

Sample Exams, Feedback, Student Work



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Sample Exam

I attest that my examination answers entirely reflect my own work in accordance with the conduct policies of the Charlotte School of Law and the rules of this examination. I further attest that I have neither given nor received improper aid on this examination in violation of those policies and rules.

BGN: _____

Final Examination

In-Class Midterm

Professor Burgess

1 Hour

EXAM DIRECTIONS

THIS EXAMINATION & ALL MATERIALS MUST BE RETURNED AT THE END OF THIS EXAM

This two-part examination comprises 5 multiple-choice questions and 1 essay questions (with four question calls) worth a total of 150 points.

PART I: MULTIPLE-CHOICE

Part I consists of 10 multiple-choice questions worth 5 points each for a total of 25 points. Multiple-choice must be answered in ExamSoft. Credit will not be given for answers not marked in ExamSoft.

PART II: ESSAY

Part II consists of 3 essay responses worth a total of 125 points. Essay questions can be annotated in ExamSoft or the bluebook.

1. This is a closed book exam. No notes, no collaboration or discussion with other students. You will have 3 hours to complete the exam.
2. **BLIND GRADING NUMBERS.** Before beginning your exam, write your blind grading number at the top of this page. After the exam begins, place your blind grading number at the top of each page of: (1) the hard copy examination; and (2) any bluebooks, if utilized.
3. **EXAMSOFT.**



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- a. All students must complete the exam within the allotted time. If you use ExamSoft and experience computer problems during the exam, raise your hand and ask the proctor to call for technical support. Pending resolution of the problem, use a blue book to continue writing your answer. If the problem can be resolved within a reasonable amount of time, you may return to typing your answer. If not, you must finish your answer in the blue book. ***You will not be given additional time to complete the exam.***
- b. You must remain in the classroom until your exam is successfully uploaded into ExamSoft. A reduction in grade may be given if you do not successfully upload the exam. You will receive an immediate congratulations confirmation on your computer screen. An email will also be immediately sent to your CSL email account stating the exam has been successfully uploaded.

SPECIAL INSTRUCTIONS

- 1.
- 2.
- 3.

This exam has 5 pages, including this cover sheet.

Make sure you have all the pages before beginning the exam.

DO NOT TURN PAGE UNTIL INSTRUCTED TO DO SO.

PART I: MULTIPLE CHOICE

1. When Professor Burgess came to class, there was a sweater draped over a chair. Each shoulder was on each corner of the back of the chair. The sweater hung down as if the chair was wearing it. Professor Burgess picked up the sweater and wanted to take it home. However, the dean wants the sweater to sell at a fundraiser for scholarships.

In a law suit between Professor Burgess and the school, who would win and why?

- a. Professor Burgess would likely win because the property was likely voluntarily placed.
 - b. Professor Burgess would likely win because the property was likely lost.
 - c. The school would likely win because Professor Burgess would be an agent of the school.
 - d. The school would likely win because they would have a duty to keep the sweater for at least a year so the true owner can find the sweater.
2. A property owner was doing some landscaping. The property owner asked friends to come help. While a friend was digging in the property owner's yard, the friend came across a box shaped like a treasure chest. Inside was memorabilia from 1925, which included children's drawings, some newspaper clippings, and a letter from the children's mother who buried the items indicating it was a time capsule which the person intended to retrieve. The friend thought one of the child's drawings looked similar to the drawings of a famous person.

In a lawsuit between the property owner and the friend, who would win and why?

- a. The property owner would likely win because the box was attached to the land.
 - b. The property owner would likely win because the friend was an agent of the property owner.
 - c. The friend would likely win because finders keep treasure trove.
 - d. The friend would likely win because it is unlikely the true owner will return.
3. A property owner lost his job and couldn't pay the mortgage on Greenacre. The bank foreclosed on Greenacre. The bank did nothing with the property and it became overgrown. The property owner's next door neighbor started mowing Greenacre in 2005 and kept doing so until the present day. Then, a water pipe broke in the house on Greenacre and the neighbor fixed it in 2006. When the neighbor was inside the home, the neighbor realized the home was much like the neighbor's only updated and decorated with wall paper. In 2007, the neighbor decided to move in to the house, just until the bank returned. The neighbor lived there without issue for 7 years. After that, the bank returned and attempted to evict the neighbor. This state has a statute of limitations of 5 years for adverse possession and 3 years for color of title. This jurisdiction follows the objective intent standard of Hostile.

In an eviction proceeding between the bank and the neighbor, who would win?

- a. The neighbor would likely win because the neighbor was on the property without the bank's permission and against the bank's ownership rights.
- b. The neighbor would likely win because the neighbor knew the property was not his.



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- c. The bank would likely win because the eviction proceedings were carried out lawfully.
 - d. The bank would likely win because the bank is the true owner of the property.
4. A property owner had a fence around the property owner's land. The fence was 15 feet inside the property owner's boundaries. The property owner's neighbor thought that the fence was the boundary between the two lots. In 1990, the neighbor planted flowers right against the fence. The neighbor loved the look of natural gardens, so he through seeds and let the flowers grow where they may. The neighbor installed in-ground composters to keep the flowers well fertilized. The neighbor also decorated the garden with small statues and some bird feeders. When the property owner sold the property owner's house, in 2014, the mortgage company for the buyer discovered the neighbor's use was 15 feet over the boundary of the property owner's land. The buyer won't purchase the property until the boundary dispute is settled. This jurisdiction has a 20 year statute of limitations for adverse possession and a 7 year statute of limitation for color of title. The jurisdiction uses the good faith intent standard for hostile.

In a case between the property owner and the neighbor, who would win and why?

- a. The property owner would likely win because the wild appearance of the flowers would not put a reasonably attentive land owner on notice that the neighbor was staking a claim.
 - b. The property owner would likely win because nothing in the facts indicates the neighbor excluded others from the strip of land.
 - c. The neighbor because the property owner had actual notice of the flower bed.
 - d. The neighbor because the neighbor's use of the strip of land was consistent with the nature of the property.
5. A property owner had such a huge track of land, the owner did not know where his land began and the neighbor's land began. When the neighbor wanted to build a gardening shed, the neighbor asked the property owner if the location was on the neighbor's property or the property owner's property. The property owner said, "I don't really know. But, go ahead and build your shed anyway. I don't mind." The neighbor built the shed. Thirty years later, the property owner sold the property to a buyer. Five years after that, the buyer realized that the neighbor's entire shed was on the buyer's property. This jurisdiction has a 20 year statute of limitations for adverse possession and a 7 year statute of limitation for color of title. The jurisdiction uses the good faith intent standard for hostile.

