

Empire College of Law

Property Law

Fall Midterm 2025

Professor Lehre

Answer two (2) Essay Questions

Answer 20 MBEs

Time Allocated: Three (3) hours

Essay #1: Vineacre

Vineacre consists of 5 acres of grapevines. Owen owned Vineacre. He lived on the land and farmed the land. In 1990, Owen devised Vineacre to Abby and Betty for life, then to the survivor. This was a valid will and Owen never revised nor revoked this will during his lifetime.

In 2000, Owen became incapacitated by illness. His neighbor, Fred, saw that Owen was no longer able to take care of Vineacre. In 2001, Fred took advantage of Owen's incapacity and began encroaching onto Vineacre with his own vines and harvesting the grapes for his own use. Fred continued to encroach until, by 2004, he had taken over 1 acre of Vineacre, which he then fenced off and continued to use for 20 years.

In 2020, Abby died. In 2024, having never regained capacity, Owen died. Fred immediately claimed ownership of Vineacre and sued. The adverse possession statute of limitation in this jurisdiction is 15 years.

Answer the following questions in detail explaining why you reached your conclusions, using the IRAC method:

1. What were the present and future interests in Vineacre, if any, of Owen, Abby, and Betty in 1990? How did this change in 2020?
2. What were the interests in Vineacre, if any, of Betty in 2024?
3. What were the interests of Fred, if any, in Vineacre at the time of Owen's death in 2024?

Essay #2

Lois owned a five-unit apartment building, Peaceful Park Apartments (“PPA”), and the adjacent lot called Greenacre which she landscaped as a park for her tenants to use. Tyler was attracted to the calm, peaceful environment around PPA and entered into a lease with Lois for a three-year fixed term pursuant to a written lease that complied with the Statute of Frauds. The term was to run from January 1, 2023 to January 1, 2026.

The lease provided, among other things: “Tenant shall be fully responsible for making the apartment a fit place to live in. Therefore, Tenant must pay for all repairs and improvements to Unit B which may be necessary or appropriate to make Unit B habitable. In consideration, Tenant’s rent will be reduced \$100 per month”

On January 1, 2024, Lois sold Greenacre to a local quarry business which began using Greenacre to dump large rocks from the quarry, destroying the park in the process. As a result, large dump trucks drove past the apartment building into Greenacre and dumped rocks, on average, every two hours three days out of every week. The activity started at 7:00 a.m. and stopped at 8:00 p.m. The walls of Tyler’s Unit B shook every time a dump truck dumped rocks onto Greenacre. Tyler would have to leave his apartment on the days when rock was being dumped because of the shaking, noise, and dust.

On September 1, 2024, Tyler demanded that Lois fix the problem, but she told him that, per the lease, it was his problem and she suggested that he soundproof Unit B as the other tenants had done to their units. She told him she heard no complaints from them once they did this.

On February 1, 2025, Tyler handed Lois a letter which read: “Lois: I will not pay any more rent until the shaking, noise, and dust problems from the trucks are resolved. Tyler.” Two months later, Tyler stopped paying rent but continued living in Unit B because he could find no other place in the area that he could afford to lease.

Both Lois and Tyler sued each other. Who will win and why?

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owner would discover the adverse claim upon a reasonable search. Here, the facts show that V is 5 acres of grapevines, which insinuates that all 5 acres are used. Had O not been incapacitated and continued to harvest the grapevines, it is likely that O would discover that F was encroaching on 1 acre of the land. F also fenced off the acre of land that he was using in 2004, this constitutes as open and notorious because if an owner had reasonably inspected, then they would have likely noticed the fence surrounding the acre of land, therefore satisfying this element.

Adverse or Hostile

Possession is adverse or hostile when it is used without the true owner's permission and it conflicts with the true owner's rights. Here, it is obvious that F did not have O's permission to use his land because he waited until O was incapacitated to go onto the land and harvest his own grapes. F's possession of the land also conflicts with O's rights because F is using that land and trespassing on the land (trespass is the intentional entering onto the land of another without consent). Because F's possession of the land was adverse and hostile, this element is satisfied.

Statute of Limitations (SOL)

In order to claim adverse possession, the possessor must possess the land for the SOL in the jurisdiction, here the facts tell us its 15 years. When the owner of the land is incapacitated, the SOL does not run, meaning that during the time that O was incapacitated from 2000 to his death in 2024, the years did not count as meeting the SOL requirement. So, the clock would not start until B took over the property in FSA in 2024. Depending on when O died and F brought the suit for AP, F would not have even a year of the SOL requirement. Since this element has not been met, there is no adverse possession, therefore F would have no interest in V.

