

MONTEREY COLLEGE OF LAW - HYBRID

Real Property – Section 1

Midterm Examination

Fall 2024

Prof. C. Lewi

Instructions:

There are three (3) questions in this examination. You will be given three (3) hours to complete the examination.

Your answer should demonstrate your ability to analyze the facts in the question, to tell the difference between material facts and immaterial facts, and to discern the points of law and facts upon which the case turns. Your answer should show that you know and understand the pertinent principles and theories of law, their qualifications and limitations, and their relationships to each other. Your answer should evidence your ability to apply the law to the given facts and to reason in a logical, lawyer-like manner from the premises you adopt to a sound conclusion. Do not merely show that you remember legal principles; instead, try to demonstrate your proficiency in using and applying them. If your answer contains only a statement of your conclusions, you will receive little credit. State fully the reasons that support your conclusions and discuss all points thoroughly. Your answer should be complete, but you should not volunteer information or discuss legal doctrines that are not pertinent to the solution of the problem.

Question 1

In 2005, by a deed which he drafted himself, Oliver conveyed Blackacre (a five acre parcel of farm land) to Alice. The deed provided:

“Oliver conveys Blackacre to Alice and her heirs so long as it is used only for farm purposes.”

Alice took possession of Blackacre and began growing high quality organic produce which she sold at farmer’s markets and to restaurants.

In 2010, Alice decided to no longer farm Blackacre. Needing income, Alice leased Blackacre to Bobby for him to use as a work yard for Bobby’s 100-acre vineyard property next-door pursuant to a signed written lease agreement. Bobby moved right in and used all 5 acres for his purposes (he had a crew of 20 persons who parked their cars on there, equipment and materials to store, erected several work sheds, and set-up a nursery using one (1) of the acres for raising new vines and cuttings to replant and graft in the vineyard.) At all relevant times, that lease is/was valid and current and Bobby’s use remains/remained the same as when the lease started.

In 2024, Bobby was still a tenant occupying Blackacre when Oliver filed a lawsuit to quiet title for Blackacre back into his name. Oliver named both Alice and Bobby.

Assume this is a “common law” jurisdiction, that no “disability” applies to any party, and that the applicable statute of limitations is ten (10) years.

Discuss Oliver’s, Alice’s, and Bobby’s respective arguments as to why the Court should decide in their favor. Please make sure to include as part of your answer which of these positions has the better chance of prevailing and why.

If you have enough time, and for the chance to increase your score, explain any differences in your analysis under California law.

Question 2

Larry Lawrence (LL) is the owner of a multi-story mixed use building – commercial spaces on the ground floor and residential units above.

On January 1, 2020, Commercial Trust and Bank (CT), began leasing the first floor of the building on a 10-year written lease @ \$10,000/month. The lease provides that CT employees and customers have the right to use a common area in the central lobby of the building to access BankCorp offices during business hours. The lease also provides that LL will provide 10 onsite parking spaces for CT customers.

On January 1, 2021, Ron Thompson (RT) entered into a month-to-month written rental agreement for an apartment on the 2nd floor @ \$1,500/month. RT moved in and began living in that unit.

On January 1, 2022, LL began to renovate the building. The renovation creates noise and dust and about 1x/week an unannounced disruption of electrical service to the entire building for about an hour at a time at various times of the day. The renovation prevents the use of six of CT's parking spaces. Since January 1, 2022, the central lobby of the building has been inaccessible, and CT employees and customers have to use an unmarked side entrance to the building to access CT's offices.

Starting February 1, 2022, and continuing for the next six months, both CT and RT complained to LL of the noise and dust and dirt and electrical outages and inconvenience and in CT's case, the loss of 6 of the parking spaces. LL was genuinely patient and understanding but did not actually do anything to reduce the noise and dust and dirt and electrical outages and parking shortages and inconvenience, explaining that LL had to get the work done as quickly as possible to meet the terms of its permit for the work. LL did assure CT and RT that the renovation would be completed by December 31, 2022 (and it was.)

Rent being paid through October 31, 2022, on September 1, 2022, CT and RT moved out of their respective leaseholds, returned the keys to LL and paid no further rent.

LL then sues RT and CT for rent owed.

Assume the common law controls and that there are no issues with the written lease or rental agreement.

