's incarceration happened after Ann had began adversely possessing on his property, then tolling of the statute of limitations would not occur because Blake should have or could have known of the wrongful entry of his property had he inspected it prior to his incarceration. **In this scenario Ann + Claire's possession would exceed the requisite time frame of 15 years. They possessed altogether for 16 years.**

If his incarceration happened right before Ann started possessing the property then the statute of limitations would be tolled. In this scenario, Ann+Claire's possession would only be 12 years.

Since the facts do not specify when the incarceration occurred, I will assume at some point during the duration of the adverse possession and there would be no tolling since he was incarcerated after Anne had entered the property.

Once the lawsuit is filed, the statute of limitations clock stops ticking.

Under traditional adverse possession, Clair would definitely be entitled to the five acre portion that she actually possessed in a manner consistent with the elements needed to satisfy the statute of limitations. However, since they were adversely possessing under Color of Title, Clair has an interest in the entire parcel, even though she did not actually occupy the rest of the 100 acres of land.

END OF EXAM

3)

What rights do B and C have to the coal profits from Rosedale?

joint tenants and tenants in common do not have any right to rent from any possessing co-tenant, but they are entitled to profits derived from the property in accordance with their interest.

A, B, and C all have a 1/3 interest in the property as joint tenants, and A is in possession, thus B and C do not have any right to collect rent from A, but are entitled to collect from the "profitable use" of the land in accordance with their 1/3 interests. This includes 1/3 of any rents to persons not co-tenants and any other use of the land such as the coal mining operation. 1/3 of the \$250,000 in coal profits is \$83,333.

B and C have a right to ~\$83,000 out of the coal profits.

Does Yessy have an enforceable interest in Rosedale after Dory's death?

Joint tenancy requires 4 privities: Possession, interest, time, and title. The privity of time (when the interest originates) and title (the document upon which the interest is granted) are both destroyed upon conveyance of property by any joint tenant. The non-conveying co-tenants would still have a joint tenancy as tenants in common with the person who acquired the conveyed share. An interest held as a tenant in common is devisable by will. Liens are not enforceable against a joint tenancy interest in property after the death of the joint tenant, because the interest is destroyed upon the death of the joint tenant, however an interest by a tenant in common is reachable by a creditor after death.

Cory conveyed his 1/3 interest in Rosedale to Dory. This destroyed the required four privities, ended the joint tenancy, and established a tenancy in common between Dory and the two remaining joint tenants: Ally and Bonny. Dory's interest in Rosedale was successfully devised to Elly at Dory's death because the property was held as a tenancy in common between D and the other co-tenants, and was therefore devisable.

The mortgage against Dory's interest in the property remains attached to the property because Dory's interest is not destroyed, only transferred. Therefore, Yessy, as the holder of the lien against Dory's interest, does have a valid interest in Dory's interest in the land, enforceable against Elly.

Yessy has an enforceable interest in the property, despite Dory's death.

After the foreclosure sale, what are the interests of Ally, Bonny, and Zippy?

See the rules of co-tenancy, above.

After the foreclosure sale, what interest does Ally have in Rosedale?

Ally remains a joint tenant with Bonny, and is now a tenant in common with Zippy; with a 1/3 undivided interest in the property. There is a lien against her interest in the property for a further 7 years (assuming the sale occurs at the end of year 3) and that lien will disappear upon Ally's death, along with her interest in the property. As a co-tenant in possession, she does not owe any rent to the other co-tenants, but must give 1/3 of any other profit derived from use of the property to each of the co-tenants.

After the foreclosure sale, what interest does Bonny have in the property?

Bonny's interest has not been affected by any of the actions of her co-tenants. She has a 1/3 undivided interest in Rosedale as joint tenant with Ally and as tenant in common with Zippy. There is no lien against her interest, which will be destroyed upon her death. As a non-possessory co-tenant she is not entitled to any rents from A, but is entitled to 1/3 of any other profit derived from the use of Rosedale.

After the foreclosure sale, what interest does Zippy have in Rosedale?

Zippy owns a 1/3 undivided interest in Rosedale held as tenant in common with both Ally and Bonny, due to his purchase of the interest from Yessy. There is no lien against his interest, the mortgage having been discharged in the foreclosure. Upon Zippy's death, his interest in Rosedale will pass through his will or to his heirs. As a non-possessory co-tenant, Zippy is not entitled to rent from Ally, but is entitled to any other profits derived from the use of the land.

END OF EXAM