The buyer sues the neighbor to remove the shed. Who should win and why?

- a. The buyer would likely win because the clock reset when the buyer purchased the property.
- b. The buyer would likely win because the neighbor's use was not hostile.
- c. The neighbor would likely win because the 35 years of use far exceeded the statute.



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- d. The neighbor would likely win because the shed would be an enclosure that excluded all others, including the rightful owner.

PART II: ESSAY

What is Your Quest?

Note to students: The next page has an issue spotting outline to jot down your ideas.

To: Junior Associate

From: Senior Associate

Date: 25 September 2014

RE: King Arthur Pendragon v. Guy de Lombard

I am deciding whether to take a case between King Arthur and Mr. de Lombard. This jurisdiction has a fifteen year statute of limitations for adverse possession, a ten year statute of limitations for color of title, and uses the objective standard of Hostile. You can read a summary of the facts below. (4-8 minutes) I have done a lot of the research myself, but I want to go have drinks with an old friend, so I won't have time to finish this memo. I have a golfing trip to go on this weekend, so I need you to finish my objective memo in the next 30-45 minutes so I can take it with me on my trip. Specifically, I need you to provide:

6. An overarching rule for Adverse Possession (1-2 minutes)
7. The overarching rule for Open and Notorious, plus a complete analysis of the RALO standard. Don't analyze any other sub-element of Open and Notorious. (4-8 minutes)
8. The overarching rule for Hostile, plus a complete analysis of whether the use of the land was against the true owner's rights. Don't analyze any other sub-element for Hostile. (8-15 minutes)
9. The overarching rule for Exclusive, plus a complete analysis of whether King Arthur excluded everyone, including Mr. de Lombard, like a true owner. I have already concluded that Mr. de Lombard did in fact exclude others, including Mr. de Lombard. I need you to analyze only whether King Arthur's exclusion was like a true owner. (8-15 minutes)

Fact Summary:

After many years of searching for the Holy Grail, King Arthur Pendragon (AP) decided to set up a base camp in the woods. King Arthur knew the land belonged to the Guy de Lombard (LO). Mr. de Lombard's assistant, the Frenchman, had insulted King Arthur both verbally and physically in the past. So King Arthur set up his base camp in the Mr. de Lombard's woods, just out of spite.



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King Arthur couldn't wait for the next confrontation with the Frenchman because King Arthur was sure he'd get his revenge. King Arthur wanted to make the Frenchman's experience particularly unappealing. Thus, King Arthur dug a mote around his base camp and put an entrance bridge over the mote. King Arthur named the bridge "The Bridge of Death."

The bridge had a blockade arm. When people approached the bridge, a little robot, called the Bridgekeeper, would ask visitors, "What is your name? What is your Quest? What is the air speed velocity of an unladen swallow?" The Bridgekeeper was programmed to allow anyone to enter if they answered these three questions with a good faith effort. However, if the visitor responded to the first question with "Guy de Lombard" or "The Frenchman," instead of lowering the blockade, the landing would catapult the visitor.

For the next twenty years, King Arthur would go on quests ranging in time from a month to six months, or sometimes even a year. He would always return, with his knights, to the base camp. King Arthur eagerly awaited the return of Guy de Lombard, but every time he returned, he was disappointed.

Unfortunately, just before King Arthur made base camp for the first time, Mr. de Lombard was called back to France because his wife was very ill. Mr. de Lombard asked the Frenchman to look after his property while he was gone because the Frenchman had been such a dutiful guard. Unfortunately, as soon as Mr. de Lombard left, the Frenchman moved to the Castle Aggh. He collected his paycheck and reported that all was good, but never actually visited Mr. de Lombard's property.

Dutifully, Mr. de Lombard nursed his wife until her demise five years later. Mr. de Lombard picked up his only child, his 30 year old daughter, at the airport so they could attend the funeral. On the way to the funeral, Mr. de Lombard was in a car accident. His daughter was instantly killed and he lapsed into a coma. After ten years of being in a coma, Mr. de Lombard awoke. Unfortunately, Mr. de Lombard suffered amnesia for the first five years after he awoke. When Mr. de Lombard's memory finally returned, he returned to his property to find King Arthur, who had just returned from a quest.

Mr. de Lombard sues Arthur for eviction. Who should win and why? Here's an outline to help you organize your answer and keep track of facts. Don't forget your headers!

(6) Overarching AP Rule:

(7) Open and Notorious Rule

RALO standard rule



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Relevant Facts

(8) Hostile Rule

ATOR Rule

ATOR Relevant Facts

(9) Exclusive Rule

LATO Rule

LATO Relevant Facts



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Annotated Model Answer

For this model, I have highlighted the purpose of each clause using a different font color:

Headers

Rules

Facts. Understanding (explanation of the facts) and Logic, Language linking to the Element or the Rule

Conclusion

With the exception of RALO, notice how much of the essay is in green and blue.

6.

Adverse Possession

To obtain title to land by adverse possession, the adverse possessor must actually enter the land in a way that is open and notorious, exclusive, hostile. All of these elements must be met continuously for the statutory period.

7.

Open and Notorious

The Open and Notorious element requires the adverse possessor's use of the land must be so apparent that a reasonably attentive land owner would notice the adverse possessor was staking a claim to the land.

RALO Standard

The RALO standard is the standard a court should use to evaluate the noticeable and staking a claim sub-elements. The RALO Standard is an objective standard. The court will hold the LO liable for anything a RALO would have noticed. The LO has a duty to monitor his property. If a LO is unable to do so, the LO must have a proxy monitor the property for the LO.

Here, the LO was away from his property for five because he was in another country tending to his ailing, then dying wife. After the LO's wife died, he was in a coma for ten years, then suffered amnesia for another five years. Although the LO did hire a guard to monitor the property, the guard only pretended to monitor the property while collecting the guard's monitoring fee. The court may not

Comment [A1]: Some students wanted to talk about AE. In a complete essay, AE would be the first element. However, the call of the question was only about ON's RALO standard.

Comment [A2]: Some students wanted to talk about whether the conduct was noticeable or whether it constituted SAC. However, the call only asked for the standard by which the court should judge. We pulled up several samples in class. Use those samples and this one to understand what a standard is and why discussing noticeable or SAC is off-base.

