

MONTEREY COLLEGE OF LAW - HYBRID

Real Property

Midterm Examination

Fall 2023

Prof. C. Lewi

Instructions:

There are three (3) questions in this examination. You will be given three (3) hours to complete the examination.

Your answer should demonstrate your ability to analyze the facts in the question, to tell the difference between material facts and immaterial facts, and to discern the points of law and facts upon which the case turns. Your answer should show that you know and understand the pertinent principles and theories of law, their qualifications and limitations, and their relationships to each other. Your answer should evidence your ability to apply the law to the given facts and to reason in a logical, lawyer-like manner from the premises you adopt to a sound conclusion. Do not merely show that you remember legal principles; instead, try to demonstrate your proficiency in using and applying them. If your answer contains only a statement of your conclusions, you will receive little credit. State fully the reasons that support your conclusions and discuss all points thoroughly. Your answer should be complete, but you should not volunteer information or discuss legal doctrines that are not pertinent to the solution of the problem.

REAL PROPERTY
Professor Christopher C. Lewi
Midterm, Fall 2023

Question 1

Freddy was walking down the street three weeks ago and saw a shiny bracelet laying on top of a fire hydrant located on the sidewalk about one (1) foot from the curb of the street. (Vehicles routinely park on the street nearby the hydrant.) Freddy picked up the bracelet and took it home with him.

The next day, Freddy's brother urges him to get the bracelet valued to and Freddy's astonishment the jeweler – the best in town with an excellent reputation -- tells Freddy that this is *THE* "Heavenly Bracelet" from the crown jewel collection of the Raja of Rajastan, that while the bracelet is a priceless piece of history, the value of its stones and gold is \$150,000 USD. "Wow," utters Freddy. The jeweler also repeats some credible sounding but unfounded information that the Raja may have sold the bracelet to an unknown buyer about a year ago and that such buyer wishes to remain anonymous.

One week later, Freddy sells the bracelet to Bert for \$150,000 cash and Bert takes possession. Bert asks no questions and Freddy provides no answers. Freddy provides a simple written receipt for the money paid.

A week after that, agents for the Raja contact Bert (Freddy had posted his incredible story on Facebook, including the sale to Bert) and demand the bracelet back; the Raja's agents offer no money and state none will be paid other than a very modest fee for keeping the bracelet safe.

The next day:

- (1) Bert sues the Raja for a declaration as to who is the proper owner of the bracelet.
- (2) Bert also sues Freddy to reclaim the \$150,000 paid. The jurisdiction follows the common law. Who prevails and why? Make sure to discuss all arguments and your evaluation of those arguments in your answer.

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Question 2

Laura owns Blackacre, a single-family residence on a 5,000 square foot lot in a residential neighborhood of similar homes and lots.

Effective January 01, 2010, Laura enters into a 1-year lease with Teresa (01/01/2010 to 12/31/2010) where Teresa, as tenant, will pay Laura \$2,000/month, payable on the 1st each month. The lease is silent as to what happens if neither Teresa nor Laura renew the lease prior to the expiration of the term.

Everything is fine during the year of 2010; no problems with the building and Teresa timely pays her rent.

On January 01, 2011, Teresa does not move out, stops paying her rent, and stays at the house for the next 10 years without paying rent (01/01/2011 to 12/31/2021.)

On January 01, 2013, Laura had an accident at the Rose Parade and suffered a brain injury which left her incompetent to attend to her affairs.

During the 10-year period from 2011 to 2021, there are problems with the residence – the doors do not close and lock, the roof begins to leak, the heater does not always work right, the electrical is always blowing a fuse, and there is sporadic hot water. Teresa complains but Laura does nothing to fix the problems.

On January 02, **2022** (January 01, 2022, is a judicial holiday), after giving all proper notices, Laura's guardian sues to evict Teresa from the residence for failure to pay rent. Laura timely files her answer to the lawsuit and files a counter-suit.

The jurisdiction follows the common law and the majority trends. The applicable statute of limitations for an action for rent is 4 years. The applicable statute of limitations for an action to recover real property is 8 years; the applicable disability statute adds 4 years to that 8 year period. (Assume no COVID hiatus.)

Who prevails? Laura or Teresa? Why? What is Teresa's counter-suit for? What result(s) do they achieve? Remember to discuss all arguments and counter-arguments in your answer and "do the numbers."

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Question 3

Music star King Galahad has a certified platinum hit song called “Party All Over Again” which he wrote and produced in 2010 when he was 27 years old.

He died the next year in the recording studio from a tragic auto-tuner explosion while working on what he hoped to be his next big hit. The King died intestate.

