

MONTEREY COLLEGE OF LAW

REAL PROPERTY

Midterm Examination

Fall 2025

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.

PROPERTY

Professor Justin O'Connell

Midterm, Fall 2025

Question 1

Oliver owned Blackacre, a small parcel of land with a single-family home where he lived. Alice, Oliver's daughter, told Oliver she was having financial problems. The following day, Oliver signed a valid deed conveying Blackacre to Alice, and his signature was notarized.

A week later, Oliver went to Alice's home and brought \$10,000 in cash and a sealed envelope containing the deed. The envelope said "OPEN WHEN NEEDED" on the outside of the envelope. As he tried to hand her the cash and the envelope, Oliver told Alice, "You need this more than me." Alice said, "I don't need your pity." Oliver then tossed the cash on the table in front of Alice, tore the envelope, placed the envelope in the trash can next to Alice and then left.

Right after Oliver left, Alice opened the envelope and found the deed which was unharmed by the tearing. She placed the deed and the cash in a drawer in her home. Several weeks later, Alice called Oliver and left him a voice message saying, "Thanks for the help." Oliver received the voicemail, called Alice back and demanded half the cash back, but Alice said the money was all spent, though it was still in her drawer.

The next day, Alice recorded the deed, went to Blackacre, and told Oliver he could have a few weeks to move out. Oliver told Alice he would see her in court.

Oliver died the following day with a will leaving his entire estate to his son Cory.

What claims to Blackacre and the \$10,000 in cash could be made by Alice and by Cory?

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Question 2

Adam is the owner of an apartment complex. On January 1, 2024, Betty entered into a written lease with Adam providing that she and her dog had the right to occupy one of the apartments on the ground floor for 12 months at a rental rate of \$1,000 per month. That day, Betty moved in. At the end of the lease Betty continued to occupy the apartment and continued to pay Adam rent monthly.

In August of 2025, Betty notified Adam that the sliding glass door in her apartment would not lock. The next day, Adam gave Betty a broom stick handle to place in the door track that would keep the door from opening.

Also in August of 2025, Betty notified Adam the refrigerator in her apartment was not working. Adam immediately inspected the refrigerator and found it was not the refrigerator that was in the apartment when he leased the apartment to Betty. Adam notified Betty he would not fix the refrigerator. Betty looked up the price of a refrigerator, which was \$400, and deducted that amount from her September rent payment.

In September of 2025, numerous mice began living in Betty's apartment. Betty notified Adam there were mice and they were eating all her dog's food. Adam told Betty if she did not have a dog then she wouldn't have mice, and that he was not going to do anything about the mice.

At the end of September of 2025, Betty told Adam that she would not pay rent beginning in October of 2025 until her sliding glass door lock and refrigerator were fixed, until the mice were gone, and until she was given a designated parking spot.

Betty failed to pay Adam rent in October 2025. After giving Betty proper notice to pay rent or vacate, Betty did not vacate, so Adam filed an eviction proceeding against her based on her failure to pay rent.

Discuss the rights and remedies of Adam and Betty.

PROPERTY

Question 3

In November of 2019, Able bought Blackacre, which is a large parcel of undeveloped, heavily forested real property bordered by a large public lake and a public road. Able and his real estate agent thoroughly inspected Blackacre before the purchase, and neither saw any campsite or other improvements on Blackacre. At that time, Charles lived on the far side of the lake from Blackacre and had been accessing Blackacre by boat to occasionally camp there over the previous three years. Able never returned to Blackacre after the inspection.

Beginning in December 2019, Charles parked his truck several times a month along the public road adjacent to Blackacre from which he carried building supplies to a campsite on Blackacre. At the campsite, he built a circular stone firepit and began constructing a rectangular shelter out logs cut from trees on Blackacre. He worked at the site during the day and went home at night.

In August of 2020, Charles completed the rectangular shelter, which was about 20 feet by 10 feet. Also in August of 2020, he also posted a "No Trespassing" sign at the public road near the trail leading to the campsite, and installed a barbed wire fence on Blackacre adjacent to the public road. Bob then began accessing Blackacre only by boat, returning to Blackacre about once a week to clear brush during the day, and staying over for a few nights on each visit.

