

MONTEREY COLLEGE OF LAW

REAL PROPERTY

Midterm Examination

Fall 2018

Prof. Justin O'Connell

Instructions:

There are three (3) questions in this examination. You will be given three (3) hours to complete the examination.

Your answer should demonstrate your ability to analyze the facts in the question, to tell the difference between material facts and immaterial facts, and to discern the points of law and facts upon which the case turns. Your answer should show that you know and understand the pertinent principles and theories of law, their qualifications and limitations, and their relationships to each other. Your answer should evidence your ability to apply the law to the given facts and to reason in a logical, lawyer-like manner from the premises you adopt to a sound conclusion. Do not merely show that you remember legal principles; instead try to demonstrate your proficiency in using and applying them. If your answer contains only a statement of your conclusions, you will receive little credit. State fully the reasons that support your conclusions, and discuss all points thoroughly. Your answer should be complete, but you should not volunteer information or discuss legal doctrines that are not pertinent to the solution of the problem.

REAL PROPERTY
Professor Justin O'Connell
Midterm, Fall 2018

Question 1

In 2007, Able inherited Blackacre, a 5-acre parcel of undeveloped real property on the outskirts of town. The public had used Blackacre as a dumping grounds for many years, depositing trash and other refuse all over the property. Able never visited Blackacre after he inherited it, or ever had knowledge of its condition.

In 2010, Charles began leaving his trash on Blackacre every week, and he continued to do so to present. Also, on a monthly basis in 2010, Charles began sifting through the refuse left by others on Blackacre, removing items he found, and selling those items from his home on the internet. He also began making separate piles on Blackacre of different types of refuse for later sale, and he continued that practice to present.

In 2011, Charles began to sell items from a table he found on Blackacre. He set up the table in the middle of Blackacre so anyone coming onto the property to dump refuse would be able to see him, though the table was not visible from the adjacent public street. He manned the table every weekend between 9:00 a.m. and 2:00 p.m., and has continued that routine up until present.

In 2012, Charles posted "Keep Out" signs at all entrances onto Blackacre. That same year, he began telling people, "Get off my property," if he caught them depositing refuse he did not want, and but said nothing if they were depositing refuse he wanted.

In 2014, Charles placed a large sign at the front of Blackacre, facing a public street, that read "Charles' Treasures for Sale."

In 2017, Able sold Blackacre to David.

Assume this jurisdiction has a 5-year statute for ownership of real property by adverse possession.

Discuss the rights of Charles and David under the theory of acquisition of Blackacre by adverse possession (ignore any claim by David against Able).

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Question 2

Acme is the owner of a multi-story commercial building. On January 1, 2017, BankCorp, a bank, began leasing the first floor of the building from Acme on a 10-year written lease for \$3.00 per square foot per month. The lease provides that BankCorp employees and customers have the right to use a common area in the central lobby of the building to access BankCorp offices during business hours. The lease also provides that Acme will provide 10 onsite parking spaces for BankCorp customers.

On July 1, 2018, Acme began to renovate the building, which might be completed by April 1, 2019. The renovation creates noise and the occasional, unannounced disruption of electrical service to the entire building for about an hour at a time. The renovation prevents the use of six of BankCorp's parking spaces. Since September 1, 2018, the central lobby has been inaccessible, and BankCorp employees and customers have to use an unmarked side entrance to the building to access BankCorp offices.

On October 1, 2018, BankCorp moved out of the front half its leased space to another building, where it is leasing space at \$4.00 per square foot. BankCorp has only paid half of its rent to Acme since October 1, 2018.

What claims and defenses might Acme and BankCorp assert against one another in an eviction proceeding (ignore any issue about notice prior to commencement of suit)?

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Question 3

Oliver, owned Blackacre, a parcel of real property. At his ninetieth birthday party Oliver had a reunion with his niece, Alice, with whom he had had no contact in over 60 years. At the party, Alice told him of her fond memories of spending her childhood at Blackacre. Also at the party, Oliver told many people he expected “a bolt from above” to come for him at any moment due to his age.

