

Property Law

Che and Cedric own adjoining pieces of land in a rural community, but the boundary line between the 2 properties was never clearly marked. Twenty-five years ago Che dug a well on a piece of the property that he believed to be his. He has used the well continuously since then and has taken care of the area surrounding it. Fifteen years ago, Cedric was defined as mentally ill and found incompetent. He died today and the executor of his estate filed suit to throw Che off the land with the well. The adverse possession requirement is 20 years. Which best summarizes the status of the well property?

- A.** Che has acquired title by adverse possession.
- B.** Che cannot claim title as an adverse possessor since he never entered with hostile intent.
- C.** Che is in adverse possession but does not hold title, since Cedric's incompetence 15 year ago stopped the possession clock from running.
- D.** None of the above

Answer: A

This is a simple adverse possession case. Che had title due to his open, exclusive, continuous, and hostile use for a period longer than the statute. Since Cedric did nothing to eject Che during the running period of the statute, title to the property vests in the possessor, and the owner is barred from suing for ejectment. An adverse possession claim requires: 1) open and notorious use, 2) actual and exclusive use, 3) continuous use throughout the statutory period and 4) the possessor must occupy the property and enter without the owner's permission. Here, Che has met all of these requirements.

B is incorrect. Hostile intent merely requires a possessor to take possession of the land without permission of the true initial owner, which results in a loss of Cedric's rights.

C is incorrect. The only time in which the statute of limitations for adverse possession would be tolled is if the true initial owner is mentally incompetent when the possessor initially takes the land. Here, Cedric's mental illness occurred years after Che initially took possession.

D is incorrect in light of the correct answer. Answer **A** clearly and accurately states that Che has taken right and title by adverse possession.

Property Law

Kazuo owns a huge hunk of property in a rural district of Oregon. He builds a home on the northernmost region, and grows Christmas trees on the southern region. Kazuo becomes ill from pesticide poisoning and spends his last years in a hospital bed. Right before dying, he gives the northern parcel with his house to Henry stating: "*To Henry, for life and then to his widow for her life, and then to Henry's surviving children.*" The southern region goes to Roy, a friend. Kazuo dies leaving a single heir, his brother Tanaka. After failing to rent the house on the northernmost region of the property, Henry decides to level it and plant Christmas trees for income. The property would be worth much more this way, but Tanaka has a sentimental attachment to the home and wants Henry to leave it as is. This jurisdiction has the common law rule against perpetuities. Does Tanaka have standing to enjoin destruction of the house?

- A. Yes, as Tanaka has a reversion that will occur when Henry's widow dies.
- B. Yes, Tanaka has an executory interest that will become possessory in the event that Henry dies without surviving children.
- C. No, Tanaka has no interest in this parcel of the property.
- D. No, so long as Henry is married with living children at the time of the conveyance.

Answer: A

Under the rule against perpetuities, the remainder of Henry's interest is void and Tanaka has a reversionary interest. Since Tanaka has inherited this reversionary interest from Henry, he has standing to sue. Under the rule against perpetuities, interest in property is valid unless it must vest, if at all, for longer than 21 years after one or more of the lives in being at the creation of the interest. The analysis for this rule is done at the time the interest is created. We have a potential problem with the general word "widow." "Widow" is defined as the person to whom someone is married at the time of his death, so Henry's widow can only be determined upon Henry's death. Henry's "widow" has a contingent remainder in a life estate because, until her identity and existence are ascertained, there is no one to take possession upon Henry's death. Henry's children have a contingent remainder in fee simple, as their interest is contingent upon outliving both Henry and his widow. This remainder is in violation of the rule against perpetuities, as Henry may get divorced (assuming that he is married) and remarry someone younger who was not yet born at the time that the interest was created. He could then have a new child with his new wife, at which time everyone connected with the vesting of the interest could die. This widow could live for more than 21 years after the death of all lives in being at the time the interest was created and leave their child. Here, the interest of Henry's widow and child could vest outside the perpetuities period (21 years) rendering the interest void. In light of this, when Kazuo conveyed the northern parcel of his land, he had a reversion, which was passed to his brother Tanaka upon his death. Tanaka, therefore, has standing to enjoin the destruction of house.

B is incorrect since Tanaka actually holds a reversion interest, and not an executory interest. By definition, an executory interest is a future interest created in a transferee that is not capable of taking on the natural termination of a preceding life estate. An executory interest follows a gap in possession which does not occur here. In the present facts, Tanaka gets his interest in the property through his inheritance rights from his brother Kazuo.

