

MONTEREY COLLEGE OF LAW

**REAL PROPERTY**

Midterm Examination

Fall 2023

Prof. J. O'Connell

Instructions:

Answer 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.

**REAL PROPERTY**  
**Professor Justin O'Connell**  
**Midterm, Fall 2023**  
**Question 1**

Tina sells rugs. She signed a three-year lease for a large warehouse owned by Lee with rent set at \$1,000 a month, with a start date of January 1, 2023. The lease stated that the warehouse would only be used for business purposes and that Tina was responsible for repairs and maintenance in the interior of the building. On January 1, 2023, Tina paid Lee \$12,000 as rent for all of 2023 and took possession of the warehouse.

On March 1, 2023, Lee saw that Tina was not using most of the warehouse, so Lee moved his classic cars in thereby occupying about 10% of the warehouse. Tina discovered the cars on March 2, 2023, and immediately told Lee to remove the cars, which Lee never did.

In April of 2023, Tina remodeled a portion of the interior of the warehouse to create a small apartment in which she began living without Lee's knowledge.

In May of 2023, Tina notified Lee that the hot water heater in the warehouse was broken, that mice and cockroaches had infested the warehouse, and that a neighboring property owner was playing loud music nearly every night. Lee never responded. Thereafter, Tina paid \$600 to fix the water heater and sent Lee a letter demanding to be reimbursed, which he never did.

On July 1, 2023, Tina notified Lee that she was moving out and that the keys would be left inside, which she did on July 31, 2023. The next day, Lee retook possession and began leasing the warehouse to Ned for \$800 per month for a term of ten-years.

In subsequent litigation between Tina and Lee, what claims and counterclaims might they reasonably assert against one another.

\*\*\*\*\*

**REAL PROPERTY**  
**Professor Justin O'Connell**  
**Midterm, Fall 2023**  
**Question 2**

Olivia was 98 years old and owned Blackacre, a small parcel of land with a single-family dwelling on it where she lived. On January 1, Olivia received a call from her daughter, Alice, in which Alice said she was having money problems. Olivia told Alice, "Don't worry, I'm ancient and you'll get Blackacre when the time comes." Olivia had no will at that time.

On January 2, Olivia executed a valid deed for Blackacre identifying Alice as grantee, and had the deed notarized. Olivia then placed the deed in her desk in a folder labeled "Alice stuff."

On January 3, Olivia mailed Alice a letter, which Alice received, that stated "Dear Alice, I hope you enjoy Blackacre. Your deed is in my desk."

On February 1, Alice went to Olivia's house to drop off Olivia's groceries, which Alice did every week. Olivia was not at home, so Alice used the key Olivia previously gave her to enter. When Alice left she took the deed with her.

On February 2, Olivia received a call from her son Bob who said that Alice had been speaking poorly of Olivia. Olivia told him, "Now Alice will never get Blackacre." That day, Olivia could not find the deed to tear it up, but she did draft a valid will that left Blackacre to Campaign for Peace, Olivia's favorite charity.

On February 3, Olivia died.

What claims to Blackacre can be made by Alice and by Campaign for Peace?

**REAL PROPERTY**  
**Professor Justin O'Connell**  
**Midterm, Fall 2023**  
**Question 3**

In 2000, Adam bought Blackacre, a large parcel of undeveloped land in a remote area. Adam immediately began development of Blackacre to build homes there, then to subdivide the property. Adam partially built roads and several homes on Blackacre but ended development in 2002.

In 2003 Charles and David began occasionally going onto Blackacre together to hunt and camp.

In 2010, Charles trimmed all the shrubs along the roadways on Blackacre and David installed several birdfeeders on trees. Also, in 2010, they began camping hunting there together nearly every weekend.

In 2012, Charles moved away and stopped going to Blackacre, though David continued to go and spend weekends there. Also in 2012, David placed a lock on the gate across the driveway onto the property and insulated the garage at one of the homes so he could sleep in it rather than camping out each weekend. Thereafter, David slept in the garage each weekend he went to Blackacre.

In 2021, Charles was in town for a visit and stopped by Blackacre for some hunting but discovered the locked gate. He called David, and David told Charles he could not come onto Blackacre ever again.

Assume a ten-year statute for adverse possession.

Discuss the rights of Adam, Charles and David with respect to a claim for adverse possession.