In 2023, Intelico, Inc., a rising software and data company, began using a part of “Party All Over Again” in its public marketing campaign – print, internet, streaming and TV, and social media – which reached millions of people around the world.

Before it began using “Party All Over Again,” Intelico’s agent contacted King Galahad’s widow, who granted permission for the use of the song in exchange for a fee paid to the widow.

However, now, King Galahad’s long-time friend and musical partner Duke Launcelot asserts that he, the Duke, owns the rights to “Party All Over Again” because, says the Duke, King Galahad gave them to him in the studio as he, the King, lay dying. There is no written conveyance from the King to the Duke.

The Duke has now filed a lawsuit against Intelico for damages and injunctive relief.

The subject jurisdiction will award all the decedent’s assets to the decedent’s surviving spouse.

Discuss: (1) The Duke’s claims against Intelico; and (2) Intelico’s defenses to the Duke’s claims. Make sure to include in your answer both the strengths and weaknesses of these positions and your conclusion as to whom should prevail.

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SLO College of Law
Midterm, Fall 2023

ANSWER- Question 1

Question 1 Issue Outline

**(Finders / Misplaced Property / Abandonment;
Basic Indemnity)**

Bert vs. Raja – Raja Prevails:

Bert, as the buyer from Freddy, only has title as good as Freddy's. Bert, presumably, is contending that the bracelet was "lost" and that Freddy found it and as "finder" Freddy has superior title to the bracelet over all but those with superior title to him and that Bert obtained this title when he purchased the bracelet from Freddy.

But, here, unless Bert (or Freddy) can produce admissible, credible evidence that the Raja is not the true owner, *e.g.*, that the rumors are true that the Raja in fact did sell the bracelet to an unknown 3rd party prior to Freddy finding the bracelet, the Raja should prevail as the true owner. Bert (and Freddy), of course, can explore this line of inquiry during the litigation but if they cannot develop sufficient evidence to prove-it up, Bert will lose to the Raja.

Bert may also argue that he is a *bona fide purchaser* – one who paid value for the bracelet without notice (actual, constructive, or inquiry) – and as such, his title to the bracelet is clean as against the world, including the Raja. Assuming that BFP doctrine applies to personal property (it may in a given jdx) and assuming that BFP doctrine will supercede finder's doctrine (it does not – the true owner's rights are paramount), there are problems with Bert's argument. (1) Did Bert pay fair market value (FMV?) Probably not; he paid the stone and gold price but the bracelet is actually "priceless"; nor was the bracelet exposed to the open market (we have no facts showing that to be the case) and thus the "market" part of FMV is missing. (2) Did Bert have notice? Probably; his "don't ask, don't tell" approach with Freddy does not insulate Bert; the bracelet was a famous, priceless artifact and while we have no evidence that Bert had actual notice, there are good arguments that he did have constructive notice from publicly available information and at the least he was on inquiry notice that he may need to delve more deeply into the provenance of the bracelet and Freddy's title to it – Freddy, we presume is "just a guy" who now has a bracelet worth \$150K that he is willing to sell quickly and with no questions. Seems fishy enough to put Bert on "notice" that title to the bracelet may have issues. Bert is not a BFP.

Freddy may also argue that the bracelet was *abandoned* (intent to abandon and an action consistent with that intent.) If abandoned by the prior owner (whether the Raja or any other person), then the first person to take possession is the new “owner” for all purposes, i.e., Freddy, who could then pass clean title to Bert as purchaser. While there is some circumstantial evidence of abandonment – one does not “forget” a priceless artifact on top of a fire hydrant and one does not typically have such a thing fall out of one’s pocket and thus a reasonable person could conclude it was abandoned – the better view is that there is no credible basis to believe the priceless artifact was simply left behind to be claimed by whomever; there is nothing in writing and the fact that the Raja’s agents surfaced within 2 weeks to claim the bracelet back is not consistent with it being abandoned. Bert (and Freddy) will not prevail on an abandonment claim.

Affirmatively, the Raja contends (1) he is the true owner (and we assume here for sake of analysis that the “agents” of the Raja are legitimate) and thus his claim to the bracelet is superior as against Freddy and thus against Freddy’s successor, Bert. The Raja can also argue, alternatively (2) that the bracelet was not “lost”, but “misplaced” [found at waist height on top of the fire hydrant, where it was left by accident by one of the Raja’s agents while getting into a car] and thus Freddy never had any title at all to the bracelet but simply held it in trust and safekeeping for the Raja (of whom Freddy was very soon aware after visiting the jeweler.) Either one of these arguments is a winner for the Raja, assuming of course that he did not actually sell the bracelet to the anonymous 3rd party prior.

