

Property I – Spring 2017 – Final Exam A+ Answer

Question #1

1. To claim Los Angeles, Skynet will rely on the principle of "Acquisition by Conquest." When two or more people lay claim to the same land, the winner of the battle/duel rightfully acquires the land. Skynet will argue that based on their nuclear strike, they have substantially exterminated the human race and have rendered control over Los Angeles; therefore, they have effectively acquired Los Angeles through victory in battle. Furthermore, although a weaker argument, Skynet may rely on the precedent of *McIntosh* and claim that since they have superior intelligence in comparison to the human race, the humans merely occupied the land because the humans are essentially aboriginals not sophisticated enough to own the land, and therefore Skynet is justified in taking the land from them. In contrast, John and the resistance will contend that because they are still alive and fighting, acquisition by conquest is not yet fulfilled. John will contend that Los Angeles still belongs to the human race because they are still alive (albeit very few) and they are the first civilized people to see it and lay claim to it. Additionally, John will argue that the humans are an intelligent race and have sophisticated property rights, but also the robots themselves.

2. To assert rights over Arnold, Skynet will argue that they are entitled to ownership over Arnold based on the principle of acquisition by creation. Skynet may rely on the policy arguments in *INS v. AP*. In particular, Skynet will claim that robots would not invest time and labor in creating anything if it could just be stolen from them without any consequences. This would erode property rights and create a situation comparable to the tragedy of the commons. Additionally, Skynet will argue that based on Locke's labor theory, Skynet should retain ownership because they have mixed and injected their labor in creating Arnold. On the other hand, John may argue that the only reason Skynet was able to build the Arnold in the first place was by taking his blood without his permission. Accordingly, like *Moore v. Regents*, John did not give informed consent to the taking of his blood and therefore Skynet cannot use it. John may further argue that since Skynet used his blood, Arnold is essentially a part of him, and because Arnold has John's blood, he owns Arnold just as he owns his own organs and tissue. John may additionally bring up his property right in his image and persona as discussed in *Samsung v. White*. John will claim that since Arnold has his blood, Skynet is basically using his persona/image without his permission. Skynet will counter saying that informed consent was not needed because there was no invasive procedure and John abandoned his blood on the battlefield. Skynet will say that since the blood left his body, John's property right in it evaporated, so it can be used freely. Additionally, Skynet will say that *Samsung* is not applicable here because Arnold does not look like John and they are not using Arnold for commercial use. And in any event, Skynet will say that overprotection stifles the very creative forces it's supposed to nurture, citing *Kozinski, J. dissental*.

3. Skynet will rely on the case of *INS v. AP* and assert a quasi-property right in the time machine's instruction manual. Skynet will say that Arnold copied and misappropriated the instruction manual when he gave it to John and the resistance to use. Skynet will also say that they made a substantial investment in creating the manual and that their thoughts and creations cannot simply be copied down and used by others. This would be a blatant violation of

intellectual property and should therefore be protected by quasi-property rights. Skynet may also argue from a natural law standpoint the John Locke's labor theory once more. Skynet put time and effort in creating the revolutionary time machine and it therefore belongs to them. The only counter Arnold would have would be that he did not use Skynet's instruction manual for commercial use and did not reap any profit from it. Accordingly, Skynet would fail to make a viable claim because they have no damages. However, this argument will not get very far. Although the holding in *INS* may be limited in commercial news sense, the stealing of that intellectual property would be in violation of natural property rights. From a policy standpoint, it would not fair well to rule in favor of Arnold because it may lead to an encouragement of trespass and the misappropriation of others' property.

4.

PI: John as a life estate pur autre vie subject to an executory limitation;

FI: John's Father has a shifting executory interest in fee simple subject to a condition subsequent; Sarah(Mother) and her heirs right of re entry.

Sarah has right of re entry because there is a condition, the conveyance has language "but if," and Sarah is the original grantor.

5. Property rights in this post-apocalyptic world will be essential to maintain order, certainty, efficiency of resources. Without property rights in the future age, no one's work can be protected. Without the protection of work from property law, the incentive to create, innovate, and provide for one's self would be extinguished, and the world would be reduced to barbarism. Property rights will ensure that communities can be built efficiently and without problem of theft or even murder. Furthermore, without property rights, resources could be potentially overused and misused. It is imperative that if there is be anymore sustainable human life in the post-apocalyptic world, there cannot be any inefficient allocation of resources; the resources must be used wisely. With property laws, markets can become more efficient, and resources can be put to their most beneficial use. These considerations are of the utmost importance in the resolution of conflict between man and machine. Man and machine can come to an agreements and solutions if there rules to abide by; otherwise, it will remain a free for all and theft, murder, and ongoing conflict will continue to be issue between the humans and the machines.

