ARIZONA STATE UNIVERSITY COLLEGE OF LAW

PROPERTY LAW, SPRING 2013

Professor Karjala

FINAL EXAMINATION
Part 1 (Essay Question)

MODEL ANSWER

Wednesday May 1, 2013

Instructions

This examination consists of two parts. Part 1 is an essay problem that will account for roughly 1/3 of your final grade in the class. Part 2 is a set of 40 multiple choice questions that will account for roughly 2/3 of your final grade in the class. You have a total of 1 hour to complete this Part 1 of the examination.

You are permitted to have with you and to use during the examination hard copies of the textbook, any class handouts (including printouts from the Syllabus), your class notes and outlines, and any other materials made by you personally or by your study group (not photocopied from printed materials, except for materials referenced on the Syllabus). You are permitted during the examination to access files stored on your own computer or accessible over the internet via the Syllabus. The materials we have studied and our class discussion constitute the legal authorities that govern the answers to these questions. Do not rely on or cite as authorities cases, statutes, or other materials of which you may be aware but that we have not studied in class.

If answering Part 1 in longhand, please write legibly, double space, and on one side of a bluebook page only.

In answering this problem, do not begin with an elaborate discussion of the facts. Indeed, mere repetition of the facts without relevant legal doctrine will not get you any points at all. Neither, for that matter, will abstract discussion of legal doctrine that is not tied to the facts of the problem. Your analysis should weave relevant legal doctrine together with the facts to create a response that is directly relevant to what has been asked. If you believe that your resolution of a given issue basically eliminates the need to consider other issues, do not give in to the temptation to point that out and stop writing. Rather, assume (even if apparently beyond common sense or logic) that your earlier resolution is incorrect and analyze the issues that remain when that issue is decided the other way. Think about all the facts in the problem. If your answer does not make use of a particular fact, it is quite possible that you have missed an issue.

GOOD LUCK!
Problem

O is the owner of a 3-acre lot, where he has lived for over 20 years in a house built nearly a century ago. Well over half the lot remains densely wooded. Well up in one of the trees were the remains of a tree house, obviously built decades ago for the playtime pleasure of children. Due to its decrepit state, O did not allow his own children to play in the house when they were young and eventually decided he ought to get rid of it before it became an attractive nuisance to his grandchildren. He invited his friend F to come over to help him remove the tree house (in exchange for beer and pizza), and together they set about the task. F climbed up the tree and started ripping out boards when he noticed a small piggy bank coarsely hidden behind a crude false wall in a rear corner of the tree house. F put the piggy bank into his tool box and finished the “demolition” work. When he came down, he forgot to mention to O what he had found in the tree house. O and F did then enjoy several hours of beer and pizza at O’s house, at O’s expense.

When F got home he broke open the bank and saw that it contained a number of old United States coins, some dating back to the late 19th and early 20th centuries. F took the coins to a coin dealer, who informed F that while most of the coins (mainly nickels, dimes, and quarters) had a value several times their face value, one dime was very rare indeed. Given a recent auction result at which several million dollars were paid for a rare “Indian Head” nickel, the dealer estimated the value of the rare dime to be $1 million.

F contacted O to tell him the good news and offered to split the $1 million evenly with O. O, however, was furious that F had taken what O considered to be O’s property without saying a word and demanded return of all the coins, including the rare dime. F retorted that he thought he was being generous in offering O half and rescinded the offer. O brought action in the superior court demanding return of the coins.

Publicity about the lawsuit between O and F brought the matter to the attention of C. C is now 95 years old but was raised on what is now O’s property, and it was C’s father who built the tree house. C has photographic proof that he was in that tree house as a boy with a piggy bank meeting the description of the one found and opened by F. C says that he put the piggy bank behind the tree house’s false corner wall and did not remember placing it there when his family moved out of the house some years later, when C was a teenager. Over the years, C has often wondered about the bank and occasionally has thought about going back to look for it. He was unaware, however, that it contained a coin as valuable as the rare dime, and every time he thought about it he decided it was not worth the effort to go back to look for a bunch of small change. Now that he has realized its value, however, C intervenes in the case demanding that all of the coins belong to C.

