

SAN LUIS OBISPO COLLEGE OF LAW

Real Property

Midterm Examination

Fall 2023

Prof. C. Lewi

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 Christopher C. Lewi
SLO College of Law
Midterm, Fall 2023

Question 1

Freddy was walking down the street three weeks ago and saw a shiny bracelet laying on top of a fire hydrant located on the sidewalk about one (1) foot from the curb of the street. (Vehicles routinely park on the street nearby the hydrant.) Freddy picked up the bracelet and took it home with him.

The next day, Freddy's brother urges him to get the bracelet valued to and Freddy's astonishment the jeweler – the best in town with an excellent reputation -- tells Freddy that this is *THE* "Heavenly Bracelet" from the crown jewel collection of the Raja of Rajastan, that while the bracelet is a priceless piece of history, the value of its stones and gold is \$150,000 USD. "Wow," utters Freddy. The jeweler also repeats some credible sounding but unfounded information that the Raja may have sold the bracelet to an unknown buyer about a year ago and that such buyer wishes to remain anonymous.

One week later, Freddy sells the bracelet to Bert for \$150,000 cash and Bert takes possession. Bert asks no questions and Freddy provides no answers. Freddy provides a simple written receipt for the money paid.

A week after that, agents for the Raja contact Bert (Freddy had posted his incredible story on Facebook, including the sale to Bert) and demand the bracelet back; the Raja's agents offer no money and state none will be paid other than a very modest fee for keeping the bracelet safe.

The next day:

- (1) Bert sues the Raja for a declaration as to who is the proper owner of the bracelet.
- (2) Bert also sues Freddy to reclaim the \$150,000 paid. The jurisdiction follows the common law. Who prevails and why? Make sure to discuss all arguments and your evaluation of those arguments in your answer.

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Question 2

Laura owns Blackacre, a single-family residence on a 5,000 square foot lot in a residential neighborhood of similar homes and lots.

Effective January 01, 2010, Laura enters into a 1-year lease with Teresa (01/01/2010 to 12/31/2010) where Teresa, as tenant, will pay Laura \$2,000/month, payable on the 1st each month. The lease is silent as to what happens if neither Teresa nor Laura renew the lease prior to the expiration of the term.

Everything is fine during the year of 2010; no problems with the building and Teresa timely pays her rent.

On January 01, 2011, Teresa does not move out, stops paying her rent, and stays at the house for the next 10 years without paying rent (01/01/2011 to 12/31/2021.)

On January 01, 2013, Laura had an accident at the Rose Parade and suffered a brain injury which left her incompetent to attend to her affairs.

During the 10-year period from 2011 to 2021, there are problems with the residence – the doors do not close and lock, the roof begins to leak, the heater does not always work right, the electrical is always blowing a fuse, and there is sporadic hot water. Teresa complains but Laura does nothing to fix the problems.

On January 02, **2022** (January 01, 2022, is a judicial holiday), after giving all proper notices, Laura's guardian sues to evict Teresa from the residence for failure to pay rent. Laura timely files her answer to the lawsuit and files a counter-suit.

The jurisdiction follows the common law and the majority trends. The applicable statute of limitations for an action for rent is 4 years. The applicable statute of limitations for an action to recover real property is 8 years; the applicable disability statute adds 4 years to that 8 year period. (Assume no COVID hiatus.)

Who prevails? Laura or Teresa? Why? What is Teresa's counter-suit for? What result(s) do they achieve? Remember to discuss all arguments and counter-arguments in your answer and "do the numbers."

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Question 3

Music star King Galahad has a certified platinum hit song called “Party All Over Again” which he wrote and produced in 2010 when he was 27 years old.

He died the next year in the recording studio from a tragic auto-tuner explosion while working on what he hoped to be his next big hit. The King died intestate.

In 2023, Intelico, Inc., a rising software and data company, began using a part of “Party All Over Again” in its public marketing campaign – print, internet, streaming and TV, and social media – which reached millions of people around the world.

Before it began using “Party All Over Again,” Intelico’s agent contacted King Galahad’s widow, who granted permission for the use of the song in exchange for a fee paid to the widow.