\*\*\*\*\*

**REAL PROPERTY**  
**Professor Justin O'Connell**  
**Midterm, Fall 2023**

**ANSWER- Question 1**

Outline:

Type of lease

Term for years

Tina:

May claim breach of warranty of habitability as a defense to payment of rent. However, the lease was a commercial lease, and Lee was not obligated to maintain the property in a habitable condition. Therefore also no claim for the hot water heater expense.

May claim breach of warranty of quiet enjoyment. Lee's use of the warehouse for his own storage would qualify. If considered substantial, then she was entitled to move out (constructive eviction) which thereby terminates the lease, and she should get her rent back after July and could get a discounted rent refund for March through July. If not substantial, then she might not be entitled to move out and terminate the lease, but might get a discounted rent refund for March through July. The noise complaint would not qualify since Lee is not under a duty to prevent the neighbor from being loud (plus it is at night when Tina's business is not interrupted anyway, so likely not a nuisance to begin with).

Lee

May claim waste due to unallowed remodel. Reduction in property value or costs of removal might be awarded.

May claim unpaid rent from Tina, offset by the rent he received from Ned.

Tina may claim that Lee did not use enough efforts to mitigate and that he accepted her termination as a surrender because Ned's lease is longer replaced – not covered – Tina's rental period. Lee may claim the remodel caused a reduction in rental value so he mitigated appropriately.

**ANSWER- Question 2**

**Present Donative Intent**

Olivia's intent appears clear from her point of view, to gift upon death. However, objectively Alice argues that the letter coupled with the placement where Alice could get it indicates a present donative intent, irrespective of Olivia's secret intent to not give yet. Alice has reason to believe the intent was to transfer now based on the letter and placement of the deed in a location Alice can get.

### **Delivery**

Donor must feel the wrenching of delivery. Objective indication the donor understood that ownership was transferred. Here, it appears that Olivia thought she was estate planning and not presently transferring. Also, the behavior was such that a 98 year old likely would not give up her home while she was alive, she was still living there for months, and still getting groceries delivered. Alice will claim that irrespective of Olivia's secret beliefs, delivery occurred because the deed was placed in a location, Alice was told of the location, and Alice had the means to get it.

Also, why was Alice coming and going for weeks without getting the deed and only got it when Olivia was gone, if Alice believed she had the right to take the deed at any time?

### **Acceptance**

The law presumes acceptance. No facts indicate Alice would not have accepted the gift, and to the contrary she took steps to acquire the deed.

## ***ANSWER- Question 3***

### **Actual Possession**

AP may work in together. Issue here is that Charles really never did anything to possibly take actual possession with David. Moving away indicates relinquishing rights to possession. David stays behind and intensifies his use of the property to the point he is living there on weekends. The change in structure of the garage and the lock on the gate might be sufficient, where coupled with residing there 2 out of seven days a week. Type of property is remote, so real owner might have used it on occasional basis too.

### **Open and Notorious**

Trimming trees and adding bird feeders indicates humans. Same with campsite and remodel of garage. Locked gate indicates someone (other than Adam) has asserted right to keep others out.

### **Exclusive**

No facts to indicate Adam ever had use or possession since 2002

### **Hostile**

No facts to indicate permission, so it was hostile under the majority view. Under Maine doctrine and a small minority of jurisdictions, the knowledge of the trespasser is relevant, but the overwhelming majority of jurisdictions it is not.

### **Continuous (10 years)**

This is where primary difference between Charles and David lies since Charles left and could not have had unity of elements for the 10-year period. David might have if the court feels as though the changes in 2012 were sufficient.

1)

### **Type of Tenancy**

The type of tenancy present in the current facts is a commercial tenancy. Tina, the tenant, would use the large warehouse for business purposes only.

### **Type of Lease**

#### **Term for years**

The parties had entered into a three-year lease, making it a term for years tenancy. A term for years tenancy has a stated end date that does not require the landlord to provide the tenant notice that the tenancy is terminated upon reaching that stated end date. It is implied in the three-year lease that the tenancy would terminate at the end of the day on 12/31/2026, being that the tenancy began on 1/1/2023.

### **Landlord Duties (Duties of Lee)**

The landlord owes the tenant the duty to deliver possession of the property, not infringe upon the tenant's use and possession of the premises, provide a habitable and well maintained property, and the duty to mitigate their damages in the event of an abandonment.

