

MONTEREY COLLEGE OF LAW

REAL PROPERTY

Midterm Examination

Fall 2024

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 2024

Question 1

Lee owned an apartment building. Tina signed a two-year lease with Lee to rent an apartment for \$1,000 per month, which provided, in part: "Lessee may not assign the leased premises."

Upon moving in, Tina discovered that the water occasionally became scalding hot when Tina showered and that mice were living under the kitchen cabinets. When Tina told Lee about this and asked Lee to remedy the problem, Lee said, "The water does that if you're showering for too long, and if you'd clean the kitchen you'd have no mice." Lee took no steps to remedy the problem.

Two months after Tina moved in, Lee told Tina that Lee needed to use a closet in Tina's apartment for storage, and then Lee filled the closet with Lee's belongings. Tina asked Lee to remove the belongings, and Lee said, "It's only for a while and it's only a closet."

Six months after Tina moved in, she wanted to move due to the ongoing water, mice and closet issues. Tina asked Lee if Tina could assign the lease to Dan. Lee refused to consent to an assignment, but Tina assigned her lease to Dan anyway. Tina moved out and Dan moved in.

A month later Dan complained to Lee about the same water, mice and closet issues. Lee's response was, "You're not my tenant. I'm not doing anything about it." So, Dan stopped paying rent, and at that time there were 17 months until the lease ended.

What claims and defenses could be asserted by Lee, Tina, and Dan.

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Question 2

In 2007, Able acquired a 500-acre parcel of rugged, undeveloped real property, which was bordered by a National Park. Able had never been to the remote property, so he went out to inspect it a few days later. He parked along the public road that bordered the property and hiked in to inspect it.

An hour into the hike, Able came across a small log cabin in which Baker was living. Baker built the cabin from trees on the property over the course of 2001 - 2003, after having seasonally camped at the same site since 2000. Beginning in 2003, Baker began living in the cabin for a few weeks each summer. Baker told Able that the cabin was within the National Park and asked Able not to tell the National Park officials. Able responded with a smile, telling Baker "I saw nothing." In fact, the cabin was built well onto Able's property.

In 2008, Baker cleared land and created a dirt driveway leading across Able's property from the cabin to the public road. That same year, Baker began living in the cabin full-time.

In November of 2024, Able sold the property to Carroll. The following month, Carroll inspected the property and discovered the driveway and cabin.

Assume this jurisdiction has a 20-year statute to assert ownership by adverse possession. Discuss the rights of Baker and Carroll under the theory of acquisition by possession as of December 2024 (ignore any claim by Carroll against Able).

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Question 3

Oliver, owned Blackacre, a parcel of undeveloped land. Oliver was diagnosed with a degenerative disease and told by his doctor that he would likely have no more than five years to live. The following day, Oliver decided to give Blackacre to his daughter Alice. So, Oliver executed a valid deed conveying Blackacre to Alice, and his signature was notarized.

The following day, Oliver handed Alice a sealed envelope containing the deed with the words "NO PEEKING" on the outside of the envelope. Oliver asked Alice to keep the envelope but not to open it until he said to, and she said, "sounds good." Alice was unaware of the existence of the deed.

A week later, Oliver sent Alice a letter, which she never received, that stated "My Dear Alice, open away."

Several months later, Alice called Oliver and told him that she had not opened the envelope because she had lost it. Oliver responded, "That's OK. It was just a funny drawing I made." By that time, Oliver found out he was misdiagnosed and did not have a disease, so he did not want to give away Blackacre.

The following day, Alice found the envelope, opened it, and recorded the deed, all without telling Oliver.

Oliver died the following week 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-ANSWER OUTLINE
Professor Justin O'Connell
Midterm, Fall 2024
Question 1

Outline:Q1

Type of lease

Term for years

Lee

May claim 17 months of rent from Tina and evict Dan. No contractual privity with Dan so not rent due from Dan. Or could wait until end of lease and sue Tina for 17 months of rent.

May claim assignment is invalid and a breach of the lease, giving independent grounds to terminate and sue for 17 months of rent.

If Lee waits to sue, Tina will claim Lee failed to mitigate/offset rent against what she owes by leasing to a new tenant.

Tina:

May claim breach of warranty of habitability as a defense to moving out and non-payment of rent. Notice was given regarding the water and mice issues and not remedied. Showering often (as most people do) is an ongoing risk of harm. Mice can bring diseases and leave excrement in the home irrespective of how tidy Tina is.

May claim breach of warranty of quiet enjoyment. Entitled to move and no longer pay rent. Lee's use of the closet for his own storage would qualify if considered substantial. She might also have consequential damages (higher rent somewhere else) due to having to move.

