

Empire College of Law

Property Law

Professor Lehre

Fall Midterm 2024

Answer two (2) Essay Questions

Answer 20 MBEs

Time Allocated: Three (3) hours

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First Essay

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Owen owned Blackacre in fee simple absolute. In 2020, Owen conveyed Blackacre to Abby and Bart “jointly with right of survivorship.” The deed provides: “If Blackacre, or any portion of Blackacre, is ever transferred to a third party, either individually or jointly, by Abby or Bart, Owen shall have the right to re-enter and repossess Blackacre.”

In 2001, without the knowledge of Bart, Abby conveyed her interest in Blackacre to Fred.

In 2003, Abby and Fred died in a hang-gliding accident. Fred died testate. In his will, Fred left all his property to his cousin Mike.

In 2004, Bart and Mike learned that Abby had conveyed her interest in Blackacre to Fred. When Mike approached Bart a day later to discuss his interest in Blackacre, Bart told him, “I’m the only owner of Blackacre.” When Mike approached him a second time a few days later, Bart yelled at Mike, “You have no interest in Blackacre!” Bart immediately put up a fence around Blackacre and posted “No Trespassing” signs.

In 2014, Bart took out a loan using Blackacre as collateral. He used the funds from the loan to build a house on Blackacre. For the next ten years, Bart paid all of the taxes on Blackacre. Mike has never taken any action against Bart’s possession of Blackacre. The statute of limitation for adverse possession in the jurisdiction is 8 years.

1. What right, title, and interest in Blackacre, if any, are held during the relevant time periods by Owen, Abby, Bart, Fred, and Mike? Discuss.
2. Are any remedies available? Who will likely prevail? Discuss.

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Second Essay

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In 2021, John and Bella bought a three-acre parcel of flat grassland called Greenacre, which had an empty house on it. John found out that there were valuable lithium deposits throughout Greenacre. John did not tell Bella about the lithium deposits.

John began mining lithium on Greenacre, next to an adjacent parcel owned by Coal Company. Coal Company claims that John's mining has harmed their operation by endangering the structural integrity of their coal mines, making cave-ins more frequent.

In 2022, John deeded his interest in Greenacre, via quitclaim deed, to his son, Junior.

In 2023, Junior leased Greenacre to Carla for three years for the sole commercial purpose of mining the lithium deposits. While continuing to mine lithium, Carla entered into a written residential rental agreement to rent the empty house on Greenacre to Mitch until the end of Carla's lease with Junior. Carla called Junior and told him that Mitch was living in the house and Carla would give Junior a share of the rent. Junior said that was fine with him. Junior promptly forgot about this conversation. Carla never gave Junior his share of the rent.

Junior hated the house on Greenacre because it reminded him of his terrible childhood. The house was in good shape, but Junior took a sledgehammer to it and began demolition of the kitchen and only bathroom of the house so that he could build a better house in its place. He also filled the empty inground pool with rocks and set the rocks on fire, destroying the pool, which he also hated.

When Junior remembered that Mitch was living in the house, he stopped demolition. He made no repairs and left the kitchen and bathroom open to the elements for months. Mitch continued to live in the house. Mitch began repairing the kitchen and bathroom, and he stopped paying rent. Junior properly noticed Mitch of the termination of his tenancy for failure to pay rent and then filed an action against Mitch for eviction.

1. What are the interests, rights, duties, and remedies, if any, of John, Bella, Junior, Carla, Mitch, and Coal Company? Discuss.

