

This is an example of a student answer which I found to be very good for a first year, first semester effort. It's not a perfect answer, but it is well organized and follows an IRAC formula.

This case presents a multi-faceted problem, involving the joinder of two causes of action. The first action deals with the ejectment of Tracy Spencer from the parcel of land which he claims to have adversely possessed. Jane has brought this action, claiming ownership by way of a letter. The second action is brought by Peter, who claims ownership via a *causa mortis* gift, or, in the alternative, by will. It is necessary to examine each cause separately.

The first problem to be dealt with is that of adverse possession, as the outcome, if favorable to Tracy, will be good against Jane or Peter. Tracy has been occupying the cottage on Golden Pond during the off-season every year since 1950, and has also laid a pipe across the lot for supplying his herring hatchery with water from the pond. The occupation of the cottage and the pipe will be considered separately.

Adverse possession, to be valid, must satisfy five elements: possession must be exclusive, open & notorious, actual, continuous, and hostile. Tracy's possession of the cottage satisfies all elements except continuity; his possession is broken every summer when Henry and Katherine return. Thus his adverse possession "begins anew" every year and cannot be considered to have satisfied the 21-year statutory requirement.

As for the pipe, the element of continuity is satisfied, but there is another problem: the occupation of the buried pipe is not open and notorious. The actual owners did not have any reasonable way of knowing that such a pipe was present, so even though it has been physically present for 30 years, its use is hereby enjoined. Removal will not be required, however, because this would result in a greater disturbance of the land. Perhaps this seems unjust, but it is quite possible that the actual owner and Tracy can come up with a suitable arrangement whereby Tracy pays for a privilege that, by law, he ought to pay for.

Having thus disposed of the adverse possession issue in favor of Jane or Peter, it becomes necessary to see which of them has the better claim. The letter, the *causa mortis* gift, and the wills shall be examined separately.

The letter appears capable of satisfying the Statute of Frauds requirements. These requirements are the "bare necessities" of a conveyance. First, the conveyance must be in writing. We have the letter before us as this writing. Next, the parties must be identified. It can be seen that Jane and "Mom & Dad" are all present in the letter. A description of the property, "cottage" follows, and also words of present conveyance--"We want you to have it." The

signature of the maker, "Mom & Dad" is sufficient also. So the letter appears on its face to satisfy the Statute of Frauds requirements.

Turning to Peter's *causa mortis* gift, this also, standing alone, would appear to be valid. There must be donative intent, delivery, and acceptance, and all are present. Henry & Katherine made the gift in contemplation of immediate death, which did occur from the cause contemplated, and nothing interfered between the gift and death which might invalidate the gift. There was constructive delivery of keys which is permissible when manual delivery is not possible, as here (cottage). There was donative intent--"We want you to have it" and acceptance is obvious from Peter's present action.

Also, the wills standing by themselves would be a valid conveyance--they were properly probated and recorded, leaving everything to Peter. It only remains to decide which of the 3 valid transfers will rule.

As between the *causa mortis* gift and the wills, the *causa mortis* gift will control because *causa mortis* gifts speak at the time of the gift and wills do not speak until death. The *causa mortis* gift is therefore first in time between them. As for the letter, it will control the *causa mortis* gift because it also occurred prior to the *causa mortis* gift. Even though there is some evidence that Henry and Katherine may have changed their minds, this is not relevant as they actually parted with possession and never took subsequent legal action. It was shown that Jane did occupy the cottage after the letter.

Thus, Jane will have ownership of the property, as conveyed by letter. Neither Jane nor Peter have recorded, it seems, but even if Peter has, or does record first, it will not change the outcome because he did not take for value. Tracy will have to remove himself from the cottage, his further use of it will be enjoined. His use of the pipe will also be enjoined.

Judgment for Jane.