

Property I – Spring 2013 Top Exam

Question 1 (497 words)

1. Immediately upon A's death, B owned Blackacre(BA) in fee simple subject to executory interest. B's interest would divest if he failed to care for C. At this time, C had a shifting executory interest.

C moved into the basement of BA. During this time, B allowed the basement to become unbearable. The pipes ruptured and raw sewage seeped through the pipes. From this, the court can easily infer, that B failed to care for C.

Judging from the text of the conveyance, it appears that G did not want B's interest to divest automatically. If C had to exercise her right of entry, then she would have had to take affirmative steps to possess the property. Given that C moved away on 6/1/12, it is clear that she did not exercise this right. Yet with C's death, E became C's heir and her future interest in BA transferred. So E can still exercise this right to enter.

2. Every lease has an implied warranty of habitability. B breached this warranty by allowing the basement to become unbearable. Given this, C & M could either stop paying rent or continue to pay rent and go to the court for a refund. Because C & M were not in a position to file a lawsuit, she stopped paying rent. B may argue that because C & M continued to live there for 3 more months after the conditions appeared, that they waived this right. Yet contrary to constructive eviction, it is not necessary for C & M to evacuate the premises. C & M will likely win.

3. J had Whiteacre(WA) in fee simple subject to executory interest. J had possession as long as he was married to G, otherwise, it went to C's heirs. G had a reversion in case C had no heirs. Because C technically had no heirs at the time of her death (gap in death and birth of E), WA went back to G. G now had fee simple subject to an executory interest--with C's heirs having a springing executory interest. Upon E's birth, E's interest sprung into fruition and E had possession of WA. E will prevail.

4. On 6/30/12 G created a joint tenancy between him and J in Redacre(RA). Most courts allow a person to create a joint tenancy in themselves, but some still recommend a strawman. A joint tenancy in common not be transferred testamentary--only inter vivos. Thus, regardless of G's will, J has RA in fee simple.

5. G & J were married in Massajersey, which is a common-law property state. G & J moved to Texiana, a community property state. When a couple moves from a common-law state to a community property state, the surviving spouse loses the right to "elective share." Further, once property is characterized, ownership does not change unless parties consent. Thus, because G did not consent to put all of his property in G&J's name upon moving to Texiana, J gets nothing.

Question 2 (498 words)

1. B will argue that she has a right to the chain because she found it. Yet it is unclear whether A mislaid or lost the chain.

C will argue that A said C could have the chain when A dies. At this time, A revealed that she didn't realize that she had lost the chain--thus, providing proof that A actually lost the chain rather than misplaced it.

Salon owner will argue that as the premises owner, that she is entitled to keep the chain until the true owner appears. Yet, due to the A's comment, the chain was not mislaid.

Given this, B (as a finder) has more title to the chain than C or the salon owner. A still retains superior title, yet she is not apart of the suit. Thus, B's heir should get the chain.

2. A has the right to transfer her property at any point during her life. A conveyed the poster to P on the boat. Because actual delivery was impossible at this time, A delivered symbolically by giving P the key to obtain the poster. And P clearly accepted. Although A left all her personal property to F in her will, the poster became P's property on the lifeboat, and thus not included in the will.

3. F will argue the ideas of Pufendorf and Grotius. They believed that property is obtained through occupation (Rule of Capture). This meant that the first one that gets it (sharks), keeps it. Under this view, F wins.

The fisherman will argue the ideas of Locke. Locke believed in the Labor Law theory. This meant that the person who puts in time and effort into should be entitled to possession. This rewards people who put labor into it. Under this view, the fisherman win.

All three of these people were Natural Law writers. Thus, depending on which NL theorist you look at, you will reach a different result. Thompkins, in the Pierson dissent, argued that it is unnecessary to focus on the ideas of 400 year old NL theorists. Rather, the court should just look to the the fisherman.

So the court must look to other factors too, such as efficiency and custom. The fishermen were trying to catch sharks as a part of their business--proving a service. F was just trying to kill them for fun. The court should likely rule in favor of efficiency and custom, like in Ghen.

4. Under M'Intosh, Hanks(H) is a native who has no concept of proeprty rights--he is a savage and had no power to convey the land to Locke(L). L had no property right to the land. Further, under this theory, F can be said to have conquered the island, and thus has a property right.

Even under Locke's (own) theory, property rights are obtained by improving upon the land. Thus, unless L had improved upon the land when he passed by, he has no title to it even under his theory.