Dan

No right to assert habitability defense because he is not a valid tenant. Lee's duties do not flow to Dan, and Dan cannot stay in possession and withhold rent due to habitability issues.

Q2 Outline

Actual possession

2000 – camping likely not enough to demonstrate control and use

2001-2003 clearing of forest and construction might be, but questionable as to along this time when actual possession would attach. No indication of excluding others or other indicia of possession other than construction.

2003 – summer residency might be enough depending on type of property and expected use

2008 – driveway and fulltime residency best examples of possession attaching

Open and Notorious

Same as above, but discuss how each step would have more likely put owner on notice of adverse claim. Also discuss remoteness and condition of property – took Able an hour to find it when hiking, not visible from road, Baker's statement indicated he might not have wanted to be found.

Exclusive

Nonissue – no facts indicate owner or public also used the property.

Hostile

Generally the state of mind irrelevant (Conn rule), and only issue is whether there was no permission. Able's statement is likely not permission (sounded sarcastic, and Able might not have known Baker was trespassing).

Maine – need to knowingly trespass

Minority view – mistaken trespass required

Continuous

Depends on when the other elements are met at the same time. Highly dependent on whether the 2003 residency will be enough or if 2008 residency and dirt driveway will be.

Q3-Outline

Present donative intent

Appeared to exist when handed to her, but also questionable because she was told not to open yet. He could have waited 5 minutes or 5 years to instruct her to open.

Likely occurred with letter. Lack of communicating intent (letter was not received) does not vitiate his intent to gift at that time – no requirement words be used to express intent- act of mailing letter might suffice)

Lying about contents later might indicate a lack of intent then, but if intent previously formed, only way to negate intent is if it were a gift causa mortis – however, he was not fearing imminent death when gift was made – he likely had years to live.

Delivery

Physical delivery occurred but he placed restriction on her access.

Her subsequent discovery and opening was in line with his instructions (though she did not know she had been instructed to open). Delivery might have occurred when she opened.

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?

1)

Type of Tenancy

Tina and Lee have a Term for years Tenancy. A term for years tenancy does not need to be for a year as long as it is for a fixed set of time, however here, Tina signed a two-year lease with Lee to rent the apartment which is required in order to satisfy the statute of frauds which would require this agreement to be in writing as it is for more than one years length. A term for years tenancy has a specified date of termination and no notice is required to be given between the landlord and the tenant.

Landlords Duties to Tenant

Landlords have a duty to deliver possession of a property, not to interfere with the tenant's use and enjoyment of the property and they have a duty to provide a habitable space free of health and safety concerns and a duty to mitigate if the property is abandoned.

Tenants duties to Landlord

Tenants have a duty to pay rent, notify landlord of concerns or problems and abide by the terms of the lease.

Tina's Claim as to the Water Heater

Landlords have a duty to provide a habitable space for the tenant. Habitability encompasses a space from any substantial health and safety risks. Here, Tina's claim as to the water heater may not rise to the level of a substantial habitability claim as Lee explains to her that it only occurs to when someone takes too long of a shower. Here, Tina could claim that this is a breach of quiet enjoyment of the property as perhaps Tina enjoys taking longer showers and she should not have to be rushed due the defect in the water

heater that could be fixed by Lee. Additionally, Tina could claim as to habitability, that this poses a serious health and safety concern as the temperature of the water becomes a scalding hot and therefore could cause injuries to Tina or anyone else who uses the shower.

Additionally, Lee was notified of the issue with the water heater and took no direct steps to fix it. Tina acted according to her duties and notified her landlord only to be informed that there is nothing that can be done as it can only be fixed by Tina not taking long showers.

Tina's claim as to the water heater is substantial enough as it relates to a breach of quiet enjoyment and habitability as it directly interferes with her enjoyment of the property and it poses a serious health and safety concern that should have been addressed by Lee when he was notified.

Tina's Claim as to the Mice

Landlords have a duty to provide a habitable space for the tenant. Habitability encompasses a space from any substantial health and safety risks. Here, Tina informs Lee that there are mice living under kitchen cabinets. This is a substantial claim as to habitability as mice can cause serious health and safety concerns. Additionally, this was an issue that was pointed out by Tina to Lee immediately upon moving into the premise. Lee has a duty to have delivered a space that was habitable from the time that Tina moved in. Here, Tina had only moved in and she had already noticed that there were mice in the kitchen, it is unclear how long they have been there and if there are any other spaces they have occupied at the time of Tina becoming the new tenant. Lee telling Tina that the mice are her problem and that if she'd clean her kitchen she would have no mice creates a problematic situation as there are no facts to support that Tina is an unclean person with habits that are likely to attract rodents as Tina had just moved in.

