

HYBRID JD PROGRAM
REAL PROPERTY – Section 2

Midterm Examination

Fall 2024

Prof. A. Blomquist

Instructions:

There are three (3) questions in this examination.

Total Time Allotted: Three (3) Hours.

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.

Monterey College of Law – HYBRID
Real Property Final Examination
Fall 2024
Prof. A. Blomquist

Question 1

Owen acquired Wideacre in January 2010. Wideacre is a large rural property with a very large hill on the center of the property. A house sits on the side of the hill facing toward a public road. Most of the property sits behind the hill and is not visible from the house. Owen moved into the house and lived there full-time.

Andrea was hiking through the countryside and noticed that the other end of Wideacre was not visible from the road or the house on the property, so Andrea set up a camp where she began to live and started building a small cabin there, which was completed in June 2010.

In June 2010, Owen noticed Andrea's cabin, but mistakenly believed it was built on a neighboring property. He brought her a "Welcome" mat as a housewarming present and told her, "I am so glad you are living here."

In June 2015, Andrea believed she had acquired title to Wideacre by adverse possession. Andrea began paying taxes on the property and opened a firing range where the public could come and shoot targets with guns for a fee. Owen was upset by the noise and quickly noticed that the firing range was built on Wideacre. Upon further investigation, Owen realized that the cabin was built on Wideacre, too. He confronted Andrea and demanded that she leave. She refused.

In July 2015, Owen suffered a stroke and was declared legally incompetent. In December 2024, Owen died. His son, Sam, acquired everything Owen owned through Owen's valid Will. Sam promptly filed suit against Andrea to quiet title to the property.

The jurisdiction has a five-year statute of limitations applicable to claims of adverse possession.

Who owns Wideacre? Discuss.

Question 2

Tom owned Whiteacre, a quarry used to mine copper, in fee simple.

Tom deeded Whiteacre, “to my son Sam and his heirs, but if ever it snows on Whiteacre, to my daughters and their heirs.” At the time, Tom had no daughters, but he had a daughter, Debbie, who was born one year later. Whiteacre is in a warm climate, and it has not snowed there in at least 21 years.

Sam took possession of Whiteacre and significantly expanded the mining operations there. He also built a two-room office on part of Whiteacre and began leasing it out to Larry. The lease agreement called for a termination date in 5 years and rent payable on the first day of each month. The lease agreement was silent as to repairs.

Two years later, Sam was driving a tractor in the quarry when he lost control and crashed into the office. The front room of the office was completely destroyed, but the back room was intact. Larry demanded that Sam fix the office, but Sam refused. Larry immediately stopped paying rent and moved out with three years left on the lease.

Over the following year, Sam did not do any maintenance or repairs on the office, and the office continued to deteriorate.

1. Does Debbie have any interest in Whiteacre? Discuss.
2. If Debbie files suit against Tom for waste, what result? Discuss.
3. In a suit by Larry against Sam for breach of the lease, what result? Discuss.
4. In a suit by Sam against Larry for breach of the lease, what result? Discuss.

Question 3

Blueacre is a single-family dwelling in a quickly developing suburban area. The property continually increased in value at all relevant times.

In 2020, Olivia sold Blueacre to Alex for \$400,000, which was the fair market value for Blueacre in 2020. Olivia properly executed a deed to Alex. However, Alex failed to record the deed at the time. Alex did not move in, instead intending to keep the house as an investment. The property remained vacant.

In 2021, Olivia properly executed a deed granting Blueacre to Brent as a gift. Brent recorded his deed. Brent promptly moved into the property. Brent was not aware of the deed to Alex.

In 2022, Brent sold Blueacre to David for \$200,000. Brent properly executed the deed to David, but David failed to record his deed. David was not aware of the deed to Alex.

In 2023, David gave Blueacre to Ed. Ed recorded his deed.

In 2024, Alex learned about the other deeds and recorded his deed. David then recorded his deed.

1. Who owns Blueacre in a jurisdiction with a race recording statute? Discuss.
2. Who owns Blueacre in a jurisdiction with a notice recording statute? Discuss.
3. Who owns Blueacre in a jurisdiction with a race-notice recording statute? Discuss.