Lee has delivered the property to Tina when the parties entered into the commercial tenancy agreement that Tina would only maintain the property for business purposes only.

### **Tenant Duties (Duties of Tina)**

---



---

Tina as a tenant must pay rent, not create waste, notify the landlord of any defects, and abide by the terms and conditions of the lease.

### **Condition of the Premises (Asserted by Tina)**

For a commercial tenancy, the conditions of the property are dictated by the terms of the lease. The implied warranty of habitability is not applicable, as this is not a residential tenancy. ✓

Tina will most likely justify her moving out on the fact that Lee did not make repairs to the hot water heater after being put on notice that it was broken and that pests were present on the property. However, these justifications are likely to fail because, as stated in the lease, and being that this is a commercial tenancy, all repairs and maintenance of the interior of the property fall on the responsibility of Tina. Lee does not have a duty to make any repairs or keep the maintenance of the property because a commercial tenancy's conditions of a property are dictated in the lease agreement. Had this been a residential property, then an implied warranty of habitability would have been applicable by Tina. Tina would have asserted that Lee failed to remedy the defects that he had been put on notice of, defects that adversely affect the health and safety of the tenants. However, this is not applicable in this commercial tenancy.

### **Breach of the Quiet Enjoyment (Asserted by Tina)**

A landlord has the duty to not infringe upon a tenant's use and possession of their property, their enjoyment of the property. A breach of the quiet enjoyment of a tenancy occurs when there is a paramount claim asserted, the landlord causes a substantial interference with the use and enjoyment of the property, or another tenant, under the control of the landlord, causes the substantial interference.

Tina has two potential claims for the breach of quiet enjoyment of the property. The first potential breach occurred when Lee noticed that Tina was not using most of the

---

---

warehouse and subsequently moved his classic car collection into the warehouse, occupying 10% of the space. Even if Tina was not using the full space of the property, Lee does not have a right to infringe upon Tina's use and enjoyment of the property by moving his personal property into the space and interfering with Tina's overall use of the property. Tina may have had plans to use the untouched space for other reasons that flow from business purposes and Lee's presence would not allow her to do so. Lee never moved his cars despite Tina immediately telling him to do so. This immediate negative reaction by Tina should have been a clear indication to Lee that he was infringing upon Tina's overall use and enjoyment of the property. The second occurrence of a potential infringing of the quiet enjoyment of Tina's property may be the loud music being played by a neighboring property owner. However, this assertion is likely to fail because, even if the neighbor's music was interfering with Tina's use of the property, the neighboring property owner does not fall in Lee's control. If a neighboring tenant who was under Lee's direct control would have been the one playing the music and interfering with Tina's enjoyment of the property and Lee was placed on notice of this interference, then Tina may have a sufficient claim for breach of quiet enjoyment. These facts, however, indicate that Lee has no control over the neighbor, therefore can't do anything about it, as he did. Tina's claim of the interference by Lee when he moved his cars into the space may succeed as a breach of the quiet enjoyment.

### **Tenant's Rights / Remedies**

A tenant, in the event that there is a breach of the quiet enjoyment or the landlord fails to maintain the upkeep of the premises, may have a few remedies. A tenant may move out, an allege that they had been constructively evicted as a result of the landlord's conduct, or lack of conduct, a tenant may withhold the payment of rent, or the tenant may properly make repairs after putting the owner on notice and an opportunity to remedy the defect and if the remedy never comes, they may make the repair themselves and accordingly deduct from their rent.

---

---

Here, Tina's only allegation that may hold weight is the breach of the quiet enjoyment of the property when Lee moved his vehicles into the warehouse space. However, this infringement may not be substantial enough to justify the moving out by Tina, as she did in the fact pattern. Tina's additionally may argue that she placed Lee on notice of the defects and after no response or action was taken by Lee to remedy, she took it upon herself to make the repairs and demand reimbursement since all of the rent for the whole year was already paid, there was nothing that she could have deducted from. This reasoning, however, fails because she was the one responsible for the repairs as indicated in the lease. Had this been a residential property, then Tina's argument for constructive eviction due to the landlord's failure to fix defects may have been valid enough reason. In a commercial tenancy where the duty to repair and maintain the property falls on the responsibility of the tenant, the landlord owes no duty to repair, therefore the tenant cannot attempt to place that responsibility on the landlord and when the landlord fails to fix the issue, then move out if not met. Overall, Tina's moving out may have resulted from Lee's infringing upon the enjoyment of the property, however since Lee only ended up occupying 10% of the warehouse space, the infringement may not be substantial enough to justify the moving out by Tina.