Lee could raise the defense that prior to moving in if Tina had noticed that there were mice she would have not signed the lease and agreed to move in.

However, Lee has a duty to provide any tenant a habitable space and Lee was noticed about the mice problem, which does rise to the level of a substantial habitability issue in which Tina could seek remedies.

Breach of Quiet Enjoyment

Tenants have a right to quiet enjoyment of the property meaning that they have the right to use the property free from any disturbances or interference from the landlord and those under the reach of the landlord.

Here, Tina. has possession of the apartment and has a right to enjoy her apartment without any interferences from Lee. Here, while seemingly harmless, Lee has effectively "closed" off part of the apartment from Tina's use as he has taken use of the closet as his personal storage unit. Here, Tina cannot fully use her apartment because it is being occupied by the landlord. Tina is entitled to full use of the apartment without Lee's interference.

Assignment of Lease to Dan

In a residential lease a tenant can be barred from assigning their lease expressly through contract. A tenant may still assign their lease only with the consent of the landlord.

Here, when Tina signed the contract it was expressly states that she may not assign her lease and she signed the agreement. Even after she sought consent from Lee, Tina went ahead and assigned the rest of her lease to Dan. When Dan took over the lease, Dan reported the same issues as to the mice, water heater and closet and Lee's response was that Dan was not his tenant however, Lee's responsibilities continue to Dan as he is

occupying the space and he still has a duty to provide a habitable living space to the tenant.

Lee may claim that Tina breached her duties as a tenant for not following the terms of the agreement and may proceed to take action against both Tina and Dan. Tina is ultimately a surety against Dan. Lee may sue both Tina and Dan in order to recover unpaid rents as there was 17 months of unpaid rent left on the lease.

Tina and Dan may claim that they both experienced constructive eviction as they both notified Lee of all issues related to the water heater, mice and Lee's use of the closet space. Tina and Dan have right to move out, withhold rent, fix any problems and then deduct the cost of fixing from the rent when it comes to a breach of quiet enjoyment of the property.

However, in a breach of quiet enjoyment claim a tenant may move out but it does not their responsibilities as it relates to the lease. Tina would still be responsible for the rent owed for the 17 months. Tina could sue Dan for the remaining amount of rent due.

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2)

Adverse Possession

A trespasser may acquire property of a true owner through adverse possession (AP) if they come to (1) actually possess the property, (2) possess the property in an open and notorious manner, (3) possess the property without consent of the true owner, (4) exclusively possess the property and (5) must possess the property with all elements met simultaneously for a continuous period according to a statutorily set limit.

Actual

An adverse possessor engages in actual possession when they use the property as the true owner should. With the right to possession comes the right to exclude, and if the true owner does not exclude others from their property then a court may deem they lose actual possession. Actual possession is best demonstrated by control over the property. Control is best demonstrated when the adverse possessor substantially alters or otherwise improves upon the property to suit their needs.

2000-2003

Baker's cabin was built between 2001 and 2003, and he seasonally camped on Able's property since 2000. The start of Baker's actual possession of the property is most reliably determined at the date he began to use the property to suit his needs. Since Baker was a seasonal camper, the construction of the cabin likely facilitated his goal of camping for long periods of time. Since 2001 is the year he began building the cabin, that is the earliest time Baker may have actually possessed Able's property. By constructing a building on the property, Baker also acted as a true owner would by improving an undeveloped property. Very few people buy rugged, undeveloped property unless they seek to substantially alter in some way. A court may be convinced that by simply building a structure on

good point

cutting down trees

undeveloped land, that land is substantially modified to fit a new purpose, which is human habitation.

2007- Present

Baker may have continued to actually possess Able's property into 2007-2008 because he began to live in the cabin during different times of the year and he continued to improve the property by clearing land and creating a driveway. This conduct suggests that Baker has continued to actually possess the property because he has continued to act as a true owner would by substantially altering the landscape. The facts suggest that Baker's cabin is an hour hike from the main road, and that the property is rugged. Clearing the property and creating a long driveway to reach the road must have substantially altered the property because Baker would have to clear dozens of trees and stones to make the driveway usable. Lastly, Baker began living in the Cabin full time, meaning that he asserted a stronger claim of actual possession now that he was on the property full time.

After melding the landscape for his purposes, Baker likely exercised control and actual possession from 2001 onwards.

Open and Notorious

An adverse possessor engages in open and notorious possession according to an objective standard. If a reasonable true owner of the property could identify that trespassers were present on their land, then the adverse possessor is engaging in open and notorious possession.