Comment [A3]: Notice that this rule and the last two sentences were almost verbatim from the several samples we used in class. I mentioned they should be. Students who did well on this question followed these instructions.

Comment [A4]: These are all of the sob story facts I indicated you should list. Notice that, as we discussed in class, the facts are simply listed because the analysis is "the court should ignore these tempting facts."



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consider any of these factors in determining what LO should have noticed. The court may only consider what a RALO would have noticed had the RALO engaged in due diligence to monitor his property.

Comment [A5]: The idea in these last two sentences should appear in EVERY analysis of RALO.

8.

Hostile

The Hostile element requires the Adverse Possessor use the land without the permission of the true owner and against the true owner's rights. This jurisdiction follows an objective intent standard, looking only at the outward manifestations of the APer, without regard to whether the APer believed the land was rightfully the APer's or available to claim.

Comment [A6]: It can be hard to separate out without permission and ATOR because most use that is WOP is ATOR. However, there are many uses that are ATOR and many justifications for why they are. Top students will think beyond the most obvious fact, especially when the facts don't really speak to permission.

Against the True Owner's Rights

An adverse possessor must use the land against the rights of the true owner. Common rights of the true owner are the right to use, the right to build, the right to maintain, the right to appropriate natural resources, and the right to exclude.

Comment [A7]: We mentioned this rule in class several times. I mentioned that this year, despite model answers from the past, you should make sure to mention the rules we discussed in class. I know it's a late class after a long day, but be sure you are capturing the exam tips I provide. They tend to be direct, so it's just a matter of writing them down and reviewing what you've written. ☺

Here, the APer used LO's land as a base camp for AP and his knights. This use would violate the LO's right to use because LO cannot use the same land that AP is using. It would also violate LO's right to exclude AP and his knights because AP was authorizing himself and the knights to enter the land. Thus, AP's use of the land as a base camp was against LO's rights.

Comment [A8]: Notice how a well-articulated rule makes the linking language easier. Because the rule here explains the rights, later, I need to explain why the use violated one or more of these rights. Only once I make that argument can I claim that the use was ATOR.

Here, AP dug a moat around the base camp. The moat violates the LO's right to build because AP constructed a structure that LO would have to deconstruct before being able to construct anything else. Also, there is no indication that LO wanted a moat on LO's property, so the moat violated LO's right to maintain the property as the LO saw fit. Finally, the moat prevented LO from excluding, or rather permitting, people on the land whom LO might want to grant access. Thus, when AP built a moat, it was against LO's rights.

Here, AP built a bridge on LO's land. The bridge would violate LO's right to build on the property because LO would need to remove the bridge before being able to construct an object the LO wished to have on the property. The bridge would violate the LO's right to maintain the property because there is no indication LO wanted a bridge on his property. Thus, when AP built the bridge, it was against LO's rights.

Here, AP included a blockade arm on the bridge. The blockade arm would have violated LO's right to use the property because it made it difficult for LO to enter. The blockade arm would have violated LO's right to build because LO would have to remove the blockade arm before building something LO wanted on LO's land. The blockade arm would have violated LO's right to maintain the property because there is no indication LO wanted the blockade arm on the property. The blockade arm would have violated



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LO's right to exclude others because there is no indication the blockade arm permitted people LO wanted on the land to enter.

Here, AP installed a Bridgekeeper robot that allowed anyone to enter except LO or his guard. The Bridgekeeper violated LO's right to use the land because the Bridgekeeper prevented LO from entering that part of the land. The Bridgekeeper violated LO's right to build on the land because LO would have to remove the robot before building something of LO's choice. The robot violated LO's right to maintain the land because there is no indication LO wanted a robot on his property. The robot violated LO's right to exclude others because it allowed anyone to enter without any regard for who LO wanted to permit on his land.

Here, AP installed a landing that would catapult unwanted visitors. The landing violated LO's right to use the land because the catapult ejected LO and LO's guard from the land which would have prevented LO and LO's guests from entering the land. The landing violated LO's right to build because LO would have to remove the landing before building something LO wanted on LO's land. The landing would have violated LO's right to maintain the property because there is no indication LO wanted the landing on the property. The landing violated LO's right to exclude others because it allowed anyone to enter without any regard for who LO wanted to permit on his land.

Creative Student Ideas

Thus, AP violated LO's right to use, maintain, build, and exclude others when AP used the property as base camp, dug a moat, built a bridge with a blockade arm, installed a robot, and installed a catapult landing. As such, AP's use was against LO's rights.

9.

Exclusive

To meet the exclusive element, the APer must exclude all others, including the TO, like a true owner would.

LATO

The APer's exclusion must be consistent with the way a true owner would exclude others from the land. The AP does not have to exclude others entirely, but must control who enters the property like an ordinary true owner would.

Here, AP invited his soldiers onto the land. The invitation serves to control who enters the property by limiting the invite to only the people AP wanted on the land. True owners often invite only certain

Comment [A9]: Some students wrote that the AP's use was intended to irritate and seek revenge against LO. Use of the land for irritation or revenge would be ATOR because property owners typically do not want their land to harm them. CLEVER.

Comment [A10]: This question was ONLY about Hostile's ATOR sub-element. We have not seen the rest of the memo, so we don't know if the senior partner concluded the other Hostile elements were met. Thus, we cannot claim that Hostile has been met.

Rather, we can only claim that ATOR has been met. Our nest is ATOR. In order to claim Hostile has been met, we have to conclude that each of the sub-elements have also been met. However, the call of the question specifically forbid us from discussing these other elements.

Comment [A11]: Some students through this element meant use like a true owner. However, that definition is part of continuous (continuous use like a true owner). Exclusive's LATO asks if the APer excluded others LATO.

Comment [A12]: Students who earned top scores said something more than LATO means the APer must exclude others LATO. Notice how this rule begins to expound upon what that rule means.

Comment [A13]: Notice how the analysis below uses this language consistently as a link back to this definition.

Comment [A14]: Notice how the analysis below uses this language consistently as a link back to this definition.



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people on the land. Thus, the invitation would be consistent with the way a true owner excludes, or in this case, includes others from the land.

When AP built a moat around the property, AP excluded others from the property like a true owner would because the moat serves as a barrier to keep unwanted intruders off of the property. True owners often create barriers, such as fences, that keep others off of the property. Even though a moat is not a common contemporary barrier, the moat serves the same purpose as a fence or more traditional barrier, which is to make it difficult to enter the property. Thus, the moat was consistent with the way a true owner would exclude others from the land.