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**Empire College of Law**  
**Midterm Exam 2024: Outline for Essay 1**  
**Professor Lehre**

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- I. Fee Simple Absolute (Owen):
  - A. Definition of FSA.
- II. Joint Tenancy with Right of Survivorship ("JTWROS") (A&B):
  - 1. Four requirements for JTWROS: (1) Conveying the Same Interest, (1) Same Title, (2) At the Same Time, and (4) Same Right to Possess the Entire Property
  - B. Conclusion: A&B have JTWROS.
- III. Owen would fail to keep a reversionary interest based on Fee Simple Subject to Condition Subsequent ("FSSCS"):
  - A. Fails for two reasons:
    - 1. Owen likely can't claim a FSSCS reversionary interest (Right of Reentry / Right of Possession):
      - a) Right of Re-Entry under FSSCS likely fails outright. It would defeat the purpose of a Joint Tenant Right of Survivorship if it were allowed. However, severance of one party's interest by transfer creates a Tenancy in Common ("TiC") which severs the JT.
    - 2. Doctrine of Restraint on Alienation will cause the reversionary interest to fail.
      - a) This is a total restraint. Owen cannot totally restrict the right to alienate (transfer) the property. This is against public policy.
  - B. Conclusion: A&B have JTWROS. Owen has no future interest in Blackacre.
- IV. Severance of A&B's JTWROS:
  - A. Severance of JT is allowed at common law even with no notice.
  - B. Define and analyze why A&B's JT was severed.
  - C. Conclusion: Severance occurred. B&F have TiC. A has no interest in Blackacre.
- V. Tenancy in Common:
  - A. Define and analyze the interests of B&F as TiC.
  - B. Conclusion: B&F now have TiC.
- VI. Devising of Blackacre.
  - A. Effect of F dying testate and devising Blackacre to M. F's 50% ownership interest goes to M when F dies.
  - B. Conclusion: M now owns in TiC with B.
- VII. Ouster of M by B because B continuously refused M access.
  - A. Analysis of ouster of TiC by occupying tenant. Wrongful exclusion by claim of sole ownership.
  - B. Conclusion: There was likely an ouster of M by B. Damages: loss of use, rental value / profits.
- VIII. Adverse possession by B:
  - A. Analysis of elements and facts: (1) actual and exclusive, (2) open and notorious, (3) hostile, and (4) continuous, for the statutory period.
  - B. Conclusion: B successfully adversely possessed Blackacre. M has no rights to Blackacre. B can sue M (and all others with a claim to Blackacre) for quiet title. (Extra points if student notes that failing to obtain a judgment for quiet title on an adverse possession claim would make Blackacre unmarketable as to the disputed ownership interest.)

## Property Law

### Professor Lehre

#### Outline Second Essay – Fall Midterm 2024

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- IX. J&B – default ownership fee simple absolute (“FSA”) as tenants in common (“TiC”).
  - A. Define FSA. J&B has a FSA.
  - B. Define TiC. J&B have a 50/50 TiC by default.
- X. Rights and duties of tenants in common to each other.
  - A. Right to a proportionate share of the profits from the lithium (and later from the rent payments from the residential lease.)
- XI. Inter vivos gift of property from J to JR.
  - A. Quitclaim deed transfers all right, title, and interest of J to JR.
  - B. No effect on the property interest of B. JR & B now own 50/50 as TiC.
- XII. Waste. Define waste and the three types of waste.
  - A. Ameliorative waste of the house by JR.
  - B. Voluntary waste of the pool by JR.
- XIII. Term of years lease JR to C for three years. Solely allowed to mine lithium deposits.
- XIV. C’s lease to M for the purpose of renting the house.
  - A. Term of years lease.
  - B. Assignment/Sublease or Neither?
    - 1. Was this an assignment of the lease? (It wouldn’t be a sublease, because it’s for the full term. C is apparently continuing to mine lithium, so this isn’t clear. It is likely a new contract involving different a subject matter.)
  - C. Half of rent owed to JR from C.
    - 1. Statute of frauds defense (oral agreement for a lease longer than one year. Equal Dignities Rule requires a written agreement for the share of the rent, signed by the party to be charged. Even if Equal Dignities Rule does not apply, it is still a lease longer than one year.)
- XV. Breach of Warranty of Habitability.
  - A. JR destroyed the kitchen and bathroom of the house M was renting from him (M is JR’s tenant), making the house uninhabitable (likely no running water, no toilet, nowhere to cook, etc.).
- XVI. Remedies for Tenant
  - A. Rent withholding (repair and deduct)
  - B. Termination of remainder of lease (requires tenant to vacate).
  - C. Damages remedy (tenant continues to pay rent but sues landlord for damages.)