However, now, King Galahad’s long-time friend and musical partner Duke Launcelot asserts that he, the Duke, owns the rights to “Party All Over Again” because, says the Duke, King Galahad gave them to him in the studio as he, the King, lay dying. There is no written conveyance from the King to the Duke.

The Duke has now filed a lawsuit against Intelico for damages and injunctive relief.

The subject jurisdiction will award all the decedent’s assets to the decedent’s surviving spouse.

Discuss: (1) The Duke’s claims against Intelico; and (2) Intelico’s defenses to the Duke’s claims. Make sure to include in your answer both the strengths and weaknesses of these positions and your conclusion as to whom should prevail.

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ANSWER- Question 1

Question 1 Issue Outline

(Finders / Misplaced Property / Abandonment;

Basic Indemnity)

Bert vs. Raja – Raja Prevails:

Bert, as the buyer from Freddy, only has title as good as Freddy's. Bert, presumably, is contending that the bracelet was "lost" and that Freddy found it and as "finder" Freddy has superior title to the bracelet over all but those with superior title to him and that Bert obtained this title when he purchased the bracelet from Freddy.

But, here, unless Bert (or Freddy) can produce admissible, credible evidence that the Raja is not the true owner, *e.g.*, that the rumors are true that the Raja in fact did sell the bracelet to an unknown 3rd party prior to Freddy finding the bracelet, the Raja should prevail as the true owner. Bert (and Freddy), of course, can explore this line of inquiry during the litigation but if they cannot develop sufficient evidence to prove-it up, Bert will lose to the Raja.

Bert may also argue that he is a *bona fide purchaser* – one who paid value for the bracelet without notice (actual, constructive, or inquiry) – and as such, his title to the bracelet is clean as against the world, including the Raja. Assuming that BFP doctrine applies to personal property (it may in a given jdx) and assuming that BFP doctrine will supercede finder's doctrine (it does not – the true owner's rights are paramount), there are problems with Bert's argument. (1) Did Bert pay fair market value (FMV?) Probably not; he paid the stone and gold price but the bracelet is actually "priceless"; nor was the bracelet exposed to the open market (we have no facts showing that to be the case) and thus the "market" part of FMV is missing. (2) Did Bert have notice? Probably; his "don't ask, don't tell" approach with Freddy does not insulate Bert; the bracelet was a famous, priceless artifact and while we have no evidence that Bert had actual notice, there are good arguments that he did have constructive notice from publicly available information and at the least he was on inquiry notice that he may need to delve more deeply into the provenance of the bracelet and Freddy's title to it – Freddy, we presume is "just a guy" who now has a bracelet worth \$150K that he is willing to sell quickly and with no questions. Seems fishy enough to put Bert on "notice" that title to the bracelet may have issues. Bert is not a BFP.

Freddy may also argue that the bracelet was *abandoned* (intent to abandon and an action consistent with that intent.) If abandoned by the prior owner (whether the Raja or any other person), then the first person to take possession is the new “owner” for all purposes, i.e., Freddy, who could then pass clean title to Bert as purchaser. While there is some circumstantial evidence of abandonment – one does not “forget” a priceless artifact on top of a fire hydrant and one does not typically have such a thing fall out of one’s pocket and thus a reasonable person could conclude it was abandoned – the better view is that there is no credible basis to believe the priceless artifact was simply left behind to be claimed by whomever; there is nothing in writing and the fact that the Raja’s agents surfaced within 2 weeks to claim the bracelet back is not consistent with it being abandoned. Bert (and Freddy) will not prevail on an abandonment claim.

Affirmatively, the Raja contends (1) he is the true owner (and we assume here for sake of analysis that the “agents” of the Raja are legitimate) and thus his claim to the bracelet is superior as against Freddy and thus against Freddy’s successor, Bert. The Raja can also argue, alternatively (2) that the bracelet was not “lost”, but “misplaced” [found at waist height on top of the fire hydrant, where it was left by accident by one of the Raja’s agents while getting into a car] and thus Freddy never had any title at all to the bracelet but simply held it in trust and safekeeping for the Raja (of whom Freddy was very soon aware after visiting the jeweler.) Either one of these arguments is a winner for the Raja, assuming of course that he did not actually sell the bracelet to the anonymous 3rd party prior.

