

PROPERTY SECTION 1

Professor Donahue

Available for download: December 10, 10:00 a.m.

Due: By 6:00 p.m., December 10

EXAM, PART II

The exam mode for this exam is TAKEHOME.

This exam is 6 pages long. Please check to see that you have all 6 pages. (If you don't, try downloading it again; if that doesn't work, get in touch with UserSupport@extegrity.com.)

There is one essay question.

This is an open-book exam. You may use your casebook, your notes, and any other material that you wish (including material that is "online"). Collaboration is not permitted. Your answer must be entirely your own work. Please do not discuss these questions with anyone until 5:00 p.m. today.

There is no page or word limit, but conciseness will be rewarded and verbosity penalized. I won't tell you how to allocate your time, but I would strongly encourage you to spend at least an hour reading through the exam and making notes of issues that you see. I would also urge you to spend at least an hour at the end editing and proofreading your answers. Seven hours of non-stop writing can produce an impressive amount of paper, but the thought reflected is likely to be incoherent. Think before you write and edit what you write.

The cast of characters involved in the exam is large, and, unfortunately, their names don't all begin with a different letter. Three-letter abbreviations (e.g., "Aga" for Agamemnon, "Aeg" for Aegisthus) will, however, get you to unique identifiers.

The "background law" in the General Instructions applies to this part as well. If you don't have a copy of the General Instructions handy, you can find them at :

https://www.law.harvard.edu/courses/fall_08/property_2_donahue/Exam08Inst.doc.

Once you have turned in the exam you might want to read the *Oresteia*, three plays by Aeschylus ("Agamemnon," "The Libation-Bearers," "The Eumenides"), which tell the story of the exam much competently than I can. An online version may be found at

<http://records.viu.ca/~Johnstoi/aeschylus/oresteiatofc.htm>. Other translations are also available at http://old.perseus.tufts.edu/cache/perscoll_Greco-Roman.html. But don't do it now. The Charles-Addams house featured in the exam does not feature in the plays.

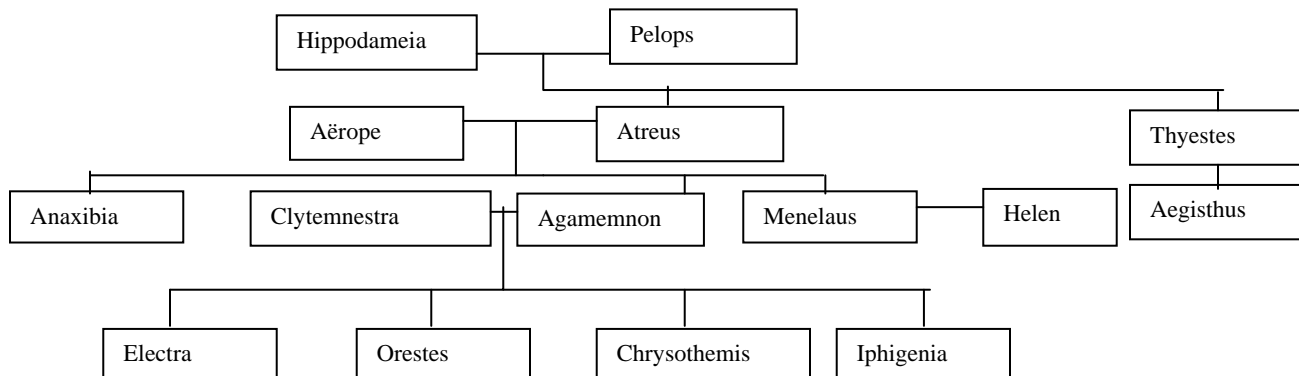
PART II PROPERTY: SECTION 1

The House of Atreus is a collection of characters in Greek mythology and literature. Atreus was the son of Pelops and the father of Agamemnon, the leader of the Greek army in the Trojan war, and of Menelaus, the abduction of whose wife, Helen, by Paris, son of King Priam of Troy, was the cause of the war. Upon his return from Troy to Argos where he was king, Agamemnon was murdered by his wife Clytemnestra, who hated Agamemnon because: (1) he had sacrificed their daughter Iphigenia in order to get a favorable wind to go to Troy; (2) he had brought back a concubine from Troy, Cassandra, a prophetess who was the daughter of Priam, and (3) because she wanted her lover Aegisthus to become king of Argos. Clytemnestra and Aegisthus were later killed by Orestes and Electra, son and daughter, respectively, of both Clytemnestra and Agamemnon. Orestes then went mad, pursued by the Furies, until the cycle of vengeance was finally broken by the verdict of an Athenian jury under the guidance of the goddess Athena, which declared that Orestes' matricide was justified.