Tax requirement

In some states, like California, it is required that the adverse possessor pay taxes on the land they are possessing, but the facts do not indicate where the is or whether F paid taxes on the land.

Conclusion

It is likely that F does not have a claim of AP over V because he did not meet the SOL requirement of 15 years. Had F met that requirement, he would only have a possessory interest in the 1 acre of land that he used and fenced off because he was not in actual possession of all 5 acres of V.

2)

Type of Tenancy



very good

Lois (L) and Tyler (T) have entered into a term of years tenancy. A term of years tenancy is when a landlord and tenant agree to a fixed, determinable duration that automatically ends on a specified date. After the specified date, the tenant's possessory interest ends and the landlord retakes possession of the land/unit. Here, L and T had a written agreement that had a fixed end date of January 1, 2026. It was also a fixed, determinable duration because the agreement stated that the term was to run from January 1, 2023 to January 1, 2026.

L's Claims

Ameliorative Waste of Unit B

I there is no ameliorative waste where a landlord tells a tenant to add something

Here, if T had done as the other tenants in the apartment building had done and installed soundproofing, T could have committed ameliorative waste which is when a tenant adds something of value to the unit without the landlord's permission. Had L brought this claim against T, it is likely that L would not be successful as she was the one who suggested that T fix the nuisance problem (the rock dumping) by installing soundproofing like the other tenants did thereby giving her consent for T to add the soundproofing.

T withholding rent

very good

On February 1, 2025, T gave L a letter telling her that T was not going to pay rent until L fixed the sound problems caused by the trucks dumping rocks. Then, two months later, T stopped paying rent but continued living in Unit B. L could likely bring a suit to make T pay the rent or to evict T. One of the duties a tenant has is to pay rent as agreed upon, however when the landlord has failed to fix a defect, such as not mitigating the sound problem, one of the remedies a tenant has is to withhold rent. Eviction is when a landlord removes the tenant from the property. It can either be actual (through the legal process) or constructive. Constructive eviction means that the landlord made the land unusable and occurs when there has been substantial interference by the landlord, notice by the tenant, and the tenant leaves. The tenant must give notice and allow enough time to reasonably fix the problem. T gave L two months notice and gave L adequate time to fix this problem, so T was merely exercising his power to withhold rent due to L's lack of action. Therefore, it is likely that L's claim against T for withholding rent would not be successful.

T failed to leave

Tenancy at sufferance

There would be need to be a legal proceeding (U/D) & judgment against T

After T started withholding rent, he continued to live in Unit B. L might bring an action against T for tenancy at sufferance. This occurs when a tenant has a valid possessory interest but once it ends, they continue to possess the property when they don't legally have any interest, and against the consent of the landlord. Here, L will try to argue that T's legal possessory interest ended when he stopped paying rent. This argument will likely fail because as mentioned earlier, T is exercising his right to withhold rent as a remedy. This means that T will still likely have a legal possessory interest in the land, therefore not

making this a valid tenancy at sufferance. The claim will likely not be successful.

T's Claims

Implied Warranty of Habitability

In the lease agreement, it stated that T would be fully responsible for all repairs and improvements to make the apartment a "fit place to live in" and "habitable." This is an invalid term in the agreement because a landlord owes an implied warranty of habitability to a tenant. An implied warranty of habitability is a non-delegable duty to keep the premises fit for human habitation. It occurs when the conditions affect the tenant's health and safety. The tenant must give notice and allow a reasonable time for the landlord to fix it. Here, this lease agreement cannot make T take full responsibility for ensure the apartment is habitable and fit to live in. That is the duty of the landlord. The landlord also cannot reduce the monthly rent in consideration of T taking on this duty. It is likely that T will be successful in his claim of L breaching their implied warranty of habitability.

Very good

Implied Warranty of Quiet Enjoyment

The trucks that dumped rocks in Greenacre (G), caused noises so loud, it shook the walls of T's apartment. By L not attempting to mitigate the damages of T's disrupted possession, L is breaching her implied warranty of quiet enjoyment that she owes T. An implied warranty of quiet enjoyment means that the landlord owes a duty to the tenant to ensure that their use and enjoyment of the property is not disrupted by trying to mitigate those disruptions. Here, since L knew that by the other tenants soundproofing their apartments, this potentially fixed the noise problem that the dumping caused. Therefore, she should have attempted to mitigate the disruption by installing the soundproofing in T's apartment instead of telling T that it was his problem. It is likely that if T brings a suit for breach of implied warranty of quiet enjoyment, it will be successful.

also, very good

END OF EXAM

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Excellent work. The student mistakenly analyzed an inter vivos gift instead of a testamentary gift. However, the issue spotting & analysis of interests & adverse possession is excellent

1)

1. What were the present and future interests in Vineacre, if any, of Owen ("O"), Abby, and Betty in 1990? How did this Change in 2020?