Assume that all necessary procedural steps have been taken so that O, F, and C are properly before the court. You are a clerk for the judge. The judge tells you to assume the truth of C’s claim that C was the original owner of the piggy bank and the coins it contained. The jurisdiction has no statute and no case law relating to found, lost, or mislaid property and therefore follows the common law, which is to say, the cases and materials we have studied in this class. The statutory period for adverse possession is 10 years. The judge asks you to draft an opinion deciding the case. Do so.
Model Answer

If C remains the true owner of the coin, we need not decide the relative rights of O and F, so it may be convenient to begin with the rights of C. It is clear that C was once the owner of the coin. (Hereinafter, references to “the coin” cover all of the coins F found in the piggy bank, but as the rare dime is the only coin of the set with large monetary value, this opinion uses the singular.) The common law cases state that the finder of a jewel or other valuable item acquires a property interest in the find valid against all but the rightful owner. The later cases came to distinguish between “lost” and “mislaid” property, but that distinction arose only in disputes between the finder and the owner of the property on which the find was made (O and F here). In none of those cases was the “rightful owner” in the picture. Here, C was the owner of the coin, and C therefore remains the owner unless some principle of law has given ownership to someone else.

Ownership rights in property can be lost by abandonment or by adverse possession. Has C lost title by adverse possession? The law on adverse possession of personal property varies from state to state within the United States. At least three possibilities exist: First, New York essentially says that title to personal property can be acquired through adverse possession only by holding for the statutory period after the true owner makes demand followed by good-faith refusal (Note 3, p.161). Here C made demand immediately upon learning of the lawsuit between O and F and so would not be blocked by a claim of adverse possession. Under the New York rule, it seems that C would not have lost title under adverse possession principles.

Second, if the law of adverse possession for real property is applied here, we can say that the coin has been in O’s at least “constructive” possession (via ratione soli - Note 2, text p.32) for the time of O’s ownership of the property. O’s “possession” (especially when tacked with that of the prior owners after C’s family, who all had the same “possession” that O had), has continued for well beyond the statutory period of any jurisdiction we have studied, let alone the relatively short 10-year period in this jurisdiction. If C has “possession,” the question is whether such possession was “open, notorious, and adverse.” We can say that the possession was adverse, as O has laid claim to everything on his property, regardless of his subjective knowledge of exactly what is there (that is, regardless of C’s actual awareness of the existence of specific objects). There are no facts suggesting that C loaned or leased the piggy bank to O or O’s predecessors or that any of them entered into any kind of bailment agreement with C. In this case, the possession was hardly “open and notorious,” because the dime was inside a piggy bank hidden in a tree house. However, the purpose of the “open and notorious” requirement is to insure that the true owner has a chance to find out where the property is or who is occupying it adversely, so that the true owner can take the necessary legal steps to recover the property. Here, C knew all along where the coin was, so O’s holding should be deemed open and notorious as to C. The issue under the real property rule would therefore seem to boil down to whether O’s constructive possession counts as “possession” in the adverse possession analysis. Because a major goal of adverse possession law is to get valuable property back into the stream of commerce without encumbrances from stale claims, the court concludes that, if the law of adverse possession for real property applies to personal property in this jurisdiction, O would be the owner of the dime at least as against C.

Third, under New Jersey’s “discovery rule,” the question is whether the true owner acted with due diligence in pursuing the property. Here C has known for 75 years where the dime was located and did nothing to get it back. C would be precluded by adverse possession in a discovery-rule jurisdiction. As an incidental matter, the court notes that even if there was statutory tolling of the statute of limitations, because C was a minor when C’s family moved
away from the property, the statute would still have run long ago, no matter how many years the
tolling statute adds under any of the tolling statutes we have considered.

This court believes that the New York rule leaves property ownership up to challenge by
too many stale claims. If called upon to rule under the law of adverse possession, therefore, the
court would find that, as between O and C, O would be the owner of the coin by adverse
possession, either under the discovery rule or under the general law of adverse possession.
Fortunately, the court does not need to rely solely on adverse possession analysis, because C has
lost title to the dime by abandonment.