2000-2003

Baker began constructing a lone cabin on undeveloped property in 2000. However, no facts suggest that the true owner of the property (before Able) knew of the cabin's existence or Baker's presence on the property. Considering the fact that 500 acres is an

immense swath of land, and that a Cabin may be obscured by the rugged terrain features on the property, it may be that even a reasonably perceptive true owner could not tell if Baker was trespassing. As such, Baker may not have been engaging in open and notorious possession at the time, especially considering that his cabin was a hour hike from the main road and no one, even a true owner, would be able to locate it among the 500 acres.

2007-2008

Baker was discovered by Able in 2007 when Able bought the property. This fact may suggest that Baker's property wasn't hard to find at all, but it is just as likely that Able discovered Baker by chance. What is true though is that Baker's possession of the property was discovered in 2007, and that is the earliest year where the strongest claim of open and notorious possession may be asserted. If Baker asserts that he was aware he was well within Able's property and that he merely lied to Able, he may have a stronger claim to open and notorious possession beginning in 2007. If it is true that Baker's cabin, or smoke from the cabin was visible from the road Able took to begin his hike, then a claim for open and notorious possession is also strong because it would be more reasonable to assume the true owner could see the cabin from a distance.

Baker's most strong claim of open and notorious possession exists in 2008 when he cleared the property and built a driveway connecting his cabin to the main road. By doing this, he would reasonably be perceptible to the true owner, Able, if Able was to see that his undeveloped property had been developed while he was away. Able would be able to easily witness Baker's trespass from the main road.

2024

Carroll swiftly observed the driveway and cabin in the month after she bought the property, so it is warranted to assume these modifications to the land made Baker's possession open and notorious

Hostile

An adverse possessor's trespassory conduct is hostile when they are present on the true owner's property without consent. Under the majority Connecticut jurisdiction, the intent to trespass is not relevant however. Under the Maine jurisdiction, the adverse possessor must be on the property with the intent to trespass. Under the minority jurisdiction, the adverse possessor must have a good faith purpose for their presence on the property.

Under the Connecticut jurisdiction, Baker's intent to trespass is irrelevant to satisfying the hostile possession element. As the facts suggest, Baker was trespassing as early as 2000 and is still trespassing to this day. As such, Baker has been in hostile possession for 24 years under the majority jurisdiction.

Under the Maine Jurisdiction, Baker's intent to trespass does matter. No facts suggest however that Baker intended to trespass on Able's property. The facts suggest instead that Baker's intent was to trespass on National Park property. As such, Baker has not been in hostile possession at all under the Maine Jurisdiction.

Under the minority jurisdiction, Baker's intent to trespass must be based on the good faith that he rightfully belonged on the property. While Baker's trespass on National Park property does not inform on his intent to exist on Ables, no circumstantial facts suggest Baker believed he had a right to be on Ables property and thus is not in hostile possession under the minority jurisdiction.

Exclusive

An adverse possessor must act as a true owner and exclude others from the property they wish to adversely possess, this includes other trespassers and the true owner.

Baker have been in exclusive possession from the inception of his trespass on Able's property because no one else was present on the property. If it is true that Baker lied to Able by saying that the cabin was located on National Park Property, then he sought to exclude the true owner by disguising his trespass so that he may not be asked to leave himself.

Continuous

For adverse possession to result in a transfer of land from a true owner to a adverse possessor, all the above elements must be met simultaneously for the duration of a statutorily defined time.

The jurisdictional limit to assert ownership based on adverse possession is 20 years and Baker must have met all elements of adverse possession to assert ownership. Most clearly, Baker under the Connecticut ruling has been in hostile possession for the duration of his trespass. Baker has also likely been actually possessing the property since 2001 since that is when he began to construct his cabin and act as a true owner. Baker also has been exclusively possessing the property as no other trespassers or true owners have made an attempt to also develop the property alongside him. Baker however, may not have been open and notorious in his possession for the entire 20 year period, and without that element met, he does not have an adequate claim for adverse possession.

Tacking

When property is transferred from one true owner to another, the current owner inherits all aspects of the assumed property, including adverse possessors.

Able bought the property from an unnamed owner in 2007, and by 2007, Baker had been on the property in some manner or another for 7 years. Carroll bought the property from Able in 2024 and discovered that Baker was on the property, and had been for 24 years. As such, Carroll likely has inherited a property that has had a continuously present adverse

possessor for a period greater than the statutory limit. Though Baker's claim of open and notorious possession is shakey, he may have adversely possessed the property as early as 2001.

Color of Title

If Baker has adversely possessed the property since 2001, he has gained ownership of the property. As such, a color of title issue has arisen when it comes to Carroll's rights.

