

Property II - Midterm

October 3, 2017

10:40 – 12:10

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Instructions:

You will have **ninety minutes** to complete the midterm examination. There is one essay question, with a 1,000-word limit. Anything you write past 1,000 words will not be read. Please use the word-count feature to check the length of each answer. You can access it by clicking Tools > Word Count. Do not use the character count feature. If you hand-write the exam, please do a manual word count.

The exam is completely open-book. You can use anything you wish, so long as it was printed *before* the distribution of this exam. Obtaining any new information from anyone or anything *after* the exam is prohibited.

Please don't turn the page until the proctor signals that the exam has begun.

Good luck!

Instructions: You are a law clerk for the Chief Justice of the Caribbean Supreme Court. You are asked to prepare a memorandum of no more than 1,000 words addressing a swashbuckling property dispute. The Caribbean follows all common law rules, and has a ten-year period for adverse possession and prescription.

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It is January 1700. Jack, a Pirate of the Caribbean, washes ashore on the island of Blackacre following a storm. Stranded, Jack realizes that there is no one else on the deserted island. Frantically, Jack begins digging in the sand to look for sources of water. Soon, he comes across a chest buried in the sand that contains 100 gold coins. Jack removes the chest, and then buries it on the other side of Blackacre.

Jack sets up camp on the shoreline, where he can easily fish for food. Soon, he discovers a stream, which provides the only source of fresh water on the island. Every day for the next five years, he walks from his camp on the shoreline to the stream, where he fills a bucket of fresh water.

In January 1705, Will washes ashore on Blackacre after another storm. Will immediately starts digging in the sand where Jack had initially found the gold chest, and realizes the gold is missing. Will sees Jack, and asks “Where is my treasure chest?” Jack stays silent, and shrugs his shoulders. Will tells Jack that he had stolen the treasure from Elizabeth in January 1695, and buried it in the sand to keep it private. Suspecting that Jack was lying, Will said, “If you have the treasure, I will split it with you.” Once again, Jack remained silent and shrugged his shoulders. Will explained that Elizabeth was the record owner of Blackacre, and that she would eventually return to look for her treasure. She did exactly that.

In February 1706, Elizabeth rows ashore to Blackacre and demands that Will return her treasure. Will insists he doesn’t know where it is. Jack continues to remain silent, and doesn’t acknowledge he found it. Elizabeth then explains that Blackacre is cursed by an evil spirit, and anyone who comes into ownership of the land will become ill. Indeed, when she purchased Blackacre, she recorded a deed indicating that the evil spirit had a superior interest over Blackacre.

Elizabeth soon fell behind on her mortgage payments for Blackacre. There were two mortgages on the property. With respect to her first recorded mortgage to Caribbean Bank, Elizabeth owed 100 gold coins. With respect to her second recorded mortgage to Atlantic Bank, Elizabeth owed 50 gold coins. A foreclosure sale was announced and properly advertised. At the sale, only one bid was placed: Jack bid 100 gold coins—the same amount he found in the buried chest. Jack is given a contract of sale from Caribbean Bank, which does not disclose the curse on Blackacre.

Shortly after Jack takes ownership of Blackacre, as Elizabeth predicted, he becomes ill.

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A number of law suits are filed between Jack, Elizabeth, and the banks. You are asked to write a memorandum for the Chief Justice addressing five issues raised by this litigation:

1. Elizabeth sues Jack to recover her gold chest. Jack counterclaims, asserting that he acquired the gold treasure chest by adverse possession. How should the court resolve this claim?
2. Elizabeth sues Jack for trespassing because he (1) set up camp on the shore line, and (2) walked across Blackacre to reach the stream. How should the court resolve these claims?
3. Discuss all of the legal issues that arose from the foreclosure sale *before* Jack becomes ill.
4. *After* Jack becomes ill, he sues Caribbean Bank, seeking to rescind the contract. Jack argues that Caribbean Bank failed to disclose the fact that the Blackacre was cursed. How should the court resolve this claim?
5. Regardless of how you answered question #1, discuss from a policy perspective why the law should—in theory at least—recognize the claim of an adverse possessor, like Jack or Will, against the record owner, Elizabeth. Pay special attention to issues like efficiency and fairness.

Is title marketable haunted by ghost – visible on daily basis. Better than haunted

Measure of damages – gold pieces.

Delivery – testamentary v. inter vivos gift. Given while he is dying. Death bed confession.

Deficiency Judgment – mortgage

Recording statute – Race - Notice.