(Hint: You do not need to address any tort claims, claims for breach of deed covenants, or the validity of any deeds.)

ANSWER OUTLINE

**Monterey College of Law – HYBRID
Real Property Final Examination
Fall 2024
Prof. A. Blomquist**

Exam Question 1

Adverse Possession

Actual use (15%)

Limited to location of cabin until 2015

Limited to location of cabin and firing range from 2015-2024

Exclusive use (10%)

Not exclusive use of the entire property

Exclusive use as to cabin and firing range

Open and Notorious (20%)

Not visible from road or house

Should have been noticed by a reasonable owner

Firing range was loud and apparent

Hostile (25%)

What was the effect of the housewarming gift and statement from Owen?

Maine/Connecticut Doctrines

Continuous for the Statutory Period (20%)

Continuous from June 2010 to July 2015

Statute is tolled from July 2015 to December 2024 because Owen is incompetent

Taxes (modernly) (10%)

Exam Question 2

1. (20%)

Identify Fee Simple Subject to Executory Limitation

Rule Against Perpetuities

Might not show until 21 years after Sam and Debbie are dead

Effect: Debbie has no interest unless in a wait-and-see jurisdiction

2. (30%)

Affirmative Waste—Driving Tractor and expanding mining operations

Open Mines Doctrine—only liable for expanded operations

Permissive Waste—Allowing office to deteriorate

Ameliorative Waste—Constructing the office

3. (30%)

Effect of destruction of the premises

Actual eviction—caused by act of landlord so even though partial it is deemed to apply to the whole

Breach of warranty of habitability

Remedies: Quit the premises in a reasonable time and terminate the lease

4. (20%)

Duty to pay rent

Extinguished by eviction and exercise of remedies

Exam Question 3

1. Race Jurisdiction (30%)

No requirement of a bona fide purchaser.

Brent recorded first, so Alex and Celia lose their interest.

Brent sold to David, and David recorded

Ed claims under David

Ed owns Blueacre

2. Notice Jurisdiction (35%)

Is David a bona fide purchaser?

Significantly below value, but not a sham

Did David have notice?

No actual notice

House was vacant, no inquiry notice

No record notice because Alex's interest was not recorded

Ed can claim under David under the Shelter Rule

Ed prevails

3. Race-notice Jurisdiction (35%)

David was a bona fide purchaser without notice, but did not record first

Was Alex a bona fide purchaser?

Paid market value for the property

Did Alex have notice?

No other transactions so nothing to have notice of at the time of the transaction

Subsequently acquired notice is irrelevant

Alex recorded first

Alex prevails

1)

Leasehold

A leasehold is an interest in the possession of land. There are various types of leases including a tenancy for years, a periodic tenancy, tenancy at will, and tenancy at sufferance. A tenancy for years is one where the beginning and end date are fixed from the outset. The tenancy is supposed to expire at the end of the lease term and it does not require notice from either party. At common law, leases that were three years or longer required a writing. At modern law, leases that are one year or longer required a writing to satisfy the statute of frauds.

The facts here indicate that Lee and Tina entered into a tenancy for years. The facts state that Tina signed a two year lease with Lee to rent an apartment for \$1k/month meaning that there was a writing that set the terms of the lease and satisfies the statute of frauds. There was also a condition on the lease that prevented assignments. This means that Tina was not allowed to pass her possessory interest in the property to anyone else.

Thus, it would appear that Lee and Tina have a valid lease.