Discuss LL's claims against (1) CT and (2) RT and LL's respective chances of success (including how much money, if any, that LL should reasonably expect to be awarded.)

Question 3

Oliver, owned Blackacre, a 10-acre parcel of real property, with a 3-bedroom house, a barn and stables, well cared for and in good condition. At his ninetieth birthday party Oliver had a reunion with his niece, Alice, with whom he had no contact in over 60 years. At the party, Alice told him of her fond memories of spending her childhood at Blackacre.

The following day, being a life-long unmarried man and having no children of his own, Oliver decided to give Blackacre to Alice. He executed a deed that named himself as grantor and Alice as grantee, and designated Blackacre as the property being conveyed. Oliver's signature was notarized, and he immediately gave the deed to Alice's dad, Bob. Oliver told Bob to record the deed but not tell anyone about it, especially Alice, because Oliver wanted to surprise her. Bob agreed to follow those instructions.

The following day, Oliver sent Alice a letter, which she received soon afterwards, that only stated "My Dear Alice, I hope you like Blackacre."

Several weeks later, Bob left Oliver a voicemail informing Oliver that Bob had lost Alice's deed. Oliver called Bob back, and left Bob a voicemail that stated, "Heard about the deed. That's OK." The next day, Bob found the deed, and recorded it without telling Oliver.

What Bob did not know when he recorded the deed was that during the time between Oliver giving the deed to Bob and when Bob recorded the deed, Oliver sold Blackacre to Benjamin Franklin Pierce for \$100,000; Pierce promises to deliver the money to Oliver and in reliance on that promise Oliver gave Pierce a deed, which Pierce promptly recorded before Bob recorded the deed from Oliver to Alice. To date, Pierce has not actually delivered any money to Oliver. Pierce did not move onto the property and has never moved onto the property.

A year passed. Oliver died. Bob then told Alice about the deed to her and that he, Bob, had recorded it. Thrilled that she now "owned" Blackacre, Alice made plans to move onto the property. As a caution, she decided to get a title report and found out about Pierce's deed.

Alice files a quiet title action against Pierce. Assume the deeds are in proper form, a race-notice jurisdiction, and that there are no statute of limitations issues. Who will prevail – Alice or Pierce and why?

Question 1 Issue Outline (Defeasible Fees and Adverse Possession)

Issue #1: What Interest does the deed create?

- Defeasible Fee
 - Fee Simple Determinable (FSD) in Alice
 - Conditional grant – “farm purposes only”
 - “so long as”
 - Title remains in Alice and her heirs so long as condition is not breached
 - If condition breached, Blackacre automatically reverts back to Oliver
 - Oliver has the future interest under the common law called “possibility of reverter” in fee simple absolute
 - Extra Credit: If we assume this is in Cal
 - FSD abolished
 - All defeasible grants are in FSSCS to avoid harsh results of the automatic forfeitures created by FSD grants
 - Oliver has the future interest called right of entry in fee simple absolute
 - Oliver has the option to take Blackacre back in the event Alice breaches the condition but does not have to exercise that option
 - As long as Oliver does not exercise option, Blackacre remains with Austin in FSSCS
 - O has to exercise the option within 5 years of the breach
 - O did not do so; A has Blackacre in FSA if the condition was breached.

Issue #2 – Did Alice Breach the Condition?

- Grant imposes the condition “so long as it is used only for farm purposes.”
 - What does “farm purposes” mean?
 - If it means planting and harvesting crops from the soil on Blackacre – which is probably the common understanding – leasing the property out for an ag work-yard would violate the condition
 - However, a work yard for a working vineyard can be argued to be for “farm purposes” – farming involves workers and machinery and processing equipment and storage of supplies and nursery yards this can be argued with some merit to comfortably fit within “farm purposes”, especially where part of that use is a nursery for propagating and growing plants.
 - If the work yard is deemed to fit within “farm purposes”, then condition not breached and title is still unquestionably with Alice and she will win the quiet title action and the lease to Bobby is fine and remains in force.
 - However, there is at least a 50/50 chance that “farm purposes” is deemed to mean planting crops in the soil, and that Alice has breached the condition of the grant.
 - And, because Oliver is still alive, we can ask him what his intent was in the use of the term “farm purposes” and we can presume he will do so, since he is suing to quiet title in his name, and that testimony will help him.

Issue #3 – if Condition Breached, Who now Owns Blackacre and why?

