SANTA CLARA UNIVERSITY SCHOOL OF LAW – Fall 2005

FOUR-DIGIT EXAM ID# COURSE: PROPERTY PROFESSOR:

THESE EXAMINATION QUESTIONS MUST BE RETURNED AT THE END OF THE EXAMINATION. THE EXAMINATION RULES STATED IN THE STUDENT HANDBOOK APPLY TO THIS EXAMINATION.

PROPERTY 104
PROFESSOR CARBONE
22 MULTIPLE CHOICE QUESTIONS
2 ESSAY QUESTIONS

PROFESSOR INSTRUCTIONS

ANSWER THE EXAMINATION AS WRITTEN!

IF YOU BELIEVE A MISTAKE IN DRAFTING THE EXAMINATION HAS BEEN MADE OR THAT A QUESTION IS AMBIGUOUS, STATE YOUR ASSUMPTIONS IN YOUR ANSWER. YOUR PROFESSOR WILL REVIEW YOUR STATED ASSUMPTIONS IN GRADING THE EXAMINATION.

DO NOT ATTEMPT TO CONTACT THE PROFESSOR TO SECURE A CLARIFICATION.

INSTRUCTIONS: This exam consists of two parts. Part I consists of 22 multiple choice questions. Part II consists of 2 essay questions. You must answer all of the questions. Suggested times are given below, but you may also allocate your time as you like. The credit given will be proportional to the time allowed. IN THE EVENT OF AN EMERGENCY, HOWEVER, THE MULTIPLE CHOICE QUESTIONS AND ANSWERS WILL BE COLLECTED SO THE SAFEST COURSE IS TO DO THE MULTIPLE CHOICE SECTION FIRST.

INSTRUCTIONS FOR PART I ONLY:
1. Write your 4-digit I. D. on the Scantron card.
2. Answer by completely filling in the appropriate blank. Use a #2 pencil. Press hard. Do not make extraneous marks on the Scantron card. If you believe that there is an error or ambiguity or other matter on which you would like to comment, write your comments in a separate bluebook labeled "Part I" on the outside of the bluebook.
3. You must hand in both the questions and the Scantron card at the end of the exam.
4. In answering these questions, you are to assume that:
   a. The statute of limitations in the jurisdiction is five (5) years for all property actions;
   b. The rule in Shelley's case, the doctrine of worthier title, and the destructibility of contingent remainders have been abolished unless otherwise noted;
   c. Possibilities of reverter and rights of entry are freely alienable and devisable;
   d. The rule of convenience does not apply;
   e. Modern law presumptions with respect to the construction of ambiguous provisions apply (i.e., an interest will be presumed to be a fee simple even if it does not use the words "and his heirs");
   f. The California statute on assignments and subleases in the appendix applies;
   g. The common law rule against perpetuities applies without statutory modification.

STOP! DO NOT FLIP THIS COVER UNTIL TOLD SO BY THE PROCTOR
Exam

Begins on

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INSTRUCTIONS FOR PART II ONLY:

1. Unless you are typing the exam, please write your answers in the blue books provided. Write on every other line and on every other page. (I.e., do not write on the backs of the pages. The ink shows through.) Begin each question in a separate bluebook. Write your 4-Digit I.D. on the exam and on the outside of each bluebook.

2. You are in the State of Calm, a mythical jurisdiction in which there is very little law and in which the courts are influenced by precedents from other states. The State is part of the United States, and federal anti-discrimination statutes apply.

3. The State of Calm has adopted the statutes addressing adverse possession contained in the appendix.

4. If a question is ambiguous in any material way, point out the ambiguity and explain how various interpretations of the ambiguity would affect your answer.

QUESTION A (60 MINUTES)

Noel, an ambitious law student, enters into a one year lease with Lenny the landlord for a small one-bedroom single family home in September, 2004. Noel adds the phrase "so long as the premises are habitable" to the lease term, signs the lease and mails it back to the landlord. Lenny responds to Noel in writing that he has accepted the lease with the understanding that "it does not alter the statutory law of the state." Noel moves in the day after he receives Lenny's letter.