Bert v. Freddy for Indemnity / Breach of Contract – Bert Prevails and Gets his \$150,000 back:

Assuming that Bert is unsuccessful in proving the Raja does not have superior title to the bracelet and that Bert has to give it back to the Raja, Bert is out the \$150,000 purchase price paid to Freddy.

Bert can sue Freddy for indemnity (and quite possibly breach of contract) for selling him something for which Freddy did not have clean title.

Freddy will argue the common law maxim of *caveat emptor* (buyer beware) and that he, Freddy, made no warranties of title to Bert, either orally, or in writing (there is only a simple receipt for the money paid), a risk Bert took in asking no questions at the time of the sale. Freddy will also argue that he, Freddy, had a good faith belief that he was the proper “owner” of the bracelet under the doctrine of finders and is thus not liable to Bert because he, Freddy, did nothing wrong.

Bert can counter this argument to some degree because Freddy knew from the jeweler the provenance of the bracelet, its significance, and who the Raja was, and did nothing to contact the Raja prior to his sale to Bert.

In counter, Freddy will point out, again, *caveat emptor*, and that the bracelet was of such public importance that Bert knew or should have known these things himself and that Bert was careful to actually make no inquiry thereby assuming the risk of loss.

On balance, Bert should win as against Freddy because any other result will unjustly enrich Freddy, who is not an “innocent” in this and to whom equity and justice does not owe a windfall.

The bracelet is back home with the Raja, Freddy gets a small safe-keeper’s fee, and Bert gets his money back.

The End.

Question 2 Issue Outline

(Landlord/ Tenant and Adverse Possession)

Teresa v. Laura for Adverse Possession – Laura Prevails:

This is a fixed term lease for 1 year, with definite start and end dates. Under the common law, no notice is required and tenant is required to vacate the premises at the end of the term. A tenant’s failure to do so means that they are now trespassing on the property, absent agreement to the contrary.

There is an argument that such a so called “holdover tenant” now becomes month-to-month, all other terms of the lease still applicable, but we do not have enough information to conclude this is what happened here and Teresa is likely best determined to be a trespasser from January 01, 2011.

If Teresa is a trespasser, then after some amount of time, Teresa will argue in her counter-suit that she has perfected a claim to title to the property by adverse possession. The elements for AP may be met here: (1) open and notorious possession of the property – Teresa acted at all times as if she were the owner; (2) actual and exclusive – Teresa really did live there on a discrete 5,000 sq/ft urban lot and Laura never did possess the property, (3) continuous for the 8 year statutory period (Jan 01 2011 to December 31, 2019); and (4) hostile to the true owner, that is without the permission of Laura. (We are told this is a common law jdx, so no requirement to pay taxes.)

Laura – or more accurately her guardian – will argue that Teresa has not met all the elements, namely that Teresa, as a holdover tenant, was not “hostile” to Laura, that Teresa was there with her permission as her “tenant” (hence the action for back rent, which can only be brought against a “tenant”) and that because Laura was declared incompetent in 2013, that adds 4 years to the 8 year statute of limitations, and that 12 years from January 01, 2011, has not yet run as of January 02, 2022, date of the lawsuit.

Addressing Laura’s “**disability**” argument first, that will not be successful because the alleged adverse possession began at a time *before* Laura’s injury, and thus the injury and the disability statute is irrelevant; the applicable statute of limitations is 8 years, which Teresa has satisfied.

However, Laura’s **hostility** argument may have better luck. Assuming we believe that she always considered Teresa a “tenant” even though there was no rent paid (perhaps understandable from Jan 01, 2013, when she suffered her brain injury), then Teresa was there with Laura’s permission and was not “hostile” to Laura for the requisite 8 years (or ever). Moreover, Teresa complained to Laura about problems with the premises, and these are not the acts of a trespasser but the acts of tenant there with the permission of the owner.

On balance, in a close call, Laura should prevail and remain the record title holder to Blackacre.

Laura v. Teresa for Back Rent and Eviction – Teresa wins under the IWH but if She Does not Timely Pay the Rent Owed, She will be Evicted.

Laura’s guardian – late to the party – served a proper notice to Teresa that she owes \$96,000 in back rent (the last 4 years at \$24,000/yr.) A lot of money.

Assuming that Teresa is a “tenant” still – and the claim for rent is essentially a concession by Laura that Teresa is a tenant [only tenants owe back rent], then she must pay rent as part of her essential obligations as tenant.

However, because this is a residential property, and we are told this is a majority view jdx, the implied warranty of habitability (IWH) will apply and impose on Laura (and her guardian) the obligations to maintain minimal housing standards for the premises – essentially that it complies with the minimal life safety requirements under the building code. If it does not, each habitability problem is evaluated by the Court and assigned a value as a credit against the rent claimed by the landlord.