The house of Atreus (with a lower-case 'h') is also a large, Charles-Addams-style Victorian house that has seen better days, in a neighborhood with the same characteristics, in the city of Argos, county of Argos, in the US state of Hellas. Its current residents are Agamemnon, the mayor of Argos; Clytemnestra; Aegisthus; Cassandra; Electra and Orestes, whose relationships with each other are as described above. What is about to happen to them has substantial legal ramifications, but they are mostly beyond the scope of this course. You may assume, however, that the "facts" are, and will be, as described above, except that Agamemnon is mayor of Argos, not king.

Right now the residents of the house of Atreus have a somewhat different problem. They want to sell the house. Daily interaction among them is difficult, and they need more space to get away from each other. A developer named Penelope thinks that she can make a go of it by tearing down the house and developing the land commercially, something that the current zoning will allow. She needs, however, clear title to the land in order to obtain financing, and she's not sure that any of the current inhabitants of the house can give it to her, either singly or in combination. Because relations within the family are, to put it mildly, strained, the fewer people who have to sign off on the deal, the better. She consults with Nestor, the senior partner of your law firm, and he outlines to you the following facts, all of which are known to Penelope:

(1) The genealogy of the House of Atreus:



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(2) The title to the house of Atreus is a mess. The only thing that is reasonably clear is that in 1955 the house belonged to a man named Eurystheus. The last deed to the house in the chain of title is a deed of gift from Sthenolos, Eurystheus' father, to Eurystheus, the operative words of which are "to my son Eurystheus and his heirs, so long as the property is used for residential purposes, and if it is not so used to his daughter Admete and her heirs."

In 1955, Eurystheus lent the house to Atreus and his brother Thyestes, went off to war, and never came back. All his sons were also killed in the war, but Admete survived, and is still living in Argos. She lives in a house in which Sthenolos had been living when he died, and she was his only surviving grandchild when her brothers were all killed in battle. (She has cousins, descendants of a man named Heracles, but they are not as closely related to Sthenolos as she is.)

Atreus and Thyestes took over what came to be called "the house of Atreus," but they soon fell to quarreling with each other. The story is a horrible one, and the details need not detain us here. Atreus managed to expel Thyestes in early 1956, but shortly thereafter he took in a foundling, who turned out to be Aegisthus, who was both the son and the grandson of Thyestes. Aegisthus killed Atreus in 1974. The same year Aegisthus and Thyestes expelled Atreus' sons, Agamemnon and Menelaus, and took up residence in the house. Agamemnon and Menelaus returned with their new wives, Clytemnestra and Helen, in 1985 and expelled Aegisthus and Thyestes. Menelaus returned to Sparta with Helen, where he became mayor. He and Agamemnon went off to war in 1999, and shortly thereafter Aegisthus moved in with Clytemnestra. Agamemnon has now returned from the war, and tensions are high.

(3) Atreus left a will, valid in form, which Agamemnon had duly probated and recorded shortly after Atreus' death. It gave a substantial monetary legacy to his daughter Anaxibia, who was (and is) happily married to the mayor of Phocis. The legacy was never paid. The following language concerned, among other things, the house: "I give, devise, and bequeath all my real property to my sons Agamemnon and Menelaus, or to whichever of them shall live in the house of Atreus (adequately described)." Nothing more was said about the real property. The final clause devised and bequeathed the residue of the estate to Anaxibia, Agamemnon, and Menelaus in equal shares. (Atreus' wife, Aërope, who had had an adulterous affair with Thyestes, predeceased him.)

(4) Iphigenia is, of course, dead, without any survivors. Chrysothemis is unmarried and away at college. Thyestes is still alive. He is a widower, and his only living child is Aegisthus. (The rest of his children were served up to him in a cannibalistic meal by Atreus.) Menelaus and Helen are still alive and living in Sparta.