During the early summer of 2005, the house needs minor repairs, and Lenny's daughter Jen, an aspiring carpenter, comes by to perform the work. She and Noel hit it off and begin dating. When the lease expires in September, Noel is extremely busy with a new job and schoolwork. He continues paying rent and neither he nor Lenny discuss the lease.

On Halloween night, Noel is still at the library when Jen comes by in costume. She decides to play a trick on Noel, and she loosens all of the lightbulbs in the house, including those on the front porch, and inside the house. When Noel comes home around midnight, he can't figure out how to turn on the lights. Very frustrated, he goes to bed in the dark and the next morning he calls the landlord to report what he assumes is a power outage. Lenny, who knows nothing about Jen's activities, asks her to fix the problem. Jen, continuing the practical joke, tells Noel there is nothing wrong with the electricity; she hints that it might be the lightbulbs. Noel can't believe that all the lightbulbs could go out at the same time, and he never checks them. Instead, he lives in the house in the dark for the next several weeks while sending Lenny e-mails complaining about the problem. He also withholds the rent for November. Finally, two and a half weeks after Halloween, he trips on a stair at night and breaks his leg. Jen, completely embarrassed, tells him the truth. Noel explodes at her, and Lenny sends him an eviction notice the following day. When he reviews his lease, he discovers a clause providing that: "Tenant agrees to assume responsibility for all repairs under $100. Tenant agrees that landlord shall not be liable for any injury that occurs because of tenant's failure to make such repairs, and failure to make such repairs shall be grounds for eviction."

Noel arranges a consultation with you. He tells you his exams are coming up shortly and he would like to stay in the house at least through the end of December. Advise him of the arguments the landlord is likely to make in support of the eviction, any defenses he may have, and the strength of the arguments. [There is no need to advise him about potential tort claims, claims he may have against Jen independently of her father, or about his love life – he feels bad enough as it is.]
QUESTION B (65 MINUTES)

Noel and Jen reconcile and move in together. Lenny, who is getting on in years, conveys the house to “Noel and Jen as joint tenants, remainder to the survivor.” The residuary clause in Lenny’s will leaves any property not provided for to Jen.

Lenny dies two years later. Shortly after Lenny’s funeral, Noel and Jen have another fight. Jen comes home the next day to find all of her belongings piled up on the curb. The locks to the house have been changed, and no one is there. Heartbroken, Jen accepts a job offer in Australia. She sends her brother Ken a letter, explaining everything that has happened, and a deed conveying any interest she has in the house to him. Six years later, she learns that Noel has died in a motorcycle accident. She asks you to look into any claim that she or her brother Ken may have in the house.

Your initial investigation reveals that at the time of the conveyance to Noel and Jen, Lenny owned two lots, the one on which he was living (Lenny’s house) and the lot next door that he had been renting to Noel (Noel’s house). The deed Lenny gave Noel and Jen accidentally described Lenny’s house, which Lenny had owned for years. That house was sold shortly after Lenny died to the Smiths, who have lived there ever since. Lenny had purchased Noel’s house only six months before he began renting to him, and it turns out that the deed Lenny received is defective. The Johnsons, who have been living in Europe, are the true owners. You also discover that although Noel never lived on any portion of Lenny’s lot, he built a large doghouse about a year after Jen left that inadvertently crossed the property line. Ken has not set foot on either lot since Lenny’s death, although he did record the deed she gave him.

Advise Jen as to any possible claims she or her brother may have, any claims that the executor of Noel’s estate may have, the effect (if any) of Jen’s transfer of her interest to Ken, and the likely owners of the two lots.

END OF EXAMINATION
HAPPY HOLIDAYS!
STATUTORY APPENDIX

ADVERSE POSSESSION STATUTES


§ 320. Entry on real estate

No entry upon real estate is deemed sufficient or valid as a claim, unless an action be commenced thereupon within one year after making such entry, and within five years from the time when the right to make it descended or accrued.


§ 321. Possession, when presumed; Occupation deemed under legal title, unless adverse

In every action for the recovery of real property, or the possession thereof, the person establishing a legal title to the property is presumed to have been possessed thereof within the time required by law, and the occupation of the property by any other person is deemed to have been under and in subordination to the legal title, unless it appear that the property has been held and possessed adversely to such legal title, for five years before the commencement of the action.


