

## Property II Midterm – Fall 2017 – A+ Paper

1. The issue is adverse possession of the gold chest. Jack satisfies the entry element by taking the chest and burying across the island, but it was not open and notorious because he hid the chest underground and didn't allow Will or Elizabeth to find that he had it. Jack's possession was also not continuous for the statutory period because he did not hold it for the minimum 10 years, but instead 6. As for the final element regarding state of mind, Jack meets the aggressive trespass standard because he knew he didn't own it but intended to make it his. Because of these issues, Elizabeth's lawsuit to recover the gold chest would prevail. On the issue of if Will adversely possessed the chest, while he did meet the statutory time requirements of adverse possession, he did not actually possess the chest because he has the same open and notorious issue that Jack has - he "buried it in the sand to keep it private." Further, if the court applies the discovery rule, the cause of action would not accrue until Elizabeth discovered or should have discovered the facts which form the basis of her cause of action. Elizabeth would have a good argument using this rule that the statutory period should not begin until she came back to the island and discovered the chest missing. This is similar to the *O'Keefe* artwork case. Therefore, Will never adversely possessed the chest, making Elizabeth was still the true owner, and Jack didn't meet the requirements to adversely possess it from her.

2. This problem deals with water access issues. Property owners such as Elizabeth can't keep Jack from accessing the water, especially that it is the only water on the island. Because of this rule, Elizabeth's claim #2 for trespassing to get to the stream fails, and Jack has lateral access to the water. Jack could also claim that he has an easement by necessity because there is no other way to the only water source on the island besides through BA. If Elizabeth doesn't want this, she should give him permission to cross BA. Elizabeth's 1st claim is trickier. She generally cannot exclude Jack from using the shoreline, but she could charge him a nominal fee of its use. The shoreline must be available for public use. However, Jack is camping on the shoreline, meaning he is staying there permanently and never leaving. In the case of *Matthews v. Bay Head Improvement Association*, the court held that the public had to have access to the shoreline for uses such as sunbathing and enjoying the beach, but put time restrictions on when the public could use the land. Because of this, Elizabeth claim of trespassing for the camping would likely prevail.

3. At the foreclosure sale, the property was sold for 100 coins. Elizabeth owed 100 coins to the 1st mortgagor, and 50 coins to the 2nd mortgagor. The 1st mortgagor (Caribbean Bank) had first priority on the funds from the foreclosure sale. Because that was the exact amount the property sold for, the 1st mortgage is completely paid off but Elizabeth is still liable for the 50 coins from the 2nd mortgage. Generally, a bank will not sue for the extra owed through a deficiency judgment, because it's like kicking someone when they are down. The bank used good faith and due diligence when advertising the foreclosure sale, so the 100 coins was most likely a fair price. The facts also don't say that Jack recorded his deed to BA. He is still the owner of the property, but is not the BFP because his chain of title isn't clear.

4. Jack's suit against the bank alleging that they failed to disclose the curse on the contract for sale would fail, because Jack knew it was cursed before he purchased the property, and that the spirit had a superior interest in BA. He was there when Elizabeth explained about the evil spirit

and its interest in BA. This gives him actual notice. Jack essentially took a chance on property without a clean title. A title with defects is still a marketable title. A purchaser can purchase property with a defective title, but if the bona fide purchaser for value comes along, they have the best claim to the property and Jack would lose BA. Jack could have looked up the chain of title and seen Elizabeth's recorded deed that stated about the spirit's interests, but failed to do so. Jack has an argument similar of that in the *Stambovsky* case, but the facts don't say that the bank knew of the evil spirit issue, which is required. Because he failed to do his research, the Jack's lawsuit would fail.

**5.** The law should recognize the claim of an adverse possessor from a policy perspective because as a society we want property rights clarified in a reasonable amount of time and we also want property put to its best and highest use. It would be more efficient to let Jack adversely possess the property and then spend it on something useful - such as an island - rather than allow Elizabeth to continue not using it efficiently by keeping it buried underground. However, neither Jack nor Will have a good claim of adverse possession of the chest because they both didn't use the chest open and notoriously, and kept it hid from Elizabeth and anyone else that might come to the island. This issue goes towards the fairness idea - it's not fair to allow adverse possession of property when the true owner didn't have an opportunity to get their stuff back.