Question #2

1. Sarah conveyed BA to her and Arnold as joint tenants. Because California employs a community property regime, this will be deemed a quasi-joint tenancy. John would be a tenant in common with Arnold and Sarah. Being that BA is community property of Arnold and Sarah, Arnold would of probably needed consent from Sarah to put a mortgage on BA. Nonetheless, Sarah's locking Arnold out of BA Arnold may have severed the joint tenancy because Arnold's unity of possession was effected. However, this will not matter because the right of survivorship does not matter in a community property state. Even further, Arnold's opening of the shooting range in the backyard does not affect the couple's interest based on the court's holding in Sampson where leasing out a boxing ring did not affect a joint tenancy.

2. Sarah began making payment on BA four years before she married Arnold. However, Sarah made and completed payments on BA after she married Arnold. Under a community property regime, BA would presumptively be community property. Under the time of vesting rule, BA would be community property because ownership vested when Sarah and Arnold were married. If the court is to use equitable considerations in the division of assets under the Uniform Dissolution of Marriage Act, Sarah should obtain all the proceeds from the sale because Sarah is the one who made paid all the installments on the property. Sarah's sole payments on BA is likely a dispositive factor in the equitable division. [JB: The better answer would apply the pro rata rule].

3. Before Arnold was about to kill Terminator, Terminator said that Arnold could "take it from [his] cold dead hands." In other words, Terminator said that Arnold could have it when he died just before Arnold was about to kill him. Arnold will agree that this would be considered a valid causa mortis gift because Terminator made it in contemplation of immediate approaching death. These gifts can be effectuated orally so long as the donor has mental capacity and all three elements of a gift are met.

John will argue that because Terminator gave a causa mortis gift, Arnold had valid possessory interest to give that gift to John. John will say that he entitled the motorcycle because Arnold have it to him as a testamentary gift.

However, Terminator will argue there was a problem with delivery to Arnold. Although the motorcycle is not capable of being manually handed over (as the gift was in *Newman v. Bost*), some type of constructive or symbolic delivery did not take place. In order to effectuate the gift, there needed to be at least the delivery of keys or some other type of item that either provided access to the motorcycle or symbolized the motorcycle. Terminator's estate will argue that because there was no valid delivery, and that because Terminator made this gift potentially under duress, the giving causa mortis gift is invalid. Furthermore, Terminator will say that since his battery ended up plugging itself back in, he ended up living; thus, the gift causa mortis is revoked since the donor (Terminator) lived. And in any event, Terminator will say that Arnold's testamentary gift to John was invalid because it violates the statute of wills.

One non-frivolous argument John and Arnold could possibly make under equitable considerations was that Terminator was using the motorcycle to engage in wrongdoing -

specifically, to murder Sarah with the objective to end all of humanity. This would be a good plea if the court is made up of humans, but if the court ends up being machines making decisions based on algorithms, then it may not have any muster.

4. Once Arnold dies, John's life estate pur autre vie ends. Sarah and heirs have right of re entry since John's father (Arnold) has died. However, John will have the right of re entry because after Skynet's nuclear strike on the humans on Judgment Day, Sarah's only surviving heir (and issue) is John. Therefore, John gets the BA in fee simple once he exercises his rights.

5. The state should provide special protections to marital property because marriage is a sacred institution where spouses are partners for life and essentially work with one another in creating and acquiring property. The state should allow spouses the right to survive one another in property and to elect to take property after death because partners contribute to each other, and it would be unjust to deprive spouses the benefits that come with that partnership and contribution to one another. Furthermore, because both partners contribute to the acquisition of property, it would not be right to allow creditors or some other adverse claimants of one spouse come in and foreclose/ levy the property because of one spouse's mistake. This is the precise reasons legislatures created the Married Women's Property Act. It would be unjust for a woman's property to not be immune from her husband's creditors. In sum, married couples are economic units and their property should be given special protections and benefits by the state because property acquired jointly is inherently different than property acquired independently.