Warranty of habitability:

Modernly within all leases there is an implied warranty of habitability which implies that the landlord will provide a property that is habitable and includes the basic necessities for habitability including running water, heat, plumbing, and no pests, etc. If the landlord were to violate the warranty of habitability by providing a place that is not habitable, the tenant has to inform the landlord of what is wrong with the property and give the owner time to cure the issue. If the landlord does not cure the issue, the tenant then has several options to fix the situation. A tenant may, pay for the repairs and reduce the rent by the amount that it cost them to repair. A tenant may also stay in the property and sue for damages. A tenant may

Here, the facts indicate that upon moving into the property, Tina discovered that the water occasionally became scalding hot and that mice were living in the kitchen. Tina felt that these two conditions substantially affected the habitability of the premises and she brought this to Lee's attention. When Tina told Lee about the issues, she gave him notice and time to cure. Lee responded by telling Lisa that she showered for too long and that she should clean the kitchen. Assuming Lee did not take action to fix the issues that Tina told him about, he likely breached the warranty of

habitability. A court would likely side with Tina because water is a substantial need and it is very dangerous and can lead to injury if the water is scalding hot. Also, the facts indicate that Tina saw the mice when she moved in. There are no facts that indicate that Tina committed any type of waste in regards to the property.

→ so? what's the problem w/ mice? Discuss

Thus, Lee breached the warranty of habitability and Tina can likely win in court on this issue.

Duty to repair

At common law, the tenant had a duty to repair the premises. At modern law, the landlord has a duty to repair in a residential lease.

Here, Tina gave Lee notice of the issues with the property. Lee has the responsibility to repair the property and make it habitable.

Thus, Lee breached the landlord duty to repair.

Tenants Quiet Enjoyment of the Property

Each lease has a covenant within it that states that leasees are entitled to quiet enjoyment of the property they leased.

Here, two months after Tina moved in, Lee told Tina that he needed to use the closet space in her apartment. Lee's usage of the closet constitutes a substantial interference with Tina's quiet enjoyment of the property because it is unreasonable. Tina should be able to use and enjoy the whole property she leased and she should not be burdened by Lee's possessions or him coming into the property often.

Thus, Lee breached the covenant of quiet enjoyment and Tina would win on this issue in court.

Constructive Eviction

A constructive eviction occurs when the landlord violates the implied covenant of quiet enjoyment either through their actions or inactions. If this occurs, the tenant has the ability to surrender the lease as long as they provide notice, and opportunity to cure. After the tenant surrenders the lease, they can seek damages in court.

Here, Tina will argue that she left the premises under a constructive eviction because Lee breached the warranty of habitability by failing to repair the water issue or address the pest issue after Tina gave him notice. Tina will also argue that the implied covenant of quiet enjoyment was breached by Lee

when he moved his things into a closet on the property. Tina can sue Lee in court for damages however, the facts indicate Tina might have breached the lease herself by bringing Dan onto the property (discussed below). Tina would argue that if there is a constructive eviction where the tenant is displaced of a portion of the leased premises, that tenant is no longer obligated to pay rent.

Dan will argue that there is hot and cold water on the premises and he did not breach the warranty of habitability. Dan implied that the pests are there because Tina does not clean up after herself meaning that she committed permissive waste. Permissive waste is found when a tenant negligently allows the property to fall into disrepair. If the court sides with Dan on this issue, Tina will be liable for waste and may be responsible to clear out the pests herself.

Thus, considering all the arguments, Tina's argument that there was a constructive eviction is likely a stronger argument than Dan's

Assignments

Assignments occur when a tenant transfers all of their interest in a leasehold to a third party. Assignment are allowed in leaseholds unless there is a writing to the contrary. Assignees are liable to the landlord if the landlord accepts money from the assignee. If the landlord does not accept the assignment, the tenant is still liable to the landlord for the rent because they are still in horizontal privity.

Here, six months after Tina moved in she wanted to vacate the premises because of the ongoing issues. Tina gave Lee notice that she wanted to assign the lease to Dan. Lee could have accepted the assignment but he chose not to. Tina assigned the lease to Dan anyway and moved out.

Unfortunately for Tina, when she signed the lease agreement with Lee she agreed that there would not be any assignments. Therefore, her assignment to Dan was a breach of the lease agreement. Dan moved into the property however he did not sign any type of agreement with Lee. Dan, the assignee, is in privity with Tina, the assignor.

Thus, although Tina moved out she is still liable to Lee for the rent as she remains in horizontal privity with Lee.

At common law, landlords did not have the responsibility to relet the premises after a tenant abandoned the lease. At modern law, landlords have the duty to mitigate their damages and re-let the premises.