XVII. Constructive Eviction of M because of uninhabitability. M did not leave the property, so no constructive eviction.

XVIII. Actual Eviction of M. M's defense of right to repair and deduct.

XIX. Coal Company v. B&JR

A. Subadjacent and lateral support.

B. CC could likely successfully sue for damages.

XX.

1)

Owen

Owen (O) owns Blackacre in fee simple absolute. Real property, which described tangible, immovable things such as a land, can be owned in various ways. A freehold estate is a form of ownership in real property. There are four freehold estates: Fee Simple Absolute, Fee Simple Defeasible, Life Estate, and Fee Tail. O holds Blackacre in Fee Simple Absolute, which conveys the most property rights possible, it is indefinite ownership and conveys all of the rights associated with property ownership, including the right to alienate, exclude, use, and destroy. Further, O may devise (convey blackacre via a will) or descend (pass to his heirs without a will upon his death) as he sees fit.

#### O's conveyance to A + B

O has the right to convey his present possessory interest in blackacre to Abby (A) and Bart (B). His conveyance states that blackacre will go to A and B "jointly with the right of survivorship". Land may also be conveyed in the form of a concurrent estate. A concurrent estate in land occurs when more than one person hold a present possessory interest in a single piece of lands simultaneously. There are three forms of a concurrent estates in land; they are a tenancy in common, a joint tenancy with the right of survivorship, and a tenancy by the entirety. Here, O went beyond created a mere tenancy in common and and created a joint tenancy. The difference between the two is that a Joint tenancy with Right of survivorship (JTwRoS) has the feature that in the event of death of either co-tenant, their present interest merges with the others, effectively meaning that the last survivor of then holds the property solely in FSA (Fee Simple Absolute). To create the JTWRoS, four unities must be present. The conveyance must occur by means of the same instrument and at the time time. Here, O created the JTWRoS at the time time and within the same 2020 conveyance. The other requirements are an equal interest being conveyed between the co-tenants. Here, both A and B seemed to have a 50% conveyance each, in the absence of any other language which would indicate an otherwise even split of the their interests. Finally, the conveyance must allow for a possessory interest to possess the whole of the property. Again, there is no indication that would suggest that O did not intend for each to have an equal possessory interest in Blackacre. Due to the presence of the four unities in this conveyance by O, A and B are Joint tenants with the right of survivorship. The impact to creating this form of tenancy are that if A or B ever die, their present possessory interest merges with the other, making them the sole owner in FSA.

#### O's restriction on Alienation

O's 2020 (although there seems to be an issue with the timeline of dates) conveyance is subject to a problem, due to public policy considerations. The conveyance states that "if any portion of Blackacre is every transferred, then O retains the right to re-enter and repossess." Normally, this sort of limitation may impose a Fee simple defeasible, with the power of reentry. However, this clause of the conveyance violate the rule which restricts alienation. The courts favor alienability of property, that is to say, the courts favor instruments which allow property to be sold and transferred. Only in limited situations, such as reasonable time related reasons to limit alienation will the court accept this. This sort of restriction by O is likely void and should be struck out from the conveyance. Thus, the conveyance to A and B is simply to convey to them as JTWRoS, subject to no limitations that accompanied his later instrument.

### O's Future interests

Because the clause regarding O's right to re-enter and repossess is likely void as a matter of public policy, O no longer has a interest in Blackacre. That is to say, his reversionary future interest in the property is null and void. A reversionary future interest is a type of future interest that can remain in a grantor when they transfer a portion of their present possessory interest, or transfer their interest in such a way they have the option to reclaim it in the future. A possibility of reverter, is a future interest that accompanies a fee simply determinable.