In December 2021, Bob installed a large gasoline powered generator on Blackacre to provide electricity and began living in the shelter full-time. From that time until present, Bob has cut down and milled trees from all parts of Blackacre for wood to create furniture that he sells.

In October 2025, Able sold the property to David. The following month, David discovered Charles living on Blackacre.

Assume this jurisdiction has a 5-year statute to assert ownership by adverse possession. Discuss the claims of David and Charles under the theory of acquisition by adverse possession as of November 2025 (ignore any claim by David against Able).

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Q1- Outline

Present donative intent

Cash: appeared to exist when tried to hand to her, then tossed at her. Leaving behind something that was easily transportable.

His statement later that he wanted it back indicate he knew he left her the money. Maybe he was wanting to take back a gift, maybe he was trying to only gift her \$5k. If gift was complete then he had no right to demand half back.

Deed: may have existed at beginning. However, he tore it up in front of her, or perhaps he thought he did, to make clear he did not intend to gift. Placed it in a garbage to symbolize his lack of intent, but then again it was easily transportable and he could have taken it if he really did not want her to have deed.

His statement later about seeing her in court might indicate he believed he never gifted, which would be consistent with tearing the envelope.

Delivery

Cash: tossed on table leaving it in Alice's possession likely sufficient for this type of property

Deed: left it in her possession but attempted to destroy it first and place in garbage maybe to indicate no delivery. Hard to say he felt the "wrenching of delivery" and knowledge of transfer when his conduct seemed to imply no delivery

Acceptance

Subsequent change of mind cannot negate gift if both delivery and intent existed along with acceptance. However, did she accept before he demonstrated he no longer intended to gift?

Q2-ANSWER OUTLINE

Creation of the tenancy.

Conversion of the tenancy to periodic by implication.

Habitability issue with door.

Still has access. And it locks.

Could a stick be pushed out of the way by a burglar?

Is it really a habitability issue.

Habitability issue with refrigerator.

Is refrigerator habitability issue to begin with?

Ameliorative waste – she must have replaced the refrigerator without permission.

Does he have any duty to maintain a refrigerator that did not come with the apartment?

Can he sue for value of the refrigerator she took (no indication anything wrong with prior refrigerator.)

If habitability issue, then she is entitled to reduced rent, but owes the \$400 (see below) – likely offsetting claims. She never replaced the refrigerator but 1) deducted \$400 from rent, and 2) is later withholding rent based on the same claim.

Mice habitability issue.

It is a habitability issue.

He should not place burden on her – her fault for having mice – especially where contract allows for dog.

Even without dog food, mice could enter and live in the apartment.

Repair and Deduct

Deducted from rent but did not do the repairs so the defense is not available.

Parking spot not a habitability issue and not a contractual right

Q3

2019

Inspection by multiple people indicates no trespassing. Not open and notorious by this point, and arguably not actual possession.

2020

Intensification of use. Likely open and notorious. No issue with exclusivity or hostility (both elements are met). Primary issues is whether this constitutes actual possession – is there sufficient control and use in manner of a true owner. Gradual over time but a 20 x 10 structure would have been more visible and indicative of use well before completion. Access by boat may be consistent with use of a property that borders a lake. Clearing brush consistent with improvement by a true owner.

2021

Generator and fulltime occupancy likely indicative of use and control of property of this type by a true owner, and the actual possession more clearly met here. Posting of signs and fencing indicative of intent to exclude others which is consistent with possession. Policy considerations – property is being put to use by occupancy and commerce – favors the trespasser over the owner who allows property to sit dormant.

Sale – tacking of adverse possession period over to new owner who takes subject to claims.

1)

1. Gifts

A gift is a voluntary transfer of property to another person without support of consideration. To be valid, a gift must have (1) present donative intent, (2) be delivered, and (3) be accepted. There are three primary types of gifts: Intervivos, Causa Mortis, and Testamentary. An intervivos gift is one that is given while alive to another person, meets the donative intent, delivery, and acceptance requirements, and once all elements met is irrevocable. A Causa Mortis is a gift that is given in anticipation of once impending death from a particular peril, meets the donative intent, delivery and acceptance requirements, but is revocable if (1) donor doesn't die and chooses to retain the property, or (2) donor dies but from other peril than that when gift was made, and the estate chooses to retain the property. Finally, the testamentary gift is given in anticipation of one day dying, and as such is not a "gift" because there is no present intent to deliver. Therefore, absent a formalized will stating the gift to the donee and meeting requirements of a will, the testamentary gift is invalid.

