



**Property I  
Final Exam  
Fall 2010**

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**INSTRUCTIONS:**

The examination is a three-hour modified open book examination – each student may use his/her text, any assigned supplemental materials, any supplemental materials specifically provided by Professor Kochan (like the powerpoints), any notes or outlines which that student prepared, any group notes or outlines to which he/she made a *significant* contribution in preparation, and a general usage English and/or legal dictionary. No commercial outlines, treatises, or similar materials will be permitted for use during the examination. Other than ExamSoft and requisite hardware, no electronic materials or devices may be used during this exam.

All notes and copies of the exam questions must be turned in at the conclusion of the exam, although only official answers on ExamSoft or in Bluebooks will be considered in the evaluation of your grade.

There are 4 essays.

Total points = 100

Look at the point allocations and use your time wisely.

Assume throughout the exam that the Doctrine of Worthier Title, the Rule in Shelley's Case, the Rule of Destructibility do NOT apply. Assume that the *common law* Rule Against Perpetuities, the Statute of Frauds, and a 10-year statutory period for common law Adverse Possession DO apply – all in any jurisdictions mentioned or presumed.

There are eight (8) pages including the cover/instructions page.

***Essay 1: (5 points)***

Cameron nervously leaves his father's classic red Ferrari at a parking garage in downtown Chicago. The Valet takes his keys and says "relax man, I'm a professional." After Cameron leaves, Valet (rather than park the car) proceeds to drive the car out of the garage, jump the ramp, and put hundreds of miles on the car by joy-riding; but the car is waiting for Cameron when he arrives to pick it up and it appears unscratched. Cameron pays the Valet and drives the car home later discovering the extra mileage.

- (a) Promised Wiffle Ball question (0.5 points): Name the movie where this scene occurred (as mentioned in Class and the same movie from which one of the first statements in the fast-moving Class 1 was paraphrased).
- (b) Briefly explain in one paragraph the property doctrine(s) involved in this scenario and the bases for a lawsuit by Cameron against Valet, including the claims (if any) and defenses (if any) of the parties.
- (c) In no more than two sentences, provide one non-identical factual analogy to this hypothetical that involves the same primary relevant doctrine(s). Identify the legal terms for the players in your analogy and their counterparts in the provided hypothetical.

***Essay 2: (50 points)***

Carrie Care owned 46 acres of farmland in Oz County. When she died in 1958, Carrie Care devised by written will Careacre to "my children, so long as it is used only for residential, farming, grazing, ranching, or church purposes along with ingress, egress, and other ancillary uses thereto; and if it shall ever be used for any other purpose, then to Minister if then alive and if not then to Minister's sons Pete and Paul whoever shall graduate from seminary first, and if neither graduate seminary then to Paul's children." Carrie Care died leaving seven children.

A house stood within a thirty-two-acre wooded area on part of the Careacre property. Another approximately eleven-acre portion was cleared and used for grazing and farming. The property also had a tank pond, which a nearby church (Minister's church) periodically used for baptisms. An old, three-strand, barbed-wire fence surrounded the entire property.

During his lifetime, Carrie Care's son, Snap, used the property for growing hay and grazing cattle throughout the whole property. Snap repaired the old fence whenever it broke through. He also harvested timber from various parts of the property. His siblings occasionally visited the property to

hunt and fish.

In 1971, Dyer bought a tract of land next to Careacre. Snap allowed Dyer's cattle to graze on the property and let Dyer gather hay from the property. Snap and Dyer were friends. When part of the fence came down, Snap and Dyer worked together to repair it. Later, when Snap became ill and could not check on his cattle as often as he used to, Dyer tended to them and fed them.

Meanwhile in 1990, one of Snap's sisters, Pippy, sold her interest in Careacre to Baker.

After Snap's death in 1994, Dyer bought Baker's interest in Careacre. The special warranty deed Baker executed purported to convey the entire Careacre property to Dyer. Before the conveyance, Baker verbally informed Dyer that he “only owned whatever had been Pippy’s share.” The special warranty deed from Baker to Dyer, however, stated (in writing and signed) “That I, BAKER, ... do Grant, Sell and Convey unto DYER ... all of the following described real property in Oz County, to-wit: [description of the full Careacre property].”

After acquiring Baker’s property and also in 1994, Dyer wrote Snap’s son, Sammy, who had inherited all of Snap’s property, asking if he could purchase the interest in the property he had inherited from his father Snap. Sammy refused.