### Abby and Bart

*exactly*  
In 2001, we are told that A conveyed her interest in Blackacre to Fred (F). A severance occurs when a unilateral act of a co-tenant in a Joint Tenancy with Right of survivorship alienates their interest. The effect of a severance (the alienation of their present possessory interest) is that it destroys the four unities which are required to maintain the right of survivorship. A does not need to inform B that she intends to sever, but she must clearly intend to part with her possessory interest of Blackacre. With limited facts, it can be inferred that there was sufficient intention to transfer her interest and thus she severed the four unities. This is because the interest now does NOT exist due to the same instrument and at the same time, even if the proportion of interest and the proportion of possessory interest remains the same. The ultimate effect is that she rendered the estate into a tenancy in common, with F and B now being tenants in common and sharing an undivided, yet fractional interest in Blackacre. There is no longer a right of survivorship existing in this concurrent estate.

### Fred

Fred (F) dies in a hang-gliding accident in 2003. We are told that he died testate, which is to say that he died with a functional will in place. A concurrent estate is devisable, and thus it can be passed through a testamentary disposition. F's interests in Blackacre, which were conveyed to him by A, will pass to his devisees (those named in his will). In this case, his interests will pass to his cousin Mike (M). M now holds a 50% share in Blackacre, as a tenant in common with B.

### Mike

As stated above, Mike now holds a concurrent estate with a 50% share with B. This is a tenancy in common, as there is no four unities, and each tenant as an undivided, fractional interest in the whole of Blackacre. As discussed above, the clauses which gave O the right of reentry is likely void against public policy. In 2004, Mike learns about A's conveyance to Fred. Subsequent to this, M approaches B to confront him about the property. B tells M that he (M) has no interest in Blackacre. In fact, they are tenants in common with equal present possessory interests.

### B places Fence and Signs

B places a fence around blackacre and posted no trespassing signs on the property. This is important for two reasons; the first is that B has likely committed ouster at this point. Ouster is when a co-tenant physically impedes access to the property that another tenant has a legal right to occupy. Ouster is a legal wrong and even if B beliefs he is in the right, the fact remains



that both B and M have a right to enter the property, regardless of whether they like each other or not. The second reason B's actions are important is because it's likely that he has committed a conversion at this point in time. A conversion occurs when an individual substantially interferes with the possessory right of another's property. M is the legal holder of title to Blackacre, just as B is. B impeding M from exercising his possessory right to his property (by access) or to his chattel (inside Blackacre) is consistent with a conversion, depending on how long the impediment lasts. The facts state the ouster occurred in 2004 and we pick back up in 2014, which invites the question of whether the ouster occurred for 10 years. If that's the case, then it is very likely that a conversion occurred during this time. B is liable to M for conversion and ouster.

### Adverse Possession by B

Adverse possession occurs when someone possesses property continuously in such a way that is hostile to the true title holder's interests. Its elements are that possession is actual, exclusive, open and notorious, adverse or hostile, continuous, and occur for a statutorily imposed period. B's possession of Blackacre likely began as early as 2004 when he ousted M from the property, though we are not explicitly told that he possessed the property during that time. Yet, in 2014 B took out a loan to build a house on the property. B's physical presence is NOT required for him to have actual possession of Blackacre. The requirement is only that the one seeking to adversely possess use the property in a way that is reasonable under the circumstances. Here, the building of a house on Blackacre is likely sufficient to stake the claim that B is "actually" possessing Blackacre. The building of the house impedes the use of the property by others also.

The possession by B is exclusive, because of the erection of the fencing and posted no trespassing signs, he has manifested an intention to keep others off the property. This is synonymous with exercising domain over the property. The facts don't state whether anyone actually entered the property other than B, but it can be inferred under the circumstances that there was exclusive possession by B during this time.