Here, we need to determine if Oliver had the present intent to deliver (1) Blackacre (BA) and (2) \$10k to Alice (A), if either was properly delivered and accepted. Then, we will determine if Cory retains any right to either property under O's will.

Land to Alice

Type of Gift: Intervivos/Causa Mortis/Testamentary

Here, O is alive when the purported "gift" to A is attempted by transfer of deed. If all elements follow, then this is an intervivos gift.

Donative Intent:

Donative intent requires the present intent to gift property which one presently owns to another. Intent of the donor may be determined by evaluating the actions, words, and circumstances surrounding the event.

Here, Alice told her dad that she is having money problems. The very next day, Oliver attempts to make a gift of real property of his small piece of land that has a single family house where he lived to Alice.

why?
Cory will argue that O had no present intent to give A his property, because it was A that said she needed financial help and O didnt want to give her the property but felt compelled to. C will argue that when he tried to give A the deed and money and she made a snide comment, that was all he needed to show his real intent NOT to give A BA by attempting to tear the deed. Further C will argue that O said clearly "You need this more than me" and then wrote "OPEN WHEN NEEDED" on the envelope. He will argue that those statements taken together, doesnt implice present intent to transfer ownership but rather a future intent, wish would render the gift testamentary, under the condition that she need it, and thus void.

However, A will argue that O's intent was clear because (1) the deed need not be physically handed over to complete delivery and reflect intent. Rather his words and actions are more convincing re intent, because he did not attempt to immediately hand the deed to A, but waited until the next day to do things properly This shows time for thought and reflection. Furthermore, A will show that O went to the effort to have the deed signed and notarized. When you get something notarized, you attest to the intent that you asserting in the document. Also, he waited an additional week to bring the notarized deed to her house, showing futher refletion and care in intent.

Therefore given O's actions donative intent will likely be held to be found at least at the time the deed was notarized.

Delivery:

A valid gift must be delivered to the donee. Depending on the characteristic of the gift, it may be delivered by actual delivery, symbolic delivery, or constructive delivery. Here, this is a property and thus is not an object that can be physically handed over (actual) nor would a key granting control and access suffice (symbolic). To validly transfer property by deed, the title must be in writing, signed by the original owner, a description of the property is included, and then it must be delivered to the recipient. Once the deed is signed, ownership interest transfers from the donor to the donee. — NO — how about delivery + acceptance?

Here, the facts indicate O signed a valid deed conveying BA to A, and his signature was notarized. Therefore the first three requirements are purportedly met.

However, C will argue that a week later when O went to A home and A responded to apparently decline the gift (see acceptance below), he Tore the Envelope and put the envelope in the trash can next to A then left. C will assert that by tearing and tossing the envelope with the deed he had intent to revoke his gift by not completing delivery.

However, A will argue that a deed being handed over is only symbolic. The actual transfer happens at the time O signed the deed over to A. While the deed hadn't yet been recorded, recordation is not required for the transfer of title, only the signature. Therefore, there was no way for O to cancel his intent to transfer by not physically delivering the deed.

C may further argue that the deed wasn't recorded at that time, and thus not delivered. However, a deed does not need to be physically delivered to be transferred/delivered.

C will then argue that O wanted to get the house back as evidenced by his statement "see you in court" intending to make the return of the deed official. But again, O at that point had no ownership interest in the property. The moment he signed the deed over to A, he relinquished any ownership interest to A. — NO — could have left this out

She may further argue that if he really didnt want her to have the physical deed, and considering it's a property of high value, a reasonable person in O's shoes likely wouldnt have tossed the envelope into the trash in her home. A reasonable person would assume that the donee would likely get the envelope from the trash and retain its contents if of value.

Therefore, a court will reasonably find that given the clear delivery of the deed by signature and transfer, delivery is met.

Acceptance

Acceptance of a gift is generally presumed, unless it is something of detrimental value. Here, O is gifting A a small piece of property with a house on it. Therefore, A's acceptance would be assumed.