Comment [A15]: Acknowledge the obvious objection before moving on to the argument so that the argument is taken seriously.

When AP built a bridge over the moat, AP was controlling who entered the property like a true owner because AP provided a means to enter the property. When a TO has a natural or manmade barrier, the TO will often provide an access point. The bridge would allow AP to provide his guests access to the property behind the moat just like an opening in the fence (or an open gate) would allow TO to provide his guests access to the property behind a gate. Thus, the bridge was consistent with the way a true owner would exclude or include others from the land.

When AP built a barricade arm on the bridge, AP was controlling who entered the property like a true owner would because the barricade arm prevented anyone from wandering onto the property. TOs often provide blockades to entranceways to prevent others from entering. The barricade arm on the bridge would allow AP to block the entranceway to behind the moat, just like a closed gate would allow AP to block entrance to the bridge. Thus, the use of the barricade arm was consistent with the way a true owner would exclude or include others from the land.

For your midterm rewrite, you will be asked to provide analysis of whether the following facts meet the LATO standard: the bridgekeeper, allowing visitors (potentially even strangers) who passed the bridgekeeper's test to enter, and catapulting the TO and the TO's employee from the land. I will provide instructions by Thursday.

In sum, inviting others onto the land, digging a moat, building a bridge, creating a blockade arm, using a bridgekeeper, allowing quizzed people to enter, and catapulting the TO and the TO's employee would all be consistent with how a TO would exclude or include others from the property. Thus, AP excluded others LATO.

Comment [A16]: In the conclusion, notice I restate all of the facts, then use the language from the DEFINITION of the element. Lastly, I state that the APer met the element by giving the element name. (It is very difficult for judges to follow "so this element has been met" because they lose track of which element you are discussing. The problem is even more significant with juries.)



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2014 In Class Midterm Adverse Possession: Bridgekeeper

Overall, I can see progress from midterm 2 to midterm 3. This midterm was a bit harder than midterm 2 for a few reasons. First, it was closed book and timed. Second, the questions did not guide you through the organization for each question. Thus, you had to apply IRAC yourself to each question yourself. Third, I did not spot the facts for you. Thus, many students who had done well with guidance made some errors that would be fatal on the bar exam. Luckily, these student made them on a low-stakes (15% of the grade) exam and there's plenty of opportunity to improve before the bar exam. With your dedication, we will move you significantly forward.

Over 20% of students had very strong essays. These essays would be likely to result in a fair to good bar essay score. Thus, provided these students maintained their current commitment to studying and building skills, I have confidence these students have a significant likelihood of passing the bar exam. Please note, these students were the top essay scores, not the top exam scores.

The middle 50% of students showed some strong areas of analysis and some weak areas of analysis. For example, some essays were really strong with spotting facts and providing linking language, but did not provide an understanding of how the fact links to the element. Other exams had great analysis for one or two facts per question, but didn't spot many facts. Many of these exams also did not respond to the call of the question on one or more essays. The analysis might have been great, but didn't answer the question asked, so earned no points. These errors would be fatal on the bar exam, but these students could pass the bar if they make some good progress on skill building this semester and continue to make progress until graduation.

The bottom 30% of students made some critical and fatal bar exam errors. Many of these students need significant work to improve writing. I am here to help, both with in-class exercises and in office hours. There are also a number of other resources like TA's, Academic Success, and the LDZ.

The three biggest issues I saw as a class were:

1. Not answering the call of the question. This error can be from not reading the question carefully. It can also be from not understanding organizational skills of nested IRAC. Many times, it is because students understand the rules globally, but don't have a nuanced understanding of the differences between the elements and sub-elements.
2. Not spotting many facts. Everyone could have spotted more facts. The more familiar you are with the topic, the easier it is to spot facts.
3. Not providing rhetorically sound linking language. The linking language inserts the facts and the parties' names into the language of the *definition* of the sub element. For example, the element "Against the True Owner's Rights" means a violation of the true owners rights to use, maintain, alter, extract resources, invite guests, exclude others, sell, and transfer the land. A conclusion would be "AP's use was against LO's rights." A link would be "AP's use violated LO's right to use the land."



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Ironically, the essays were fairly strong on explaining how the reader should understand the facts. The next step would be to argue both sides of the issue. For example, one can hardly say that catapulting someone from the land is typical of the way a true owner excludes people. ☺ Most students skipped that analysis. However, most of you identified why this act should still meet the standard of excluding LATO, which was a necessary flip argument.

#6. AP Overarching Rule

What was the call of the question? Write it here:

Do's

Did you provide a header for Adverse Possession?

Did you provide a rule for Adverse Possession?

Did the rule have all 5 elements (or 6 if you break up continuous and statutory period)?

Did you indicate that all elements need to be met continuously for the statutory period?

Don'ts

Did you include element definitions in response to #6? If so, delete them.

Did you describe what each element met in parenthetical phrases or comma-off-set clauses? If so, delete them.

Did you say anything other than the rule for Adverse Possession? If yes, delete it all.

Take Home Points

What did you learn from these questions?

#7. Open and Notorious RALO Standard

What was the call of the question? Write it here:

Rule Don'ts:

Did you provide a rule for Adverse possession in this answer? If so, delete it because it does not respond to the call of the question.

Did you provide a rule for actual entry, exclusive, hostile, continuous, or statutory period in this answer? If so, delete it because it does not respond to the call of the question.



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Did you provide a rule for what use is noticeable? If so, delete it because it does not respond to the call of the question.

Did you provide a rule for what use suggests an APer is SAC? If so, delete it because it does not respond to the call of the question.

Rule Do's

Did you provide a header for Open and Notorious?

Did you provide a rule for Open and Notorious?

Did the rule match the content of the rule from this model or any previous model? If not, what was it missing?

Did you provide a header for the RALO Standard?

Did you provide a rule statement for RALO?

Did the rule match the content of the rule from this model or any previous model? If not, what was it missing?

Did you have anything in the rule that was not in the model? If not, what do you think your additions added to the reader's understanding of the rule? Where the additions narrowly tailored to the call of the question?

Analysis Don'ts:

Did you make any conclusions about whether AP's conduct was ON? If so, delete them. Keep in mind, the call of the question was ONLY for the RALO standard. The RALO standard is one element of ON. The largest conclusion you can make is about the elements you've actually analyzed. In this case, that would be the RALO standard.

Did you explain why the APer's use was noticeable? If so, delete all of these arguments because they don't respond to the call of the question.