Bert v. Freddy for Indemnity / Breach of Contract – Bert Prevails and Gets his \$150,000 back:

Assuming that Bert is unsuccessful in proving the Raja does not have superior title to the bracelet and that Bert has to give it back to the Raja, Bert is out the \$150,000 purchase price paid to Freddy.

Bert can sue Freddy for indemnity (and quite possibly breach of contract) for selling him something for which Freddy did not have clean title.

Freddy will argue the common law maxim of *caveat emptor* (buyer beware) and that he, Freddy, made no warranties of title to Bert, either orally, or in writing (there is only a simple receipt for the money paid), a risk Bert took in asking no questions at the time of the sale. Freddy will also argue that he, Freddy, had a good faith belief that he was the proper “owner” of the bracelet under the doctrine of finders and is thus not liable to Bert because he, Freddy, did nothing wrong.

Bert can counter this argument to some degree because Freddy knew from the jeweler the provenance of the bracelet, its significance, and who the Raja was, and did nothing to contact the Raja prior to his sale to Bert.

In counter, Freddy will point out, again, *caveat emptor*, and that the bracelet was of such public importance that Bert knew or should have known these things himself and that Bert was careful to actually make no inquiry thereby assuming the risk of loss.

On balance, Bert should win as against Freddy because any other result will unjustly enrich Freddy, who is not an “innocent” in this and to whom equity and justice does not owe a windfall.

The bracelet is back home with the Raja, Freddy gets a small safe-keeper’s fee, and Bert gets his money back.

The End.

Question 2 Issue Outline

(Landlord/ Tenant and Adverse Possession)

Teresa v. Laura for Adverse Possession – Laura Prevails:

This is a fixed term lease for 1 year, with definite start and end dates. Under the common law, no notice is required and tenant is required to vacate the premises at the end of the term. A tenant’s failure to do so means that they are now trespassing on the property, absent agreement to the contrary.

There is an argument that such a so called “holdover tenant” now becomes month-to-month, all other terms of the lease still applicable, but we do not have enough information to conclude this is what happened here and Teresa is likely best determined to be a trespasser from January 01, 2011.

If Teresa is a trespasser, then after some amount of time, Teresa will argue in her counter-suit that she has perfected a claim to title to the property by adverse possession. The elements for AP may be met here: (1) open and notorious possession of the property – Teresa acted at all times as if she were the owner; (2) actual and exclusive – Teresa really did live there on a discrete 5,000 sq/ft urban lot and Laura never did possess the property, (3) continuous for the 8 year statutory period (Jan 01 2011 to December 31, 2019); and (4) hostile to the true owner, that is without the permission of Laura. (We are told this is a common law jdx, so no requirement to pay taxes.)

Laura – or more accurately her guardian – will argue that Teresa has not met all the elements, namely that Teresa, as a holdover tenant, was not “hostile” to Laura, that Teresa was there with her permission as her “tenant” (hence the action for back rent, which can only be brought against a “tenant”) and that because Laura was declared incompetent in 2013, that adds 4 years to the 8 year statute of limitations, and that 12 years from January 01, 2011, has not yet run as of January 02, 2022, date of the lawsuit.

Addressing Laura’s “**disability**” argument first, that will not be successful because the alleged adverse possession began at a time *before* Laura’s injury, and thus the injury and the disability statute is irrelevant; the applicable statute of limitations is 8 years, which Teresa has satisfied.

However, Laura’s **hostility** argument may have better luck. Assuming we believe that she always considered Teresa a “tenant” even though there was no rent paid (perhaps understandable from Jan 01, 2013, when she suffered her brain injury), then Teresa was there with Laura’s permission and was not “hostile” to Laura for the requisite 8 years (or ever). Moreover, Teresa complained to Laura about problems with the premises, and these are not the acts of a trespasser but the acts of tenant there with the permission of the owner.

On balance, in a close call, Laura should prevail and remain the record title holder to Blackacre.

Laura v. Teresa for Back Rent and Eviction – Teresa wins under the IWH but if She Does not Timely Pay the Rent Owning, She will be Evicted.

Laura’s guardian – late to the party – served a proper notice to Teresa that she owes \$96,000 in back rent (the last 4 years at \$24,000/yr.) A lot of money.