C incorrectly states that Tanaka has no interest in the northern parcel. In light of the correct answer, Tanaka has a reversionary interest and can sue to enjoin destruction of the house.

D is incorrect. Based upon the analysis given in the correct answer, there is a possibility that the Rule of Perpetuities could be violated.

Torts

Janis and Bobby are a couple who have been dating for 3 years. Janis lets Bobby drive her pickup truck to pick up a used refrigerator that Bobby bought online. Bobby drives to the appliance store and parks outside. He decides to go into the pet shop next store to look at puppies first. Bobby then picks up the fridge at the appliance store. He straps it to a moving dolly and heads to the pickup in the parking lot. As he is waddling over, a car driven by McGee slams into the pickup doing \$10,000 in damages. Janis does not have collision insurance. Assume that Janis sues Bobby on a negligence-based theory for damaging her pickup. Who wins?

- A.** Janis, Bobby's stop off at the pet store was an extension of the granted authority.
- B.** Janis. If not for Bobby's delay in going to the pet store before getting the fridge, the pickup would not have been in the parking lot at that time and would not have been damaged.
- C.** Bobby, there was no foreseeable risk in damaging Janis's pickup.
- D.** Bobby. Under the family car doctrine there cannot be negligence between Janis and Bobby as they are not in the same family.

Answer: C

Bobby is not liable as a reasonable person would not have foreseen damage to the pick up simply because he exercised a slight delay in picking up an appliance at the store. A *prima facie* case for negligence consists of: 1) a duty on the part of the defendant to conform to a specific standard of conduct for the protection of the plaintiff against an unreasonable risk of injury; 2) a breach of such duty by the defendant; 3) a breach that is the actual and proximate cause of the plaintiff's injury; and 4) a damage to the plaintiff's person or property.

Note: *There is never a duty in a party to take precaution against an event that may or may not occur.* Here, there was no foreseeable risk in legally parking a pickup when going shopping. Therefore, Bobby cannot be held liable for negligence.

A is incorrect. Stopping off at the pet shop did not result in Bobby's creation of an unreasonable risk to Janis's pickup. The idea of "exceeding one's authority" only applies to situations in which an employer tries to avoid vicarious liability for the tortious conduct of an employee who acted outside the scope of her or his employment. Such a situation is not applicable here.

B is incorrect. We cannot apply a finding that Bobby leaving Janis's pickup in the parking lot for a few extra minutes led to its damage, thereby resulting in Bobby's negligence. Since we have unforeseeable damage to Janis's car, Bobby is not responsible.

D misstates the family car doctrine. The doctrine makes a car owner liable for the tortious conduct of any immediate family who are driving with the owner's permission. This is an inapplicable doctrine to the present case. Additionally note that we are not dealing with a family, just a girlfriend/boyfriend relationship in the eyes of the law.

Torts

Virginia and Orlando go to college together and after their gender studies class they decide to go out for drinks at the Ho, a popular college bar. They are deeply discussing politics when Shelmerdine sits down at a neighboring table. Shelmerdine has a crush on Orlando and decides to get her attention by scaring her. (Shelmerdine is still immature and will probably never get a date.) He decides to fling a beer coaster at Orlando's back. His toss goes astray and he hits Virginia in the eye, giving her a paper cut on her cornea. She screams. A waitress hears the scream, rushes over, slips on some spilled beer and falls onto Professor Hawkes, a fragile college professor with osteogenesis imperfecta. Professor Hawkes is severely injured from the impact. Assume that Virginia sues Shelmerdine. What can she recover for?

- A. Assault
- B. Battery
- C. Intentional infliction of emotional distress
- D. Nothing, because Shelmerdine did not intend to harm her.

Answer: B

Battery is applicable to the present situation under the doctrine of transferred intent. This doctrine applies to situations in which a person intends to commit a tort against one person but instead: 1) commits a different tort against that person; 2) commits the same tort as intended but against a different person; or 3) commits a different tort against a different person, after which the intent to commit a tort against a different person transfers to the injured person establishing a *prima facie* case. Transferred intent only applies to situations in which both the intended tort and the resulting tort result in one of the following: 1) assault; 2) battery; 3) false imprisonment; 4) trespass to land; and/or 5) trespass to chattels. **Note:** *By definition an assault requires: 1) an act by the defendant creating a reasonable apprehension in the plaintiff of immediate harmful or offensive contact to the plaintiff's person; 2) intent on the part of the defendant to cause such apprehension in the plaintiff; and 3) causation. Battery requires: 1) an act by the defendant that brings about harmful or offensive contact to the plaintiff's person; 2) intent on the part of the defendant to bring about such contact; and 3) causation.* Shelmerdine is liable for either assault or battery since when he hit Virginia his intent was transferred, making him liable for battery.