- If we presume the “farm purposes” condition is breached – and we do here . . .
- Because this is a FSD grant, title will automatically revert to Oliver upon the breach, which occurred in 2010, when Alice leased Blackacre to Bobby.
 - But this is not the end of the analysis . . .

- Alice leased the property out to Bobby in 2010, as if she was the true-owner still from 2010-2024, -- a period of 14 years, four years longer than the applicable 10 year statute of limitations.
- Does Alice have a claim to own BA through adverse possession?
Does Bobby?
 - Better argument is that Alice does not for lack of actual occupancy but that Bobby does.
- Analyze elements for AP:
 - Was A using land as an owner might? Was B?
 - Yes and yes
- Exclusive Possession
 - No for A (from 2010 to present, she did not actually occupy the premises; she leased it out to B.)
 - Yes for B; B was there on BA for 14 years as a tenant.
 - No evidence of any concurrent use by public or owner
- Open / Notorious
 - Yes for B; no evidence that B did anything in any way except in the open.
- Hostile (little analysis, but issue must be noted)
 - We do not know . . . , but
 - No evidence that O gave permission to B to continue to be on BA or use BA from 2010 to present . . .
 - Better conclusion is that the use was “hostile”
- Continuity of Use
 - 10 year statute
 - 2010-2014 = 14 years
 - B still using the premises.
 - No disabilities apply per call of the question so no tolling issues
 - Continuity is established

- o No tacking analysis necessary because facts tell us that both original parties – O and B – are still directly involved
- How Much of BA? Exclusivity revisited
- Claim of Title vs Claim of Right?
 - Was B on BA based on a good faith belief that a proper writing granted him title?
 - Yes; written lease agreement from A to B that B relied upon.
 - Can argue that B should have known that A would breach the FSD if she leased the land out and that therefore the lease was not valid.
 - If so, then B there under a claim of right and not under claim of title.
 - Issue not relevant here because we are told that the entire 5 acres was used by B at all relevant times so either under a claim of title or claim of right B will still get all 5 acres under an AP claim.

Extra Credit: Payment of Property Taxes?

If we presume jdx follows Cal rule we would also require the AP claimant to pay property taxes on the subject parcel; we have no evidence of that and B would lose. However, we are told this is a common law jdx, and thus the better conclusion is that there is no requirement that AP claimant pay property taxes.

Question 2 Issue Outline (Landlord/Tenant)

- There are two different leases:
 - Residential month-to-month lease for RT
 - Commercial fixed-term 10 year lease for CT
 - Two different sets of rules apply
- CT Lease:
 - IWH does not apply to commercial lease
 - Covenant of quiet enjoyment does apply – Breach?
 - Did LL provide suitable premises?
 - Yes: 1 year of inconvenience over a 10 year lease is not enough reason for a reasonable tenant to have no choice other than to vacate the premises
 - NO: a bank needs parking and a clean quiet premises with a reliable power supply
 - CT gave notice of the problem and then repeated that notice for 6 months
 - LL took no actual action
 - We do not have evidence that CT was actually harmed or if there was actual physical damage to CT.
 - Constructive Eviction:
 - if problems deemed material enough to warrant a substantial interference with CT's use and enjoyment of the premises warranting a reasonable tenant's decision that it should no longer be required to remain at the premises, then CT owes nothing and in fact, LL may be liable to CT for difference in rent CT pays at new location for 8 years remaining on the CT lease, subject to mitigation.

- If problems deemed incidental, then CT was not warranted in vacating and will be liable for \$120k/yr @ 8 years less mitigation.
 - Conclusion: No constructive eviction; no substantial interference and CT liable to LL for \$960,000 (8 years at \$120,000/yr) less mitigation
- RT Rental Agreement:
 - Covenant of quiet enjoyment applies and the same analysis applies here
 - On that theory, RT should owe LL only \$1,500 for 1 month of rent subject to LL's duty to mitigate.
 - IWH applies to residential lease
 - Intermittent electrical service at the least is a breach of the IWH
 - Noise and dust and dirt – maybe, but probably not.
 - IWH is a defense to LL's claim for rent
 - How much is the intermittent electrical service worth as an offset.

Question 3 Issue Outline (Gift)

There is no dispute that the BFP deed was recorded before the deed to A so BFP wins the “race” portion of the race-notice recording statute.