There are such problems: the doors do not close and lock; the roof begins to leak; the heater does not always work right; the electrical is always blowing a fuse, and there is sporadic hot water. Teresa has complained but Laura does nothing to fix the problems. Each of these will be assigned a monthly offset against the \$2,000/month rent. Assuming all the problems with the premises amount to a credit \$1,000/mo for the last 4 years, this reduces the amount of rent owed by Teresa to Laura from \$96,000 to \$48,000.

Under the IWH and the leading case of *Green v Superior Court*, Teresa will be given some amount of time to pay the \$48,000 and Laura will be ordered to fix the problems. Let's assume this is 90 days. If Teresa timely pays the \$48,000 back rent; Teresa "wins" and will not be evicted. However, if Laura timely fixes and Teresa does not timely pay the rent owed, Laura can then evict Teresa.

Because \$48,000 is a lot of money in a lump sum, and assuming that Laura's guardian makes the fixes (not an automatic but it would be in line with L's self-interest to fix the property and make it fully compliant as a rental property or to sell), the likely scenario is that Teresa will not be able to make the payment timely and she will be evicted by Laura.

Question 3 Issue Outline (Copyright and Gift)

The Duke is presumably contending that Intelico's use of the song without the Duke's permission is a copyright infringement. The Duke wants Intelico to stop using the song – to "cease and desist" – and damages for the past unauthorized use of the song.

Intelico's defense is that it is not infringing on the copyright because it obtained and paid for a license from the proper owner of the song – the widow – and that the Duke has no rights to the song.

Because the Duke will have a hard time proving a valid gift, Intelico most likely prevails.

Copyright:

- Original, Fixed, Work of authorship

The song qualifies: The facts are clear that the King wrote and produced the song and that it was a huge hit. Was it "original"? yes, almost certainly; a creative work, like a song, almost certainly meets the minimal standard of a "modicum" of originality; it is not mere recitation of facts and we have no evidence of any plagiarism. By definition, it was a work of authorship -- the King wrote and produced it. And by recording it, it is "fixed." The song is copyrighted as of 2010 when it was created.

Death of the King – Public Domain?:

Copyright protections last for 70 years beyond the death of the author. The King died in 2011; the use by Intelico was in 2023, 12 years after the King's death and within the copyright period. The song has not entered the public domain and the copyright protection still exists.

Who Owns the Copyright? – Valid Gift to the Duke or Does it Pass to Wife?:

Copyright – like all IP – is a property right that can be transferred from the original holder to any number of people. Here we have competing claims of ownership. The King’s widow says the song is hers, having passed to her 100% by the jdx’ intestacy laws following the King’s death. The Duke says the song is his, having been given to him *causa mortis* just prior to the King’s death.

If the wife is correct, then Intelico’s use of the song is not an infringement of copyright because Intelico obtained and paid for a license to use the song from the proper owner – the widow.

However, if the Duke proves up a valid gift prior to the King’s death, then the song was not part of the King’s estate at the time of death and did not transfer to widow and thus, widow did not own any rights and could not have issued a valid license to Intelico to use the song. Therefore, if the Duke proves up the gift, Intelico will be infringing on the copyright and liable to an action for damages and injunctive relief. (The copyright infringement defense of “fair use” should not apply here – the use of the song was by a for-profit commercial advertising campaign, even though Intelico only used a part of the song – Intelico is not advancing public knowledge or the state of the art by using the song the way it is.)

Was There a Valid Gift to the Duke? – Probably Not Provable:

- **Donative Intent**
- **Delivery**
- **Acceptance**
- **And, if gift *causa mortis*, given in anticipation of imminent death**
 - **Revocable if donor does not die.**
- **Present Donative Intent – Not Clear**
 - If no provable donative intent, then no gift to the Duke
 - Nothing in writing
 - But, perhaps understandable given the death was caused by sudden accident
 - Maybe there are witnesses? Usually, there are more than just two persons present at a recording session.
 - Maybe there is an audio recording or even a video (this did happen in a recording studio and everyone has cell phones now.)
 - Witnesses and/or recording(s) would be terrific evidence but given that 12 years has passed and there is no mention of this in the facts, I am presuming that there is no such evidence.