The following day, Oliver decided to give Blackacre to Alice. So, he executed a deed that named himself as grantor and Alice as grantee, and designated Blackacre as the property being conveyed. Oliver’s signature was notarized, and he immediately gave the deed to Alice’s dad, Bob. Oliver told Bob to record the deed but not tell anyone about it, especially Alice, because Oliver wanted to surprise her. Bob agreed to follow those instructions.

The following day, Oliver sent Alice a letter, which she received soon afterwards, that only stated “My Dear Alice, I hope you like Blackacre.”

Several weeks later, Bob left Oliver a voicemail informing Oliver that Bob had lost Alice’s deed. Oliver called Bob back, and left Bob a voicemail that stated, “Heard about the deed. That’s OK.” The next day, Bob found the deed, and recorded it without telling Oliver.

A year passed, when Alice called Oliver and asked what the letter meant. Oliver said he had wanted to surprise her with owning Blackacre, but the “paperwork got messed up,” and he never fixed it. Oliver died the next day with a will leaving his entire estate to his son Cory.

What claims to Blackacre can be made by Alice and by Cory?

REAL PROPERTY - Midterm, Fall 2018-MCL&SLO

Question 1 Issue Outline (Adverse Possession)

(Many facts crossover in the analysis of the elements, but must be addressed in relation to the particular element (e.g. fact of possession may also be fact for continuity of use))

- *Actual Possession*
 - *Was Charles using land as an owner might? Undeveloped? Better use than mere dumping ground? Preventing unwanted disposal?*
 - *Keeping out trespassers/ asserting control to the public / organizing garbage (recall case about manure piles)*
 - *Fencing (lack thereof) or substantial improvements (lack thereof) not determinative.*

- *Exclusive Possession*
 - *Timeline come into play here*
 - *No concurrent use by public or owner*
 - *Charles begins excluding people – gives ostensible permission only to those he wants to leave garbage*
 - *What about during weekdays/was public still dumping/is that determinative?*

- *Open / Notorious*
 - *Go through timeline of increasing use*
 - *When likely noticeable to owner – e.g. when piles appeared? Selling items offsite on net likely not enough?*
 - *Table in center of property – would owner notice (table already rubbish), not visible from street but visible to trespassers who may think he's owner*

- *Hostile (little analysis, but issue must be noted)*
 - *Facts indicate Charles had no permission*
 - *Able's lack of inspection/knowledge irrelevant – trespass is per se hostile*

- *Continuity of Use*
 - *Student needs to particularly focus on the timeline here, to walk through when "possession" may have occurred, and when trespass had not yet amounted to "possession"*
 - *If student analyzes last, easier for student to incorporate prior analyses, much of the above will merely be rehashed into a timeline*

- *Tacking (little analysis, but issue must be noted)*
 - *(Conceptual subset of continuity of use.)*
 - *Tacking of prior time as against subsequent purchaser – statue continues to run after sale to David*

REAL PROPERTY - Midterm, Fall 2018-MCL&SLO

Question 2 Issue Outline (Landlord/Tenant)

- *Identify type of tenancy: tenancy for years.*
- *Breach of Covenant to Pay Rent (little analysis)*
 - *BankCorp breached covenant by not paying full amount*
 - *Past due rent – future rent offset against mitigated damages*
- *Breach Of The Covenant Of Quiet Enjoyment*
 - *Substantial interference with use/enjoyment by LL? Temporary? Reasonable in large commercial building?*
 - *Parking spots – really a problem for bank? Drive up customers common? Local offsite parking? Not really enough here to say one way or another.*
 - *Discussion of how renovation more than a mere inconvenience, e.g. modern bank needs electricity.*
 - *Cumulative effects – totality of circumstances – occasional interferences add up*
- *Constructive eviction (defense subset of Quiet Enjoyment)*
 - *Abatement of rent for inability to use/partial constructive eviction of leased premises? Differing jurisdictional views*
 - *BankCorp claim for difference in rent*

REAL PROPERTY - Midterm, Fall 2018-MCL&SLO

Question 3 Issue Outline (Gift)