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3)

GIFTING OF PROPERTY

In order for the gifting of property to be recognized, there must be a donative intent from the person providing the property, delivery in some way of the gift, and acceptance by the one intended to benefit.

Claims to Blackacre by Alice

Donative Intent

To show that a gift was intended, the actions of the one granting the gift are examined (which may include whether the donor took steps to transfer property to another such as by a deed).

Here, Oliver is noted to have executed a valid deed conveying Blackacre to Alice after deciding to give the parcel to his daughter in connection with being advised that he would only have five years to live. Oliver is further indicated to have taken steps such as having his signature notarized. A person intending to legally bind an action or ensure that it is deemed legitimate would most likely sign for it, and further supports that Oliver did intend to have the deed conveying Blackacre to Alice as legitimate.

Thus, Oliver did demonstrate donative intent when he took such steps to ensure the deed was valid.

what about not telling her until later to open, did he have the present donative intent when he gave her the envelope?

Delivery

A gift must have delivery to the recipient in order to be a gift. The delivery can be actual (such as the gifting of a watch), constructive (like gifting a set of keys to a locked house), or symbolic (which may entail the delivery of a title or deed). Delivery may also be conducted by a third-party agent authorized by the grantor to do so.

Oliver is noted to have handed Alice a sealed envelope containing the deed after having it executed. Although Oliver told Alice not to open it, wrote "NO PEEKING!" on it, and did not inform her of the contents, there was nonetheless symbolic delivery by way of the deed. *he instructed her to not open, i.e., to not take delivery?*

Therefore, Oliver did have delivery of the gift to Alice.

Acceptance

The acceptance of a gift is presumed, absent refusal or if it is detrimental to the recipient's own interests.

Although Alice is noted to have been unaware of the deed's existence and had briefly lost the envelope, there is no indication that she had refused to keep the envelope upon the delivery. As Oliver did deliver a legitimate deed which Alice did not reject, it can be presumed that she had accepted the unknown gift provided to her by Oliver.

However, there was no acceptance of the deed itself prior to Oliver recanting his donative intent. Furthermore, Alice is noted to have never received the letter providing her with permission to open the envelope and in fact recorded the deed without telling Oliver. While Alice's acceptance can be presumed based on her receipt of the envelope, she did not have knowledge of the actual deed.

Claims to Blackacre by Cory

Donative Intent

See supra.

Here, Cory is noted to have been left Oliver's entire estate with a will, following the latter's death. Assuming the will was fully and legitimately executed in order to leave Cory the entire estate, this would support Oliver's donative intent to leave the property to Cody.

Furthermore, Cory may argue that Oliver deciding to tell Alice that the deed was "just a funny drawing" shows that Oliver recanted his donative intent to Alice, and would have issued a new deed if he had truly wished to gift the property after Alice advised of having lost the envelope. Cory may further argue that Oliver not wanting to give away Blackacre after learning about his misdiagnosis eliminated Oliver's donative intent. However, Oliver could have taken greater steps to ensure that his recanting of donative intent was documented, such as by obtaining information relative to public records on the property from the recorder.

Delivery

See supra.

Cory may argue that Oliver ultimately did not intend to deliver the gift, as no new deed was issued after Alice advised of having lost the envelope. He may argue that Oliver took no further steps to ensure delivery to Alice, such as providing another deed. There is no indication that Oliver provided additional delivery by another method (such as gifting Alice housekeys), and as such Cory may challenge the delivery component.

However, this is unlikely to prevail as the original delivery did provide Alice with the deed which she had in her possession since the time of Oliver's initial delivery.

Acceptance

See supra.

There are no facts to indicate that Cory did not accept Blackacre or would have found it detrimental to his own interests. Additionally, Cory may argue that as Alice found the envelop again after Oliver did not want to give away Blackacre, which would invalidate Alice's claim. Alice is noted to have recorded the deed without telling Oliver, despite Oliver deciding not to give away Blackacre by the time the deed was recorded. As such, Cory may seek to contest Alice's acceptance as illegitimate due to Oliver not having knowledge.

However, Alice's recording of the deed did take place prior to Oliver dying and leaving his entire estate to Cory. As such, Alice would have had actual acceptance of the property at the time of Oliver's death, as this was documented in writing by public record.

CONCLUSION

Alice would take ownership of Blackacre as she was gifted this by Oliver, who had donative intent at the time of delivery and whose valid deed to Alice was recorded in writing. Cory is unlikely to prevail in claim of ownership of Blackacre.

END OF EXAM

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Good start but more
facts could be used to
support the analysis