

**Property I – Law 715A -- §LS3
Professor Stanley -- Fall 2006 Final Exam**

Monday, December 4, 2006

General Instructions

1. You have three (3) hours to complete this exam.
2. This is an entirely closed book exam. You may not use any books, notes, outlines or materials during the exam.
3. This exam consists of 13 pages, including these Instructions. Check to make sure you have all pages before beginning the exam.
4. Write your **exam number** on your exam envelope, at the top of the exam question packet, and on the ParScore form. Also, write your exam number on the cover of **each** Blue Book. **Do not use your name, student ID number, or Social Security Number on any exam.**
5. There are two parts to this exam. There is, however, no formal restriction of time between Parts I and II, and you may allocate the full three hours as you deem best.
 - **Part I consists of 20 Multiple Choice questions. Each question in this Part is worth five points, with the total of all multiple-choice questions worth 100 points.** Part I should consume approximately 60 minutes of the allotted time. Please answer the multiple-choice questions on the ParScore provided to you using a #2 pencil. If you change your answer, please be sure that your erasures are complete. The exam will be scored by a machine and ambiguities will be counted as a wrong answer
 - **Part II consists of two essay questions each worth 150 points.** You should allocate 60 minutes to answer the question. Make sure you answer each part of the call of the question, and include your reasoning and analysis as well as your conclusion. If you use Examsoft, please use a 12-point font and double space. If writing, please answer the essay questions in the blue books provided to you, writing only on the right hand side of the page.

Please take time to organize your answer before you begin to write, and write clearly and concisely. **Read the facts carefully.** Answers based on incorrect facts are treated as incorrect answers. If you believe a question is vague or a material fact is lacking, state explicitly the assumption of fact you are making in answering the question. It is possible that a key fact or facts may have been intentionally omitted. In these instances, in order to fully answer the question, you must make an assumption and supply the key fact or facts. Furthermore, unless otherwise noted, if you conclude that different results could be reached depending on the applicable law of a particular jurisdiction, your answer should cover alternative situations, *e.g.*, the majority, the minority, and the California rule. You may abbreviate where appropriate.

6. Your final grade in the class will be comprised of your score on the midterm (20 multiple choice questions of 5 points each = 100 points or 20% of your final grade) plus this final exam (20 multiple choice questions of 5 points each = 100 points plus two essays worth 300 points = 400 points or 80% of your final grade).
7. Unless otherwise stated, assume: (a) all parties are unmarried and unrelated to each other; (b) all property is separate (not community) property; (c) the jurisdiction has adopted the common law Rule Against Perpetuities without modification by statute, and (d) the jurisdiction has **not** adopted the Rule in Shelley's Case, the Rule Regarding Destructibility of Contingent Remainders, and the Doctrine of Worthier Title.
8. The entire exam and all scrap paper are to be turned in at the end of the exam period, together with your exam blue books. Answers appearing on scrap paper will not be read.
9. At the conclusion of the exam, return all test materials to the exam envelope and submit it to the proctor. Do not seal the envelope. Failure to return all materials will result in academic sanctions, which may include a failing grade for the course.

GOOD LUCK!

THANKS FOR BEING SUCH A GREAT CLASS!

SEE YOU IN FEDERAL INCOME TAX!

PART II -- ESSAY QUESTION 1

(150 points total -- Suggested time: 60 minutes)

Landlord owns a commercial office building that has two tenants. Landlord leased the first floor to Teri, who operates an internet café. Teri's lease runs from January 1, 2004 to December 31, 2006, for an annual rent of \$60,000, payable \$15,000 on the first day of each quarter. Landlord made sure to include a clause in the lease that precluded Teri from subletting or assigning the space without his consent. Before opening the café, Teri made substantial improvements to the first floor space by installing built-in tables and booths, new lighting, a coffee bar, and increasing the capacity for additional internet users.

Landlord leased the second and third floors to Independent Realty ("Realty"), a real estate brokerage with ten employees. Realty's lease ran from January 1, 2004 to December 31, 2005, for an annual rent of \$120,000, payable \$10,000 on the first day of each month. Through most of 2006, Realty continued to pay Landlord \$10,000 on the first day of the month and Landlord deposited the payments.

In January 2005, Landlord married Wife and, in a stroke of generosity, conveyed his separate property interest in the building to the two of them "as joint tenants with right of survivorship." Unfortunately, Wife was not to be trusted, and without telling Landlord she immediately conveyed one-half of her interest in the building to Creditor, her separate creditor, for \$100,000. Not surprisingly, Landlord and Wife got divorced later that summer. At that time, Landlord learned that Wife had conveyed her interest in the building to Creditor; Landlord continued to deposit all of the rents in his own bank account.

Teri was having difficulty paying her expenses, and so in April 2006 she agreed to let Ben use some of the space as an office. Ben paid Teri \$1,000 each month on the first, and faithfully did so for five months. Teri did not have any written agreement with Ben, but he always let her know by the 15th of the month whether he wanted to continue to use the space. Although Ben told Teri he was running an "e-bay business" (selling items on an online auction web site), in actuality he was hacking into the computer servers in Realty's offices one floor above. By doing so, Ben had developed a thriving identity theft operation using Realty's confidential client information.