However C will argue that when O tried to hand A the envelope with the deed in it, she said when "I dont need your pity." C will argue that this is a clear declination of the gift.

However, A will argue that the statement was at most ambiguous. Just because she is saying she doesnt need his pity or sympathy does not mean she is refusing a house. Culturally, it may be words of pride while her intent was to retain the property. Otherwise, why would she go fishing in the garbage for the deed if she didnt care to accept it. Regardless, even if A didnt intend to keep the property, the deed was already transfered to her legally and the only way to relinquish ownership is to sign the property to someone else. A called O a week later and left him a VM saying "Thanks for the help." Thank you is generally an expression of acceptance.

Most importantly, A recorded the deed the day follwoing the call. The recording of a deed isnt a necessary condition for transfer of ownership, but it purports notice and delivery. By having it recorded, A showed clear intent to accept.

Therefore, a court may reasonably hold that A intended to accept the deed, and even if she didn't the deed was already transferred to her legally.

Her words and actions reflect acceptance, thus acceptance is met.

In conclusion, because O properly transferred his ownership interest to A with the intent that she own BA, and A accepted, A is the owner of BA as of the time of notarization.

Money to Alice

Type of Gift: Intervivos/Causa Mortis/Testamentary

supra.

Here, O is alive when the purported "gift" of \$10k in cash to A is attempted by hand delivery. If all elements follow, then this is an intervivos gift.

Donative Intent:

supra.

Here, Alice told her dad that she is having money problems. One week later, Oliver shows up at A's house with the deed and 10k in cash. He tried to hand her the cash and as handing over said "you need this more than me. Alice replied, I don't need your pity" at which point O tossed the cash on the table in front of Alice. When O left, A put the cash in a drawer in her home. Several weeks later, when A called O and left him a VM saying "Thanks for the help." However, O called A back and demanded half the cash back (5k) but A said it was all spent. However, the money wasn't spent and remained in A's drawer.

Cory will argue that O had no present intent to give A the money, he only had pity on her (per A's own words) and thus was not acting with requisite state of mind. C will argue that

all just
reciting
facts
again

when he tried to give A the money and she made a snide comment, that was all he needed to show his real intent NOT to give A the cash by throwing it on the table.

Both arguments will likely fail. O waited a week before going to A's house to deliver the money and the deed. No reasonable person holds on to 10k for a week, mulls it over, and then hands it to another person without the present intent to do so. Alice may further argue that O said "You need this more than me" clearly indicatng a present intent to transfer ownership of the 10K to A because she "needs" it now, wihc follows from her prior conversation about her fianncial problems.

Most importantly, O did not put the money back in his pocket when Alice supposedly refused. He did not even throw it in the trash. He threw it on the table in front of Alice further suppoerting delivering to A. C may argue that it wasnt hers to pick up, but the moment O walked out the door without attempting to take the money back, it became A's property. *left control of it in A's home*

Therefore given O's words and actions to throw the money on her table and leave without taking it back it clearly reflects present donative intent will be found.

supra.

↳ stay away from this road. Very often nothing is "clear", which is why there is a dispute

Acceptance

supra.

Here, C will argue that A declined the gift of cash and therefore the gift is void. However, A did not collect the money off the table and hand it back to her dad. Rather, she took the money and the deed and locked them in her drawer, securing them as her property under her ownership and control.

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Therefore, because she accepted the money and safely kept it in her house under lock and key, the money is hers and she has no obligation to give it C.

Ownership Rights

O died the day after his return message to A and had a will leaving his entire estate to son Cory. However, based on the facts and analysis above, the deed and the money were valid gifts prior to O's death and therefore A is the true and present owner of the properties. Therefore, C has no valid claim to recover any of the property gifted to A.

2)

Tenant/LandLord

Tenant Duties

A tenant has the duty to pay rent, notify landlord of any concerns or problems, and abide by the terms in the lease.

Landlord Duties

Landlord has the duty to deliver possession of property, not interfere with the use and enjoyment of property, and provide a habitable environment.

Term for Years

This type of term has a fixed start and end date. There is no required length of time, can be for 5 months or 12 months. Additionally, the lease automatically ends there is no notice required to end this type of lease.

