Property Makes Me Cry

Presented by
Academic & Professional Development

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WHY IS PROPERTY A “SCARY” SUBJECT?

1. Breadth of coverage – estates, landlord-tenant, co-tenancies, servitudes, takings, etc.

2. Depth of coverage – Rule Against Perpetuities, equitable servitudes, etc.

3. New topics – mortgages, water rights, etc.

4. Confusing crossovers – Contracts, Community Property, and Wills & Trusts
ESSAYS TEND TO FAVOR THE BROAD TOPICS

- Landlord-Tenant – formation of leases, terms, rights against landlords, tenants, and co-tenants***

- Estates – identification of present interests, co-tenants’ rights

- Servitudes – formation and meaning of affirmative easements
APPROACH TO A PROPERTY ESSAY

1. Follow the Call of the Question for an overall organizational structure. If there’s a general Call, skip to step 2.

2. Organize by transaction (like a Contracts question.)


4. Use headings to make it easy for your grader to know that you made sense of the transactions.
5. Remember that rule precision makes up a significant component of your score.

Property is a common law subject, so formulations of the law vary (unlike Contracts which has the Restatement and UCC, and Evidence which has the FRE and CEC.) Write with confidence and sound like a lawyer. Look at the Cal Bar released answers for rule statements that actually work.

HANDOUT: Read Betty v. Ed
CALL OF THE QUESTION

1. What are the property interests of Betty and Ed, if any, in the condominium unit? Discuss.

2. What relief, if any, may Ed obtain on his claims against Betty for past due rent for her use of the condominium unit and for a share of the rent paid by the tenant? Discuss.

3. What relief, if any, may Betty obtain on her claim against Ed for contribution for the costs of maintaining the condominium unit? Discuss.
THE CALLS BECOME YOUR META-STRUCTURE/HEADINGS

1a. Betty’s Property Interest in the Condominium

1b. Ed’s Property Interest in the Condominium

2a. Ed’s Claim for Past Due Rent

2b. Ed’s Claim for Rent Paid by Tenant

3a. Betty’s Claim for Contribution of Costs to Maintain the Condominium
WITHIN EACH CALL, ORGANIZE CHRONOLOGICALLY

Betty’s Property Interests in the Condominium

1. Betty’s Initial Interest as a Joint Tenant with Right of Survivorship
1b. Effect of Betty’s Move-Out
2. Effect of Ann and Celia’s Transfers to Ed on Betty’s Interest
3. Effect of Ann and Celia’s Deaths
3b. Effect of Betty’s Return
PROPERTY EXAM APPROACH OUTLINE #1

1. What is the type of ownership interest?

2. What characteristics are inherent in such ownership and what rights and duties arise from such ownership?

3. Are there any limitations on such ownership?

4. Land sale contract issues?

From *Bar Breaker* by Jeff Adachi (2011)
PROPERTY EXAM APPROACH OUTLINE #2

1. Possessory Interests: Estates in Land
2. Landlord-Tenant
3. Concurrent Estates
4. Easements
5. Licenses, Profits, Covenants, Servitudes
6. Support
7. Conveyancing
8. Adverse Possession

From Barbri California Essay Lecture by Richard Sakai (2011)
PROPERTY EXAM APPROACH OUTLINE #3

1. Estates in Land
2. Adverse Possession
3. Landlord/Tenant
4. Easements/Profits/Licenses
5. Covenants/Equitable Servitudes
6. Conveyancing
7. Security Interests in Land
8. Fixtures
9. Natural Rights
10. Zoning

From Barbri Real Property Essay Writing Workshop by Tara Shah (2011)
Betty’s Initial Interest as a Joint Tenant with Right of Survivorship

Ann, Betty, and Celia originally purchased the condominium as “joint tenants, with right of survivorship.” Joint tenancy is a form of co-ownership by which co-tenants: (1) take the property at the same time, (2) under the same instrument, (3) each has an equal undivided interest in the property, (4) with equal rights to use and possess the property. These are the four unities, which would have had to be present for the joint tenancy to be created. In addition, as a joint tenancy is disfavored by modern courts, the co-tenants typically must also demonstrate a clear intent to form a joint tenancy, likely evidenced here by the explicit wording “joint tenants, with right of survivorship.”
Betty’s Initial Interest as a Joint Tenant with Right of Survivorship (cont.)