The law is not entirely clear on what constitutes an “abandonment.” For easements, the
United States Supreme Court has stated that mere nonuse is insufficient to rise to the level of
abandonment. Rather, there must be unequivocal acts manifesting a present intent to relinquish
the easement or a purpose inconsistent with it (Presault, p.837). The issue before this court,
however, is not abandonment of a right to use property (i.e., an easement) but rather
abandonment of ownership rights themselves. Our authorities do not give us a precise definition
of abandonment, but it is clear that it involves knowingly giving up possession with the intent not
to repossess. Cases have held that shipwrecks under water for a century or more have not been
abandoned (Note 5, p.113), but in the case of shipwreck the location of the ship may be unknown
to the owner and seeking to recover it may be prohibitively expensive. In this case, C knew all
along where the piggy bank was and even considered going back for it from time to time. C
affirmatively decided against trying to retrieve it, because he believed it contained coins of at
most modest value beyond face value. C knowingly decided to leave the piggy bank where he
had left it. C is now 95 years old, so C has failed to take action to retrieve the property for over
75 years (given that C was still a teenager when C’s family moved away). That alone is
sufficient to conclude that C abandoned the piggy bank long prior to its discovery by F, exactly
where C had left it.

The court therefore concludes that, as between O and C, C has lost title by abandonment
and, alternatively, by adverse possession.

Next we turn to the question of the relative rights of O and F. The cases involving
disputes over title to property found by one person on the property of another distinguish
incoherently between “lost” and “mislaid” property (Note 2, p.108-09). Fortunately, this
distinction need not detain us in this case, because the facts make it quite clear that the dime was
neither lost nor mislaid. The original true owner, C, placed it where C intended to place it and
remembered for over 75 years exactly where it had been placed. C did not lose it and did not
mislai it. Rather, as concluded above, C abandoned it. Moreover, to the extent there is a
coherent policy underlying the lost/mislaid distinction, it is supposed to be that the true owner is
more likely to return for mislaid property than for lost property. Here, however, the court has
concluded that the “true owner,” C, has lost title to the coin via abandonment or adverse
possession. Consequently, there is no reason to adopt a rule designed to favor the interests of the
true owner when that person’s ownership rights have already been determined to have been lost.
The court must therefore decide who has the better claim to personal property found by an
invitee of the owner of the real property on which the personal property is found. (The court
noted in passing that, in the United States, treasure trove is generally treated like any other found
property (Note 4, p.111). This court adopts that approach, if somehow a claim is made that the
bank or the coins it contained qualify as “treasure trove.”)

In this case, F was invited onto O’s property for the specific purpose of tearing down the
decrepit and dangerous tree house, followed by “payment” in the form of beer and pizza for F’s
assistance. At no time did O suggest to F that F was entitled to keep whatever F might run across while on O’s property. The case of Hannah v. Peel (p.101) does suggest that a property owner does not become the owner of personal property lying in the open that may be found there, but in that case the court emphasized that the property owner had never occupied the property, which had been requisitioned by the government for temporary military use. Here, O has occupied the property for over 20 years. Had F found the piggy bank while trespassing on O’s property, the courts would be loathe to award ownership to F, because to rule otherwise would encourage trespass and reduce the property owner’s right to exclude – one of the most basic “arrows” in the quiver of property rights. While F here was not a trespasser, this court finds little social good that would result from a rule allowing invitees to keep items of personal property they find lying about the premises to which they have been invited. The court therefore rules in favor of O, thereby avoiding the need to consider the issue of whether F acted in bad faith in not informing O as to his find at the time, or whether F’s good faith in ultimately informing O of the find after the appraisal alters the analysis. Neither bad faith nor good faith is doctrinally relevant to the issue of property ownership, although either may be relevant to the remedy a court might award for trespass or conversion.

Speaking of remedy, justice in property disputes can sometimes be better achieved by avoiding a winner-take-all resolution in favor of one that splits the benefits more equitably. In this case, F’s ultimately informing O of the find must be regarded as a socially desirable act, because it allowed the current true owner, O, to assert ownership rights of which O might otherwise have remained ignorant. The court does not wish to discourage this type of behavior in the future by people in F’s position. However, in this case, F wrongfully failed to inform O of the find immediately upon making it. Whether or not F is considered a common law “employee” (he was “paid” for his work with beer and pizza), F had a both a moral and a legal duty to inform O immediately of the find. While it is possible that F simply forgot, one cannot avoid speculating that F expected O to assert complete title, leaving F out in the cold. Had F informed O immediately of the find, O might well have chosen to reward F, perhaps even to the degree of the 50% that F demanded. F’s failure to follow the legal duty on F to inform O prevents our knowing how O would have responded. While as a court of equity this court has the power to order sale of the coin and award something of a finder’s fee to F, the court declines to exercise such power in this case, given F’s mildly deceitful behavior.