- Why? Because a platinum song will pay royalties, every year, and if the Duke contended the song was his, better assumption is that he would have surfaced much sooner with concrete evidence of the gift.
- Was the Duke a logical object of the King's bounty?
 - Maybe; long-time friends and musical partners
 - But does it make sense to transfer the rights to this huge asset outside of the King's marriage?
 - Maybe; we would need to explore the marriage and have much better details of the nature of the King's relationship to the Duke
 - Conclude: probably cannot prove donative intent.
- Assuming the Duke proves donative intent to make a gift of the song to the Duke, then the analysis can continue as to gift re delivery and acceptance
- **Delivery:**
 - Delivery can be actual or symbolic
 - Here, because one cannot deliver an actual song, delivery must be symbolic
 - Is it enough for the King to simply say "I give you this song"?
 - Under the circumstances, probably Yes.
 - Did the King "feel the wrenching of transfer?"
 - Song – IP – is "in the ether" and at best the rights to the song could be transferred in writing.
 - Death bed; sudden and unexpected; no time to prepare anything in writing
 - Who does the trier of fact believe?
 - Again, while easier to prove than donative intent, delivery will be hard to prove too and another real fail point for the Duke.

Assuming for sake of analysis donative intent and delivery are in favor of a gift – which we do not here – we move on to . . .

- **Acceptance (less analysis here)**

- o Presumed acceptance if of value – the song is platinum and being used for a high priced, international marketing campaign. It is valuable and we know the Duke wants it because he filed suit.
- o Imminent death?
 - o Yes, the facts seem to establish that but does not really matter here because the difference between a gift *inter vivos* and gift *causa mortis* is that an inter vivos gift is irrevocable (that is the whole point, really) while a gift causa mortis is revocable if the donor survives.
 - o Perhaps, the Duke could argue that this was a gift causa mortis and the rules of proof for a valid gift should be relaxed given that the gift was made on the spur of an emergency but that is not part of the applicable rule re GCM. See *Newman v. Bost*

CONCLUSION: the King is dead, so we cannot ask him what he intended. The Duke is a biased witness and his evidence will be suspect. There is nothing in writing and unless there is a conclusive audio-recording or video, the facts and circumstances are too tortured to conclude a present gift was made to the Duke; widow owns the copyright; issued a valid license to Intelico; no infringement. The Duke loses.



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1)

Declaration as to who is the proper owner of the bracelet

Finders

Lost Property

Property is lost when the owner accidentally and unintentionally parts with the property and does not know where to find it. A finder of lost property does not hold title to the property but only possession. The finder has possession over the world except previous finders and the true owner. The finder of lost property has the duty to find the rightful owner if they know or have reason to know the true owner and the duty of reasonable care of the item while in their possession. The lost property will convert to abandoned property after sufficient time being lost and at that point the finder can attempt to gain title. Here, Freddy (F) found a shiny bracelet on top of a fire hydrant located on the sidewalk about one foot from the curb of the street. Given the location where the bracelet was found, it is most likely this was lost property because the fact that this was a valuable item and the location where it was found gives rise to the conditions of an accidental and unintentional parting with the gift. Here, the Raja (R) will argue that they lost the property and the parting with it was unintentional. They will point to the fact that the location where the bracelet was found is a high traffic area. It was found on a fire hydrant on a sidewalk where people walk and where cars often park. This could lead to someone dropping items in that location pretty easily since there is lots of movement near there. R will argue that this is not mislaid property (see below) due to the location where it was found and it was not abandoned property (see below) because they were looking for the property and made contact with Bert (B) as soon as they found out where it was. **The court is likely to find this was lost property.**

Duty to Find the Rightful Owner

R will also argue that F had a duty to find the true owner because he had reason to know who it belonged to. R will point to the fact that F took the bracelet to a jeweler who told him this was THE "Heavenly Bracelet" and that it was from the collection of the Raja of Rajasthan. At that point, R will argue that F had the duty to, at minimum, do a google search and see if he could find information about the jewelry or the owner so that he could fulfill his duty find the rightful owner. F will argue that this was not lost property and, therefore, he had no duty to find the owner because he believes that the property was abandoned since nobody would walk away from such a valuable item unless they intended to relinquish control and ownership of it. In the alternative, F will argue that he did not have reason to know who the owner was because the bracelet was last owned by whoever bought it from the Raja and that person wished to remain anonymous. F will argue that there was no way for him to find out who the anonymous donor is because there is no information for him to go off of. However, R will counter that the allegations of an anonymous buyer were false since they are unfounded. They will claim they are the rightful owners. F will counter that the allegations were not false because the jeweler was the best in town and had an excellent reputation which implies he provides verifiable information. Additionally, R will argue that courts favor the "good neighbor" theory, which means that when items are found, there is an effort to find the rightful owner. Here, R will argue that F should have done his due diligence and gone to the police station and reported the item as soon as he learned about its worth. R will argue that F's actions were not neighborly because he went to the jewelry store and the day after finding the bracelet and one week later sold the bracelet to his friend for the same value that the jeweler had quoted him. **The court is likely to find that F had a duty to find the owner.**