Assuming that Teresa is a “tenant” still – and the claim for rent is essentially a concession by Laura that Teresa is a tenant [only tenants owe back rent], then she must pay rent as part of her essential obligations as tenant.

However, because this is a residential property, and we are told this is a majority view jdx, the implied warranty of habitability (IWH) will apply and impose on Laura (and her guardian) the obligations to maintain minimal housing standards for the premises – essentially that it complies with the minimal life safety requirements under the building code. If it does not, each habitability problem is evaluated by the Court and assigned a value as a credit against the rent claimed by the landlord.

There are such problems: the doors do not close and lock; the roof begins to leak; the heater does not always work right; the electrical is always blowing a fuse, and there is sporadic hot water. Teresa has complained but Laura does nothing to fix the problems. Each of these will be assigned a monthly offset against the \$2,000/month rent. Assuming all the problems with the premises amount to a credit \$1,000/mo for the last 4 years, this reduces the amount of rent owed by Teresa to Laura from \$96,000 to \$48,000.

Under the IWH and the leading case of *Green v Superior Court*, Teresa will be given some amount of time to pay the \$48,000 and Laura will be ordered to fix the problems. Let's assume this is 90 days. If Teresa timely pays the \$48,000 back rent; Teresa "wins" and will not be evicted. However, if Laura timely fixes and Teresa does not timely pay the rent owed, Laura can then evict Teresa.

Because \$48,000 is a lot of money in a lump sum, and assuming that Laura's guardian makes the fixes (not an automatic but it would be in line with L's self-interest to fix the property and make it fully compliant as a rental property or to sell), the likely scenario is that Teresa will not be able to make the payment timely and she will be evicted by Laura.

Question 3 Issue Outline (Copyright and Gift)

The Duke is presumably contending that Intelico's use of the song without the Duke's permission is a copyright infringement. The Duke wants Intelico to stop using the song – to "cease and desist" – and damages for the past unauthorized use of the song.

Intelico's defense is that it is not infringing on the copyright because it obtained and paid for a license from the proper owner of the song – the widow – and that the Duke has no rights to the song.

Because the Duke will have a hard time proving a valid gift, Intelico most likely prevails.

Copyright:

- Original, Fixed, Work of authorship

The song qualifies: The facts are clear that the King wrote and produced the song and that it was a huge hit. Was it "original"? yes, almost certainly; a creative work, like a song, almost certainly meets the minimal standard of a "modicum" of originality; it is not mere recitation of facts and we have no evidence of any plagiarism. By definition, it was a work of authorship -- the King wrote and produced it. And by recording it, it is "fixed." The song is copyrighted as of 2010 when it was created.

Death of the King – Public Domain?:

Copyright protections last for 70 years beyond the death of the author. The King died in 2011; the use by Intelico was in 2023, 12 years after the King's death and within the copyright period. The song has not entered the public domain and the copyright protection still exists.

Who Owns the Copyright? – Valid Gift to the Duke or Does it Pass to Wife?:

Copyright – like all IP – is a property right that can be transferred from the original holder to any number of people. Here we have competing claims of ownership. The King’s widow says the song is hers, having passed to her 100% by the jdx’ intestacy laws following the King’s death. The Duke says the song is his, having been given to him *causa mortis* just prior to the King’s death.

If the wife is correct, then Intelico’s use of the song is not an infringement of copyright because Intelico obtained and paid for a license to use the song from the proper owner – the widow.

However, if the Duke proves up a valid gift prior to the King’s death, then the song was not part of the King’s estate at the time of death and did not transfer to widow and thus, widow did not own any rights and could not have issued a valid license to Intelico to use the song. Therefore, if the Duke proves up the gift, Intelico will be infringing on the copyright and liable to an action for damages and injunctive relief. (The copyright infringement defense of “fair use” should not apply here – the use of the song was by a for-profit commercial advertising campaign, even though Intelico only used a part of the song – Intelico is not advancing public knowledge or the state of the art by using the song the way it is.)