§ 322. Occupation under written instrument or judgment, when deemed adverse

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, or 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.


§ 323. What constitutes adverse possession under written instrument or judgment

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 inclosure;

3. Where, although not inclosed, 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 inclosed 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.

**Code Civ Proc § 324 (2004)**

§ 324. Premises actually occupied under claim of title deemed to be held adversely

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.

**Code Civ Proc § 325 (2004)**

§ 325. What constitutes adverse possession under claim of unwritten title

For the purpose of constituting an adverse possession by a person claiming title, not founded upon a written instrument, judgment, or decree, land is deemed to have been possessed and occupied in the following cases only:

1. Where it has been protected by a substantial inclosure.
2. Where it has been usually cultivated or improved.

Provided, however, that in no case shall adverse possession be considered established under the provisions of any section or sections of this code, unless it shall be shown that the land has been occupied and claimed for the period of five years continuously, and the party or persons, their predecessors and grantors, have paid all the taxes, state, county, or municipal, which have been levied and assessed upon such land.

**CIVIL CODE – ASSIGNMENTS AND SUBLLEASES**

§ 1995.010. Applicability of chapter

This chapter applies to transfer of a tenant's interest in a lease of real property for other than residential purposes.

§ 1995.020. Definitions

As used in this chapter:

(a) "Landlord" includes a tenant who is a sublandlord under a sublease.
(b) "Lease" means a lease or sublease of real property for other than residential purposes, and includes modifications and other agreements affecting a lease.

(c) "Restriction on transfer" means a provision in a lease that restricts the right of transfer of the tenant's interest in the lease.

(d) "Tenant" includes a subtenant or assignee.

(e) "Transfer" of a tenant's interest in a lease means an assignment, sublease, or other voluntary or involuntary transfer or encumbrance of all or part of a tenant's interest in the lease.


(a) Subject to the limitations in this chapter, a lease may include a restriction on transfer of the tenant's interest in the lease.

(b) Unless a lease includes a restriction on transfer, a tenant's rights under the lease include unrestricted transfer of the tenant's interest in the lease.

§ 1995.220. Construction

An ambiguity in a restriction on transfer of a tenant's interest in a lease shall be construed in favor of transferability.

§ 1995.230. Prohibition of transfer

A restriction on transfer of a tenant's interest in a lease may absolutely prohibit transfer.

§ 1995.240. Standard or condition of transfer

A restriction on transfer of a tenant's interest in a lease may provide that the transfer is subject to any express standard or condition, including, but not limited to, a provision that the landlord is entitled to some or all of any consideration the tenant receives from a transferee in excess of the rent under the lease.

§ 1995.250. Requirement of landlord's consent

A restriction on transfer of a tenant's interest in a lease may require the landlord's consent for transfer subject to any express standard or condition for giving or withholding consent, including, but not limited to, either of the following:

(a) The landlord's consent may not be unreasonably withheld.

(b) The landlord's consent may be withheld subject to express standards or conditions.

§ 1995.260. Standard for giving or withholding consent

If a restriction on transfer of the tenant's interest in a lease requires the landlord's consent for transfer but provides no standard for giving or withholding consent, the restriction on transfer shall be construed to include an implied standard that the landlord's consent may not be unreasonably withheld.
Whether the landlord's consent has been unreasonably withheld in a particular case is a question of fact on which the tenant has the burden of proof. The tenant may satisfy the burden of proof by showing that, in response to the tenant's written request for a statement of reasons for withholding consent, the landlord has failed, within a reasonable time, to state in writing a reasonable objection to the transfer.

§ 1995.270. Legislative findings and declarations

(a) The Legislature finds and declares:

(1) It is the public policy of the state and fundamental to the commerce and economic development of the state to enable and facilitate freedom of contract by the parties to commercial real property leases.

(2) The parties to commercial real property leases must be able to negotiate and conduct their affairs in reasonable reliance on the rights and protections given them under the laws of the state.