Finder Does Not Have Title, Only Possession

A finder does not have title to found property but only possession of the property. Sufficient time has to pass before the finder can assert that the property is abandoned and assert control and dominion over the property. Here, F found the bracelet and a week later sold it to his friend. R will argue that this was not sufficient time for the title to transfer to F due to the property being abandoned. F will argue that he exercised dominion and control over the bracelet when he took it from where it was and sold it. However, given the bailee nature of the finder, it is unlikely that simply taking property from where it is found is sufficient dominion and control. **Therefore, it is likely title did not pass to F before he sold the property.**

Mislaid Property

Based on where the property is found, it is reasonable to believe that a person intentionally placed the item there and forgot it. The owner of the location acts as bailee and has possession over the item as against the world except the true owner. The idea is that the owner of the property unintentionally left the item behind and will retrace their steps and eventually find the item. Here, R will argue that the location is not typically where someone would place such a high value item and that no reasonable person would think someone purposely placed it there. Additionally, there is no owner of a location to act as bailee for the rightful owner to come back and ask about the item. **Therefore, the property was not mislaid.**

Abandoned Property

Property is abandoned when there is a voluntary and intentional relinquishment of possession and title of the item. The finder of abandoned property has possession of the item as against the world except previous finders and the owner. The finder of the property can take title of the item through actions of total dominion and control of the item. Here, F will argue that the owner of the property, the anonymous buyer, had not

come to look for the bracelet. Only the Raja had come to look for the bracelet and they are not the last owners of the property because it was sold to an anonymous buyer. However, the Raja will deny those claims as they are unfounded and state that they are the rightful owners of the bracelet and they diligently looked for it, therefore, there is no intention to abandon. **The court is likely to find that the property was not abandoned.**

Therefore, the bracelet was lost and F had a duty to find the rightful owner and act as bailee until the owner was found. He only has possession as to the world, but not as to the rightful owner which is presumably R if there really is no anonymous buyer. Thus, R is the proper owner of the bracelet.

→ very good.

Bert v. Freddy

Bert sues Freddy for the \$150,000 paid and the court will likely award him his damages.

Bonafide Purchaser

A bonafide purchaser is one that purchases property without notice of previous title holders and pays valuable consideration.

No notice

The bonafide purchaser (BFP) must have purchased without actual, record, or inquiry notice. Actual notice is when the purchaser is told directly who the previous title holder was. Record notice has to do with some recorded document of ownership. Inquiry notice is any information that the buyer could have found by doing a search on the property or asking questions. Although there is no duty to search title, a BFP will be charged with any

notice that could have been found had a search been done. Here, B will argue that he had no notice as to the fact that F was not the title holder of the property. He will argue that he did not ask F any questions and that F provided no information, which means that he had no actual notice. The facts do not indicate whether there was any recorded documents that would provide record notice so we will assume B did not have record notice. B will also argue that he had no inquiry notice because F was in possession of the bracelet so it was reasonable for him to believe that F was the owner. R will argue that B should be charged with inquiry notice because had he asked any questions at all of Freddy he would have learned the source and the backstory of the bracelet and known that F did not have title. The court will likely find that the fact that B asked no questions and F provided no answers does not save B from being charged with the information he could have found if he had done some due diligence questioning about the item. He could have gone to the jeweler and asked about the item to value it before paying such a high price tag and he would have learned the information that F learned.

Valuable Consideration

The consideration paid does not have to be the fair market value but it does have to be a significant pecuniary value to ensure the person is a bona fide purchaser. Here, B paid \$150,000 for the bracelet which is significant pecuniary value.

Given that B is likely to be charged with notice of the title holder of the bracelet, the court will likely find that B is not a BFP.

Marketable Title, Sellers Duty to Disclose

A sales agreement has an implied covenant of marketable title. Title does not have to be perfect but it does have to be free of questions that will give rise to litigation. A title will

give rise to litigation questions if it has issues with the chain of title. A seller has duties to a buyer including a duty to disclose any defects in the property. Here, B will argue that even if he didn't ask any question, Freddy had the duty to disclose that the title on the property was defective because F was selling him a found item that he had not acquired title to. Once a seller discloses the information, if the buyer purchases anyway, then they are liable for the defect. Here, B will argue that F did not disclose the defect in title so B should not assume the liability for the defect. B will argue that F sold him the bracelet knowing he did not have marketable title. F will defend stating he believed he had good title because he thought the property was abandoned and he exercised dominion and control over it. However, since the court will likely find the property to be lost and not abandoned, they will find that F did not provide marketable title.

Therefore, the court will find F liable for unmarketable title and award B damages.