Was There a Valid Gift to the Duke? – Probably Not Provable:

- **Donative Intent**
- **Delivery**
- **Acceptance**
- **And, if gift *causa mortis*, given in anticipation of imminent death**
 - **Revocable if donor does not die.**
- **Present Donative Intent – Not Clear**
 - If no provable donative intent, then no gift to the Duke
 - Nothing in writing
 - But, perhaps understandable given the death was caused by sudden accident
 - Maybe there are witnesses? Usually, there are more than just two persons present at a recording session.
 - Maybe there is an audio recording or even a video (this did happen in a recording studio and everyone has cell phones now.)
 - Witnesses and/or recording(s) would be terrific evidence but given that 12 years has passed and there is no mention of this in the facts, I am presuming that there is no such evidence.

- Why? Because a platinum song will pay royalties, every year, and if the Duke contended the song was his, better assumption is that he would have surfaced much sooner with concrete evidence of the gift.
- Was the Duke a logical object of the King's bounty?
 - Maybe; long-time friends and musical partners
 - But does it make sense to transfer the rights to this huge asset outside of the King's marriage?
 - Maybe; we would need to explore the marriage and have much better details of the nature of the King's relationship to the Duke
 - Conclude: probably cannot prove donative intent.
- Assuming the Duke proves donative intent to make a gift of the song to the Duke, then the analysis can continue as to gift re delivery and acceptance
- **Delivery:**
 - Delivery can be actual or symbolic
 - Here, because one cannot deliver an actual song, delivery must be symbolic
 - Is it enough for the King to simply say "I give you this song"?
 - Under the circumstances, probably Yes.
 - Did the King "feel the wrenching of transfer?"
 - Song – IP – is "in the ether" and at best the rights to the song could be transferred in writing.
 - Death bed; sudden and unexpected; no time to prepare anything in writing
 - Who does the trier of fact believe?
 - Again, while easier to prove than donative intent, delivery will be hard to prove too and another real fail point for the Duke.

Assuming for sake of analysis donative intent and delivery are in favor of a gift – which we do not here – we move on to . . .

- **Acceptance (less analysis here)**

- o Presumed acceptance if of value – the song is platinum and being used for a high priced, international marketing campaign. It is valuable and we know the Duke wants it because he filed suit.
- o Imminent death?
 - o Yes, the facts seem to establish that but does not really matter here because the difference between a gift *inter vivos* and and gift *causa mortis* is that an inter vivos gift is irrevocable (that is the whole point, really) while a gift causa mortis is revocable if the donor survives.
 - o Perhaps, the Duke could argue that this was a gift causa mortis and the rules of proof for a valid gift should be relaxed given that the gift was made on the spur of an emergency but that is not part of the applicable rule re GCM. See *Newman v. Bost*

CONCLUSION: the King is dead, so we cannot ask him what he intended. The Duke is a biased witness and his evidence will be suspect. There is nothing in writing and unless there is a conclusive audio-recording or video, the facts and circumstances are too tortured to conclude a present gift was made to the Duke; widow owns the copyright; issued a valid license to Intelico; no infringement. The Duke loses.

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1)

(1) Bert's Request for Declaratory Relief

good The Law of Finders relates to items of personal property that find their way out of the hands of the original (or true) owner. Freddy found the "heavenly bracelet," from the crown jewel collection of the Raja of Rajasthan. The bracelet was found laying on top of a fire hydrant located on the sidewalk about one foot from the curb of the street. The rights and limitations of a finder (and subsequent purchaser) depend on whether the item was abandoned, lost, or mislaid.

Abandoned Property refers to property that is left by the true owner, who intends to make a complete and instant divestment of their property interest. An individual who encounters abandoned property can usually reasonably easily understand that it was abandoned. A vacuum cleaner on the side of the road with a "free" sign is an example of abandoned property. Because the owner makes a present and complete divestment, leaving it out on the road, the vacuum is available for anyone to claim complete ownership, and the former owner has no right to reclaim after it's been picked up. ✓

good Freddy, upon finding the bracelet, was encouraged to take it to be appraised, and discovered that it was from the Raja's crown jewel collection. Freddy learned that it was worth \$150,000, leading to an argument that it was likely not abandoned. Freddy also learned that the Raja may have sold the bracelet to an unknown buyer, who wished to remain nameless. Due to the history of the bracelet, and its value, **it cannot be reasonably inferred to be abandoned.** ✓

Lost Property Refers to items of property that are found open in public, in a place the true owner likely did not leave their knowingly or intentionally (e.g. it fell out of their pocket). Because a true owner of lost property is likely unable to return to the place that

they left it (because they don't know where they left it), the probability of them being reunited with their property (paired with their carelessness in losing it), renders it permissible that a finder may retain a possessor interest, and has rights superior to all except the true owner.