Throughout the period after 1994, the Care Children continued to visit the property, but as they advanced in years, they did not visit as often as in the past. Snap's sister, Birdetta visited to gather firewood from the property and fish in the tank pond about four or five times a year. On one of those visits in 1994, Birdetta installed locks on the gate, but she found them cut off on her next visit. She did not replace them. On later visits, she found the old fence had been replaced with a four-strand barbed wire fence and that someone had removed the gate. She crawled through the fence to enter the property. Dyer never forbid her to go on the property, or told her that she was a trespasser. She never saw a “no trespassing” sign on the property.

Sammy heard that Dyer had stopped people from entering the property, but he visited about twice a year without a problem but also did not announce his visit or see Dyer when there. Dyer never communicated with Birdetta regarding the gates to the property, nor did he tell Ruth, another of Snap's sisters, that she could not cut timber on the property which she had continued to do. Dyer claims that he told the Care Children whenever they came by *and* he saw them, the first of many times as early as 1994 after obtaining the deed from Baker, that “I own Careacre and have a right to the whole *any which way you see it.*” Dyer also turned away surveyors who tried to enter Careacre three times between 2006 and 2008.

During this entire period, Dyer made changes to the use of the property, modernizing some of

the equipment and restructuring the grazing and farming plots. He started growing new crops that had not previously been planted on Careacre and placed “markers” throughout the property with the name “Dyer” on them – such as “Dyer Trail 1, Dyer Trail 2, . . .” and “Dyer Sublot A, Dyer Sublot 2, . . .” and the like. He also dredged and filled the tank pond, making the property useless to the church and useless to Birdetta’s fishing. Although a couple other siblings walked around the property a few times a year without having trouble entering the gate, they did see a new chain and a new lock hanging on it, but it was unlocked during most of the visits. The mailman, the neighbors, and supply and delivery companies came unto Careacre on a regular basis and always saw Dyer there. In fact, Dyer is the only one who receives mail or other deliveries at Careacre since 1994.

Since 1994, Birdetta assumed responsibility for paying the family's taxes on the property. Dyer paid taxes on what he considered Pippy’s share that he acquired from Baker but that is all.

- (1) In 2008, Dyer sues to eject the Care Children and to quiet title. What are the claims and defenses of the parties?

While the litigation is pending in 2009, the 6 Care Children or their successors (*i.e.* all potential original present possessory interest holders from the original devise but Pippy (who had sold her share to Baker who sold it to Dyer)) individually and collectively conveyed in writing their entire remaining interests to Developer (“We, each and all, hereby convey to Developer any and all interests we have in Careacre”). Immediately thereafter and also in 2009 while the litigation is still pending, Developer proceeded to level one quarter of the property and built a gas station on it.

- (2) In 2010, Dyer now sues Developer too. What are the new or additional claims and defenses of the parties, if any?
- (3) Also in 2010, Minister (still alive) believes he is the owner of Careacre and so he sues Dyer, the Care Children, and Developer. What are the claims and defenses of the parties?

*Essay 3: (25 points)*

Larry owns Rentacre and in the year 2000 builds a 10-unit condo complex on it. Larry does not build or provide parking for his tenants, intending instead that they will use the available adjacent free public parking lot owned by the City of Blank (the only parking lot within blocks of the building) or find some other means of parking or live without it. The parking lot does not have an attendant and is neither gated nor otherwise restricted. One day in January 2005 while walking to his office in the Rentacre building, Larry parks in the public parking lot. Unnoticed by Larry, the chain on his valuable antique heirloom pocket watch (inscribed with his grandfather's initials) breaks and the watch falls on the concrete in the public parking lot while he walks toward Rentacre.

An hour later, Tenley, a prospective tenant of Rentacre parks in the public parking – she is there to apply to lease a unit in Rentacre. As Tenley walks toward Rentacre, she sees the pocket watch on the ground, says “cool find” to herself, and puts the watch in her bag. Tenley thereafter executes a lease with Larry in writing for “a condo only in Rentacre for a term of year to year, payments to be made on the first of each month.”

On his way to his car that night, Larry notices the watch missing from his side and “tracks” his steps, the best he can remember them, looking for the watch. After an hour he gives up and never looks for it again that day or later except for an occasional glance around for a few days after as he walks to his office.