END OF EXAM

*This is very well
presented + reasoned. Good
work*

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2)

LAURA'S SUIT TO EVICT TERESA

The issue is who prevails in Laura's suit (filed by her guardian) to evict Teresa for failure to pay rent. ✓

Periodic lease

A periodic lease is a lease for a specified term with specified rental payments. If timely notice is not given, presumably it renews for another of the specified term. Tenants have a duty to pay the rent listed.

Here, Laura entered into a lease for a specified term of one year with monthly payment of \$2,000 per month. Because no notice was given by either party, presumably the lease renewed each year for the same monthly payments. So, after the first year in which Teresa paid all of her rent, she continued to owe Laura \$2,000 per month, for a total of \$24,000 per year. ✓

Because the statute of limitations for an action for rent is 4 years, Laura can only recover the past 4 years rent, which is a total of \$96,000.

Thus, barring any defense, Teresa owes Laura \$96,000.

**Implied warranty of habitability**

good
Every residential lease comes with an implied warranty of habitability, which guarantees at least a minimal level suitable for human habitability. This implied warranty of habitability includes such things as doors that close and lock, a roof that does not leak, a working heater, working electricity, and both hot and cold running water. A breach of the implied warranty of habitability by the landlord is a defense against eviction and the court may order that no rent is due until repairs are made or a rent reduced to the level appropriate for the living conditions. ✓

Here, the doors not closing and locking, the roof leaking, the heater not consistently working, the electrical system continually breaking, and lack of consistent hot water all violate the implied warranty of habitability..Laura breached Teresa's implied warranty of habitability because, even after Teresa apprised Laura of the conditions, Laura failed to fix the conditions. Perhaps Laura's lawyer would argue that Laura was not able to fix the conditions because of her accident that left her incompetent. However, Laura's accident did not happen until two years after the conditions began, and Laura did not fix the conditions during that time. Moreover, after her accident her guardian or estate would have assumed Laura's responsibilities, yet the conditions were not fixed. Thus, Laura breached Teresa's implied warranty of habitability. ✓

Conclusion

Because Laura breached Teresa's implied warranty of habitability, Teresa will not be evicted and will either owe no rent or a reduced rent for four years at a level appropriate for the living conditions. Any rent owed may be altered depending on the outcome of Teresa's counter-suit against Laura for adverse possession (see next section). ✓

very good

TERESA'S COUNTER-SUIT AGAINST TERESA FOR ADVERSE POSSESSION

The issue is what Teresa is counter-suing Laura for and what the result should be.

Adverse possession

A person gains ownership of real property via adverse possession if the person has possession of the property that is (1) continuous possession for the statutory period, (2) open and notorious such as to give notice, (3) actual possession (not merely symbolic), and (4) hostile without permission of the owner.

Here, the relevant period to establish Teresa's adverse possession began when she stopped paying her rent but did not move out: January 01, 2013. From that day on Teresa continually lived in the house for at least 11 years (the day Laura's guardian sued to evict Teresa) and still going. Because the applicable statute of limitation for an action to recover real property is 8 years, Teresa had continuous possession of the house for the statutory period. Perhaps Laura's lawyer will argue that the relevant statutory period is actually 12 years since the applicable disability statute adds 4 years to the 8 year period and Laura had the accident which left her incompetent during that time. However, a disability only tolls the statutory period if it existed when the statutory period began. Because Laura's accident did not happen until 2 years after the statutory period began, it does not trigger the 4 year addition. Thus, Teresa meets the requirement for continuous possession for the statutory period.



Laura was well aware that Teresa was in possession of the house since she had already been living there while paying rent, did not provide notice of moving out, did not move out, and did not pay rent. Additionally, Laura was aware that Teresa was still in possession of the house because Teresa complained to Laura about the problems with the residence. Therefore, Teresa's possession of the house was open and notorious.

Because Teresa continued to live in the house, her possession was actual, and not merely symbolic.

Finally, because Teresa stopped paying rent, her possession was hostile, without permission of Laura. Perhaps Laura's lawyer would argue that Laura granted Teresa implied permission to stay there since Laura had not previously given notice of eviction. However, the agreed upon terms, which presumably renewed if notice was not given, was to live there in exchange for rent. So, without rental payments, Teresa was staying without permission. Moreover, Laura did not give any indication of permission for Teresa to stay without paying rent. Thus, Teresa's possession was hostile.

Therefore, Teresa gained possession of the house via adverse possession and so should sue Laura for ownership of the house via adverse possession.

→ very good.

Conclusion

If Teresa's adverse possession is effective as of the date of filing her suit, she would still owe any rent due from Laura's suit against her, which, if any, should be an amount reduced significantly to account for the conditions below the minimum level for the implied warranty of habitability. If Teresa's adverse possession is effective as of the statutory period of 8 years, then she would only owe rent for the one year, if any or at whatever reduced amount decided, since there would be only one year overlap between

the period for which she could be sued under Laura's suit and Teresa's ownership under adverse possession.