A is incorrect since the tort we are dealing with is battery. At no point was Virginia placed in apprehension of any harmful or offensive contact. (She was unaware of the flying coaster.)

C is incorrect because we are not dealing with extreme and outrageous conduct by Shelmerdine as required by the tort of intentional infliction of emotional distress. Additionally, the intent element of this tort is missing.

Note: *The doctrine of transferred intent does not apply when an assault or battery is intended toward one person, and emotional distress occurs in another person.*

D is incorrect for failing to apply the Doctrine of Transferred Intent. The fact that Shelmerdine did not intend to hurt Virginia does not relieve him from liability for battery. Transferred intent makes him liable.

EVIDENCE

Clyde is charged with robbing a bank, but in the federal court case alleges that he was vacationing 5 states away in Wisconsin when the robbery occurred. Clyde calls Bonnie as an alibi to testify that she was traveling on vacation with Clyde at the time in question. When questioned where she was during the robbery and with whom, Bonnie says, "Yes, *I definitely know that I was at the Grizzard Motel the weekend of the robbery, because that is the same weekend as my birthday and I was there to celebrate. The thing is, there's no way I was there with a guy as ugly as Clyde.*" Clyde's attorney seeks to introduce evidence that Bonnie was at the Grizzard Motel with Clyde. Clyde had testified to that fact in the preliminary hearing. The prosecution objects. The question is:

- A. Proper, if the judge determines that Bonnie is a hostile witness.
- B. Proper, as it is simply refreshing the witness's recollection.
- C. Improper, as it is a leading question on direct.
- D. Improper, since Clyde's attorney cannot impeach her own witness.

Answer: A

The federal rules state that an attorney may impeach her own witness, even on direct, if the judge has found the witness to be a hostile witness. In light of this, Answers **C** and **D** are clearly incorrect.

B is wrong as Clyde's attorney is not seeking to refresh Bonnie's memory, but to admit testimony from the preliminary hearing in order to impeach her.

EVIDENCE

Dumaine owns a bakery, and is charged with murdering Hansel, his employee, by putting him in the baking oven with some muffins. The prosecution seeks to introduce the testimony of Oliver, another employee of Dumaine. Oliver will testify that as he went to place an order for more flour one day, he accidentally pushed an already lit extension on the phone and overheard an unknown voice say to Dumaine, "*Hey Dumaine, I hear that Hansel is going to testify about all the illegal prescription drugs that you have been selling out of the bakery. What are you going to do about him?*" Dumaine's attorney objects to the introduction of Oliver's testimony on the basis that it is irrelevant. How should the judge rule?

- A. Sustain the objection.
- B. Overrule the objection, as this testimony is being introduced to show Dumaine's state of mind and is, therefore, within a hearsay exception.
- C. Overrule the objection, as this hearsay falls within the business record exception, since the attempted call was made as a part of work during business hours.
- D. Overrule the objection if, and only if, the evidence is offered to prove motive.

Answer: D

Recall that an out-of-court statement offered for the purpose of proving knowledge on the part of the listener is not deemed objectionable hearsay. Furthermore, the evidence may be admitted as an admission by silence on the part of Dumaine. In light of the correct answer, **A** is clearly wrong.

B is wrong. The state of mind exception only applies if an out-of-court statement is introduced in an attempt to prove the declarant's state of mind. Here, that is clearly not the case, making this exception inapplicable.

C is wrong. The business record exception does not apply to phone calls made during work hours, only to work product that is generated in the course of business (i.e., charts or documents).

Constitutional Law

A New York law provides state residents with a decreased state college tuition; while nonresidents, or those students who have been residents for less than 5 years, shall pay a higher nonresident tuition rate. A fourth-year resident files a class action suit challenging the constitutionality of the law in federal district court and seeks a declaratory judgment. The state moves to dismiss on this basis: by the time the case would come to trial, 13 months after filed, the resident would by then be eligible for the reduced tuition rate. Should the state's motion be granted?

- A. No, because there is a live controversy.
- B. Yes, because the student lacks standing.
- C. No, because a declaratory judgment is the improper vehicle.
- D. Yes, because the student is now an eligible resident.

Answer: A

In the present case, there is a live controversy and the case is not moot. In light of this, a federal court would proceed to hear the case. As a federal court requires a live controversy at all stages, not just when the case is filed, it appears at first glance that the student's eligibility for resident tuition would render the case moot. However, the fact that this is a class action suit yields viable claims for those remaining within the class.