Fee Simple Absolute (FSA) is the fullest form of ownership in real property, giving the holder complete and indefinite rights to use, possess, and transfer the property, with no conditions or limitations attached. Here, O holds Vineacre in **FSA**. The facts tell us that O owned Vineacre, and since the facts say he devised Vineacre to Abby ("A") and Betty ("B"), this demonstrates his complete right to transfer the property with no conditions attached. As such, O holds FSA in Vineacre.

A **gift** is an immediate transfer in property rights from the donor to the donee, without payment or any other consideration. An **inter vivos gift (IVG)** is one that is made during the grantor's life, and the grantor must have present donative intent, the property must be delivered to the grantee, and the grantee must accept. Delivery must demonstrate the grantor's relinquishment of dominion and control, and delivery should be manual or constructive, since mere words alone are insufficient for symbolic delivery. Here, the facts tell us that O created a valid will, which demonstrates his present donative intent to deliver Vineacre to A and B. The facts are silent as to whether A and B accepted, but acceptance is presumed in gifts of high value, such as a 5 acre property.

This is not an IVG. It is a testamentary gift in a will

A and B received a Life Estate in Vineacre. A **Life Estate** is a present possessory interest in property that lasts for the specified duration of a specific life (the *measuring life*). Once the measuring life ends, the property passes to a remainder-man or reverts back to the original grantor. The tenant in a life estate has the right to use and possess the property, but must avoid committing waste. Here, the conveyance to A and B was "for life" and then to the survivor. The language "for life" creates a life estate whereby A and B can use and possess the property and upon the death of either of them, the property goes to the survivor.

This survivor language also indicates that A and B hold concurrent ownership as **Joint Tenants with Right of Survivorship (JTWS)**. JTWS is a concurrent estate with equal shares, equal rights to possess the whole, and with right of survivorship and is created when the four unities (time, title, interest, and possession) are met. Here, this interest was created at the same time, and there is a valid written instrument (the will) that validates a title claim for A and B whereby they receive an interest in Vineacre, and they have the right to possession of the property since they have a life estate. Because of this, A&B are also **JTWS** as of 1990.

The "survivor" which will either be A or B, holds a **remainder** interest. A remainder is a future interest created in a transferee that becomes possessory immediately upon the termination of a natural estate. The requirements are that it be made at the same time as the original interest, that it not cut off any interest, that there be no gap, and that it follows a freehold estate (usually a life estate). A **vested remainder** is one that immediately follows the natural termination of an estate, without any condition precedent. There are indefeasible vested remainders (follows the natural termination of an estate and possession kicks in immediately after the natural termination of the prior estate), vested remainders subject to divestment (which cuts short the interest if a stated condition occurs), and vested remainders subject to open (which is for a class of people). Here, the survivor holds an **indefeasible vested remainder**, because their

This is a contingent remainder because we don't know who (A or B) will die first.

possessory rights kick in immediately after the termination of the life estate (i.e, the death of either A or B). This was created at the same time as the life estate, it's not cutting short anybody else's interest because they currently hold interest as JTWRS, there is no gap in time when this will kick in, and it follows the life estate. As such, the survivor holds an indefeasible vested remainder.

By 2024, when A dies, this gives B FSA in Vineacre because she now receives A's share of the property upon her death. B now has full ownership of Vineacre and holds complete and indefinite rights to transfer, use, or possess the property.

The **Statute of Frauds** is also satisfied because there is a valid will, which is a written instrument for the transfer of real property.

2. What were the interests in Vineacre, if any, of Betty in 2024

Fee Simple Absolute (FSA) is the fullest form of ownership in real property, giving the holder complete and indefinite rights to use, possess, and transfer the property, with no conditions or limitations attached. Here, by 2024, B is still holds FSA because the facts do not indicate that she made any transfers or created any of the other freehold estates (fee simple determinable, fee simple subject to condition subsequent, fee simple subject to executory limitation, or life estate) in someone else.