- *Present Donative Intent*
 - *The intent must be to make a present transfer, not a transfer to take effect in the future.*
 - *Did Oliver intend a present gift (was the gift to occur when deed given to Bob/when recorded (recordation not legally required so was this indicative of wanting to ensure the gift was in public record?)/when Oliver tells Alice?)*
 - *Did Oliver intend to gift in the future (why didn't Bob tell Alice outright/was she supposed to be "surprised" later/if later, when?)*
 - *Effect of Oliver finding out not recorded (was it "OK" because he never intended a present gift/was it "OK" because he did not want Bob to feel bad/do Oliver's subsequent statements to Bob and Alice clarify a previous ambiguity about his intent – "messed up" and never gifted?)*

- *Delivery*
 - *Did Oliver feel the "wrenching" of transfer? Oliver's words and conduct must be examined.*
 - *Was handing to Bob alone enough?*
 - *Directing to record indicate delivery upon recordation?*
 - *Effect of telling Bob (ostensible agent for Alice) not to tell Alice*
 - *Did Oliver impliedly recall the deed?*
 - *Was deed delivered when finally recorded?*

- *Acceptance (less analysis here)*
 - *Presumed acceptance if of value – Alice loved the property as a child/condition now? Is it something she wants?*
 - *Alice lacked knowledge/ likely a non-issue as presumption will likely apply absent repudiation.*

- *Gift Causa Mortis (less analysis here)*
 - *Could Oliver revoke even if there is a gift?*
 - *Comment about lightening – joking or really thought death imminent*
 - *No facts of imminent death / age not enough*
 - *No facts to indicate Oliver escaped peril and sought to reclaim gift*

Question 1
Fall 2018

Blue Book

NAME	INDIVIDUAL
SUBJECT	Real Property
INSTRUCTOR	Justin O'Connell
EXAM SEAT NO	SECTION
DATE 12/6/18	GRADE

Question #1 Fall 2018

Adverse possession

In order for a person to claim and successfully acquire property through adverse possession the following conditions must be met. There has to be a hostile acquisition, that is open and notorious, through a continuous period of time, with exclusive use of the property and where the person has been in actual possession of it.

A. Charles's claim to Blackacre

Charles may have a claim to Blackacre because he adversely possessed it.

a. Hostile

Charles did not have authorization to do anything in Blackacre other than dump trash, much like anybody else that was using Blackacre as a public dump. As of 2010 Charles began leaving trash there and his operation in the property carried on until 2017, throughout this time period Charles had no authorization to do anything in Blackacre and the owner did not acknowledge the condition of the property or who was in it at any

moment so Charles effectively took the property (and was availing himself to it) by hostile means. This element of adverse possession has properly been satisfied.

Open and Notorious

Charles began to engage in the selling and sorting of trash in Blackacre in 2010. Although initially he sold items from his computer and that would not be considered open and notorious conduct on the property, he began to sort and separate the trash on different piles to sell later. This would be a visible change to the area as it would seem that organizing the trash ~~the~~ means someone is actively investing time and effort into the endeavor. The piles would certainly be open and notorious to the public and to the owner if he had come by the property.

Also in 2011 Charles set up a table to sell items in Blackacre that was open and notorious to the people who came to Blackacre City. However, the table was not visible to people transiting the public

street nearby so at this point Charles' conduct in Blackacre was not sufficiently open and notorious (in regards to the table operation). On 2012 Charles placed "Keep out signs" on Blackacre and this along with his continuous use of the sales table would be more indicative of open and notorious use. The signs at the entrances kept people out but also openly and notoriously gave an indication that Blackacre was "under ownership" of someone. On 2014 the sign "Charles Treasures for sale" went up to the same effect.

Continuous

On 2010 Charles began to sort through refuse and making ~~the~~ piles of refuse until the present. But it was on 2011 that Charles set up a table to sell items on weekends from 9-2pm. His presence can be considered continuous even though he was not there during the week because he was using the property to its best purpose. Charles returned every ~~the~~ weekend without interruption so there was a continuous adequate use by Charles. The element of continuity is met by Charles frequent and consistent use of the property.