Here, we do not have facts stating that Lee attempted to relet the premises meaning that a court would take this into consideration when deciding how much money, if any, Tina owes Lee.

Thus, Tina might owe Lee some money but the court will adjust the amount because Lee failed to mitigate.

There is no self-help modernly, Lee can not forcefully evict Dan without notice and due process of law.

85
good use of law &
spotting issues
go back & look @ the last video
and nice discussion - you could
go further than a couple of sentences

2)

Adverse Possession

A person can acquire title to land that is not their own through the principal of adverse possession. In order for an adverse possessor to acquire title to the property, they must meet the following elements:

- *Actual possession: meaning that the adverse possessor must actually possess the land.*
- *Open and notorious: meaning that the possession of the land must be obvious to other people who come in contact with the land.*
- *Continuous: meaning that the adverse possession must be continuous for the whole statutory period, 20 years in this case.*
- *Hostile: meaning that the possession must be against the possession of the true owner and without the permission of the owner.*
- *Exclusive: meaning that the adverse possessor must exclusively possess the property during the statutory period.*

Actual Possession (see rule above):

Here, Baker will argue that that he maintained actual possession of the land. Baker would likely argue that his actual possession began in 2000 when he began seasonally camping on the same cite. Although Baker did not live on the land beginning in 2000, he did occupy the land in a way that the true owner reasonably might have. The facts indicate that the 500 acre parcel is a rugged, remote, and undeveloped property which borders a National Park. It is reasonable to think that the owner of such a property would occasionally camp there while it is undeveloped. Baker would argue that his actual possession of the land continued through 2001-2001 when he built the cabin on the land using the trees from the property. Baker would also argue that he continued actually possessing the land in 2003 when he began living on the property in the summer time. Baker would go onto say that his actual possession continued on in to 2008 when he cleared some land and created a dirt driveway leading from the public road to the cabin. Lastly, Baker would argue that he moved on the property in 2008 full time through 2024.

In order to preserve her interest in the property, Carroll would argue that Baker did not actually possess the land because he only used a very small area of the 500 acre parcel. The facts indicate that

baker built a *small* log cabin on the property.

Baker's argument is more convincing thus, the court would likely find for Baker as to this element of adverse possession. However, Baker's argument would only cover the area of land which he actually used or possessed, not the entire 500 acre lot.

Open and Notorious(see rule above):

Here, Baker would attempt to argue that his possession of the parcel was open and notorious. He would say that he spent a lot of time on the property and that he used in similarly to how the true owner would. Baker would also claim that he built his cabin on the property and a reasonable person would infer that he owned the land. Baker would also argue that in 2007, Able came on to the property and became aware of Baker's possession as well. Baker would also argue that a reasonable owner would have inspected the property and found him in possession of it as Able did. Baker might also argue that since 2008, he built a dirt driveway leading from the cabin to the public road.

Carroll would argue that Baker's possession was not open and notorious because for several years within the statutory period, no one knew he was on the land. It took Able going out to the property and hiking for an hour to even see that Baker was on the land at all. It is almost as if the cabin was hidden from public view which is not open or notorious. Carroll would argue that the driveway is not indicative of open and notorious use because it was made of dirt. Carroll would also argue that in 2007, when Able discovered that Baker was on the property, Baker was under the mistaken belief that the cabin was on the property of the National Parks. Baker told Able not to report him to the National Park officials meaning that Baker was in fact hiding from who he believed were the true owners of the property.

All arguments considered, a court would likely side with Carroll on this element.

Continuous(see rule above):

Here, Baker would argue that his possession of the 500 acre parcel was continuous from 2000-2024. The statutory period in this jurisdiction is 20 years. Baker would say that his possession has met the continuous element for adverse possession because he used the property during that whole time period in a way that a reasonable owner would use it. First, he camped there occasionally starting in 2000. Then, he built a cabin from 2001-2003. Later in 2003, Baker began using the property as a vacation home and camp there in the summers. In 2008, Baker cleared the land and began living on the land full time. The average, reasonable, property owner would likely take some time to take a

remote, rugged and undeveloped parcel of real property and make it a home.