(5) Just prior to his departure for the war, Agamemnon was running for a 20-year term as mayor of Argos. He published the following on a marble plaque in the town square:

"To the Citizens of Argos:

"If you elect me mayor, I will convey to you a portion of the property known as the house of Atreus, to be used as a subway station for the new subway line that is planned to go in front of the house. If I'm not around, my successors will do the same.

"Signed: Agamemnon."

Agamemnon was elected mayor. Because of the war, the subway line was never built, but now that the war is over, plans are afoot to build it. The city plans to condemn easements to build the subway line and convey them to Hades Development, Inc., whose CEO, Pluto, has promised to build the line. They are relying on Agamemnon's promise about the land for the subway station,

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because they do not have the funds to pay the market value of the land. These plans are something of a mixed blessing for Penelope. On the one hand, building the subway will enhance the commercial value of the property considerably. On the other hand, if the subway station is built on the property, it will interfere with her plans for commercial development of the property considerably. Having the subway station on the land may not be a deal-breaker, but it will come close.

(6) During the war, a Trojan ship entered the port of Argos while it was undefended. The marines on the ship launched an attack on the city with flaming arrows that did a considerable amount of damage. One of the arrows set on fire the Argos County Registry of Deeds, which ended up being a total loss. None of the records survived the fire. The Hellas legislature, realizing that the loss of the records would pose considerable problems in the land market in Argos, adopted, in 2005, a statute that, after reciting the circumstances, established a land court in Argos for the adjudication of outstanding claims. The court was to have charge of a new registry and was to accept claims in the following fashion, which claims were then to be duly recorded:

(a) Anyone who was possessed of land and had paid taxes on it for seven consecutive years could file a claim to the land upon presenting evidence from the city of the payment of the taxes and an affidavit of possession. The description of the property would correspond to that on the city's tax registers (which had survived the fire).

(b) Anyone who had purchased land more recently than seven years ago could file a claim to the land upon presenting evidence from the city of the payment of the taxes and an affidavit of possession since the purchase, together with the deed by which s/he purchased the land and evidence from the city that his/her predecessor(s) in title had paid the taxes for the number of years necessary to make up the seven.

(c) Anyone who had an outstanding claim to the land not so evidenced was to present evidence of it to the land court, the court to decide the claim on the basis of the evidence presented. A special appellate court was established to hear appeals from the land court, and no further appeal was allowed.

(d) Outstanding claims not falling within (a) or (b) were to be presented to the court within a year if a claim under (a) or (b) had been presented to the court and approved by it. Otherwise they had to be presented within two years of the date of the statute. Any claims approved under this section would become unassailable one year after the date of their approval.

(e) If no claim was presented to the court for a given piece of land within two years of the date of the statute, title to the land would escheat to the state of Hellas.

(f) No written evidence of a claim would be accepted by the court if it was not in a form that would have met the requirements for recording in the former registry. That meant that, among other things, a deed had to be the original or a photocopy, signed, sealed, and acknowledged. A will also had to be the original or a photocopy.

The land court was, of course, swamped, but it managed because most of the recent transactions were relatively easily to process. A local title plant had made it a practice of making copies of everything that was recorded in the registry, which copies were then digitized in photographic form. The land court would accept paper printouts of these records. Older records were more of a problem. Here, the title plant had made an abstract of the record, not a photocopy, and that abstract was what was available in digital form. All records prior to 1975 were in this form, and the land court refused to accept them.

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In Agamemnon's absence, Clytemnestra and Aegisthus filed a claim for the land with the land court in 2006, which the court accepted. It was backed up by affidavits of their joint possession of the land together with tax receipts obtained from the city that showed that one or the other of them had paid the taxes for the last seven years.

Both the deed of Sthenolos to Eurystheus and the will of Atreus are in the database of the title plant. No originals or paper copies of them survive. Agamemnon's plaque is not in the database, but it is still quite prominently visible in the town square.

The land court finished its work in 2008, and both the land court and the special appellate court went out of business at the beginning of 2009.