Oh
Yes!!!

Here, Freddy found the bracelet laying on top of a fire hydrant. Due to the unique shape of fire hydrants (narrow, conical, pointed top), it is unlikely that one accidentally put it there. It could be inferred that one would have to *set* it there, lending to the argument that the true owner may have a recollection of where it was placed, and may return to find it. If the bracelet had been found on the curb or on the street, it may qualify as lost. Because it is more likely that the bracelet was placed there, **the bracelet will likely not fit the bill as lost property.**

Mislaid Property. Refers to property that was set somewhere by the true owner and left. This is commonly seen in businesses such as bars, where an individual set their wallet on a table, and forgot to pick it up when they left. This kind of property is *mislaid* and an individual who finds the property is not immediately entitled to ownership. When mislaid property is found in a bar or other establishment, it *must* be given to the vendor, or keeper of the establishment, until a statutory period lapses, ripening the finder's interest into possessory ownership.

Here, although the bracelet was found outside, there is an argument to be made that it was mislaid. What could have given rise to the Raja (or the anonymous purchaser) to set the bracelet down on a fire hydrant? Conversely, as mentioned above, it is unlikely that the bracelet could have accidentally made its way on top of the fire hydrant. It is **most likely the court will find the bracelet was mislaid.**

Duty to seek out true owner. Those who find mislaid property, or establishment owners whose patrons turned in a mislaid item have a duty to attempt to find the true owner

under common law. Although there was no one for Freddy to turn the bracelet into because he was on the street, he has the duty to make reasonable efforts to locate the true owner. Freddy is required to serve as almost an escrow holder or trustee of the bracelet pending either reuniting the true owner with the property, or a period of time set forth by law establishes that the finder has a possessory interest in the property. Freddy knew that Raja was the an original true owner, and he was also informed that it may have been sold to an anonymous purchaser. Freddy failed, however, to take any steps to even attempt to contact the Raja (or his people), nor are there any facts to suggest that he put out flyers or advertisements seeking out an individual who lost a valuable bracelet. Freddy may claim that an advertisement might cause individuals to lie, and assert that they lost a valuable bracelet when they did not. However, if there was an anonymous purchaser, they could likely prove ownership by way of a receipt from the Raja, photos of the bracelet in their possession, or at least correspondence to or from Raja regarding the bracelet.

Good

Bert's rights. Bert purchased the bracelet from Freddy for \$150,000. Bert did not ask any questions, and Freddy did not share how he came to have the bracelet. Due the the valuable, unique, and royal nature of the bracelet, a diligent purchaser should have vetted the purchase against thieves, or found some way to ensure that Freddy had the right to sell the bracelet to him. Even though Freddy wrote up a receipt for Bert, the receipt itself will not grant complete ownership to Bert.

True

Raja's rights. It is still undetermined whether Raja sold the property to an anonymous individual. *If* Raja did in fact sell the property, he would no longer be the true owner, and would have no right to reclaim the property from Bert. *If* there is an anonymous purchaser, they have exclusive title to the bracelet, and no other individual has a right to claim it on his behalf of as their own. We will assume that Raja did not sell the bracelet, and it was in his possession prior to being left on the hydrant. Raja, under these

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2)

Is Teresa a holdover tenant, adversely possessing or does she have an implied periodic tenancy after the lease expiration?

A holdover tenant is one that stays beyond the expiration of a fixed term lease.

Here, Tenant had a fixed term lease with Landlord because the language of the contract indicates a fixed period of time for Tenant to be in possession of the land. Because Tenant failed to pay rent after the fixed term lease expired, Tenant will argue that Tenant is a holdover and in possession of the property without the permission of the Landlord, in order to claim BA under an adverse possession claim. Landlord will argue that Tenant was a good tenant and always timely paid and thus Landlord presumed Tenant wanted to continue leasing BA because Tenant remained and kept notifying Landlord of habitability issues with BA. There would be no reason to notify landlord of the problems with heating and electrical and other code issues if Tenant was not intending to continue the lease under a periodic tenancy.