Ultimately, however, Ben was arrested and his illegal identity theft operation was shut down in November 2006. When Realty learned that Ben had stolen its confidential information from the first floor space, exposing Realty to substantial tort damages, Realty notified Landlord that it was vacating the second and third floors immediately and terminating its lease as of November 30, 2006.

Landlord has now retained you, his attorney, for advice. Assume that the common law applies with the modern trend, and advise him on the following questions:

- 1 Can Realty terminate its lease? What arguments support Realty's right to terminate the lease, and what defenses can Landlord raise?
- 2 Can Landlord terminate Teri's lease? If so, can he keep the improvements?
- 3 What, if any, are Landlord's financial obligations to Wife and Creditor?

ESSAY QUESTION 2

(150 points total -- Suggested time: 60 minutes)

Father had two children, Son and Daughter. When Father died in 1980, his will left his entire residuary estate to Son, and devised to Daughter "all my right, title, and interest to Blackacre so long as Daughter resides there, but if Daughter dies without children, then to City for use as a public park." Blackacre was a 20-acre property on a lovely stretch of beach on which Father had built a large home with tennis courts and large pool area in the backyard. Much of the property, however, remained an undeveloped forest. Daughter resided at Blackacre until 1992, when she was appointed Ambassador to Paraguay for eight years. While Daughter was in Paraguay, she leased Blackacre and all of its furnishings to Tony for an annual rent of \$200,000, for a term beginning January 1, 1992 and ending December 31, 1999.

Not long after Tony began living at Blackacre, Neighbor, the owner of the adjacent lot was out hiking in the forest and, without realizing it crossed on to Blackacre. He climbed up a steep hill to a bluff where he could see much of the ocean coastline. Neighbor made plans immediately to build a small guest cottage on the gorgeous bluff, and by year's end he had completed the cottage. Although Neighbor did not conduct a land survey, he believed the cottage was built on his property and, since Blackacre was not fenced, he had no reason to believe otherwise. The following January, and for every January thereafter, Neighbor opened up his property, including the path to the guest cottage, for City residents to do whale watching.

It was not uncommon for Tony, an aging movie star, to spend months away from Blackacre on various film shoots. While he was gone, his ditsy personal assistant, Pam, stayed there to keep an eye on things for him, but, really, she just used Blackacre to host a lot of wild parties. On one occasion, a party guest spilled red wine, staining a \$20,000 Persian rug. At another party, guests ruined the home theater system and broke a large pane-glass window. Pam had the window fixed, but neither she nor Tony realized that water had seeped through the broken window into the wall, and, within a few weeks, had caused toxic mold to develop.

When Tony returned to Blackacre, he began to have difficulty breathing. Environmental testing on Blackacre discovered the toxic mold, which Tony's doctor diagnosed as the source of his asthma. Tony moved out immediately, notified Daughter that he had vacated, and refused to pay any more rent, even though two years remained on his lease. The jurisdiction has adopted the statutes in the attached Statutory Supplement, but otherwise follows the common law as modified by the modern trend and/or majority rules.

1. You are the lawyer who represents Daughter. Discuss all of her rights and obligations in connection with Blackacre.
2. You are the lawyer who represents Son. Discuss all of his rights and obligations in connection with Blackacre.
3. You are the lawyer who represents Neighbor. Discuss all of his rights and obligations in connection with Blackacre.

Statutory Supplement for Essay Question 2

§ 1. No action for the recovery of real property, or for the recovery of the possession thereof, can be maintained, unless it appear that the plaintiff, his ancestor, predecessor, or grantor, was seized or possessed of the property in question, within five years before the commencement of the action.

§ 2. When it appears that the occupant, or those under whom he claims, entered into the possession of the property under claim of title, exclusive of other right, founding such claim upon a written instrument, as being a conveyance of the property in question, or upon the decree or judgment of a competent Court, and that there has been a continued occupation and possession of the property included in such instrument, decree, or judgment, of some part of the property, under such claim, for five years, the property so included is deemed to have been held adversely, except that when it consists of a tract divided into lots, the possession of one lot is not deemed a possession of any other lot of the same tract.

§ 3. For the purpose of constituting an adverse possession by any person claiming a title, founded upon a written instrument, or a judgment or decree, land is deemed to have been possessed and occupied in the following cases:

1. Where it has been usually cultivated or improved;
2. Where it has been protected by a substantial enclosure;
3. Where, although not enclosed, it has been used for the supply of fuel, or of fencing-timber for the purposes of husbandry, or for pasturage, or for the ordinary use of the occupant.
4. Where a known farm or single lot has been partly improved, the portion of such farm or lot that may have been left not cleared, or not enclosed according to the usual course and custom of the adjoining country, shall be deemed to have been occupied for the same length of time as the part improved and cultivated.