Did you explain why the APer's use suggested the APer was SAC? If so, delete all of these arguments because they don't respond to the call of the question.



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Analysis Do's:

Did you list all of the sob story facts that the court might be tempted to consider as reasons why LO did not notice AP's use? Check all of the facts you listed:

	LO caring for sick wife in different country		LO hired Frenchman
	LO in coma		Frenchman took off
	LO amnesia		

If you missed some of these facts, why do you think you missed them? How can you avoid missing similar facts on an AP question on the bar exam?

Did you tell the court they were not allowed to consider any of these facts?

Take Home Points:

What did you learn to deepen your understanding of this element?

What lessons did you learn about answering the call of the question? What improvements can you make in the future?

What lessons did you learn about organization? What improvements can you make in the future?

#8. Hostile's ATOR

What was the call of the question? Write it here.

Rule Don'ts:

Did you provide a rule for Adverse possession in this answer? If so, delete it because it does not respond to the call of the question.

Did you provide a rule for actual entry, open and notorious, exclusive, continuous, or statutory period in this answer? If so, delete it because it does not respond to the call of the question.



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Did you provide a rule for without permission? If so, delete it because it does not respond to the call of the question.

Did you provide a rule for what the objective standard? If so, delete it because it does not respond to the call of the question.

Did you provide a rule for what the good faith or bad faith standards? If so, delete it because it does not respond to the call of the question. Since this jurisdiction uses the objective standards (according to the facts), this law would also be irrelevant (the wrong law).

Rule Do's

Did you provide a header for Hostile?

Did you provide a rule for Hostile?

Did the rule match the content of the rule from this model or any previous model? If not, what was it missing?

Did you provide a header for ATOR?

Did you provide a rule statement for ATOR?

Did the rule statement say that Against the true owner's rights means the APer must violate the true owner's property rights? If so, do you think that helps a lay person or a non-expert judge understand the element any better?

What were some of the rights we talked about in class? How could those be integrated into this element?

Did the rule match the content of the rule from this model or any previous model? If not, what was it missing?

Did you have anything in the rule that was not in the model? If not, what do you think your additions added to the reader's understanding of the rule? Where the additions narrowly tailored to the call of the question?



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Analysis Don'ts:

Did you make any conclusions about whether AP's conduct was Hostile? If so, delete them. Keep in mind, the call of the question was ONLY for the ATOR element. The ATOR element is one element of Hostile. The largest conclusion you can make is about the elements you've actually analyzed. In this case, that would be the ATOR element.

Did you explain why the APer's use was without permission? If so, delete all of these arguments because they don't respond to the call of the question.

Did you explain the intent element was the objective standard, so it doesn't matter that AP knew the land was not his? If so, delete all of these arguments because they don't respond to the call of the question.

Did you analyze AP's use under the bad faith standard? If so, delete all of these arguments because they don't respond to the call of the question. Also, the facts indicate that the jurisdiction used the objective standard, so bad faith would mean the essay was incorrect on the law of the jurisdiction.

Did you put multiple facts in a single paragraph? If so, put each fact in a different paragraph. What did you say about each fact when they are divided into separate paragraphs? Did you skip analyzing some facts?

Analysis Do's:

Did you list all of the relevant facts that the court should consider as reasons why AP violated LO's rights? Check the facts you listed:

Any use by AP would be against LO's rights.	Building a moat
Setting up base camp	Building a bridge
Inviting knights onto the property	Putting up a barricade arm.
Allowing anyone who could answer the robot's questions to enter.	Using a robot to determine who enters
Preventing LO and his employee from entering	Catapulting LO and his employee from the land.

If you missed some of these facts, why do you think you missed them? How can you avoid missing similar facts on an AP question on the bar exam?



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Did you link each of these facts back to the specific property rights AP violated?

Did you explain why each of these facts violated LO's property rights?

Compare your explanations to the model. What rationales did the models spot that you did not? What rationales did you spot that the model did not?

Put the model answer aside. Write an analysis for whether using a barricade arm was ATOR.

Take Home Points:

What did you learn to deepen your understanding of this element?

What lessons did you learn about answering the call of the question? What improvements can you make in the future?

What lessons did you learn about organization? What improvements can you make in the future?

What lessons did you learn about using linking language? (Linking language is using the language from the *definition* of the element, not the name of the element.)

What lessons did you learn about explaining how the reader should understand the facts and explain logic?

#9. Exclusive

Rule Don'ts:

Based on the diagnostic questions asked for questions 7 and 8, what would you look for in question 9?



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Write any of the “don’t” errors you made. How will you correct them in the future?

Rule Do’s:

Assess your rule for Exclusive. What improvements do you need to make? What was good?

Assess your rule for LATO. What improvements do you need to make? What was good?

Analysis Don’ts:

Based on the diagnostic questions asked for questions 7 and 8, what would you look for in question 9?

Assess your exam for rule don’ts.

Did you make any arguments about why AP’s actions excluded others? If so, delete them. The call of the question indicated this sub-element, excluded others, had already been met. The call asked whether this exclusion was LATO.

Did you talk about why AP’s use was LATO? If so, delete all of these arguments. Any arguments against AP’s use LATO would be part of an analysis for continuous LATO. Exclusive’s LATO asked whether AP excluded others LATO.

Analysis Do’s

Did you list all of the relevant facts that the court should consider as reasons why AP violated LO’s rights? Check the facts you listed:

	The name of the bridge		Building a moat
	Setting up base camp		Building a bridge
	Inviting knights onto the property		Putting up a barricade arm.
	Allowing anyone who could answer the robot’s questions to enter.		Using a robot to determine who enters
	Preventing LO and his employee from entering		Catapulting LO and his employee from the land.

If you missed some of these facts, why do you think you missed them?

Did you link each of these facts back to how this exclusion was LATO using the definition you provided for LATO?

Did you explain why each of these facts represented acts a LATO would typically use?



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Compare your explanations to the model. What did you do well? What needs improvement?

Analyze whether AP was excluding others LATO where AP allowed visitors to enter the property if they could answer certain questions.



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Sample Student Answer

Please note: this sample student answer is to a different exam than the ones above because I wanted to ensure I had the students permission to share their work product for my class.

The issue is whether A can collect back rent from or seek additional remedies against either T or L from a rental property used for commercial purposes.

Parties to the suit

An assignment pro tanto is created when a tenant rents part of the leased physical space of their rental to another for the entire remaining period without reservation.