Tenant has option to file a counter suit for adverse possession or for an implied periodic tenancy with an breach of the implied warranty of habitability counterclaim.

Counterclaim: Holdover Tenant in Adverse Possession

Adverse possession rewards those who wrongfully enter and possess land for a continuous amount of statutory time. Adverse possession must be continuous, open and notorious, actual, and hostile.

Continuous

Continuous means for a statutory period and used the way a typical owner would occupy the property, uninterrupted.

Here, Tenant stayed at BA for 10 years without paying rent. Tenant will argue that she is a holdover tenant beginning on January 01, 2011 to 12/31/2021. The statutory period for adverse possession is 8 years. Thus, Tenant meets the criteria for continuous occupation of BA for the statutory time.

Open and Notorious

Open and notorious use of the property must be visible in a way that puts the owner on notice of the adverse possession.

Here, Tenant is living in a single family home. The facts indicate Tenant complained about heating and electrical issues, so presumable there would be lights on at nighttime and other indications of a person living there, perhaps a vehicle in the driveway or the lawn maintenance. Thus, this would put the owner on notice as to Tenant's occupation.

Actual

Actual possession means actual physical possession of the property, not constructive or symbolic.

Here, Tenant was physically living at the residence. This is known because the facts indicate habitability problems consistent with physical occupation of the property. Thus Tenant physically, actually occupied BA.

Hostile

Hostile means without the permission of the owner.

Here, Tenant will argue that because she dis not pay rent and did not sign a new lease agreement, that she does not have permission to possess the property and is there without permission. Thus, Tenant will argue her living at BA was hostile, without owner's permission.

Disability

Disability tolls the clock on adverse possession claims if the disability was present at the time of adverse possession.

Landlord's guardian will argue that Landlord's brain injury, sustained at the parade in 2013, caused landlord to become mentally incompetent and disabled because she was deemed incompetent to attend to her affairs. The statute of limitations for adverse possession is then extended by four years, in addition to the eight years. However, the disability must be present at the moment the adverse possession began. Under these facts, the start of T's adverse possession is the moment she breached her duty to pay rent--in 2011. Landlord became disabled after 2011, (in 2013) thus the disability statute does not apply.



CONCLUSION

Tenant may be able to counterclaim that she is a holdover tenant in adverse possession because she meets all of the elements for adverse possession. However, it is more likely that a court will determine Tenant is in a periodic tenancy because Tenant complained to Landlord about habitability issues during the alleged time of adverse possession (2011-2021).



Counterclaim: Implied Periodic Tenancy with Breach of Implied Warranty of Habitability

Implied Warranty of Habitability

Every residential lease has the implied warranty of habitability. The landlord has a duty to provide a residence that is suitable for basic human habitation. It requires the dwelling meet basic residential building code standards for things like heat, hot water, electricity, locking doors and windows.

Here, Tenant complained to Landlord about problems with the leaking roof and electrical blowing fuses. These types of issues require skilled labor to fix and are not something that Tenant is expected to maintain. Similarly, problems with the heating and doors not closing fall under a Landlord breach of the implied warranty of habitability. In this eviction action, Tenant may claim a breach of habitability because Tenant notified Landlord but Landlord did not timely fix or fix whatsoever. If Tenant made repairs herself, she may deduct the cost of those repairs against the amount of back rent owed.

If Landlord want to keep this property and not lose it to adverse possession, Landlord will argue that Tenant began a periodic tenancy beginning the first month of the failure to pay rent and then argue that Landlord presumed the nonpayment of rent must have been due to Tenant fixing the habitability issues herself.

If the court rules in favor of holdover and adverse possession then, Tenant can claim BA and file to quiet title, but will not be able to market title.

If the court rules Tenant was in an implied periodic tenancy, then Tenant can deduct any costs expended to fix the habitability repairs from the cost of back rent owed. In this case, \$2,000 per month = \$24,000 per year for the 10 years = \$240,000, total.

END OF EXAM

Ok; but what about the 4 yr at 1/2?

This is good + you spot the less obvious issues.

