PROPERTY

Final Examination

Professor Scott Altman   May 11, 2017

Part II: 100 Minutes (One Hour and Forty Minutes)

OPEN BOOK

After the questions and answer sheets for Part I are collected, students will be given a ten minute break. Once the break is done, the proctor will distribute Part II, which includes two pages in addition to this cover page.   Part II consists of a single essay question, with three specific disputes identified. For each dispute, you should identify important issues, make reasonable arguments on either side of any open question of fact or law, and state clearly how resolution of these issues will affect the outcome. Reasonable arguments are those that might be made in a trial court.

You will have 100 minutes to complete Part II, which will count for 60% of your exam grade.

If you are writing, please write in ink on every other line and on one side of each page. Please take care to write legibly.

Good luck on the exam.

YOU MUST STOP WRITING WHEN INSTRUCTED TO DO SO BY THE PROCTOR. FAILURE TO DO SO WILL BE CONSIDERED A BREACH OF ACADEMIC DUTY AND WILL BE REPORTED TO THE DEAN'S OFFICE BY THE PROCTOR.

DO NOT LIFT THIS COVER SHEET UNTIL INSTRUCTED TO DO SO BY THE PROCTOR

After the 2016 presidential election, several Hollywood notables formed a nonprofit called "Overcoming Our Problematic Situation" (OOPS). Founding members included Warren Beatty and Faye Dunaway (who mistakenly announced that La La Land won the 2017 best picture award) and Steve Harvey (who mistakenly announced that Miss Columbia won the 2015 Miss Universe pageant). The organization's first project was to establish the Hillary Clinton Shouldabeen Presidential Library.

Almost immediately, OOPS received good news. A wealthy supporter donated to OOPS for the library project ten acres of land in Austin, Texas. For convenience, I will call this the "Donated Parcel." The gift document indicated that the donor gave the property to OOPS

> "so long as the land is not used for any purpose other than the library, and on condition that the library does not include in its collection any information about Benghazi or about Hillary's private email server. If any of these conditions is broken, the land belongs in fee simple absolute to Bill and Hillary Clinton so they can advance the good work of their charitable foundation."

Construction began in early 2017. Unfortunately, OOPS started to build the library on a ten acre parcel adjacent to the donated one. That parcel belongs to Secretary of Energy Rick Perry. For convenience, I will call this the Perry Parcel.

In late 2017, Secretary Perry received a report from a company he hired to test his property for its oil-drilling potential. The company initially mistook the Donated Parcel for the Perry Parcel. It determined that the Donated Parcel likely had oil beneath it. After further research, it realized that Perry owned the land where the Clinton library was under construction. The company reported all this to Perry, who immediately demanded that OOPS vacate his land. OOPS quickly corrected its error, returning the Perry Parcel to its original condition and restarting construction in the correct location.

The Perry Parcel itself has a complicated history. During the 1970's, it was owned by Err Oshibka (a Russian immigrant). Oshibka sold the parcel in 1980 to Erreur (a French investor). The deed used in this transaction had no errors in it. Unfortunately, the clerk who recorded this deed was confused by these names and entered the transaction incorrectly into the grantor/grantee index (which is the only available index in this county). He thought that Err Oshibka was Err O. Shibka. Therefore the transaction was indexed under the letter "S" rather than the letter "O." Compounding this error, the clerk thought Erreur was the seller and Oshibka was the buyer and so indexed the transaction under "Shibka" in the grantee index and "Erreur" in the grantor index. In 1990, Oshibka (who had grown forgetful in old age) gave the same parcel of land to his cousin Fred Fehler. This deed was promptly and correctly recorded. Fehler kept the property for ten years. In 2000, he sold it to Rick Perry, who recorded immediately. The Perry Parcel has never been used or occupied, save for a few months in 2017 when OOPS started library construction there.

The statute of limitations for trespass in Texas is five years. A shorter statute applies to adverse possession under color of title. In Texas, adverse possession requires that a person "use, cultivate, or enjoy" the property for the entire statutory period.

1. **In 2020, Rick Perry filed a motion to quiet title in the Perry Parcel – i.e. sought a declaratory judgment that Perry owned the Perry Parcel. The heirs of Erreur (who died recently without a will) claim to own the parcel. They argue that Perry never owned this land. What arguments will be advanced about whether Perry ever owned the Perry Parcel? What outcome seems most likely, and why? Do not discuss whether OOPS has claims to the Perry Parcel.**

After many years of successfully operating the library, in early 2023 OOPS ran short of funds and decided to hire an oil-drilling company to install an exploratory well on the Donated Parcel. By June of 2023, the well was producing oil.

In 2025, Bill and Hillary Clinton both died. In the 2024 presidential election, Hillary was defeated by Donald Trump for a third consecutive time. Her only consolation was that Trump still had not won the popular vote. The Clintons' wills leave all of their assets to their daughter Chelsea. Those assets include an interest in the Donated Parcel, which has proved to be extremely valuable, producing millions of dollars in profits from oil since 2023. At this point, very little oil remains to be pumped. Had OOPS adopted a somewhat slower method for extracting oil, the well likely could have produced more oil.

2. **In June of 2025, Chelsea sues OOPS to claim ownership of the Donated Parcel and for all (or at least some) of the oil profits. In the course of preparing for this case, Chelsea discovered that the library has in storage dozens of boxes containing papers about congressional investigations into Benghazi and Hillary's private email server. No one is certain when the library received these items. Some of them appear in the physical catalog of library holdings, which can be searched by library visitors. There is no electronic library catalog.**

    What claims will Chelsea advance? What arguments will each side make? Do not attempt to calculate a damage remedy. You might want to know that the person who gave the Donated Parcel to OOPS is now dead. Her will included a clause stating that any of her assets not otherwise provide for in the will should belong to OOPS.

After these issues are resolved, Rick Perry faces a new dispute. He recently purchased the oil rights (the right to withdraw subsurface oil) for some land outside Austin, Texas. The surface rights are owned by the residents who live on the land. Recently, the Austin City Council voted to ban fracking (a technique for extracting oil) within the city limits. The law was described as necessary because fracking has been known to cause earthquakes in areas with geologic formations similar to Austin. Perry's experts tell him that there is no way to extract oil from this particular land except by fracking and that Perry's oil rights thus have no value.

3. **Perry's lawyers have filed suit to have the fracking ban declared a taking, citing <u>Lucas v. South Carolina</u> (824) as the basis for their claim. The city seeks summary judgment on the ground that Perry's argument is foreclosed by both <u>Lucas</u> itself and by the parcel-as-a-whole doctrine announced in <u>Penn Central</u> (820). Explain and evaluate Perry's claim (based on <u>Lucas</u>) and the city's two responses to Perry's reliance on <u>Lucas</u>. If open issues of law are raised, explain how you think those open issues should be resolved and why. Be sure to address counter arguments. Do not discuss other potential takings arguments. Because this is a motion for summary judgement, assume that Perry's experts are correct about the oil rights having no value.**