Here,

Betty entered into a written lease with Adam providing that she and her dog had the right to occupy one of the apartments for 12 months. Betty entered into the written lease on January 01, 2024. Because there is a fixed start date and end date (in 12 months) this is a term for years.

Periodic Tenancy

This type of term auto renews and is a month-to-month lease. Notice is required from the landlord or tenant to end the lease agreement. Acceptance of rent after expiration creates new periodic tenancy.

Here,

The term automatically ends under a residential lease because there is a fixed end date. In this case, Betty's lease ended on January 01, 2025 because she signed the lease originally on January 01, 2024 for 12 months. However, even after the lease ended Adam continued to accept rent from Betty monthly until October 2025. The term then turned into a periodic tenancy, which requires notice to end and while no notice is provided from either party it will continue to renew as long as the Adam accepted rent from Betty.

Betty

Residential Lease

This type of lease is intended for an individual who will be using the property as their home and not for commercial purposes. Under this type of lease, the landlord must provide a habitable, safe, livable premises. Any serious health and/or safety problems trigger the landlord's duties to the tenant.

Here,

The facts indicate that Betty moved in with her dog into one of the apartments on the ground floor. The facts do not state that Betty's lease included property for commercial purposes. For this reason, the lease is for residential purposes.

Habitable/Safe/Livable Premises

Under a residential lease the landlord is obligated to provide a habitable, safe, and livable premise to the tenant. This means that any serious health and/or safety concerns must be addressed accordingly by the landlord once given proper notice by the tenant. Such concerns can include cockroaches, fleas, mice, or any serious safety hazards as well as

concerns involving anything that seriously impacts the ability for the tenant to comfortably reside in the premises.

A. Sliding Glass Door

Betty notified Adam in August of 2025 that the sliding glass door in her apartment would not lock. Adam was aware of the issue because the next day he gave Betty a broom stick handle to place in the door crack that would keep the door from opening. This creates a serious safety concern for a couple reasons. First, the door does not properly lock and Betty's apartment is located on the ground floor. This means that people most likely can easily have access to her apartment. If the door is not able to lock and is only held shut by a broom stick, then this puts Betty at risk of someone managing to easily break into her home that can result in serious bodily injury or even death. Second, if there was a fire and the front door was blocked off and the only way for Betty to get out of her apartment with her dog safely, is to open the sliding glass door. Then the broom stick handle put in place by Adam would create a serious safety hazard. It is likely that the broom stick handle can get stuck causing Betty to become trapped in her own apartment unable to exit out safely.

For these reasons, the broom stick is a serious safety concern that requires Adams to resolve properly once reasonably put on notice.

Remedy

Betty may claim breach of warranty of habitability as a defense to payment of rent. She provided reasonable notice to Adam but he did not resolve this issue even after a month had passed. As a result, Betty can seek to withhold her rent until the defect is fixed. She may also pay to repair the defect herself and deduct it from the rent.

B. Refrigerator

Betty also notified Adam about the refrigerator in her apartment not working in August of 2025. Adam notified Betty that he would not be fixing the refrigerator because it was not the original one that was in the apartment when he leased the apartment to Betty. However, Betty not having a working refrigerator is a serious habitable concern. Without a proper working refrigerator she won't be able to have food in her own apartment that would perish without being refrigerated. Every tenant should have the ability to enjoy the type of food they want within their own home. This would also seriously impact Betty's ability to comfortably reside in her apartment.

For these reasons, this serious habitable concern requires Adam to resolve properly once reasonably put on notice.

Remedy

Betty may claim breach of warranty of habitability as a defense to payment of rent. She provided reasonable notice to Adam but he did not resolve this issue even after a month had passed. As a result, Betty can seek to withhold her rent until the defect is fixed. She may also pay to repair the defect herself and deduct it from the rent. In this case, Betty did search up the price for a refrigerator which was \$400 and deducted that amount from her rent. If Betty used that money to repair her refrigerator then she is entitled to deduct that amount from her rent.