§ 4. Where it appears that there has been an actual continued occupation of land, under a claim of title, exclusive of any other right, but not founded upon a written instrument, judgment, or decree, the land so actually occupied, and no other, is deemed to have been held adversely.

§ 5. Fees simple determinable and possibilities of reverter are abolished. Every estate that would be at common law a fee simple determinable is deemed to be a fee simple subject to a restriction in the form of a condition subsequent. Every interest that would be at common law a possibility of reverter is deemed to be and is enforceable as a power of termination.

§ 6. An agreement to let upon hire binds the letter to secure to the hirer the quiet possession of the thing hired during the term of the hiring, against all persons lawfully claiming the same.

§ 7. The letter of a thing may terminate the hiring and reclaim the thing before the end of the term agreed upon:

1. When the hirer uses or permits a use of the thing hired in a manner contrary to the agreement of the parties; or,
2. When the hirer does not, within a reasonable time after request, make such repairs as he is bound to make.

§ 8. The hirer of a thing may terminate the hiring before the end of the term agreed upon:

1. When the letter does not, within a reasonable time after request, fulfill his obligations, if any, as to placing and securing the hirer in the quiet possession of the thing hired, or putting it into good condition, or repairing; or,
2. When the greater part of the thing hired, or that part which was and which the letter had at the time of the hiring reason to believe was the material inducement to the hirer to enter into the contract, perishes from any other cause than the want of ordinary care of the hirer.

§ 9. The hiring of a thing terminates:

1. At the end of the term agreed upon;
2. By the mutual consent of the parties;
3. By the hirer acquiring a title to the thing hired superior to that of the letter; or,
4. By the destruction of the thing hired.

§ 10. (a) If a lessee of real property breaches the lease and abandons the property before the end of the term or if his right to possession is terminated by the lessor because of a breach of the lease, the lease terminates. Upon such termination, the lessor may recover from the lessee:

- (1) The worth at the time of award of the unpaid rent which had been earned at time of termination;
- (2) The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the lessee proves could have been reasonably avoided;
- (3) Subject to subdivision (c), the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that the lessee proves could be reasonably avoided; and
- (4) Any other amount necessary to compensate the lessor for all the detriment proximately caused by the lessee's failure to perform his obligations under the lease or which in the ordinary course of things would be likely to result therefrom.

§ 11. The hirer of a thing must use ordinary care for its preservation in safety and in good condition.

§ 12. The hirer of a thing must repair all deteriorations or injuries thereto occasioned by his want of ordinary care.

§ 13. The letter of a thing may terminate the hiring and reclaim the thing before the end of the term agreed upon:

1. When the hirer uses or permits a use of the thing hired in a manner contrary to the agreement of the parties; or,
2. When the hirer does not, within a reasonable time after request, make such repairs as he is bound to make.

§ 14. The hirer of a thing may terminate the hiring before the end of the term agreed upon:

1. When the letter does not, within a reasonable time after request, fulfill his obligations, if any, as to placing and securing the hirer in the quiet possession of the thing hired, or putting it into good condition, or repairing; or,
2. When the greater part of the thing hired, or that part which was and which the letter had at the time of the hiring reason to believe was the material inducement to the hirer to enter into the contract, perishes from any other cause than the want of ordinary care of the hirer.

§ 15. The lessor of a building intended for the occupation of human beings must, in the absence of an agreement to the contrary, put it into a condition fit for such occupation, and repair all subsequent dilapidations thereof, which render it untenable, except such as are mentioned in § 12.

§ 16. A dwelling shall be deemed untenable if it substantially lacks any of the following affirmative standard characteristics:

- (a) Effective weather protection of roof and exterior walls, including unbroken windows and doors.
- (b) Plumbing or gas facilities, maintained in good working order.
- (c) A water supply capable of producing hot and cold running water.
- (d) Heating facilities maintained in good working order.
- (e) Electric lighting maintained in good working order.
- (f) An adequate number of appropriate receptacles for garbage and rubbish, in clean condition and good repair at the time of the commencement of the lease or rental agreement.
- (g) Floors, stairways, and railings maintained in good repair.

§ 17. (a) No duty on the part of the landlord to repair a dilapidation shall arise if the tenant is in substantial violation of any of the following affirmative obligations, provided the tenant's violation contributes substantially to the existence of the dilapidation or interferes substantially with the landlord's obligation to effect the necessary repairs:

- (1) To keep that part of the premises which he occupies and uses clean and sanitary.
- (2) To dispose from his dwelling unit of all rubbish, garbage and other waste, in a clean and sanitary manner.
- (3) To properly use and operate all electric, gas and plumbing fixtures.
- (4) Not to permit any person on the premises, with his permission, to willfully or wantonly destroy, deface, damage, impair or remove any part of the structure or dwelling unit or the facilities, equipment, or appurtenances thereto, nor himself do any such thing.
- (5) To occupy the premises as his abode, utilizing portions thereof for living, sleeping, cooking or dining purposes only which were respectively designed or intended to be used for such occupancies.

End of Exam