Exclusive

Charles posted "Keep out signs" to all the entrances of Blackacre, effectively restricting use and passage to the property as of 2012. He also told people to get off his property." This also established Charles' control of the premises but could be said that he had exclusive use of Blackacre as early as 2011 because he was the sole user of Blackacre for any particular purpose that was not dumping trash, but the year 2012 establishes more specific actions by Charles that demonstrate exclusive use.

Then in 2014 Charles placed a sign that said "Charles' Treasures for sale" which named him personally and openly declared his exclusive use of Blackacre as a resell place.

Actual

To prove actual possession of the property Charles must show that he ~~was~~ had a possessory interest in Blackacre. He can say that as of 2011 he placed a table to sell items, and that ~~is~~ since then, he ~~took~~ actual possession of Blackacre. From that moment

on Charles took possession of the property, while he didn't have a fixed structure, the table was there all the time where he would man in. Charles believed he had possession of Blackacre because he also put up signs. Charles also had control of the property so that shows actual possession, he not only availed himself to the trash to make money off of it but also chose what kind of refuse people could leave there so he was acting as owner of the property.

Conclusion

All the elements of Adversary Possession have been met by Charles since 2012.

Blackacre was sold in 2017, the gap of 5 yrs between the time that Charles was in Adversary Possession of Blackacre conforms to the requisite time period in the state. Charles also has a right to Blackacre because he made improvements to the land, which had been neglected by the owner and who allowed it to become a dumpster. Charles' actions developed

the property into a business and also into a recycling facility of sorts which is the best use for the parcel, since this is encourage. Charles' actions not only benefit him but the public as well. It is also worth noting that Charles' intent is not relevant to claim adverse possession as the majority of jurisdictions follow the Connecticut doctrine. Had Charles been in a state that followed the Maine doctrine he would have had to have a good claim or 'color of title' on Blackacre to have any rights to Blackacre. Had he been in a minority state then he would have to have knowledge that it wasn't his and taken it in bad faith. Charles met the elements of Adverse Possession to Blackacre and has a right to it under this.

David's claim

David is the buyer of Blackacre and because Charles has a proper claim of Adverse possession his options are to try to undermine Charles' claims or ~~allow~~ give Charles the area that he

has been using in the property. David can argue that Charles' claim of continuous use of Blackacre is insufficient because he was only there on weekends, and because there was no prescribed use of the land, and people used it daily to dump trash. Charles was not in continuous use. This claim by David is weak because in the totality of Charles' use of Blackacre it was regular, and continuous through the years. Much like a summer home, owners can leave for months and still retain ownership of the property, in this case Charles left for the week and returned on weekends.

David can say that putting up a table is not the same as making a cement structure from where to sell items. The use of a table indicated that Charles had no intent in permanently using Blackacre. Again, David's claim is weak because even though Charles only had a table it was sufficient to operate his business for years. Also, the signs that Charles put up where permanent structures in and on themselves that changed the

property.

David has a right to Blackacre minus the part that Charles rightfully claimed through adverse possession. The courts would determine the size of the property Charles can claim and if he is in adverse possession of all of it then David is at a loss. He could have been made aware of Charles' presence in Blackacre (an encumbrance) if he had gone by the property, David would have seen the changes to the property and the extent of Charles' presence/possession of Blackacre. David could have conducted a notice of inquiry prior to buying Blackacre and saved himself the headache.

end of exam

2)

Question Two

To determine the rights and obligations of the parties, we must first determine what type of tenancy they have. Leaseholds temporary possession of a property under some type of agreement, usually a lease or rental agreement. The four types of tenancy are tenancy for years, periodic tenancy, tenancy at will, and tenancy at sufferance.

Tenancy for years

This type of tenancy occurs when there is a specific time period for the lease. It can be days, weeks, months or years and it has a definite ending date. Because there is a definite ending date that both parties are aware of, there is no need to give notice to move out and it does not automatically renew. This type of tenancy is in writing if it is more than one year in order to satisfy the Statute of Frauds.