C. Mice

In September of 2025, numerous mice began to live in Betty's apartment. Betty did notify Adam about the mice and even stated that they were eating her dog's food. Adam refused to do anything about the mice and blamed Betty's dog for causing the issue. Having mice in the apartment is not normal and definitely creates a very serious habitability concern. Mice are known to bring diseases with them, which can lead to Betty getting sick or injured if the mice bite her. Betty's dog is also at risk because the mice are eating directly

from his bowl and can also bite him. This is a very serious concern and once Adam was put on reasonable notice he should have offered to resolve the issue immediately.

Remedy

Betty may claim breach of warranty of habitability as a defense to payment of rent. She may choose to withhold rent until Adam fixes the habitability issue. She will remain the owner of the apartment.

Conclusion

Betty will be able to claim breach of warranty of habitability as a defense to payment of rent for the sliding door, refrigerator, and mice problems. However, regarding the designated parking spot, Betty would not be able to claim any defense. If Adam resolves the three issues stated earlier then at that time Betty will have to resume paying rent or risk being evicted. A designated parking spot does not constitute a habitability issue. Betty may also be able to end the lease and move to a different apartment altogether since Adam never resolved any of the habitability issues.

Adam

Residential Lease

This type of lease is intended for an individual who will be using the property as their home and not for commercial purposes. Under this type of lease, the landlord must provide a habitable, safe, livable premises. Any serious health and/or safety problems trigger the landlord's duties to the tenant.

Here,

The facts indicate that Adam offered Betty to move in with her dog into one of the apartments on the ground floor. The facts do not state that Betty's lease included property for commercial purposes. For this reason, the lease is for residential purposes.

Habitable/Safe/Livable Premises

Under a residential lease the landlord is obligated to provide a habitable, safe, and livable premise to the tenant. This means that any serious health and/or safety concerns must be addressed accordingly by the landlord once given proper notice by the tenant. Such concerns can include cockroaches, fleas, mice, or any serious safety hazards as well as concerns involving anything that seriously impacts the ability for the tenant to comfortably reside in the premises.

A. Sliding Glass Door

Adam was notified in August of 2025 that the sliding glass door in Betty's apartment would not lock. Adam was aware of the issue because the next day he gave Betty a broom stick handle to place in the door crack that would keep the door from opening. Adam may argue that when he provided Betty the apartment on January 01, 2024 the sliding door was working properly. This is shown by the fact that Betty did not bring up this issue to Adam until over a year later.

Remedy

Adam, as the landlord, may claim waste for remedy for destruction of the property. Betty damaged/destroyed the sliding glass door, which is why it stopped working properly after Betty had been living there for over a year.

B. Refrigerator

Adam was notified by Betty that the refrigerator was not working properly. He immediately inspected the fridge but upon inspection he realized that the refrigerator was not the one that was in the apartment when he leased it to Betty.

Remedy

Adam may claim waste for remedy due to improper use. Betty did not have permission to switch out the original refrigerator that Adam had provided Betty in working condition when she first moved in on January 01, 2024. Adam did not authorize this and it was not stated in the lease agreement that such changes could be made. Additionally, Betty deducted \$400 from her rent but there is nothing that states that she actually used that money to repair the refrigerator. Furthermore, this is confirmed by Betty who still complained a month later that it was still not working properly. ✓

C. Mice

In September of 2025, numerous mice began to live in Betty's apartment. Adam was notified, however Betty confirmed that the mice were eating her dog's food. The mice were never an issue previously with other tenants, however it became an issue once Betty moved in with her dog. As a result, the dog's food is the reason that the mice are going into her apartment.

Remedy

Adam may claim waste for remedy due to neglect of rental property. Betty did not maintain the apartment clean and neglected her dog's food, which resulted in mice beginning to live in the apartment because of the easily available food. This also causes the decrease in the value of his property because tenants will not want to live or pay for rent knowing his property has a mice issue.

Conclusion

Adam may claim waste for remedy for all of the issues and demand that Betty pay the rent owed along with the \$400 that Betty previously deducted without properly using that money to repair the refrigerator. If rent is not paid then Adam can continue to pursue legal action to evict Betty.