Possession by B is open and notorious. The implementing of no trespassing signs serves to show others that he is in possession of Blackacre, and M was fully aware that B was possessing the property, due to the closeness in time between B telling M you have no interest in the property. The facts don't clearly state that M was aware, but it is likely, again due to the closeness in time between the fence being put up and the interaction between B and M. M's best argument here is that he was not aware of the possession by B, but this is likely to fail, since it's fairly open and obvious that B is possessing Blackacre.

Possession must be Adverse/Hostile, in other words, it must in a way attack the proper legal title of whoever the adverse possession is going against. Here, B is telling M that he has no interest in Blackacre. This can be interpreted in two ways. The first is that he is aware of M's interest and is upset at the conveyance by A to F which ultimately passed to M. In this case, the possession is adverse because he is aware of M's possessory interest in Blackacre and is seeking to disrupt that possession by his own possession of Blackacre. The second way that this can be interpreted is literally, in which case B really truly believes that M has NO interest in Blackacre. This is a critical difference in the analysis because if B truly believes that M doesn't have an interest, and the sole interest in Blackacre is his own, then it can be said that he is not truly in a hostile possession at all. His possession, in the later scenario, is rightful under his own belief. The issue lies in which articulation is more reasonable. B learned that Abby conveyed interest to Fred, but B was probably not aware of O's original condition that said no



alienation was allowed. So in effect, B learned of the transfer, its more reasonable for him to be aware that SOMEONE else had a possessory interest in Blackacre. Thus, it is reasonable to conclude that B was aware of M's possessory interest and therefore B's continued possession is hostile to M's possessory interest in Blackacre.

Possession must occur <sup>for some period of time</sup> continuously for the statutory period. Modernly, the adverse possessor must also pay all property taxes during the period of adverse possession. Here the facts state that building began in 2014 and B paid the the taxes for a 10 year period. Its reasonable to say that possession has been occurring since the inception of the building, with no facts to infer otherwise. The relevant statute for the period for adverse possession is 8 years and so it has been meet by B's continued possession.

Seemingly, all of the elements for adverse possession have been met. However, the strongest argument against B's adverse possession claim is B's statement taken literally, that he is the sole owner of Blackacre. If taken as true in his mind, then B is not actually possessing another's property, he is simply possessing his own property. Utimately, its more like that under all circumstances, his possession is considered adverse against M.

### Remedies

A and F are dead, they have no relevant remedy. O, due to public policy, his Power of Termination is likely void and so his future interests are non-existant, he could argue for a re-read of conveyance but due to its remoteness in time there is no remedy for O. B still committed an ouster and conversion against M, even if his claim of adverse possession is accepted. B is likely liable to M for the value of his belonging which were seemingly never returned to him.

2)

*excellent work!* (908)

### John and Bella' Purchase of Greenacre

John (J) and Bella (B) purchased Greenacre. Real property, which described tangible, immovable things such as a land, can be owned in various ways. A freehold estate is a form of ownership in real property. There are four freehold estates; Fee Simple Absolute, Fee Simple Defeasible, Life Estate, and Fee Tail. J and B likely hold Greenacre unencumbered and purchased outright. They have completed ownership over the property and can alienate, devise, or descend their purchase to whoever they see fit. They hold the right to use, exclude, destroy, and transfer their ownership.

### Subsurface Rights

Part of the bundle of stick conveyed when someone purchased real property is the area above and below the property, often referred to as airspace rights or subsurface rights. The use of these spaces is primarily dictated by the reasonable use doctrine, which hold that an owner of property is entitled to the use of the airspace rights and subsurface rights of the property that which they could reasonably acquire and make use of. Here, J learns of the valuable mineral deposits below the surface of greenacre. Depending on the depth of such resources, it is reasonable for J (and B) to make use of these minerals. We are not told specifically how deep these deposits are, but if they are reachable by traditional mining techniques then it can be said

that it's reasonable for the two of them to make use of their subsurface mineral rights.