Periodic tenancy

- Be careful about specifying time on rules/BS rules that are not relevant. You will not get points if you will not do it.

This when there is not set time period for the tenancy to end, it is not put in writing and it can be weeks, days, months or years. It automatically renews at the end of each period and requires notice to terminate equal to one period. If it is rented for more than a year, it violates the Statute of Frauds if it not in writing and the period will be determined by how often the tenant pays rent. Notice to vacate can be given by the tenant or the landlord.

Tenancy at will

This occurs when there is no agreement and there may not even be rent. It is unusual and very rare in the United States to have a tenancy at will. It does not automatically renew and no notice is needed to vacate, however, most courts prefer reasonable notice, which can be as little as three days. If a tenant does not vacate in any of the tenancies above, then they become a tenancy at sufferance.

Tenancy at sufferance

This is when a tenant becomes a hold over and does not vacate at the end of the expected period or upon adequate or reasonable notice by the landlord. The landlord can then turn this into a periodic tenancy by collecting the rent after a certain period of time (say monthly) and this tenancy will become a periodic tenancy. If the landlord ("LL" chooses not to accept the rent after the tenant ("T") is expected to vacate, then they can begin eviction proceedings through the court.

Here, Acme owns a multistory building and signed a lease with BankCorp, a bank for a 10 year lease on January 1, 2017. Which means they have a tenancy for years and it will satisfy the Statute of Frauds as there is a written agreement. The lease will run from January 1, 2017 until December 31, 2026.

Obligations of the Tenant:

A tenant's obligations are to pay the rent and not create waste.

Waste can be affirmative waste (intentional damage), permissive (negligent damage), and ameliorative (improvements without the owner's permission).

Here BankCorp has paid the rent from January 1, 2017 until October 1, 2018. They do not appear to have committed any waste, therefore this issue will not be addressed.

Rent: the tenant has an obligation to pay the rent and stopped started paying only half of the rent from October 1, 2018 to the present.

Landlord's obligations

1. A landlord is obligated to deliver and provide physical possession of the property to the tenant. Here, Acme provided the first floor of their building, the right to use the central lobby, and 10 onsite parking spaces. They charged \$3.00/square foot and collected the rent. They have appeared to have delivered and given physical possession to the tenant.

2. Quiet enjoyment and use of the property. This includes not directly interfering (entering the premises without permission) or indirectly (disruptions or disturbances from third parties that the landlord has control over.) Quiet use and enjoyment also means that that tenant can use the premises as they intended without these undue disturbances or distractions. If the LL violates this covenant, then the T has remedies. Here, Acme began to renovate the building on July 1, 2018, only 6 months after BankCorp moved in. The renovation would last until April 2, 2019. There was noise, occasional unannounced disruption of electrical services to the entire building for an hour at a time.

A bank is a quiet place where financial transactions take place and noise would be very disruptive to the customers and bank employees during their business transactions. A bank relies upon electronic banking systems to process all of their transactions and if the electricity were to go off, they would not be able to complete their transactions. This would cause frustration and possibly impact their customer relations as they would not have their deposits or withdrawals properly recorded. The lights would presumably also go out and it would preclude customers from even entering the bank and as it would put them at risk and cause liability issues for the bank. The parking spaces were included in the terms of the lease and they have lost access to them for the benefit of their customers. This will impeded customer satisfaction and inconvenience them. Customers will now

need to walk around the side of the building to an unmarked entrance when the central lobby was inaccessible. These disruptions are so significant that it is definitely disrupting the quiet use and enjoyment of the premises and is in violation of their lease terms concerning the use of the lobby and the 10 parking spaces.

Implied warranty of habitability

This is an implied warranted that the landlord will ensure that the premises are free of hazards, are in livable condition and are free from rodents and pests. This covenant is not applicable to commercial leases and will not be addressed here. ✓

Retaliation

Landlords are prohibited from retaliating against a tenant who has complained to the landlord or a government agency concerning a breach of warranty. here the Landlord has not engaged in any retaliatory activity and will not be addressed here.