Here, the facts indicate that A rented the business property from T who was renting from L. A's lease with T was for part of the physical space for the entire remaining period without reservation. Thus, A had an assignment pro tanto with T.

An assignment pro tanto creates privity of estate with the original landlord(L) and privity of contract with the leasing tenant(T). The facts indicate that A has an assignment pro tanto, thus A would have privity of estate with L and privity of contract with T. Therefore, A can sue L for issues involving privity of estate and A can sue T for issues involving privity of contract.

Here, the only legal remedy available to A would be the covenant of quiet enjoyment.

Privity of Contract

Privity of contract exists when the leasing tenant has a contractual obligation, through an assignment, to the leasing assignee. Here, A and T signed an assignment pro tanto for the remainder of leased term, where T is the assignor and A is the assignee. Thus, T is responsible for any contracted duties or issues that arise under the agreed assignment terms. Any issues or defects that arise from the land itself do not fall under privity of contract.

Comment [A17]: Technically, the facts don't indicate this, you just reasoned it. Therefore, say, "Because A has..."



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The facts indicate that all the issues and problems during A's leasing term arose out of issues related to the property's defects, and not from violated contract terms of the assignment deal between A and T. Despite T did not fixing the defects on the premises, he exercised as much due diligence as possible by promptly notifying L of any issues concerning the land. Thus, A's recovery in court from T may be minimal in comparison to the cost of litigating against T because T has only trivially breached his contract for failing to fix the defects on the premises.

Comment [A18]: fix

Therefore, A could sue T under privity of contract, but would be unwise to do so because the recovery may be outweighed by litigation cost.

Privity of Estate

Privity of estate exists when the tenant, or assignee touches or concerns any part of the land owned by the landlord. Under privity of estate, a landlord has a duty to fix or remedy any defects that arise from anything touching the land.

Here, the facts indicate that A is an assignee living on L's land. Thus, L has the obligation to fix any defects on any part of the land that concerns or touches A's assignment. Further, if L fails to keep the premise tenable or fix any defect that concerns the land that A touches, then L has breached the privity of estate.

The facts indicate that numerous issues have arisen that concern the land A is using as an assignment. Thus, A could sue L under privity of estate because L is the landlord and has a duty to oblige to any duties that concern A's assigned premises.

Given that A has POE with L, A could sue L for breaches of the covenant of quiet enjoyment under POE

Covenant of Quiet Enjoyment ("CQE")

Absent a provision to the contrary, by operation of law, a lease includes an implied covenant that the tenant will have the quiet and peaceable possession of the leased premises during the term of the lease. The covenant of quiet enjoyment serves as both a cause of action and a defense. The landlord breaches the covenant of quiet enjoyment only when the effect of



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depriving the lessee of the beneficial use of the demises premises, whether by positive acts of interference or by withholding something essential to the full enjoyment and included within the terms of the lease. The landlord becomes liable for repairing the breach within a reasonable time from when the landlord has notice of the breach. If the landlord does not repair the breach within a reasonable time, the tenant may collect damages or vacate under a theory of constructive eviction.

Implied

Absent a provision to the contrary, by operation of law, a lease includes an implied covenant that the tenant will have the quiet and peaceable possession of the leased premises during the term of the lease.

Here, T has assigned his lease to A, so any of the provisions of the original lease would transfer to A in the assignment. The facts are silent as to whether T's lease with L had a covenant of quiet enjoyment. Thus, we can infer that there was no explicit covenant and that T did not waive the covenant. Thus, the covenant of quiet enjoyment would be implied in T's lease with L. This implied covenant would then be assigned to T, allowing A to sue L for a breach of the covenant under privity of estate.

Further, the facts indicate that T has assigned a part of his lease to A, which provides that T has the obligation to ensure that A has CQE on the premises that he is sharing with T. Thus, T cannot be responsible, by sharing the premises with A, in frustrating any of the terms and purposes of A's CQE or lease agreement. The facts never indicate that T has done any affirmative acts on his portion of the leased premises or on A's premises to frustrate the terms and purposes of A's CQE. All issues that arose on A's premises that would frustrate A's lease were not created by T and T does not have any obligation to do anything more than notify L of any defects. Thus, T cannot be responsible for breaching the CQE because he did not create any of the defects on A's premises, and T is not legally responsible to do anything more than notify L of the defects that touch or concern A's land.

Cause of Action or Defense



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A tenant or an assignee can use CQE as cause of action to seek damages against the landlord if the landlord has failed to keep the premises of the rented land as agreed to and required by the purpose of the lease.

Here, the facts indicate A is initiating a claim to seeks damages against L for failing to keep the premises of the assigned land as agreed to and required by the lease. Thus, A would be bringing a CQE as a cause of action against L

Breach of CQE

The landlord breaches the covenant of quiet enjoyment only when the effect of depriving the lessee of the beneficial use of the demises premises, whether by positive acts of interference or by withholding something essential to the full enjoyment and included within the terms of the lease.

Landlords Acts

To be held liable for the disruption, the person who acted or failed to act must be the landlord, someone under the authority of the landlord, someone who was granted a legal right by the landlord, or someone having superior title than the landlord.

Acts or omissions

Here, the facts indicate that L actively disrupted A's lease through affirmative acts and omissions.

First, after the roof leaked on A's premises, L merely duct taped the roof in order to fix it. This affirmative act by L impairs the safety to both A, and A's customers at his acupuncture business because most reasonable people know that duct taping an essential part of a building will not adequately fix it. If the court deems that a non-leaking roof is part of the contract, then L would be liable for the omission if L does not repair them adequately or timely.



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The facts indicate that L's repairman (R) was working for L in order to fix many of the defects on the premises. T and A's air conditioning broke in in February, and they promptly notified L. Although L sent R to fix the problem immediately, the facts indicate that R failed to act for 5 months before fixing the broken air conditioner. T and A were forced to work in unbearable heat conditions, which caused many of A's clients to stop coming to A's place of business. Thus, if the court deems that an operable a/c is part of the contract, then L would be liable for the omission of repairing the a/c.

On 1 April 2010, A was diagnosed with environmental asthma, which was linked back to the mold under the floor O installed. The L failure to change the rugs caused divots in the carpeting, which created a potential health hazard A and clients for A's business. To prevent the mold the L should have replaced the rugs as required before the tenants moved in, and therefore, A would not have been diagnosed with environmental asthma. Further, the doctor had to prescribe medicine to A to quell the symptoms and indicated that A's asthma would probably clear once the mold was removed from the house. Even though A had use of the room during this month, but tried to avoid using the room so that A would not aggravate A's asthma. L should have responded with urgency given the health problems it was causing for A. Moreover, L failed to act with any urgency to replace the carpet and do away with the mold considering it could L a week to start looking for a repairmen and another 3 weeks while getting estimates. Only to find out it would take two more weeks for the R2 to fully replacing the carpet because he would have to make sure the mold was completely gone.