END OF EXAM

This is excellent work
+ while I disagree
w/ your AP conclusion
(I think no "hostility"), your
reasoning is solid.

NICE JOB !!!



00000

3)

1. THE DUKE'S CLAIMS AGAINST INTELICO

The issue is whether the Duke has copyright ownership over the song "Party All Over Again" and, if so, whether Intelico infringed upon the rights of the copyright ownership.

Copyright

Good

For copyright ownership there has to be (1) authorship of (2) an original creation with (3) fixation in a way to preserve it. Copyright ownership gives rights to prohibit others from using the work without permission, unless it is fair use. Copyright lasts for 70 years beyond the original creator's death.

Here, the King was the author in both writing and producing his song "Party All Over Again". Because the King wrote it, it was a certified platinum hit for the King, we know of no one who sued him for copyright infringement, and because Intelico asked the King's widow for permission to use the song, it is reasonable to infer that the song was an original creation. Because it was recorded, it had fixation.

Because the King died in 2011 and Intelico began use of part of "Party All Over Again" in its public marketing campaign in 2023, only 12 years after the King's death, the copyright was still in effect.

Therefore, anyone using "Party All Over Again" without permission of the copyright holder would be infringing on the copyright unless it is for fair use.

Not fair use

Fair use depends upon factors such as nonprofit educational use, as opposed to commercial use, how substantial of a portion of the work is used, how widely it is distributed, how much profit is being made from the use, and whether there are detrimental effects to the copyright holder.

Here, Intelico is a commercial company using part of the song for its commercial public marketing campaign in a wide variety of media: print, internet, streaming and TV, and social media. So it is for commercial purposed with intent to increase profits and it is very widely distributed, reaching millions of people around the world. Granted, Intelico's use of the song will not likely have any detrimental effects to the copyright holder. In fact, it may even increase sales of the song by bringing awareness to an even wider audience. Nonetheless, overall Intelico's use meets almost none of the factors for fair use.

Therefore, Intelico's use is not covered under fair use, and would infringe upon the copyright if used without permission of the copyright holder.

→ good

Conclusion

The Duke claims to be the rightful copyright holder for "Party All Over Again." If he is correct in this assertion, then Intelico infringed upon the copyright since they used the song without permission from the Duke.

good

2. INTELICO'S DEFENSES TO THE DUKE'S CLAIMS

Does Intelico have any defenses by proving that the Duke is not the rightful copyright holder for "Party All Over" and that they got permission from the rightful copyright holder?

Not a valid gift transfer to the Duke

The Duke claims that the King gave the rights to "Party All Over Again" to the Duke as a gift as the King was dying. A valid transfer of property rights (including intellectual property rights) via gift requires intent, delivery, and acceptance.

For intent we can use direct evidence of intent to transfer via gift or a logical inference that the person makes sense as the intended recipient. Here there is no direct evidence of the King's intent to give the rights to "Party All Over" to the Duke. However, the Duke does make logical sense as a likely recipient because the Duke was a long-time friend and musical partner of the King. So it makes sense that the King might want to give rights to one of his popular songs to a musical partner who he has been friends with for a long time.

Acceptance can be assumed because the rights to the song are very valuable since it is a certified platinum hit song. And clearly the Duke would accept the rights to the song as a gift since he is claiming he has the rights to the song.

Delivery can be actual, constructive, or symbolic. Actually giving the rights over would be handing over a song, which is not possible because a song is not a physical object. Constructive delivery would be something like a key to the song. But the song is not private, it is already out in the public. A symbolic delivery might be signing over a notice of copyright or a signed note attesting to transferring the rights to the song. However, the Duke has none of these. All he has is a claim that the King said that he transferred the

right over as he was dying. But gifts effective upon death are not valid unless in a valid will. The King died intestate, without a will. Thus any dying gift is not valid.

Therefore, there is not a valid gift transfer of the song rights to the Duke, so he does not hold the rights to the song.

The King's widow rightful copyright owner

If a person dies intestate, without a will, that person's assets pass to the decedent's spouse if the decedent was married.

Here, the King died intestate. So his assets, which include any copyrights, pass to his widow.

Therefore, the King's widow is the rightful copyright holder for the song "Party All Over".

Intelico was granted license to use song

If a party gets permission from the copyright holder, they do not infringe on the copyright.

Here, Intelico was granted permission to use the song "Party All Over" by the King's widow in exchange for a fee.

Thus, Intelico did not infringe on the copyright.

OVERALL CONCLUSION

Because Intelico did not infringe on the copyright, Intelico will prevail.

END OF EXAM

EXCELLENT !!!

He coveted Five dots.