Lease terms

The terms of the lease state that the bank is permitted to use the central lobby and to use 10 parking spaces on behalf of their customers.

Here, the construction is preventing BankCorp from using six of the 10 parking spaces. Three months later, the central lobby was impacted and bank customers had to use the unmarked side entrance in order to access the BankCorp offices.

These are breaches of the lease agreements.

Eviction

Prior to determining the type of remedy for the tenant it's important to determine if there has been an eviction. There are three types of eviction: total eviction, partial eviction and constructive eviction.

Total eviction is when the landlord bars reentry to the site and prevents the tenant from occupying the premises. This is not occurring here.

Partial eviction occurs when part of the premises are not available for the tenant to use. This is occurring as the lobby and the parking spaces are not available.

Constructive eviction: This occurs when the partial eviction substantially interferes with the planned use of the property. Here, the bank is unable to use the parking spaces. Customers and presumably employees are unable to access the bank through the lobby and customers must use a side entrance. Under the covenance of quiet enjoyment and use, the bank's business purposes are being frustrated (frustration of purpose). The landlord is responsible for and has control over the actions of the third party, the renovations on the building they own, therefore they are responsible for the violation of this covenant. When there is a partial eviction that leads to a constructive eviction, the tenant may exercise certain rights.

Rights of the tenant

When a landlord breaches the terms of the lease and violates the covenants, the tenant is entitled to remedies. The remedies that are available to the tenant are:

1. Remain at the property and sue for the amount of money that would be equivalent to the amount of lost use of space and place it in escrow to demonstrate that it is not a solvency issue.
 2. Vacate the property and cease paying rent.
-

3. Repair the property and reduce the rent accordingly
4. Vacate the premises and sue.

Here, the bank is unable to use the facilities and it is substantially disruptive to their business, which amount to a constructive eviction. They are entitled to move out and now pay rent for the remainder of the lease if they vacate entirely or for the portion that they are not occupying. Based on the violation of their quiet enjoyment and use, as well as breaching the lease the bank chose to vacate the property and cease paying rent for the space that they are no longer using. If the entire space is unusable, then the bank is entitled to move out completely, break the lease and not be responsible for paying any rent in the future. The bank chose to move out of 50% of the space that they are leasing based on the disruptions to their business and began leasing another building for \$1.00 more per square foot. They are entitled to sue Acme for the difference of what they need to pay to rent their temporary spaces until the renovation is complete. It is not an option for them to repair the property and it is likely that they would prefer to return to a newly renovated bank once construction has completed in April of 2019.

If the tenant was aware of the upcoming renovations at the time they signed the lease, they have waived their right to raise this issue with the landlord, and will not be able to sue Acme for the difference in the rent when they chose to move out.

Rights of the Landlord

When a tenant stops paying rent, the landlord is entitled to:

1. Allow them to remain on the premises and sue them for rent
 2. They are entitled to evict them and sue for the remainder of the rent due for the term of the lease.
-

3. Re-let the premises to another tenant and sue for the difference should there be a gap or a difference in rent prices.

Here, BankCorp is only paying half the rent and Acme only needs to rent out a portion of the space. As there is nine and half years left, that would amount to a substantial sum for the tenant to pay. Most courts will not permit a landlord to allow a property to remain vacant and expect that the landlord will mitigate their losses by finding a new tenant. They are not required to, but they must make some effort.

The landlord is entitled to notice to cure a breach and the tenant is required to give them time to cure the breach prior to vacating or not paying rent. Here, it does not appear that notice was given, nor an opportunity to cure. However, it is unlikely that Acme was unaware that parking spaces were taken away, the lobby was effectively cordoned off, and that the electricity was going out for an hour at a time throughout the entire building.

An eviction would require the landlord to go through the court system and adjudicate the matter as it is both a criminal and civil offense to change the locks and bar entry onto the premises. If an eviction was brought before the court, a court will find that Acme breached their lease agreement and violated the covenant of quiet enjoyment and use. Awarding to BankCorp the difference between the rent they are paying to lease a new space and the cost at the Acme building for the duration of the construction project.