Therefore, L's affirmative acts and omissions are the cause for A suing him for breach of CQE.

Who is Responsible?

The facts indicate that L would be responsible for his affirmative act of merely duct taping the roof because he had control over fixing the defect, yet continued to provide an insufficient way of fixing it. If a large storm or a object were to fly into the roof and destroy L's makeshift roof repair, then L would be responsible for any injury or damages that occur as a result of his affirmative acts.



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The facts indicate that L would be responsible for his repairman, R's failure to fix the air conditioning problem because R is an agent of L's, and L is responsible for any work that R does, doesn't do, or does inadequately. Because R failed to remedy the air conditioner for 5 months, L would be responsible for the work that R did not do.

Finally, the L failure to repair the rugs was his responsibility because he owns the property and is required to change the rugs between tenants for health and safety reasons. The L was responsible for replacing the flooring before the tenants moved in, especially later when A had health problems due to mold. The mold resulted from divots in the carpeting. Also, these divots in the rugs cause A's clients to trip and fall which could have been prevented had the L replaced the rugs. Further, A was diagnosed with environmental asthma, which was linked back to the mold under the floor O installed. O was the owner at the time of the installation, however, O sold the property to L, which means that because L now owns the property he is responsible for the repairs and all previous repairs because when you buy property you buy it as it is and assume all liability. In addition, L replaced the carpeting with bamboo wood flooring the next weekend in March. Thus, L himself replaced the carpeting and is responsible for all his own acts, omission, or inadequately completed acts. Moreover, L is responsible for not fixing the floors properly which caused A's asthma.

Frustration of the terms and purposes of the lease

The complaint must allege that the lessor's action or inaction violated explicit terms of the lease or disrupted the lessee's purpose for taking a lease. If the facts are disruptive, but not to the purpose of taking the lease, then the facts are not a violation of the implied covenant.

In the present case, A took the lease to run an acupuncture business. As part of the lease, A rented out one room for seeing clients and one room as a waiting room. In a medical practice, both the tenant providers and the clients would expect a comfortable environment that is safe and clean. In an acupuncture business, specifically, relaxation is important to the care, so the environment would need to be even more soothing than a more common, sterile doctor's office. This soothing, comfortable, and safe environment would also apply to a therapist's



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office. L originally rented to T, so these expectations would be included in the purpose of the lease.

The first issue that frustrated the terms and purposes of the lease is the roof leaking approximately one time per month for the past six years. A non-leaking roof is an important component in a business atmosphere. Businesses, generally, would expect the roof to keep the elements out of the business environment. A leaky roof is not only a distraction, the water leaking into the building could cause environmental problems such as mold and structural problems such as rot. A leaky roof in an acupuncturist's office would frustrate the purpose of the A's lease because water could leak on A while he is poking needles in his clients or it could leak on one of A's clients causing them to become angry and no longer relaxed. It would also violate the cleanliness expected in the lease because water would be everywhere, which may attract mud or dirt within the office. Finally, a leaking roof could also violate safety issues if water ended up on the floor where clients could slip and potentially be injured. Thus, a leaking roof would frustrate the purpose of the lease.

The second issue that arose that frustrated the purpose of A's lease is the fact that L never took the proper precautions to fix the air conditioning that left A's acupuncture office unbearably hot. This frustrated the purpose of the lease for an acupuncture office because it is extremely difficult for a doctor to provide precise medical care when they cannot concentrate due to the immense heat. Further, the patients who go to acupuncture expect to have relaxing and a soothing experience while receiving the acupuncture. It may become very difficult for patients to enjoy relaxing care if they are sweating profusely or if the doctor providing care is not performing to his best capabilities due to the immense heat as a result of the lack of air conditioning. This non-relaxing experience may cause patients to not want to give their business to A any longer, which directly frustrates the purpose of his acupuncture business because it will not be able to continue if it is not maintaining any profits from customers.

Finally, when a person searches for a lease for an office or to live in they want to know that their health will not be in danger. A health along with her clients health was placed in danger when L failed to repair the rugs because A had health problems due to mold which resulted from divots in the carpeting. The health and safety terms in a lease are implied by law and city requirements. The purpose of the lease was to practice acupuncture in a safe environment. A's clients should not have to go see another doctor for asthma or infections due to mold from a leaky roof and old carpet. Moreover, a



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doctor office has an implied understanding that the premises must be safe and free from health hazard because you are treating patients. Wet floors and divots in the carpet create risks of tripping for all people on the premise. Also, the divots caused mold, which places A's health and the health of A's clients in danger. Patients should be comfortable in the assumption that A, their doctor, would provide a safe and calm environment. Not an office with mold caused by new hardwood floors and divots in the old carpet that could cause them to trip. A was exposed to the mold and developed environmental asthma, which frustrated the safe and relaxing purpose for having an acupuncture office. It was not merely disruptive because it prevented her from using those parts of the room to stay healthy. Being limited to only parts of the premises without the mold made the office smaller and created a danger to A's clients. The L failure to replace the floor which caused mold in the office frustrated A's purpose for taking the lease.

Therefore, L's failure to remedy the leaky roof, L's failure to fix the broken air conditioning, and L's failure to fix the mold condition underneath the floor have all significantly frustrated the purpose of the A's acupuncture office because A will not be able to have a satisfactory working atmosphere as intended by the lease.

Tenant/ Assignee's Obligations

A as the assignee, or T as the tenant, have the obligation to notify L of any issues or defects that arise on the premises, and must give L reasonable time to fix the issues.

Notice

Although disruptions are a breach of the lease agreement, the landlord only becomes liable for the breach once the landlord has actual or constructive knowledge of the breach.

Here, the facts say that T promptly notified L about the roof after it started leaking in January 2007, so L would have actual knowledge of the leak in the roof. Additionally, L put duct tape on the roof once per month. In order to put duct tape over the leak, L would have had to have known there was a leak. Thus, his repair demonstrates that L had notice of the leaky roof, beginning promptly after the leak began in January of 2007

The facts indicate that T promptly notified L about the air conditioning breaking in February 2008, so L would have actual knowledge of the broken air conditioner. Further, L sent a repairman, R, out to fix the problem. In order to send a repairman out to fix an



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issue, L would have had to know the air conditioner had broke. Thus, L sending a repairman out in February 2008 indicates that L had notice of the broken air conditioner.