#### Mining impact to Coal Company

Coal Company (CC) is a neighboring owner of property to J and B. The actions of J's mining for minerals has caused an impact to CC's property. A nuisance occurs when an individual's intentional actions restrict or impeded the enjoyment of another's possessory right to their property. CC is claiming that J's intentional mining activities have endangered the structural integrity of CC's own mines and has led to dangerous conditions. Like J, CC has subsurface mineral rights attached to their land and has the right to utilize them according to the reasonable use doctrine. A factor that must be considered with these competing claims of reasonable use is the potential for harm to others, weighed against the limit and impact to the use itself. CC argues that J's actions impede the use and enjoyment of their mining efforts, and there are no facts which state that CC's mining efforts are negatively impacting the mining efforts of J. Given that CC can operate its mines without negatively affect J, then J ought to conduct his reasonable use in such a way that does not negatively impact the mines of CC.

#### J deeds interest to Junior (JR)

As mentioned above, J and B own Greenacre (facts do not suggest otherwise) and so they have the right to alienate (to transfer) their interests. An inter vivos gift occurs when one living person makes a transfer of real property to another living person. The gift becomes possessory immediately. The elements required for an inter vivos gift are donative intent on the part of the grantor, delivery, and acceptance. Donative intent requires that the grantor have the present intention to part with the property. Delivery may be effectuated by physical delivery of the property, constructive delivery (gift of an item that allows access), or symbolic delivery (an item that conveys the property gifted). Here the deed itself may be viewed as a symbolic delivery when J gives the quitclaim deed to JR. The final element is acceptance, though it can be presumed for larger gifts. Here JR has been given an inter vivos gift of Greenacre, effective at the time when all three elements are meant. JR now has all the bundle of sticks of property ownership that J had.

#### J leases Greenacre to Carla

Carla (C) is given a limited estate. This is called a leasehold estate, which reserves a reversionary interest in the grantor at the conclusion of the lease. A leasehold estate is alienable, but it is not descendible or devisable, due to the reversionary interest retained by the grantor, in this case JR. Leasehold estates take four forms. The first is a term of years, which is fixed in duration, automatically terminable, but can be as long as the grantor desires (so long as it is not measured in life terms). The second is a periodic tenancy, which is time interval based, and requires notice to terminate. The third is called tenancy at will, which does not require notice to either lessor or lessee to terminate and is less common. The final form of leasehold estate is the tenancy at sufferance, which occurs when a tenant holds over a previous lease but the lessor chooses to not form a new implied periodic tenancy and instead pursues legal action to evict the holdover. Here, C is given a term of years leasehold for 3 years. This is fixed duration and at the end of the period, the lease terminates automatically, but C can holdover, and if JR accepts, can be transformed into a periodic tenancy with the period being whatever interval that rent is paid.

#### C rents the house on Greenacre to Mitch



An assignment occurs when a lessee transfer the remainder of the lease to another, under the same terms of the original lease. When this occurs, the assignee (new tenant) now has privity of estate with the lessor, while the original lessee, only remains in privity of contract with the lessor. the result is that new tenant is primarily liable for promises and damages to tenant, but in the event that new tenant is "judgement proof" then original lessee (C) remains secondarily liable to the lessor (JR).

Alternatively, a sublease occurs when a lessee transfer a partial remaining interest in the lease to a new lessee. The impact of a sublease is that the privity of contract (a contractual nexus) and privity of estate (a land based nexus) remains unchanged. Thus, original lessee (C) remains fully liable to Lessor (JR) in the event of redress or damages. However, original lessee may purse action against new lessee for reimbursement or cross claims, due to the privity of contract and privity of estate that is now shared with the new lessee.