D is incorrect. The filing student's case may be moot, but there exist those within the class who are still eligible.

B is incorrect as standing is simply determined at the beginning of a suit, and requires a tangible stake in the outcome of the suit. The filing student did have such a stake; thereby, providing sufficient standing at the time of filing.

C is incorrect. Although a ruling for declaratory judgment does require a showing of ripeness, in the present case the state law is currently being enforced. Therefore, the issue is clearly ripe and a declaratory judgment is a proper vehicle.

Constitutional Law

A congressionally enacted law imposes a 50% tax on all alcohol sales, dictating that the proceeds of this tax be applied toward an anti-drinking media campaign and the establishment of a federal alcohol awareness clinic. A local brewer files suit in the applicable federal court, seeking to have this tax struck down as unconstitutional. The court is likely to rule:

- A. The tax is constitutional as the broad General Welfare Clause would condone it.
- B. The tax is constitutional as it is severable from its purpose.
- C. The tax is unconstitutional as it does not provide equal time for the various manufacturers to present their arguments.
- D. The tax is unconstitutional. It infringes upon the First Amendment rights of the various manufacturers by forcing them to pay for a media campaign that they do not agree with.

Answer: A

The tax is constitutional as it falls within the power of Congress under the General Welfare Clause. A tax will be upheld if Congress has the power to regulate the activity and it bears a reasonable relationship to the revenue production. Here, alcohol purchase is an area regulated by Congress due to its effects on interstate commerce, and the tax at hand does bear a reasonable relationship to the revenue production. Furthermore, the establishment of anti-drinking clinics, for which Congress is using the proceeds of the tax, is viewed as a valid public purpose. A public purpose such as this falls within the scope of the General Welfare Clause.

B is incorrect as the tax at issue is for use in raising revenue to fund an anti-drinking campaign. The tax, therefore, is constitutional as outlined above and is not severable.

C is incorrect as there exists no requirement allowing a party equal time to respond. Under the Constitution, a “fairness in response time” is not provided.

D is incorrect because the brewers’ freedom of speech rights are not infringed upon. The brewers are still free to promote a pro-drinking media campaign of their own should they elect to. The tax does not force the manufacturers to support the anti-drinking message and, therefore, does not burden their First Amendment rights.

CONTRACTS

Blackford mails the following offer to Sally: *"I hereby offer to sell my Boston, MA property consisting of a house and lot at 381 Isabella Street for \$1 million. Terms: \$300,000 cash up front and the balance secured by a first mortgage upon closing. Please advise promptly if interested in accepting."* This offer, sent via US Mail on January 1st, reaches Sally by January 3rd. On January 7th Sally writes back: *"Received your offer and am currently considering. Prefer a cash only deal. Consider an outright purchase for \$950,000?"* On January 9th, Blackford telegrams back saying "No." Sally receives the telegram on January 10th. Upon receipt of the telegram, Sally telegrams back: *"Received January 9th telegram and have decided to accept your original January 3rd offer. Please make out the deed to my mortgage company: Boston Federal Bank and Savings."* Assume that Blackford refuses to sell to Sally and she sues. How will the court rule?

- A.** A valid contract exists.
- B.** No contract exists. Sally's January 7th response terminated the original offer.
- C.** No contract exists due to the communication by Sally that altered the terms of the offer.
- D.** No contract exists because the offer relates to real estate, and the communications fail to establish the terms of the proposed agreement with sufficient definiteness.

Answer: A

For a contract to exist you need mutual assent and valid consideration. Mutual assent requires that a valid offer exist and an unequivocal acceptance occur before the offer is either rejected by the offeree or revoked by the offeror. Here, we clearly had an offer for a sale of \$1 million. Following the offer, we had an inquiry as to new terms (not a counteroffer, which would have severed the original offer) and there was no rejection of the original offer. In light of this, the original offer was still valid when Sally finally accepted it on January 10th. Having mutual assent and valid consideration; a contract exists. The terms in the acceptance directing the deed be made out to Sally's bank are not additional language as these items are implicit in a land sale. We have an offer, a consideration and an acceptance. Therefore, a valid contract was formed.

B is incorrect. As stated above, the January 7th communication was not a counteroffer but rather an inquiry. Thereby, the original offer was valid and could be accepted.

C is wrong. Both the first and second communications by Sally served merely to inquire as to different terms and to set forth answers implicit to land use questions. Neither of these serve to set forth additional terms.

