

Property II Midterm
Fall 2015
A+ Answer

1) Scar's claim of adverse possession on Lightacre should not prevail. By taking over Lightacre and announcing that he is the only living heir of Mufasa, Scar has satisfied the entry and open and notorious elements for adverse possession. Property owners have an obligation to know of who is on their land, the law won't protect property owners that do not take care to watch over their land. Being so that Simba was gone for 15 years and there is a 10-year period for adverse possession, Scar has satisfied the elements of continuous occupancy of Lightacre and has satisfied the time allotment. Simba never gave Scar permission to take over Lightacre, thus satisfying the adverse element to give Scar title to Lightacre under adverse possession. Scar would be said to have a good faith state of mind being so that he believed Mufasa and Simba to be dead. However, Simba is only five years old, this counts as a disability. The statutory time period did not begin to run on Scar's adverse claim of possession until the year 2013 when Simba turned 18, thus Scar has only been in adverse possession of Lightacre for 2 years, which is 8 years short of the necessary 10-year period to satisfy adverse possession claim.

2) Simba's counterclaim against Scar's adverse possession should not prevail. Where a grantor, in this case Mufasa, delivers a deed under which he reserves a right of retrieval and attaches to that delivery the condition that the deed is to become operative only after the death of the grantor, and further continues to use the property as if no transfer has occurred, the grantor's actions are nothing more than an attempt to employ the deed as if it were a will. You must have a legal delivery that is absolute and outright ownership at the time of delivery or it is no delivery at all. Because Mufasa had no intention to divest himself of the conveyed interest at the time of conveyance, the deed is not valid, thus Simba's claim will not prevail.

3) The doctrine of caveat emptor (buyer beware) does not work in Simba's favor for this claim. Generally the burden is on the buyer to reasonably examine the property before purchasing it. Being so that a stampede occurs on the property every day at sunset, this defect on the property is something that Simba could have likely discovered easily had he appropriately researched Darkacre. Under common law the seller has no duty to disclose any defects however being so that Scar actively lied about the property, Simba should prevail. The modern trend in the law is that all material defects must be disclosed, not just latent defects, and this trend works in favor of Simba. Because Scar gave Simba a general warranty deed and at time of conveyance Scar knew about the stampede problem, this is a violation of the covenant against encumbrances that is guaranteed under a General Warranty Deed.

4) The case of *Stambovsky v. Ackley* held that latent defects that are not obvious, such as beings/spirits from another dimension, must be disclosed to the buyer if the seller knows about such defects. This is a rule of fairness protecting the lack of knowledge the buyer has in this type of transaction. If the executor knew or had reason to know of Mufasa's other-worldly visits from the night sky to Lightacre and did not inform Simba, Simba may prevail on the claim against the estate executor. This would be a violation of the covenant against encumbrances that is conveyed in a general warranty deed as a latent defect of the property that the buyer could not reasonably discover upon his/her own inspection of the property. However, a modern trend developing in

the law is a "stigma shield" which shields seller from a failure to disclose prejudicial facts that may have an affect on market values. Here, having a large lion ghost regularly appear in the sky over Lightacre may devalue of the property, and some courts may allow the executor to shield this fact upon conveyance of Lightacre.

5) A private nuisance occurs when there is substantial interference with the use and enjoyment of land. Here, Simba is obviously being affected by Pumba's persistent putrid problem by not being able to breathe. Simba may pursue an injunction or damages. An injunction will require Pumba to cease all flatulent-related activities, or Simba could try to get damages from Pumba in which case Pumba will basically need to purchase the right to "clear the savannah after every meal." There is likely a nuisance, however Simba will likely not be able to pursue an injunction against Pumba because Pumba has a gastrointestinal issue that likely is involuntary. The facts lean towards classifying Pumba's problem is nuisance per se. The traditional approach would be to impose an injunction however the modern trend in the law would be to require Pumba to pay a one time damages fee. The case *Estancias v. Schultz* held that the court must "balance the equities" of the two parties in a nuisance suit, and the court must find that the injury to the plaintiff is more than slight. However the facts indicate that Simba and Pumba were friends, thus is Simba came to Bugacre knowing of Pumba's propensity for toxic emissions, courts have held that parties may not obtain relief for injuries after they knowingly came into that area.