Carroll might argue that Baker only continuously possessed a very small area of the parcel for a continuous period if at all.

Thus, regarding the continuous element in adverse possession, the court would likely side with Baker finding that he possessed a small area in the parcel for 20+ years.

Hostile(see rule above):

Here, the hostile element can be argued by both sides as well. In order for the possession to be considered hostile it has to be held against the interest of the true owner. In the situation at hand, Baker believed that the land he was possessing belonged to the federal government or the owners of the National Park. Baker told Able that the cabin was located on National Park property. Absent any other facts, Able likely believed Baker and did not think that Baker was on Able's property.

Carroll might argue that Able had a mistaken belief that Baker was not on Able's property. Carroll might also argue that Able might have thought that Baker was actually on Able's property but Able did not care; meaning that Able effectively gave Baker permission to stay on the land negating Baker's argument that the possession was hostile.

As to the hostile element, it is likely that the court would side with Carroll. Baker was under the impression that someone else owned the land he was attempting to adversely possess, not Able.

Exclusive(see rule above):

Here, Baker would argue that he had exclusive possession of the parcel because the facts do not indicate that anyone else was anywhere on the property.

Carroll would argue that Baker did not exclusively possess the land because Able inspected it.

Here, a judge would likely find that Baker exclusively possessed a small portion of the land in question.

Overall conclusion:

A court would find that Carroll is the true owner of the totality of the 500 acre parcel because Baker did not meet all the elements of adverse possession.

Baker might attempt to argue using principles like tacking or color of title but these arguments would

fail. Baker did not obtain color of title because there was never a writing granting him any possession over the parcel in question. We would need more information regarding the people who possessed the land prior to Able to evaluate tacking.

90

3)

Who Owns Blackacre Under Different Recording Statutes

To determine who owns Blackacre under a race recording statute, a notice statute and a race-notice statute, the status of each recordee must be examined. First, was the recordee a bona fide purchaser and did they offer valuable consideration for the statue. Each recordee will also be analyzed to determine if and when they received notice. Then the various elements under each statute will be analyzed.

This is an unexpected way of organizing this response, but it was very effective

Bona Fide Purchaser and Valuable Consideration

A bona fide purchaser is a purchaser that offers valuable consideration for property. To not be considered a sham, a reasonable price must be given for the property. Each party will be analyzed to determine if they were a bona fide purchaser and whether they offered valuable consideration for the property

Alex

In this case, Alex purchased Blueacre from Olivia for \$400,000 which was the fair marked value at the time of the purchase.

Therefore, Alex is a bona fide purchaser because they offered valuable consideration for Blueacre.

Good

Brent

In this case, Brent was granted Blueacre as a gift.

Therefore, Brent is not a bona fide purchaser because he did not offer a valuable consideration. A valuable consideration would have been in excess of \$400,000, as the fact pattern states that Blueacre was in a quickly developing area which continually increased in value.

Good

David

In this case, David purchased Blueacre from Brent for \$200,000.

Therefore, Brent is a purchaser, but \$200,000 is less than half of the value of Blueacre, therefore his purchase would likely be considered a sham and he would not be considered a bona fide purchaser. OK

Ed

In this case, David gave Blueacre to Ed.

Therefore, Ed is not a bona fide purchaser because he did not offer valuable consideration for Blueacre. Good

Notice

When a party purchases a property, knowledge of interests of the property is considered notice. There are three types of notice: actual, inquiry and constructive. A reasonable purchaser would look into the interests of a property either through a title search by tract index or grantee/grantor index. For some recording statutes, it depends on whether notice was received at the time of acquisition or at the time of recording.

Alex

In this case, Alex purchased Blueacre from Olivia, there do not appear to be any previous transactions other than Olivia's interest which she properly deeded to Alex. Alex did not record his deed at the time of acquisition. Alex did not learn of the other deeds until he recorded his deed. At the time Alex recorded, he knew of Brent's, David's, and Ed's interests. Good

Therefore, at the time of acquisition, Alex did not have notice of any of the other parties' deeds. At the time of recording, Alex had notice of all of the other parties' deeds.