The most significant right in a joint tenancy, aside from those described above, is the right of survivorship. Upon the death of any joint tenant, the remaining joint tenants “survive to” the dead joint tenant’s interest.

If one joint tenant transfers his interest, the joint tenancy is severed, breaking the four unities with the remaining joint tenants. The remaining joint tenants retain the right of survivorship with each other.
NOTE: THAT WAS ALL LAW

For that issue, there was no application to be done. A complete and accurate answer only required a regurgitation of the applicable law knowledge. It appears from reviewing past released answers that the graders are looking at law knowledge in Property to a greater extent than other subjects.

That means you’ve got to know the rule statements cold, and be able to get them out quickly.

HANDOUT: Released Answers
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HANDOUT: Sample MBE Question
A condominium development consists of two buildings, one with balconies attached to each unit, and one with no balconies. For safety concerns, the condominium association amended the covenants and restrictions to prohibit future sales of balcony units to families with minor children. The amendment did not affect families with children already living in balcony units. The amendment was promptly recorded. The condominium association had a valid covenant providing that all sales had to be approved by the association.

Subsequent to the effective date of the amendment, the owner of a balcony unit contracted to sell it to a family with minor children. Before the closing, the association told the buyers that because they had minor children, they could not buy the unit. The association further told the buyers that numerous units were available in the building without balconies.
After receiving this notification, the buyers complained to a fair housing agency, claiming that the amendment was unenforceable because it violated federal fair housing laws.

Is there reasonable cause to believe that a violation has occurred?

(A) No, because families with children are allowed to purchase units in the building without balconies.
(B) No, because the amendment is based on legitimate safety issues.
(C) Yes, because families with children are already living in units with balconies.
(D) Yes, because families with children cannot be segregated within the condominium development.
MBEs TEST THE DEPTH OF YOUR PROPERTY LAW KNOWLEDGE

Even though the fact pattern brought up covenants, restrictions, and recording, the call of the question went in a totally different direction: housing discrimination.

Recall the Federal Fair Housing Act:

“[I]t shall be unlawful (a) To refuse to sell or rent after making a bona fide offer… a dwelling to any person because of… familial status[.]”

BRICS
After receiving this notification, the buyers complained to a fair housing agency, claiming that the amendment was unenforceable because it violated federal fair housing laws.

Is there reasonable cause to believe that a violation has occurred?

(A) No, because families with children are allowed to purchase units in the building without balconies.
(B) No, because the amendment is based on legitimate safety issues.
(C) Yes, because families with children are already living in units with balconies.
(D) Yes, because families with children cannot be segregated within the condominium development.
HOW TO LEARN/RECALL ALL THAT MATERIAL

• Remember your preferred learning style, and study in a way that favors that style:
  • Aural and Kinesthetic – listen to outlines and lectures while you run.
  • Read/Write – write out rule statements over and over.
  • Visual – create posters with outlines.

• Practice and test yourself repeatedly.
CONFUSING CROSS-OVER QUESTIONS

• Look for key words that flag a particular topic:
  • Marriages and divorces usually mean Community Property.
  • Instruments, codicils, and intestacy usually mean Wills & Trusts.
  • Descriptions of buildings and land usually mean Property.

• If you see two subjects addressed, weave in both bodies of law, but use your judgment about how issues are weighed.
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If you have a Property hang-over, let it go.
UPCOMING BRICS PROGRAMS

• **Furry Friends and Ice Cream**
  Next Tuesday, June 24 after your Bar Review course
  On the Alameda

• **Bar Graders Panel**
  Wednesday, July 2 at 1:15pm (or earlier)
  Bannan 127
SCHEDULE A BAR COACHING APPOINTMENT

• Students who met with us last summer saw a statistical benefit in their Bar passage rate.

• Why? The best students perform well because they engage in self-reflective practice. They spend time critiquing how they’re approaching their learning and make strategic improvements. Bar coaching appointments provide the space and outside perspective for that assessment.
SCHEDULE A BAR COACHING APPOINTMENT

• You can schedule an appointment online, by emailing brics@scu.edu, or just be coming into the APD office.

SUBMIT YOUR PRACTICE WRITING TO BRICS

• The Property essay question is due by Monday, July 7.

• All essay questions and the PT are posted online at: http://law.scu.edu/apd/

HANDBOUT: Perry v. Donna