3. What were the interest of Fred, if any, in Vineacre at the time of Owen's death in 2024?

Very good work

Adverse possession allows a possessor of land to to acquire legal title to another's property when, for the statutory period, the possessor occupies the land in a manner that is actual, exclusive, continuous, open and notorious, and adverse and hostile to the owner's rights.

Actual possession requires the possessor to physically use land in a manner in which a reasonable owner would given the land's nature, character and location. Here, the facts tell us that the land is farm land. Fred (F) encroaches onto Vineacre with his own vines and harvests grapes. This physical use of the land (physically farming) is one of a reasonable owner (O also farmed his land) given the character of Vineacre being a farmland. Actual possession is satisfied.

Exclusive possession means possession cannot be shared with the true owner or the general public. Here, the facts are silent as to any use of the property by O, so it is unlikely that F is sharing possession with O. F also fenced up the 1 acre, further showing that he is not sharing the possession of this 1 acre with O or the general public. The facts do not give any indication that the property is being shared with the general public, so assuming it is not, exclusivity is present.

Continuous means the property is used constantly in a manner in which an ordinary owner would use similar property. Again, Vineacre appears to be farmland, so an ordinary owner would likely use similar property for harvesting and farming. The facts also tell us that this conduct by F is carried out over years, satisfying the continuous element.

Open and notorious means the possession is sufficiently visible and obvious that a reasonably diligent owner could discover the adverse claim upon inspection. Here, the facts tell us F is possession 1 of 5 acres. F fenced off this acre and used it for 20 years. A reasonably

diligent owner could discover such adverse claim upon inspection because a fence is so sufficiently visible and obvious that any reasonable owner would see that on their property. Although it is five acres, the facts do not give any indication that the 1 acre was so extremely isolated from a primary dwelling as to make it impossible to discover such an encroachment upon reasonable inspection. F's possession satisfies the open and notorious element of adverse possession.

Adverse and hostile means the possession is without the true owner's permission and in a way that conflicts with the true owner's rights. Most jurisdictions apply an objective standard and do not require any particular intent to dispossess. Here, F takes advantage of O's incapacity, which clearly indicates no permission by O was given to F. Further, encroaching on O's rights conflicts with his rights to use and possess this one acre. It also conflicts with the life tenants (A and B)'s rights to the property. F's possession is adverse to them because he is using it for his own personal gain, without permission and in a way that restricts the true owner's whether it be O or B, of their right to use Vineacre to the fullest extent.

Lastly, the **statutory period** for adverse possession must also be met. Some jurisdictions also require payment of property taxes, but the facts are silent as to this. Here, the caveat exists with O's incapacity because this tolls the statute of limitations. However, if it is deemed that A&B were the rightful owners of the property upon the execution of the will, since O did not retain a reversionary interest, F may be successful in claiming adverse possession, in which he would hold an interest in this one acre because the statutory period would be satisfied since the facts do not indicate that A or B were incapacitated. However, if it is deemed that O was the owner up until 2024, then the statute of limitations would not be satisfied.

2)

very good work

A **term of years tenancy** is a non-freehold estate that is fixed in duration and automatically ends once the specified date arrives. In a term of years tenancy, the lessor retains a reversionary interest whereby possession reverts back to them once the fixed term is over. A reversion is a future interest retained by the grantor when they transfer a lesser estate than they own. Here, Lois ("L") and Tyler ("T") entered into a three year lease. The duration of the lease was fixed because it ran from one date, January 1, 2023, to the end date, January 1, 2026. Once January 1, 2026 arrives, the tenancy automatically ends and L can retake possession of the premises since they hold a reversionary interest.

Statute of Frauds requires that the sale or transfer of real property and contracts that cannot be performed within one year of creation be evidenced in a writing, This is a three year lease, and the facts tell us the lease complied with the SOF.

The **warranty of habitability** is a landlord imposed duty that requires the landlord to maintain the property in habitable conditions, and to avoid engaging in conduct that poses a risk to the tenant's safety. This warranty is implied in every contract and can never be waived nor can it be transferred to become an obligation of the tenant. The current lease states that T is fully responsible for making the apartment habitable. The lease imposes onto T the obligation to pay for all repairs and improvements to the apartment which would be necessary to make it habitable. This is inappropriate and likely void as a matter of public policy because the warranty of habitability is a landlord obligation, not a tenant. The fact that the lease contains "in consideration" language is irrelevant because this warranty cannot be waived or shifted to the tenant. A **tenant's duties** typically include paying the agreed upon rent, making minor repairs