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COPYRIGHT. Copyright surrounds the law of creation, and awards the ingenuity of creative individuals upon the appropriate legal preservation of their works. Copyright requires an original work of authorship that is fixed. The constitution sets established that congress has the power to reward ingenuity, and enforce and protect the rights of creators of copyrighted materials, Those who have established or ripened their work to a copyrighted status, are entitled to exclusive use of the work for their lifetime plus seventy years (with the exception of fair use of the work, discussed below).

Original. Music Star King Galahad ("KG") wrote and produced "Party All Over Again" in 2010, at 27 years old. Because KG was the author of the song, it is his original work.

Work of Authorship requires novelty and originality. Facts or compilations of facts do not qualify as works of authorship as they have no modicum of creativity (e.g. a phone book full of numbers is void of creativity as it is a compilation of facts. A phone book is not entitled to copyright protection). Here, because KG wrote a song, a creative and original work, his platinum hit song meets the burden of the work of authorship requirement.

Fixation. Works cannot remain alone in the mind and still be protected under copyright. Works must be taken down in a physical medium somehow. It can safely be inferred that KG wrote the lyrics down for the song, fixating it, and ripening it into a copyrighted work. If that were not enough, he also produced records, which would also meet this burden and would additionally protect the way the instruments were played with the lyrics he wrote down.

Copyright Conclusion. KG's hit song has ripened into a copyrighted work.

Assignability. Copyrighted works are assignable, meaning they may be passed down by will or contract. Here, KG died intestate, and his estate passed to his widow. By the probate of KG's estate, his widow is the new copyright holder and is entitled to exclusive use, and proceeds of any profits.



License. Copyrighted materials may be granted to others. License holders are entitled to use of the work of authorship under the terms of the license. There are many kinds of licenses. Here, Intelico was granted permission by KG's widow to use the song in exchange for a fee paid to KG's widow. So long as Intelico continues to pay KG's widow under the terms of the license agreement, they may continue to use the song.

Fair Use. Fair use is a defense that may be asserted when works of authorship were used in a way that does not offend our public policies. Use for educational purposes is generally permitted, whereas use for profit leans more towards copyright infringement. Changing the nature of the song, or only using a portion of the song may qualify as fair use, but we have no facts to suggest fair use is occurring here, because Intelico is claiming a license, and Duke Lancelot ("DL"), KG's longtime friend is claiming assignment (discussed further below).

DL's Claim. DL claims that KG, at this deathbed, gave the rights to "Party All Over Again" to DL. There is no written conveyance from KG to DL.

Gift Causa Mortis. Individuals wishing to give their personal property away at their deathbed must intend to make a present and complete divestment of their interest at the time, they must deliver the gift to the grantee, and the gift must be accepted.

Complete divestment of interest. Based on DL's story, it is likely that KG intended to make a present and complete divestment of his interest in his song. By telling him that he

wished to do so (if KG did actually say so), his intent was expressed, and this element is met.

Delivery may be actual, symbolic, or constructive, but delivery must be made. Because copyrights are not something applied for or granted by an authority, there is likely no papertrail other than the ways the song was fixated (in writing or recording). Constructive delivery refers to the giving of a key to a house, because you cannot possible hand over a house. Symbolic delivery refers to delivery of some items that symbolizes delivery of the actual gift. If the platinum hit song was certified, it is possible that handing DL the certification or the gold record may suffice to establish constructive delivery.

Acceptance is presumed, and can be established by DL's bringing a lawsuit against Intelico.

Reliability? Testamentary Issues. Here, there are no facts to suggest that DL and KG were in the presence of anyone else when KG presumably gifted him an assignment on the copyright. Even a note written by KG expressing his intent to do so may be scrutinized as he is likely susceptible to influence on his deathbed, and there were no witnesses to speak of KG's capacity to make a gift, or his willful and independent intent to do so.

CONCLUSION. It is likely the court will find DL's claim disingenuous, and he will not be permitted to bring an action against Intelico for their use of the song. In the interest of justice, (if the court believed that DL may have been telling the truth), they might require KG's widow to grant DL a license to use under the same terms of Intelico.

Excellent!!!

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Exam Name: RealPrpty-SLO-F23-Lewi-R

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END OF EXAM