### **Landlord's Rights / Remedies**

A landlord may sue for rent if the tenant has abandoned the property and defaulted in payment of rent. Also, a landlord may sue for possession of the property if the tenant has breached any term of the lease, such as by causing waste and using the property for other reasons not stated in the lease.

In the present facts, Lee may have terminated the tenancy as soon as Tina breached the terms and conditions of the lease. Many of the duties that a tenant owes a landlord is the duty to pay rent, which is not at issue here, the duty to not cause waste, and the duty to abide by the terms of the rental agreement. In April of 2023, Tina had remodeled a portion of the interior of the warehouse to create a small apartment in which she began to

---

---

living in without Lee's knowledge. Regardless if Lee knew or not, this breached two terms of the lease. The first term of the lease that was breached by Tina was the term that the warehouse would only be used for business purposes only. By creating the small apartment in the warehouse, Tina was in direct violation of the intended purpose of the property. Additionally, Tina's alteration of the property caused an ameliorative waste. An ameliorative waste is any improvement or change to the property that is done by the tenant that affects the value of the property, even if the value is increased, and was done without the consent of the landlord. It is clear that Lee did not know of the creating of the small apartment, therefore he could have not have consented.

### **Abandonment**

When the tenant has moved out, the property has been deemed abandoned. The landlord, at this point, if the tenant who abandoned the property had been defaulting paying rent, must mitigate their damages by reletting the property to another tenant.

### **Surrender of the Tenancy**

Mutual termination of the tenancy.

By reletting the premises to Ned and entering into a rental agreement with him, Lee impliedly consented to the termination of the tenancy. This, coupled with Tina's abandonment of the property, is a mutual termination of the tenancy.

85



2)

**Alice's Claim**

**Gift**

A gift is a present, irrevocable transfer of property from one party to another without consideration. A valid gift must include a present donative intent, the delivery of the gift to the donee by the donor, and an acceptance of the gift by the donee.

**Intent to make a gift**

The donor must have the intent to make a present transfer of the gift and not a future intent to transfer. The donor's intent may be determined by the relationship of the parties involved in the transfer, any oral statements said by the parties, the type of property being transferred, the manner of delivery, and whether the donee has retained any possession of the gift or any instrument representing the gift.

To determine whether Olivia had the donative intent to make a present transfer to Alice, we must look at circumstantial evidence that may allude to Olivia's intent to gift her daughter Blackacre. First, we understand that Olivia is Alice's mother and generally parents want to leave their children property after the parents have passed. Knowing that Olivia is Alice's mother, we may get the impression that Olivia had the intent to make Alice of the gift of the property. We next look at oral statements said between the parties. Olivia told Alice that she would "get Blackacre when the time comes." This statement is not an indication that Olivia wants to make a present transfer, rather a future intent to make the transfer of property over to Alice. Additionally, the valid will that Olivia executed which identifies Alice as the grantee of Blackacre, also shows a future intent to transfer the property over to Alice. This future intent is corroborated by the fact that, per their conversation, Olivia told Alice that she would receive the property when the time comes. This is not an intent to make the transfer at the present moment, but rather an

---

intention to later devise the property to Alice. Also, taking into consideration the type of property that is at question, a small parcel of land with a single-family dwelling, it is also important to note that family members may want to make transfers of residences to their children. Another indication of the possible intent to make the gift is the manner of delivery of the gift. The facts allude to Alice having previously been given a key to Blackacre. This would constitute a constructive delivery. Alice has had the property delivered to her, in a way. The deed is just another form of delivery and a formality to hold. When taking into consideration the relationships of the parties, the type of property at issue, and the method of delivery and the retaining of possession of the instrument allowing access to the property, it may be determined that Olivia had the intent to make the gift. However, we may also argue that the reason that Alice had the key was simply only to drop groceries off to Olivia and not because Olivia had the intent to deliver the gift to Alice. The Court may also find reasoning that Olivia did have the present intent to make the gift because, although Alice may have held right to the property, if Olivia maintained possession, therefore postponing Alice's enjoyment of the gift, provided that at the time of the transfer the separation of ownership and possession was made clear, then present intent to gift may be found. We can argue that Olivia, by her comments that the property would be Alice's and having provided Alice with a key, delivered the right to the property, but postponed the enjoyment by holding possession. However, if the Court cannot make the distinction that Olivia never made a separation of ownership and possession clear, then no intent will be found, therefore, no gift was made.