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3)

3. Adverse Possession

Adverse possession is a method of acquiring ownership to property when a trespasser possess the property in a manner that is (1) actual, (2) open & notorious, (3) exclusive, (4) hostile, and (5) continuous for the term perscribed by the jurisdiction's statute of limitations. If all elements are continuously performed by the adverse possessor (AP) during the statutory period, then title ripens in the AP and the original owner is barred from asserting a claim of ownership.

Here, we must determine if Charles has a valid claim of title under adverse possession (which will require an analysis of Bobs possession) or if D may assert ownership as the new owner.

Actual Possession

An AP actually possesses the property if he uses the property in a manner which a reasonable true owner would considering the nature, location, and character of the property. Actions such as improving, maintaining, building, cultivating, or otherwise excepting control over the property meets this condition.

A bought BA as a large parcel of undeveloped heavily forested real property bordered by a large public lake and road. The facts dont indicate any particular use for the property or why A purchased it, only that there is a lake near and lake access by boat. Given the extremely rugged nature of the property, its distance for civilization, and the apparant difficulty in accessing the property, a reasonable true owner may show actual possession by spending considerable (though not necessarily literally continuous) time on the property, make efforts to improve it and cultivate its resources. Perhaps it could be used reasonably as a campground or vacation spot given the public lake and road nearby.

At that time A purchased, C lived on the far side of the lake from BA and was accessing BA by boat to occasionally camp there. He camped for three years but didnt build, make improvement or cultivate the land.

However, in 2019, C parked his truck several times a month along the public road next to BA from which he carried building supplies to a campsite on BA. Given the rugged nature and location of the property, there may not have been a driveway and therefore a reasonable owner would need to park on a paved road and haul supplies into the property until a proper drive could be erected. However, he does built a stone firepit at the campsite and starts buidling a shelter out of logs from the property. The building of the structure, and in particular cultivating the trees for use as lumber is likely a strong indication of actual ownership. Therefore, at this time C is not quite meeting the actual possession because he is staying on the land more regularly, though not consistently. He works on the property during the day but returns "home" at night. A true owner would either be there daily or perhaps stay on the land more consistently perhaps by RV or other permanent form of camp until necessary structures are built.

In August 2020, C completed the shelter 20x10 which is an obvious structure that indicates residence or ownership. Furthermore, he acted as an owner would by securing the property with the fence and no trespassing signs at the road and near the trail that he likely made through frequent trips with lumber and supplies.

Therefore, in August 2020, C meets the Actual standard.

Open & Notorious (ON)

An AP must possess the property in a manner that is ON, meaning it a manner that is visibile and not concealed from public view, such that a reasonable true owner inspecting the property would be on objective notice of the adverse possession. Actions such as

paving roads, building driveways or gates, or otherwise making obvious changes to the property will suffice.

Here, A and his Realestate agent inspected BA before purchasing the property, neither saw any campsite or other improvement on the land. At that time there was no open and notorious use desptie C accessing BA by boat to occassionaly camp there over the past 3 years. Under the Discovery rule, the SoL begins to run when a reasonable true owner would discover or should have discovered the AP of the property. Here , because of the lack of visibillity of C's presence as AP, the ON requirement is not yet met.

However, in 2019, C parked his truck several times a month along the public road next to BA from which he carried building supplies to a campsight on BA. C may argue that a reasonable owner driving by to inspect the property would notice a car parked on the public road adjacent his property repeatedly with building materials being hauled from the side of the road into the property. However, it may not be quiet sufficient enought to objectively put Owner on notice.

However, in 2019, C did build the fire pit at the campsite. Again, though, this is the same campsite presumably that was being used when A first inspected. A didnt notice then, so would a reasonable true owner have noticed now that there is campsite with a stone firepit and beginnings of a rectangula shelter? Likely this would not meet the ON requirement yet.

In 2020, when C finally starts putting signage and the fence out along the public road, it becomes clear to the naked eye that improvements are being made on the property, efforts to exclude, etc. Anyone looking, especially a true owner driving by for a cursory check, would be objectively on notice of AP.

Exclusive

An AP must possess the property in a manner that is exclusive, meaning that he intentionally acts to restrict the use of the property from the true owner, other trespassers and the public. Exclusivity is broken once the owner enters and reasserts control or if another trespasser enters and begins to assert control.