Tenley tries to move in the next day after signing the lease but her key she received from Larry doesn't work. Tenley remembers from her one semester in law school before she dropped out that this might raise a property issue.

- (1) Tenley calls you to jog her memory – but she only wants the cliff notes (quick 2-minute summary) version of what issues that might raise. What would you tell her?

After getting off the phone with you, she calls Larry and he brings her the correct key straight away and all is well. She starts moving in and while unpacking sees the watch she had found in her bag and places it inside the built-in bathroom vanity cabinet, intending to someday give it to her father. She calls her Father immediately and says, “next time you visit me the watch I found is yours.” Father says “Great. Thank you.”

Tenley stays at Rentacre, making all payments on her lease for 1.5 years when in July 2006 the ceiling starts to leak and begins to flood the condo. She phones Larry, gets voicemail, and leaves a message saying only “please call me.” After seven days not hearing back from Larry but without trying to contact him again, Tenley vacates and leaves a note nailed to the door saying “I Condemn this Condo. I Can’t Live in This Condition. I Feel Evicted. I am Vacating and Never Coming Back Nor Paying Rent.” Tenley gathers most of her things but does not remove the watch from the vanity nor pack it with her things.

The next day, Larry goes to Tenley’s condo to respond to her call. He reads the note and sees the leak for the first time. He immediately repairs the leak and repairs the damages caused by the flooding – all completed within a week. He puts the condo back on the market (advertising it in the local paper) and sends a letter to Tenley demanding rent through December 2006. Tenley does not respond.

(2) Larry sues Tenley. What are the claims and defenses of the parties?

In January 2007, Larry finds a new tenant Ned who moves into the condo formerly leased by Tenley under identical lease terms. After moving in, Ned opens the vanity and sees the watch and puts it on; he now carries it on his person every day.

(3) In 2007 -- Larry, Tenley, Father, and Ned all claim ownership of the watch vis-à-vis the others. What arguments can each make supporting their claims to ownership or to priority rights?

Later still in 2007, the City of Blank closes the parking lot adjacent to Rentacre and turns it into a playground and city park. Ned thereafter refuses to pay full rent and deducts the amount he has to pay to park in a garage 5 blocks away in a crime-ridden neighborhood. He sends a letter to Larry saying “I cannot live where I cannot park.” Larry sues Ned for breach and unpaid rent.

(4) In that lawsuit of Larry v. Ned, briefly explain the claims and defenses of the parties?

***EXAM CONTINUES ON NEXT PAGE***

**Essay 4: (20 points)**

Please briefly assess the meaning and context of the following themes/statements – in light of what you have learned about the formation and enforcement of property law and the paradigms, theories, doctrines, rules, and jurisprudence involved in your studies of *Property*:

“Some property institutions are structured along the lines of the Blackstonian view of property as sole despotic dominion. These institutions are atomistic and competitive, and vindicate people’s negative liberty. Liberal societies justifiably facilitate such property institutions, which serve both as a source of personal well-being and as a domain of individual freedom and independence. In other property institutions, such as marital property, a more communitarian view of property may dominate, with property as a locus of sharing. In yet many others along the strangers-spouses spectrum, shades and hues will be found. In these various categories of cooperative property institutions, both liberty and community are of the essence, and the applicable property configuration includes rights as well as responsibilities. Thus, while property law appropriately facilitates the ‘sphere of freedom from personal ties and obligations’ constituted by the impersonal norms of the more market-oriented property institutions, it does not allow these norms to override those of the other spheres of society. Property relations mediate some of our most cooperative human interactions as spouses, partners, members of local communities, and so forth. And imposing the impersonal norms of the market on these divergent spheres would effectively erase these spheres of human interaction and human flourishing. . . .

Law in general, and property law more particularly, should facilitate, within limits, the co-existence of a variety of social spheres that embody different modes of valuation. As long as the boundaries between the multiple property institutions are open, and navigation within this variety is a matter of individual choice, the commitment to personal autonomy that probably drives most supporters of the conception of property as exclusion does not necessitate the hegemony of the fee simple absolute, nor does it undermine the value of other, more communitarian or utilitarian property institutions. . . . [T]he legal conventions encapsulated in property law, the property institutions as I call them, do not merely supply an assortment of disconnected choices. Rather, they offer a repertoire that responds to various forms of valuable human interaction.”

❖ Hanoch Dagan, *Remedies, Rights and Property*,  
Forthcoming in the JOURNAL OF TORT LAW (2011)

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