



Property I
Voluntary Practice Mid-Term Exam
Fall 2010
Professor Donald J. Kochan
Chapman University School of Law

2010 PRACTICE MID-TERM EXAM

This voluntary, take-home practice exam covers all material covered through Class 15. You should expect your answers to change slightly if you revisit this exam at the end of the semester after new material is covered, but you should have learned most of the material necessary to answer these questions by this point in the semester.

I strongly suggest that you replicate exam conditions while taking this practice mid-term examination. Below are the instructions that would likely appear on a final examination (but be sure you nonetheless read carefully the instructions on the actual final):

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 3 essays and NO multiple choice.
Total points = 100

Assume that a 10-year statutory period for common law Adverse Possession applies in any jurisdictions mentioned.

Essay 1: (60 points)

In 1975, Oto owned Redacre in the state of Oz (an American jurisdiction that sometimes follows traditional English common law rules, you never can tell) in fee simple absolute. Immediately adjacent to Redacre is Whiteacre, owned in fee simple absolute by Andy. Andy has purposefully left Whiteacre undeveloped.

In November 1980 when Ronald Reagan was elected President, Oto sold Redacre to Sovey with the following Deed: "Oto hereby conveys Redacre to Sovey only if it is always used for purposes as a research center for the advancement of Soviet studies." Sovey accepts the deed and immediately builds and operates the "Oto/Sovey Institute ("OSI") for Soviet Studies" (a non-charitable organization) on Redacre.

In 1981, Oto is sick of America and decided to leave for a commune in Siberia. As he got on the plane to Siberia and as Sovey and the entire population of Oz watched, Oto screamed to the crowd that "I am relinquishing all my so-called rights to property in America and returning to the motherland." After making the statement, he handed a letter to Sovey stating that he actually was not sure whether he would return, but most likely would not.

Sovey maintains and operates OSI on Redacre for several years. In 1985, Sovey takes out a long term mortgage on Redacre and takes other actions on the belief that she owns the property in fee simple absolute. As part of that effort in 1985, Sovey doubles the OSI building size and 10 feet of the new wing is actually now on the grounds of Whiteacre (without Andy's consent and Sovey never surveyed because she does not believe in the "artificial" boundaries of private property). Sovey also builds a spiked fence around the entire span of the newly expanded building.

Later in 1988, Andy is in his last days of life and decides to visit Whiteacre for the first time in more than 25 years. He knocks on the OSI door that is on the side of the building that encroached on Whiteacre. Sovey answers; Andy says "I think you are on my property and should leave"; Sovey says "no we're not" and slams the door in his face; Andy walks away muttering to himself that maybe he was wrong. He plops himself down in the middle of the field and drafts his will, leaving Whiteacre to "his daughter Andrea for life, then to his genetic siblings." He had told his son, Albert, that he would inherit the property back in 1975, but had apparently forgotten about that promise. Andy

dies the next day. Andrea moves on to Whiteacre but never notices the encroachment from OSI. She builds a home and peacefully lives next door to Redacre and OSI.

In 1989, there is a coup of sorts at OSI – Penny, a leading scholar at OSI has turned a majority of the members of the OSI toward “Western” ways and convinced them that the Soviet model is wrong. They kick Sovey out of OSI, change the locks on the building, change the name on the complex to the Institute for Peace Studies and the Westernization of Soviet Societies (“IPS”), and exclude all visitors including Sovey. Penny pays taxes on the property, makes improvements to the building with her own money, puts a sign out front that says “Under the New and Proper Ownership of Penny.” Sovey never tries to retake or make a claim to Redacre.

In 1996, Oto returns from Siberia convinced that he must bring the Soviet message back to America. He is appalled to see IPS on Redacre. (1) Oto sues Sovey and Penny. What are the claims and defenses of the parties?

In 1997, Andrea has a survey done on Whiteacre and notices the encroachment from Redacre. (2) Andrea sues Oto, Sovey, and Penny. What are the claims and defenses and counterclaims of the parties.

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Essay 2: (20 points)

Delilah finds a beautiful shell on a California State Beach.
She picks it up, cleans it off, and takes it home to her door,
Displays it up on a shelf, always within her reach.
Turns out that little Joey had found it first on the ocean floor,
But he left it lying in wait on the beach,
While he went back to swim, off to search for more.
Well oh well,
Who owns the shell?

Essay 3: (20 points)

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

“True to Blackstone’s image of property, the most basic and defining right remains a landowner’s right to exclude other people or things from his or her land. Yet there have always been limits, and the exceptions to a property owner’s right to exclude are growing in response to humanitarian, equitable, and political concerns over the “despotic” character of exclusive rights. The common law also constrains how property owners use their lands. One landowner’s right to use his land as he sees fit can clash with the right of a neighbor to do the same, as when one landowner’s desire to build a factory impinges on a neighbor’s air quality. Land uses can also impact society’s interests in the environmental and other amenities and values. For these reasons, the law limits how each property owner uses her land.”

❖ PAUL GOLDSTEIN & BARTON H. THOMPSON, JR.,
PROPERTY LAW: OWNERSHIP, USE, AND CONSERVATION 2-3 (2006).

-- END --