D is also wrong. A contract dealing with the sale of property only needs to identify the land and contain a price term to be deemed definite.

CONTRACTS

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- A.** The revocation was effective upon mailing, and the acceptance would be treated as a counteroffer.
- B.** The acceptance was effective, assuming that Sally had no knowledge of the contents of the letter setting for the revocation of the offer.
- C.** The outcome would hinge upon a court's analysis as to when Blackford's revocation was delivered and when the postman retrieved Sally's outgoing letter from the flagged mailbox.
- D.** Flagging your mailbox for outgoing mail retrieval is not a proper posting of the acceptance. Therefore Sally's acceptance is not timely and the revocation is valid.

Answer: C

Here we have a mailbox rule question, which states that an acceptance is effective upon dispatch (e.g., upon mailing a properly addressed and stamped letter).

Note: *The mailbox rule does not apply to revocations, therefore, revocations are effective only upon receipt. Additionally, that receipt does not require that a party know that there is a revocation in the letter, but merely must have the letter in her possession.*

Here, we are faced with a dicey question of which arrived first and which went out first. A court of law must evaluate the timeline of delivery and posting.

A is incorrect as revocation is effective only upon receipt, not mailing.

B is incorrect. The validity of the acceptance is contingent upon the receipt of the revocation, at what point it was received and taken into possession by Sally.

D is incorrect. The mailbox rule makes acceptance effective upon posting, and there is no valid reason that would make a properly addressed letter in a flagged mailbox a non-valid posting under the mailbox rule.

CRIMINAL LAW

Adam is tending his garden when he stumbles upon a cobra. He is frantically swinging a hoe in an effort to kill the snake when he accidentally hits Eve, who was walking by on the sidewalk in front of his lawn. Eve, infuriated, pulls out a gun and shoots Adam and the snake, seriously injuring them both. Assume that Adam is prosecuted for criminal battery. He will probably be found:

- A.** Not guilty, as no serious bodily injury was inflicted on Eve.
- B.** Not guilty, for lacking the requisite mental state required for criminal battery.
- C.** Guilty, because Adam failed to exercise due care when clubbing the snake near the sidewalk.
- D.** Guilty, because Adam caused an offensive touching.

Answer: B

Criminal battery requires a mental state that is either intentional or reckless conduct. Adam lacked both here, as his conduct was clearly not reckless in nature.

A is wrong. A serious injury is not required for battery.

C is wrong because a criminal battery requires a showing of recklessness. Recklessness is much more than a "failure to exercise due care."

D is a potential answer, but not as good as Answer B as it fails to address Adam's mental state during the act.

CRIMINAL LAW

Mint, an understudy, decides to play a joke on her best friend Sterling and borrows a toy gun from the prop cabinet of the local theater group they both belong to. (Unknown to Mint, Golda had put her real gun in the cabinet to keep it safe while she was working on sets late one night.) Mint walks into Sterling's dressing room and cries out: "*You stole my part!*" and waits for Sterling's reaction. Sterling starts laughing, knowing that obviously Mint would never do such a thing, and Mint laughingly says: "*Gotcha!*" and pulls the trigger. Unknown to Mint, it is Golda's real gun and she kills Sterling. Which crime can Mint be convicted of?

- A. Second degree murder
- B. Voluntary manslaughter
- C. Involuntary manslaughter
- D. None of the above

Answer: D

Mint cannot be convicted of any of the above. Murder is the unlawful killing of a human being with malice aforethought, which exists only if Mint had one of the following states of mind: 1) intent to kill; 2) intent to inflict great bodily injury; 3) awareness of an unjustifiably high risk to the human life; or 4) intent to commit a felony. Here, Mint had no idea it was a real gun and she fails to have the requisite state of mind for this to be malice aforethought. Therefore, Answer **A** is clearly incorrect.

Voluntary manslaughter is an intentional killing in light of adequate provocation. At the time of the killing the defendant must be provoked such that their actions are the direct result of a passion that would cause any ordinary person to act in a similar manner. Furthermore, there must be an inadequate cooling off time between the provocation and killing. Voluntary manslaughter is not applicable, here, as this was: 1. an accidental shooting on Mint's part (not voluntary), and 2. not due to provocation. Therefore, **B** is incorrect.

Involuntary manslaughter occurs when a death is the result of criminal negligence; namely, a person failing to notice that a substantial and unjustifiable risk exists, and also failing to meet the requisite standard of care that a reasonable person would have. Here, we do have negligence in firing the gun, but the negligence was not great enough to be criminal since Mint had no knowledge of the risk of her actions. In light of this, **C** is also incorrect.