

Property I – Spring 2016 – Blackman – Final Exam A+ Answer

Question #1

1. Luke's strongest argument would be under Locke's labor theory. Under labor theory the one who injects labor owns it. This is similar to the dissent in *Pierson v Post* where efficiency and work were encouraged over the result. This promotes efficiency and fairness and gives incentive to go discover water. The American rule of capture, applied to water, (eastern rule) is the first to get it keeps it as long as the use is reasonable. Luke was the first to find the water and put three weeks into searching for it and would therefore argue he put in the work and deserves possession. Obi's strongest argument would be the rule of physical capture. Although water and not a fox, in *Pierson v. Post* the rule was that labor was not enough and one must actually capture the fox. Grotius and Pufendorf argue that merely hunting is insufficient, and you must have physical capture to gain property rights (take away its natural liberty). Water is wild like a fox, and applied to water, the diverting was the actual capture and essentially took away the waters natural liberty to go where it pleased. This rule is less fair because Luke was searching and building for weeks, but it is more certain and avoids determining exactly who starting searching and building first and how much labor is enough, therefore limiting litigation.

2. Darth would argue that like INS he had a quasi property right to the blueprints. Darth will argue that people would not invest time and money inventing anything if it could just be stolen and reproduced. It is not the actual reproduction, but the injury of depriving him of the profit of his labor by reproducing and ultimately destroying the death star. Princess' strongest defense would be that Darth did not lose any profits/business from her reproduction. It was not sold and did not take away business as was done in INS. Also, Darth had the ability to seek a patent but chose not to, and Luke's destruction was not because of her reproduction. Luke never saw the picture. Princess's actions had no harmful effect on Vader.

3. Luke's strongest argument would be the argument of discovery and conquest. The first person who sees an uninhabited land and lays claim to it has title. This gives people a financial incentive to reach the land first and this discovery rule exists to reward creativity and risk taking. This promotes efficiency and increases how much land will be discovered. When two people lay claim to the same land, it is resolved by the sword (conquest) and the winner has acquired the land. When he defeated Darth, he acquired possession by conquest. As a weaker argument Luke will argue that Darth and his community are uncivilized savages with no property rights and only have a right to occupancy, similar to *McIntosh*. Under *McIntosh* Vader would only have the right to occupy, but no other stick in the bundle and Luke would obtain possession by discovery alone. Vaders strongest argument would be discovery and that he discovered it first and Luke has no title to it. To counter Luke's *McIntosh* argument, Vader will argue that they are not savages but have an intelligent civilization and benefited the land. They did not just inhabit land, but built the land and therefore under labor theory, interjected their work with the land. Under Conquest and even *McIntosh*, Luke will prevail.

4. Luke will argue that a *donatio causa mortis* gift took place with Obi. He will argue that as his father on his last breath and gave the lightsaber to his son. There must be delivery, intent, and acceptance. Luke will argue that delivery took form in giving it to Obi as a bailee, intent existed because of the words, and acceptance was completed when Luke took the lightsaber in his hand.

Luke argues it can't be revoked and subsequent conveyances are invalid. This will be defeated because Vader lived and therefore invalidates a causa mortis gift and was not compliant with the statute of wills. Princess will argue that it did not have to satisfy the statute of wills because it was an inter-vivos gift. She will argue that Luke obtained a life estate pur autre vie (lasts until Darth dies), and that a future interest was given to Princess. Darth was not retaining any interest in it, there was intent and delivery when he spoke the words and Luke was holding the lightsaber, and acceptance is presumed, but he also kept the light saber. Upon Darth's death, Princess obtained the lightsaber in fee simple. Obi will have the weakest argument. Obi's strongest argument would be that he was either the finder or that Vader abandoned the property. Because he said to give it to his son this would eliminate the abandonment argument. Even if Obi was a finder, when Vader spoke to Luke and made an inter vivos gift, Vader was still the rightful owner and at that point Luke and Princess obtained an interest.

5. The court should heavily consider the right to exclude, as it is the most crucial stick in the bundle of sticks. If you can't stop people from coming onto your property then anyone can use your land and it eliminates the purpose of property rights and leads to a tragedy of the commons. To allow Luke onto the land may lead to Darth resorting to self help. In Jacques, the court found it so important that they awarded punitive DAS to stress the importance of the right to exclude. Luke will have an argument in State v. Shack that you have the right to exclude until you start hurting people. In Shack it went against the CL rule because migrant workers could have left, therefore he wasn't hurting anyone. Here Darth is keeping Princess against her will, and therefore the court will be right to reduce his bundle of sticks and rule in favor of Luke.