Here, C is leasing to Mitch (M) the house on Greenacre. We are told that C rents the house until the end of C's lease with JR. However, its not so clear cut, because we are told that the lease to C was to mine lithium deposits, which C will continue to do while M is living in the house. At first the inclination is to treat this as an assignment because it will occur for the remainder of the period for the original lease, but C will remain on the property to mine lithium. She will not however, be inhabiting the house, further its questionable whether she has the authority to rent the house in the first place. Its more likely that this would be treated as an assignment because of the timing of the rental period coinciding with the time on her lease for mining. As such, C will remain secondarily liable to JR in the event that M causes damage to the house. This is supported by the fact that JR approves of C renting the house also.

### Duties of the Tenant

Perform to the Contract. C and M both have the duty to abide by the terms of the lease contract. They must reasonably maintain the premises and make minor repairs, as well pay rent. The facts state that C never gave her share of the rent to JR. She will be liable for this down the road unless she offsets by doing repairs which go beyond the minor repairs she has a duty to perform.

Duty to not commit waste. Tenants have a duty to not commit any waste on the property while they are in possession. Waste can either be affirmative (voluntary), permissive (negligent), or ameliorative. Affirmative waste is willful destruction of the property. Permissive waste occurs to the lack making repairs or conduct that progressively creates damage to the property. A failure to make minor repairs which then cause damages is an example of permissive waste. Finally, ameliorative waste is affirmative acts, that may increase value of the property, but are done without consent of the landowner and are not permitted. JR appears to be committing waste to the property, but he the rightful owner, per the deed from his father. He is likely not subject to the same rules for waste as it is likely he holds the property in Fee Simple.

*There is also a co-tenant duty not to commit waste.*

### Duties of the landlord (Lessor)

JR has a duty as a landlord of a commercial lease to at lease provide the covenant of quiet enjoyment. This covenant states that the landlord maintain the tenants ability to make use and enjoy the property and will not engage in any wrongful conduct that would substantially interference with the reasonable use and enjoyment of the property by his tenant. Such wrongful conduct can occur through affirmative acts or from failure to address issues brought

to his attention by others and which are within his legal right to control.

A violation to the covenant to quiet enjoyment can occur due to an actual or partial or constructive eviction. Actual eviction is physical removal from the property. Partial eviction occurs, when tenant is removed from part of the property. A constructive eviction can occur when wrongful conduct of the lessor interferes substantially with use of the property. Tenant must provide notice of the wrongful conduct and must vacate within a reasonable time to complete the constructive eviction. Once vacated, they can redress for rent and other remedies. JR came and completely destroyed the house. Due to the privity of estate shared with M, JR is under a duty to maintain the covenant of quiet enjoyment. JR has a duty to make repairs to the house, because it's likely that these repairs are significantly more than what is required by the tenant for "minor repairs".

In the event of breach of the covenant for quiet enjoyment M has different remedies available. He may withhold rent, deduct rent from costs of repair, or he may terminate and vacate. Presently, M has chosen to repair the damage done by JR and so depending on the severity of the repairs, the stopping of rent payment may be justified. Discovery would be required to calculate this difference, as we are not given any specifics as to the amount of damages or the amount of offsets to rent payments. When M

Implied warranty of habitability. This warranty is a duty of a landlord to maintain standard housing requirements, and is relevant when we are discussing residential leases. Although the lease from JR to C is commercial, C's assignment to M is a residential rental agreement and so C has the duty to maintain this. Because of privity of contract, that duty may extend to JR as well. The damage from JR, left the house open to the elements and so M may have a claim to argue this was a breach of habitability. The implied warranty of habitability, unlike the covenant of quiet enjoyment, does not require that the tenant actually vacate for there to be a breach. JR may have breached this by destroying the house's only toilet. Habitability requires the necessities basic for human life and dignity. Absence of functional plumbing and lack of sufficient heating likely are violated against the implied warranty of habitability.

### Remedies

We are told that JR gave notice to termination of his lease. and filed an action for eviction. However, JR is likely in breach of the implied warranty of habitability as well as the covenant to quiet enjoyment. The court will likely need to assess the diminution in value of the house after the damages were done and offset any repair work done by M which went beyond his ordinary duty to make minor repairs.

**END OF EXAM**