On 1 March 2009, the pads beneath the rugs became so worn down that they created divots in the carpeting, causing many clients to trip or stumble. A promptly notified L. L replaced the carpeting with bamboo wood flooring the next weekend, so as not to disrupt T and A's business. Thus, L had notice of the divots in the rugs because you cannot fix something you do not have notice over.

The facts indicate that A promptly notified L that the floors needed to be replaced because of the mold causing him Asthma in April 2010, so L would have actual notice that there was mold in the floor. Further, L indicated that he would not fix the problem because he believed A was treating him unfairly. However, L sent a repairman, R2, to fix the mold situation after 4 weeks of hearing about the issue. Thus, L choosing not to initially fix the mold situation and L sending a repairman out in April of 2010 indicates that L had notice of the mold underneath the floor.

Reasonable time to repair

Here, L responded each month to the leaky roof repair. Although responding each month might appear to be a reasonable timeframe, L only repaired the roof with duct tape each time. The duct tape did not work, as evidenced by the continual need for repair. Thus, a court should find that L did not actually ever repair the roof. Since the leak was continual for 6 years, and a roof should be repaired in less than a month, L has not repaired the roof within a reasonable time.

The facts indicate that L took 5 months to fix the air conditioning that was broken. Thus, L did not repair in reasonable time because the facts indicate that A called L to fix the air conditioner on multiple occasions because it was significantly impairing the purpose of his acupuncture business. This was evidenced by A losing clients due to the immense heat because L failed to act in a reasonable time to make repairs. Further, the facts indicate that L hired R to fix the situation, but R never showed up to make timely repairs until July. Because R is an agent of L, and both failed to fix the problem for over 5 months, it can be determined that they did not fix the problem in a reasonable time.

The facts indicate that L was promptly notified to fix the mold situation underneath the floor in March of 2009, but failed to fix the problem for nearly three weeks because he



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thought A was treating him poorly. Further, once L sent a repairman out, the repairmen said that fixing the condition would take several more weeks. Thus, L has not acted in reasonable time because the facts indicate that A has become sick from L's failure to fix the mold problem, and failed to promptly fix the problem.

Therefore, the facts indicate that L had notice and a reasonable time to remedy the issues that occurred on A's premises.

Level of the Breach

Damages

Here, A should be awarded the difference between the fair market value of the premises with a leaky roof and the price contracted for the entire lease period, since the roof has not yet been fixed.

A should be awarded the difference between the fair market value of the premises with a broken air conditioner and the price contracted for the period in which the unit did not work, since the air conditioner is now fixed. The unit in A's office was broken for approximately six months, from February 2008 until July 2008. During that time, A lost several clients due to the unbearable temperatures of his office. A should be able to recover those losses during that period since L was aware of the problem, yet never fixed the problem.

A should be awarded the difference between the fair market value of the premises with the new rugs and the fair market value of a business property with the old rugs from the beginning when A took possession until the moldy rugs were replaced with new flooring because the facts indicate that A's clients tripped over the rugs and injured themselves.

A should be awarded the difference between the fair market value of the premises with moldy floors and the price contracted for the period in which the floors posed a health concern to A and his clients. The floors in A's office space took about 6 weeks to repair, after L had been notified by A. L was notified of the problem in April 2010 and the problem remained unfixed until about May 2010. A should be able to recoup those losses because L knew of the problem, yet out of spite, delayed the process. In the two weeks that the floors were finally being replaced, A was unable to use one of his rooms, which impacted the full functioning of his business.



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The mold existed under the floors from before A took possession of the premises. A should be compensated from the beginning of the tenancy until A stopped paying rent. Even though at first, A didn't know he had the medical condition, the asthma wouldn't have developed over night. Therefore it's reasonable to infer that the mold issue has persisted over the six years that A has been working in the office, and has been renting the property from L. Thus, A should be awarded rent for the reduced value of renting property that has a mold condition from January 2006 until April 2010.

Constructive Eviction

A landlord constructively evicts a tenant when the breach of the covenant of quiet enjoyment is so significant that the tenant's purpose for taking the lease is substantially frustrated such that the benefit derived from the property amounts to an eviction.

Here, the leaky roof alone is unlikely to amount to an untenable premises because the facts do not indicate that the leaky roof disrupted A's business in any significant way.

Further, the broken air conditioner alone is unlikely to amount to an untenable premise because the facts indicate that L finally repaired the problem before A was vacated the premises, which is required under constructive eviction. However, if A did vacate the premises during the broken air conditioning in the summer then it would probably amount to constructive eviction because it substantially frustrated A's business by causing A to lose customers.

Here, carpet padding is unlikely to amount to an untenable promise because it did not significantly disrupt A's use of the property. It was repaired promptly.

Finally, the mold condition underneath the floor would likely arise to making the premises untenable because the facts indicate that A has become extremely ill with asthma as a result of L's failure to fix the problem. Thus, L's breach and failure to act substantially disrupted A's acupuncture business because A is unable to work due to becoming extremely sick as a result of the mold underneath the floor. If A wished to, he could most likely vacate the premises under constructive eviction for the significant disruption on the premises.

Vacate the premises



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If a tenant claims constructive eviction, the tenant must actually vacate the premises within a reasonable time from when the constructive eviction began.

The facts indicate that A has not vacated the premises, but rather has sued for damages. Thus, A has elected not to use the remedy of constructive eviction as a way to recover from L.

If however, A wished to move out, and use constructive eviction as a remedy, then he would only be able to do so under the issue of the mold underneath the floors. A would not be allowed to use constructive eviction for the leaky roof because L's breach is not significant enough to arise to the level of A vacating the premises. Further, the facts indicate that A failed to vacate the premises when the air conditioner broke, and L fixed the problem before A had the opportunity to vacate. Thus, A will be unable to vacate on the defected air conditioner because it is no longer an issue in which A can vacate for.

A did not vacate the premises after he found out that he had a health condition nor did he vacate after he was told by his doctor that his asthma was a result of the mold under the floor. However, even though the floor in the office space has been fixed, the facts do not suggest that mold problem has been completely eradicated from the property. As a result, it is likely that A is still able to vacate the premises as a result of the mold that is the contributing factor to his asthma condition.



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