Question #2

1. Obi's strongest argument would be that under a sublease if the sub-lessee (Obi), causes damages, the lessee (Padme) is liable to the lessor (Binks). The lease also expressly says that Padme is responsible for any damages. Padme's strongest argument would be she had a tenancy at will which allowed her to terminate, and CL required no notice. She said she "was terminating the lease, effective immediately." At CL even if it only said the landlord could terminate, it was implied the other party also had the right to do so. Therefore, under CL, the lease was terminated before the subleasing and Padme no longer had any rights to the property to sublease. Padme could even argue that it was an assignment based on the intentions of the parties. Padme wanted to terminate, so Binks made her sign a sublease. The intent was clearly for Padme to no longer have an interest in the land and Padme retained no interest in the land, again making her not liable. If Padme were to enter the land it would be a trespass. The court should consider the sublease as void as Padme terminated her lease, or as an assignment based on intent and duration, and Obi is liable.

2. Darth will have a claim if he was still considered Padme's husband when he came back to life. In a community property state unless the married couple go out of the way to expressly separate interests, it is considered a quasi-JT and considered one interest. When Anakin died, there was no right of survivorship between Anakin and Padme. His death severed the interest unity as there is no longer one interest between Padme and he, and a tenancy in common was formed between all tenants. Upon Padme's death her share would go to her heirs, but she can only give away 50% because in community property states the land would be presumed as marital property. Therefore Anakin gets 25% of her share. Padme's estate would argue that upon Anakin's death, because her share with him was a quasi-jt (one interest), upon his death the JT is severed and has become a tenancy in common. This means there is no right of survivorship and her heirs will receive 50% of her share. Luke and Princess have a strong claim. At the time of Padme's and Anakin's death, Luke and Princess were born and therefore heirs of both Anakin and Padme. When Anakin died, the quasi-jt did not have a right of survivorship and therefore, the heirs will have a claim to 50% of his share to be split amongst them. When Padme dies the children were also her heirs and therefore obtained a 50% share to be split amongst them as well. Obi has no right of survivorship as the unities were severed.

3. Darth's strongest defense would be that one does not have a property right in organs/cells once they are out of your body. Under Moore, cells are considered trash once they are removed. Moore also argues that there is immorality in the selling of one's cell/organs as it is similar to the slave trade. The defense would be that "the force" had no property value to Darth outside his body and since they couldn't legally be sold (as they don't regenerate) Obi should not receive profits. The court should rule in favor of Obi because of the difference presented between this and Moore, as well as the dissent. Moore was knowingly allowing cells to be taken, regardless of whether or not he knew what they were for. The taking from Obi was not only not informed consent, it wasn't any consent at all. The dissent also makes a strong argument that there is already a property system for the selling of organs and they can be donated after death for money. Therefore, since "the force" was taken without any consent and a system already exists in which organs are sold after death, Obi did have a property right in "the force" and therefore contributed.

4. Darth has a present interest in life estate. For the future interest, Luke has a vested remainder in fee simple subject to divestment. Princess has a shifting executory interest in fee simple. Luke was an ascertained party and no conditions precedent so he had a vested remainder in fee simple, but if he did not have legal title, Princess's executory interest would cut short his interest and she would have fee simple. However, at the time of Darth's death, Luke did have legal possession of the light saber because as discussed in #3 part one there was a valid inter vivos gift to Luke. Therefore, Luke has the strongest claim. Princess will only obtain the rights if she can prove that that giving of the saber by Vader to Luke was an invalid inter-vivos gift, and therefore no legal possession.

5. The weakness to community property laws rather than common law is that if in common law property there is a joint tenancy and a spouse dies, the surviving spouse has a right of survivorship. In community, unless specifically stated as joint-tenancy, the presumption is quasi-jt where the surviving spouse will only get 50% of the deceased spouses 50% and the spouse can be written out of the other 25%. The strength to community is that property is presumed to be quasi JT, meaning there is one interest and it can't be sold without the other spouses permission. Community also allows a spouse to stop gifts from being made with community funds. Another weakness occurs when money/property is earned/bought by one spouse(A) with separate funds in a CL state then the couple migrates to a community state. Property is characterized where it's acquired, so the property bought in the CL state is separate. When A dies, if A writes the surviving spouse (B) out of the will, the forced elective share will not apply as the laws of the community law state will apply. B gets nothing!