### Delivery

The donor must pass control of the subject matter of the property to the donee through objective conduct. Oral statements alone are not sufficient manners of delivery. A donor may deliver the property by any of the following three means: actual delivery, constructive delivery, or symbolic delivery. In order for there to be a valid gift, Olivia must have delivered the property to Alice. Actual delivery would have required that Olivia physically

---

hand over the subject matter of the gift to Alice, however, this being a small parcel of land would be impossible to do. A constructive delivery requires that Olivia would have provided Alice with something that would allow Alice access to the subject matter of the gift. Finally, a symbolic delivery would require that Olivia hand something to Alice, symbolizing the property, and evidencing the gift.

By leaving the deed in a folder labeled "Alice Stuff," Olivia did not satisfy the requirement of delivery by another of the aforementioned methods. It may be argued that Olivia properly delivered the property to Alice when she mailed a letter to Alice with the statement that reads "Dear Alice, I hope you enjoy Blackacre." No actual delivery was made of the proeprty with the mailing of the letter, no constructive delivery is met because the letter would not allow Alice access to the property, however, the argument may succeed through a symbolic delivery. A written instrument that evidences the gift, the letter that conveys the message that Olivia hopes Alice enjoys Blackacre, may be a symbolic delivery. However, this argument is likely to fail due to the fact that the letter hoping that Alice enjoy the property, not only doesn't symbolize the handing off of control, as a deed would, but the nature of the letter is not one conveying any proprietary interest in Blackacre. Where delivery may succeed is Alice's possession of a key. A key would suffice as a constructive delivery due to the fact that the key would allow Alice access to the property. The facts indicate that Alice drops off groceries to Olivia every week, so Alice having possession of the key may not have even stemmed from the intent to deliver the property constructively, but rather to allow Alice access only to deliver the groceries. Alice taking the deed when she was in the home, also does not suffice as delivery. Olivia must have been the one handing the deed over to Alice in order for the deed to satisfy as a symbolic delivery. However, since Alice simply took the deed, no delivery occurred.

*Can you actually deliver real property?*

*Also, told her in the desk & put her name on folder - maybe letter implied Alice should come by & get the deed from the labeled folder*

**Acceptance**

*Alice goes by the home every week, so why didn't O wait to see Alice & give her the deed if O really wanted to gift?*

---

It is presumed that a donee will accept a gift if it is of any value. Acceptance is presumed unless the donee expressly repudiates their interest in the gift.

Blackacre, being a small parcel of land with a single-family dwelling, has significant value. Alice made no indication of repudiating her acceptance of a potential gift. Therefore, Alice's acceptance of Blackacre is presumed.

### Campaign for Peace's Claim

#### Intent

see supra

Olivia executed a valid will that left Blackacre to Campaign for Peace. It may be argued that Olivia did not have a present intent to make a gift, but to make a future transfer at the time of her passing. However, it may also be argued that the contents of a will are an individual's intent to make present transfers of property.

#### Delivery

see supra

Olivia fails to deliver the property to Campaign for Peace. No manner of delivery was met by Olivia when she intended for Campaign for Peace to receive the property upon her death. There was no actual delivery, constructive delivery, or symbolic delivery of the control of the property to Campaign for Peace.

#### Acceptance

see supra

Campaign is the other side of the coin. If Alice loses, then C wins. Delivery will occur through the estate. C's claim is that A did not receive the gift therefore Blackacre passes by will

---



---

Blackacre being a valuable property indicates that Campaign for Peace would accept the transfer provided that there is a valid gift.