Exam Name: RealPropMCL-F18

END OF EXAM

Question #3

Fall 2018

Blue Book

NAME

~~XXXXXXXXXX~~

SUBJECT

Real Property

INSTRUCTOR

J O'Connell

EXAM SEAT NO

SECTION

DATE

12/6

GRADE

10 7/8 x 8 1/4

25 - 24 PAGE

Deed - A deed is a transfer of possessory interest that has certain formalities, such as the grantor + grantee, description of the property, and ^(notarized) signature, and a warranty against encumbrances. In order for a deed to be transfer to another there must be an intent to transfer, and there has to be a transfer once this is done the grantee gains possessory interest of the property. After a deed is transferred it must be recorded to be valid if it happens in a race jurisdiction. Although lack of recording does not invalidate the transfer.

Gifts - A gift is a voluntary transfer of property (can ~~be~~ be physical, idea, etc) that is delivered and accepted (but acceptance is presumed). Gift can be of two types; an inter vivos gift, that encompasses anything that is gifted under normal conditions and a causa mortis gift. This latter one is a gift that is given when the person that gives it thinks death is imminent.

~~She~~ Should the person not die the gift can be revoked.

Blackacre is the most contentious piece of property and the base of many and this time Oliver the owner ~~has~~ made some decisions that affected his niece Alice and his son Cory.

Alice's claims on Black Acre

Oliver Alice may claim that she is the true owner of Blackacre because she received it as a gift from Oliver.

a. Was it a gift?

Alice can argue that Oliver had the intent to give her Blackacre as a causa mortis gift because he believed that his death was imminent from a "bolt from above", his intent was clear because he executed a deed and gave it to Bob with the order to have it recorded. The advantage of Alice claiming that it was a causa mortis gift would be that if the gift would be intestate a will would trump her claim.

Cory's counter (gift)

Cory will argue that it is not a causa mortis gift because Oliver ~~did~~ did not believe death was imminent, also Oliver did not deliver the gift to Alice and she never accepted it because she did not know about it. Cory would prevail in his claim that Oliver did not gift Blackacre to Alice for lack of delivery and acceptance, and possibly because it was not appropriate grounds for a causa mortis gift.

b. Does Alice's claim to Blackacre per deed.

① Alice can argue that Oliver had every intention of giving her Blackacre because he took notice of how special it was to her. Oliver executed a deed and notarized it which shows he had an intent to legitimize his transfer to Blackacre to Alice. Oliver also composed a letter to Alice that was affectionate in nature and mentioned Blackacre and that she likes it. All of Oliver's actions indicated that he was intent on transferring Blackacre to Alice.

Cory's defense

Cory can argue that Oliver's intentions were not clear because he gave the deed to Bob and not Alice. He can say that something of such importance and value has to be given to the person, so Oliver must not have been so serious, specially since Oliver upon hearing that Bob lost the deed didn't react in any other way to the loss than saying "It's OK". Oliver even admitted to Alice that the paperwork was messed up but he never fixed it so it must not have been his intention after all to transfer the deed to Alice. Cory would prevail ~~if this~~ with this claim ~~of~~ towards undermining Oliver's intent to transfer Blackacre to Alice.

C. Was there a transfer?

Cory can argue that the deed is not valid because it was never transferred to Alice, that Bob was the one that got it.

Alice's defense:

Alice's defense:

Alice will counter Cory's assertion that there was no ~~trans~~ transfer by saying that Bob is her dad, is also her agent. And this could be valid depending if Bob is seen as Oliver's agent or Alice's agent in the end. Cory may prevail on the issue of transfer since it is not clear if Alice received it or not.

Recordation

Bob recorded Blackacre's deed naming Alice the new owner, once a deed is recorded it is valid and Cory no longer has a claim to Blackacre even if he inherits ~~to~~ his father's estate. The fact that Bob knew that Oliver didn't care if the will was lost or not, or if he didn't tell Oliver he recorded the deed is of no consequence. ~~Since~~ Alice is the true owner of Blackacre because the deed was properly executed, notarized, transferred (to Alice's agent Bob) and recorded.

End of question 3