(7) "Write me a memo," Nestor asks you, "on who has what rights in the house of Atreus and the accompanying land." "You should know," he tells you, "that the establishment of the land court in Argos was quite controversial. There were even those who argued that the statute is unconstitutional. A number of challenges to the constitutionality of the statute have been filed, and it's unclear what the Hellas Supreme Court will do with them. The cases, or pieces of them, may even go the US Supreme Court. You should focus on any aspect of the statute that might be unconstitutional as applied to us. And you should consider what would happen both if the statute were declared constitutional and would happen if it were declared unconstitutional. You should know that our Supreme Court is very good at interpreting statutes in such a way as to avoid constitutional issues. The legislature in the past few years has done a number of things that looked blatantly unconstitutional, and when the Supreme Court got through with interpreting them they looked like perfectly sensible and eminently constitutional statutes."

(8) "So far as I know," Nestor continues, "no court has ever passed on the constitutionality of a statute like this one. There's certainly no precedent in Hellas that comes even close. The closest analogies that I know of (and they are pretty far away) are cases dealing with various statutes that impose limitations or recording requirements on rights of entry and possibilities of reverter. The cases seem to be all over the lot. They are outlined in the Donahue, Kauper, and Martin Casebook (3d ed.) on pp. 502–505, which I believe that you read in your property course. There's a bit more on pp. 625–626, though I'm not sure how much help that will be."

(9) "Hellas," Nestor concludes, "as you know, also has the following statutes. I can also tell you that there are no other statutes or case decisions that are relevant."

(a) A common-law reception statute. (1785)

(b) A married women's property act. (1850)

(c) A twenty-year statute of limitations on actions to recover real property. (1805)

(d) "A conveyance to two or more persons, not husband and wife, shall be deemed to create a tenancy in common except as otherwise expressly provided." (1803)

(e) A standard-form statute of frauds. (1790)

(f) A race-notice recording statute. (1850)

(g) A relatively straight-forward intestacy statute: (i) Half the estate to the surviving spouse, half to the surviving children [and grandchildren represent their parents if their parents are dead]; (ii) in the absence of a surviving spouse, all to the surviving children [with representation]; (iii) in the absence of surviving children or their representatives, half to the surviving spouse and half to the next of kin of the deceased; (iv) in the absence of surviving spouse or children or their representatives, all to the next of kin. (Calculating next of kin can get complicated, but for our

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purposes, it's fairly simple: Siblings take in preference to all other kin [and nieces and nephews represent their parents if their parents are dead]; first cousins take if there are no siblings or their representatives [with representation by first cousins once removed].) (1950)

(h) A surviving spouse has the right to his/her intestate share in the estate of a deceased spouse, and all other spousal rights in the deceased spouse's estate have been abolished. (1950)

(10) After you have prepared an outline of the issues to be addressed in your memo, Nestor calls you back into his office. "Events," he says, "are overtaking us. I've just received word that Clytemnestra and Aegisthus have killed Agamemnon and Cassandra. Orestes and Electra have fled. Thyestes is a very powerful man in these parts, and, unfortunately, I do not think that we can count on the criminal courts doing anything about this, at least not any time soon. Penelope is still interested in the land, but she's even more skittish about where the title might lie. Let's play it straight: Assume that the title to the land will not be affected by the fact that prosecution of either Clytemnestra or Aegisthus is unlikely to happen. Who owns what interests in the house and the land now?"

"Also," Nestor continues, "I have an unfortunate ability to see into the future. I know that eight years from now Thyestes will have died. Orestes and Electra are going to return, and they will kill Clytemnestra and Aegisthus. Ultimately, a court is going to exonerate Orestes and Electra, holding that under the circumstances the killing was justified. Who is going to own the property then? Hence, by five o'clock this afternoon, I want a memo answering three questions: (1) who had what rights in the house of Atreus and the accompanying land a few hours ago when Agamemnon and Cassandra were still alive? (2) who has them now? and (3) who will have them eight years from now when Thyestes, Clytemnestra, and Aegisthus are all dead? In answering the third question, you need not worry about either the land-court statute or the proposed subway. I can see into the future but not that far. You can also assume that everyone else who is now alive, except for the three mentioned, are still alive."

"I've got some advice:" Nestor concludes, "You probably ought to begin with a time-line that sketches out the possibilities about the ownership of the house. That should make it reasonably clear what the issues are that require more discussion."

Write the memo.

THE END