**Conclusion**

Alice's claims over Blackacre may succeed to the extent that the Court may recognize Olivia's intent, as Alice's mother leaving her a nice parcel of property. Additionally, the Court may use the oral statements from Alice's conversation with Olivia that Blackacre would be Alice's when the time arrived. This, although, not an immediate transfer may support the fact that ownership and possession were separated at the time of the gift and Alice hold the right to the property, but with a postponed enjoyment. The delivery may arise from the letter drafted to Alice which states that she hopes Alice enjoys the property. This may be accepted as a symbolic delivery of a written instrument evidencing the gift. Of course, Alice's acceptance would be assumed. Campaign for Peace's claim may ultimately fail as there may not be enough of a present intent and an adequate delivery.

85

3)

### **Adam's Rights**

Adam is the true owner of Blackacre after having purchased the property in 2000. He began to immediately develop the land, which had previously been undeveloped. Homes and roads were built on the property, but Adam ended development on the land in 2002. In 2002, Adam stopped going to the property, using the property and continuing to further develop the property. His interest as the owner would trump an adverse claim that any party who wrongfully entered onto his property would claim. Once an adverse possessor's presence was made known to Adam and Adam told them to leave his property, or the moment that Adam decided to go back to the property and continue developing the land, any adverse possession claim would fail.

### **Charles' Rights**

#### **Adverse Possession**

Ownership is said to have been gained by adverse possession when the wrongful possessor has met the following five elements: actual possession, possession that is open and notorious, exclusive possession, hostile possession, and continuous possession. These five elements must be continuously met over a statutory period of time and once that statutory period of time has lapsed, the owner would be barred from suing to recover possession of the wrongfully entered upon land.

#### **Actual Possession**

Actual possession is determined by the type of property at issue, the location of the property, and the usual use of the property. The adverse possessor must demonstrate their use of the property is enough to warrant sufficient control of the property, thus demonstrating that they are in actual possession of the property.

---

Charles began to occasionally go to Blackacre to hunt and camp beginning in 2003. The presence alone of Charles would not demonstrate control over the property in any way. In 2010, we know that Charles would trim the shrubs along the roadways of Blackacre and began to hunt and camp on the property every weekend. The action of trimming the brushes was the only real change to Charle's conduct on the property because his usual use to camp and hunt remained the same. Charles never demonstrated that he was in actual possession of Blackacre because his conduct never indicated that he was in sufficient control of the property. Trimming shrubs and hunting and camping are not adequate indicators that one is in actual possession of the property.

### **Open and Notorious**

The adverse possessors use of the property is so visible and apparent as to put the owner of sufficient notice that an adverse claim may be being asserted on his property. A reasonable person must also be expected to identify the possession as being open, notorious, and apparent that an adverse claim may be taking place.

Charles' conduct on the property never arises to the level that would place Adam on notice that someone is on his property asserting an adverse claim. Perhaps Adam would have noticed the freshly trimmed shrubs on the roadway to Blackacre and that should have been sufficient to place him on notice that someone had entered onto his property and may be maing an adverse claim. However, to the normal passerby, trimmed bushes would not be enough to tick them off that an adverse possessor is on the property and that Adam was not the one trimming the shrubs.

### **Hostile Possession**

The adverse possessor's possession of the property is without the consent of the owner. Minority opinion, Maine Doctrine, requires that the adverse possessor knowingly be on the property knowing that they don't have the permission to be there. However, the

---

---

Connecticut Doctrine simply requires that the adverse possessor be on the premises wrongfully.

Charles satisfies the requirement of hostile possession because he is not on the property with Adam's permission. Whether Charles knew or not that he was wrongfully on the land of another, it is irrelevant, modernly the requirement for hostile possession is satisfied as soon as an adverse possessor wrongfully enters onto the land of another regardless of what their intent may have been.

### **Exclusive Possession**

The adverse possessor's possession of the property must be to the exclusion of the owner, other adverse possessors, and the general public.

When Charles began to enter the property in 2003, Adam had no longer been present on the land since 2002. However, Charles was not alone in his trespasses onto Blackacre. Charles was accompanied by David. Exclusive possession may exist when two adverse possessors are working in conjunction with one another. At this point, beginning in 2003, Charles was in exclusive possession of Blackacre with his joint adverse possessor.

### **Continuous Possession**

The adverse possessor must be in continuous possession of the property over a statutory period of time in order to satisfy their adverse possession claim. Intermittent occupancy may not suffice, but is dictated by the type of the property.