Brent

In this case, Brent promptly recorded his deed from Olivia and moved into the property. He was not aware of the deed to Alex. Good

Therefore, at the time of acquisition and recording (because Brent promptly recorded his deed), Brent did not have notice of Alex's deed.

David

In this case, David did not record his deed when he acquired the property. At that time, David was not aware of the deed to Alex. The fact pattern also does not state that David was aware of the deed to Alex at the time he recorded his deed. Because Brent properly recorded his deed, David could have had notice of Brent's interest if he would have inquired into the deed.

Therefore, at the time of acquisition and recording, David did not have notice of Alex's deed, but a reasonable purchaser would have had notice of Brent's deed.

Isn't this inquiry notice?

Ed

In this case, Ed recorded his deed at the tie of acquisition. As David was not aware of Alex's deed and it was still not recorded, Ed would not have had notice of Alex's interest.

Therefore, Ed did not have notice of Alex's deed and Brent's deed, but not Alex's at both acquisition and recording.

1-Race Recording Statute

In jurisdictions with a race recording statute, recorded interests are superior to all unrecorded interests, which means the first to record wins.

Notice

In a race record jurisdiction, notice is not taken into consideration.

Record

The order of recording determines the rights of the parties. Brent was the first to record, so his right would be superior to the other parties. The second to record was Ed, third was Alex and last was David.

Conclusion

Therefore in a race record, jurisdiction, Brent owns blueacre because he was the first to record.

This is incomplete. Brent recorded first, but then he gave his interest to others so those claiming through Brent need to be analyzed.

2-Notice Recording Statute

In a jurisdiction with a notice recording statute, bona fide purchasers are only protected if there is no notice at the date of recording.

Bona Fide Purchaser and Valuable Consideration

In this case, likely only Alex would be considered a bona fide purchaser because he was the only party that offered valuable consideration for the property. David could argue that he was a bona fide purchaser because he offered \$200,000 for Blueacre, which is half of the value.

Notice

Alex was bona fide purchaser, but would only be protected if they had not notice at the date of recording. At the time of recording, Alex had notice of Brent's, David's and Ed's interests. Therefore, Alex is not protected from their purchases. If David is considered a bona fide purchaser, he should have had notice of Brent's interest, but he did not have notice of Alex's interest at the time of recording.

What about the Shelter Rule?

Conclusion

Therefore in a jurisdiction with a notice recording statute, Brent would own Blueacre. Though he was not a bona fide purchaser, Alex, the only bona fide purchaser, would not have a superior right because he had notice of Brent's interest at the time of recording.

3-Race-Notice Statute

In a jurisdiction with a race-notice statute, recorded interests are superior over all unrecorded interests, if the bona fide purchaser has no notice prior to the acquisition of the property.

Bona Fide Purchaser and Valuable Consideration

In this case, likely only Alex would be considered a bona fide purchaser because he was the only party that offered valuable consideration for the property. David could argue that he was a bona fide purchaser because he offered \$200,000 for Blueacre, which is half of the value.

Good

Notice

At the time of acquisition: (1) Alex did not have notice of any other interests; (2) Brent did not have

notice of any other interests; (3) David did not have notice of Alex's deed, but should have had notice of Brent's deed; and Ed did not have notice of Alex's or Brent's deeds.

Record

Brent was the first to record, so his right would be superior to the other parties. The second to record was Ed, third was Alex and last was David.

Good

Conclusion

In a race-notice jurisdiction, Alex would own Blueacre because he is a bona fide purchaser and he did not have notice of any other deeds at the time of acquisition.

END OF EXAM

Grade: 75

This essay demonstrates above-average understanding of recording statutes. The big issue in this essay is the failure to address what happens when a party protected under the statutes gives away their interest. A party who claims under a protected party is entitled to protection of their interest, too. To improve, I suggest practicing a few more fact patterns on recording. This is a topic that may come up again on the final, so it would be worthwhile to take some time to tighten up your understanding on this issue.