Here, C posted No trespassing signs at the public road and at the trailhead leading to the campsite. He posted the signs at the likely entrance (that's where he got in) so that any trespasser or public would know that they were entering protected private property. Furthermore he installed the barbed wire fence on BA next to public road. Therefore, at this time he attempted exclusivity.

However, Bob, the additional AP, began accessing BA by boat and came once a week to clear brush during the day and stayed overnight for a few nights on each visit. Bob's presence likely breaks the exclusive use of the property. Bob entered the property the same way C used to - by boat. C knew that was an access point to public and should have put a sign or fence there as well. The facts don't show he put a sign along the public lake shore.

Furthermore, B is acting as a true owner, open and notorious, but fails to make any conduct to exclude others. So while he is unknowingly challenging C for AP, he is at least breaking the requirement that all elements be met for the duration of the statute of limitations.

Therefore, and unknown to C, exclusive use fails.

Hostile

An AP must possess the property in a manner that is hostile to the ownership interests of the true owner, meaning that the AP possesses the property without implied or express permission of the true owner and claim of right. Once the true owner gives permission to use the property, the statute of limitation no longer runs and the hostile requirement fails.

Claim of Right is met differently across jurisdictions. The majority rule follows the Connecticut Doctrine which allows the SoL to run regardless of the intent/state of mind of the AP, meaning regardless of if the AP is acting in good faith or not, hostile possession begins once the AP enters without permission and commences actual, ON, exclusive possession. However a minority of jurisdictions require that the AP be know the land is not his own, act in opposition to owners interest, and is essentially a "knowing squatter" for hostile possession to be met. Another minority of jurisdictions follow the "good faith" requirement that stipulates an AP act under claim of title (hold defective document or otherwise believe he is the proper owner of the property in question).

Here, C is possessing the property without permission and against the interests of the true owner. He is building using logs cultivated off the land, improving the land, and using the land openly as a true owner. Therefore, under the Connecticut Doctrine, C is meeting the hostile possession requirement. However, if this is a good faith jurisdiction, then state of mind is at issue and C must act under claim of title, meaning he holds a document that he assumes accurate that purports to give him actual ownership. That is not the case here, therefore in a good faith jurisdiction, this would fail.

In a minority bad faith jurisdiction, C is a "knowing squatter" because he is likely aware the land is not his and there are no facts that indicate he was under a presumption of ownership. Rather fact indicate he accesses, develops, improves, and cultivates the property as AP.

Therefore, under Bad Faith or Connecticut, Hostile Possession is met.

Continuous

The AP must hold the property under the prior elements (Actual, ON, Exclusive, Hostile) for the duration of the statutory period without break but in consideration of the nature, location and character of the property.

Here, there are several arguments against C being continuously on the property. He worked at the site during the day and went home at night. C may argue that the structures themselves permanent, but he must be using the property in the manner of an actual owner at the time. C will further argue that it's the woods and it's not meant for permanent living, that only sporadic camping is a reasonable use because that's how he used it, its not very easy to get to and thus only conducive to random camping use.

However, this argument will fail likely because of B's presence and use of the property. In 10/2015 (4 years after B started living in the shelter full time) B is still on the property (actual possession- building, installing the generator to make electricity, milling lumber from all around the property, etc), B is open and notorious about use by cutting trees and milled from all parts of the property, which is likely noticeable when a bunch of trees start going missing, especcially enough to build a home and sell furniture - a reasonable owner on inspection would and should be on objective notice of adverse possession.

Therefore, based on lack of continuous actual use during the 5 year sol, and continuous hostile use, C's claim for ownership by adverse possession will fail.

C may attempt to use tacking of B's AP use to meet the SoL to ripen title under C, however, this will likely fail because C never continuously met each element required for the 5 year duration of the statutory requirement because he wasnt continuously on property and didnt always hold it in hostile possesson agains.

Thus in 10/2025 when A sold to D. and D the following Month discovered C (NOT B) living on BA, yet again C's attempt at AP failed because at that time, D reentered, and asserted control over the property. However, should B remain hiding for one more year, B may trump D's ownership if B continues to meet all elements of the AP and continuously perform. If so then title ripens in the B and the D will be barred from asserting a claim of ownership (so long as B doesnt employ any fraudulent concealment)

END OF EXAM

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