In order for Charles to have made an adverse possession claim, he must have been in continual possession of the property while meeting the aforementioned requirements. Since Charles left in 2012, his adverse possession statutory time which may have been running if it can be identified that he had been meeting the elements to make an adverse

---

---

claim, came to an end. The duo had occasionally gone to Blackacre to hunt and camp beginning in 2003, and intermittent occupancy may not suffice as adequate continual possession unless the nature of the property would argue in favor of intermittent occupancy. The large undeveloped tract of land, in a remote area, with minor housing developments on it may not have been the adequate type of property that would warrant intermittent occupancy. The beginning in 2010, Charles began to go to Blackacre every other weekend, this again, may not be adequate intermittent occupancy of the property.

### **Conclusion**

Charles adverse possession claim never reached the ten-year statute in order to gain ownership of the property. Charles never really established actual possession or continuous possession of the property and due to these reasons, his statutory clock never began to run.

### **David's Claim**

#### **Adverse Possession**

see supra

#### **Actual Possession**

see supra

In 2003, David's presence alone on Blackacre is not sufficient to demonstrate actual possession and use of the property. In 2010, David began to install several birdfeeders on trees and began to camp and hunt on the property much more frequently. The conduct of building birdfeeders on trees may not amount to the level to indicate that David was in sufficient control of the property. The much more frequent presence of David on the property as a hunter and a camper, additionally does not indicate that David was in actual

---

---

possession of the land. However, beginning in 2012, David began to make improvements on the property which may arise to the level of establishing adequate control of the property. David placed a lock on the gate, installed insulation in one of the garage's homes so that he could sleep there and began to stay on the property much more frequently. It can be argued that David placing the lock on the gate to exclude others satisfies the requirement of demonstrating sufficient control over the property, but the "renovations" David made to one of the home's garages, which was already there before he arrived, may not be enough to indicate actual use of the property.

### **Possession that is Open and Notorious**

see supra

The placing of the lock on the front gate would have indicated to Adam that someone was on his property and may be making an adverse claim on his property. The lock would have been easily recognizable as being something someone who is not allowed on the property was actively present there. A reasonable individual, however, would notice the lock on the gate but not the insulation in the garage. There is no visible and apparent indication of David's presence beyond the lock on the gate, which could have easily been mistaken as being placed there by the true owner. If David had continued to build structures or roads, then that presence would have been much more recognizable and felt by not only Adam, but any reasonable individual.

### **Hostile Possession**

see supra

David began to wrongfully enter Blackacre beginning in 2003 and had continued to enter the property without the consent of Adam. David's continual entry into Blackacre, and eventual staying on the property on weekends, is a clear hostile possession of Adam's property.

---

---

### **Exclusive Possession**

see supra

David began to enter Blackacre with a joint adverse possessor, Charles beginning in 2003. However, when Charles moved away in 2010 and David placed a lock on the gate, this was a clear indication that David did not want anyone else to enter into the property, not even Charles. The intent to exclude everyone, even Charles, is further supported by David's statement to Charles in 2021, when David told Charles that he could not come onto Blackacre ever again.

### **Continuous Possession**

see supra

David's presence on Blackacre became much more aggressive beginning in 2012 when he began to lock out others and moved into the garage of one of the homes on the property. David's occupancy, however, was intermittent. David only stayed on the property on weekends, however, his locked gate and renovated garage remained. It can be said that David's possession was continuous to the extent that despite his physical presence only being there on weekends, his control of the property remained.

### **Conclusion**

If, beginning in 2012, it can be determined that David was in fact in sufficient control of the property due to excluding others and making a makeshift home there for his weekend stays for hunting and trapping, that his possession was hostile due to not having Adam's permission to be there, and that it was continuous and not interrupted, then the Court may find that David would assume ownership of Blackacre in 2022, provided all elements continue to be met throughout the statutory time. However, if it is determined that David never met the element of actual possession due to his intermittent occupancy

---

---

and lack of developing the land and actually determining that he intended to control and use the property, then David's statutory period would never have begun to run. Adam would retain ownership of Blackacre due to the failure of David or Charles to meet the elements of adverse possession over the ten-year statutory period of time. Yes, David demonstrated an exclusion of others, the lock was visible and apparent to Adam and others, his presence was hostile, but ultimately, David's adverse claim fails on the grounds that he never established sufficient control of the property and his intermittent occupancy did not correspond to the usual use of the property. Adam retains ownership of Blackacre.

**END OF EXAM**

90