But that is not the end of the analysis.

For A to win, she has to establish (1) a perfected gift and (2) that BFP is not a bfp, i.e. that BFP's unfulfilled promise to pay the \$100,000 purchase price does not make BFP a "purchaser" and/or that BFP had prior notice of the deed to Alice.

For BFP to win, he must show either that (1) there was no perfected gift to A and that therefore O had every right to sell/transfer BA to BFP or (2) that BFP had no notice of the prior deed to Alice and that while he has not yet delivered the \$100,000 to O, is required to, that the statute of limitations has not run, and that he is a "purchaser" i.e, that he is a bfp entitled to protection under the race-notice recording statute.

- Gift to A -- Present Donative Intent
 - o The intent must be to make a present transfer, not a transfer to take effect in the future.
 - o Did Oliver intend a present gift (was the gift to occur when deed given to Bob? when recorded (recordation not legally required so was this indicative of wanting to ensure the gift was in public record?) when Oliver tells Alice in the letter?)
 - o Did Oliver intend to gift in the future (why didn't Bob tell Alice outright/was she supposed to be "surprised" later? If later, when?)
 - o Effect of Bob as an "escrow" – see below re delivery
 - o Effect of Oliver finding out deed was not recorded (was it "OK" because he never intended a present gift? was it 'OK' because O had changed his mind and had sold BA to BFP? Is it "OK" because O did not want Bob to feel bad? What effect that O did not ask B to stop taking any more action on the matter?)
-
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- Delivery

- o Did Oliver feel the “wrenching” of transfer? Oliver’s words and conduct must be examined.
- o Was handing to Bob alone enough?
- o Did O create an irrevocable escrow in B?
 - This is A’s best argument re gift
 - O did direct that Bob record immediately
 - Contra to the *Rosengrant* case
- o Directing to record indicate delivery upon recordation?
- o Effect of telling Bob (ostensible agent for Alice) not to tell Alice
- o Did Oliver impliedly recall the deed?
- o Was deed delivered when finally recorded? Yes; CA Ev Code 1603 presumes delivery if deed is recorded.
- o
- Acceptance (less analysis here)
 - o Presumed acceptance if of value – Alice loved the property as a child/condition now? Is it something she wants?
 - o Alice thrilled when she finds out about the deed.
- BFP:
 - o Notice?
 - There is no evidence that BFP had any notice of the prior deed
 - Prior deed not before BFP records his deed, so no constructive notice.
 - No evidence that BFP had actual notice
 - No evidence giving rise to inquiry notice – A had not moved into Blackacre
 - o FMV
 - Here is where BFP may lose
 - Undelivered \$100,000 for a 10 acre improved property in good condition seem like no actual purchase and not an actual arm’s length transfer or FMV.
 - If not a “purchase” / less than FMV, then BFP not protected and the prior deed to A will prevail
 - o Not relevant here that deed to A was a gift

- A is not claiming protections under the race-notice statute as a subsequent BFP

Conclusion: Assuming that the undelivered \$100k is deemed to not qualify as a purchase, there was a valid gift and delivery of the deed to A by and through B and A should prevail over BFP.

1)

Question 1

In this scenario, Oliver conveys to Alice in Fee Simple Determinable which is a type of Defeasible Fee. The limitation was that she would use BA for "farming purposes only." Oliver sued Alice for violation of that limitation but as you will see, even though both of them have different interpretations of what "for farming purposes only" means, Alice has the stronger argument to keep BA.

Fee Simple Determinable (FSD).

FSD is one of three types of Defeasible Fees. These are conveyances of present possessory interest with a limitation attached. FSD's are covenances that have the magic term "so long as" O to A "so long as" (limitation) if that limitation is breached then with and FSD the interest AUTOMATICALLY reverts back to the original grantor. This is called a possibility of reverter. In California these types of defeasible fees are not allowed (along with Fee Simple Subject to Executive Limitation) because the automatic reverter is simply too harsh. Instead the only one allowable in CA is Fee Simple Subject to Condition Subsequent.

Here, Oliver has conveyed BA to Alice in 2005 in FSD because he states to Alice and her heirs "SO LONG AS" that's the magic words that signal a FSD is in place and the limitation here is Alice has to use the land "only for farm purposes." Here Alice takes possession of BA and begins growing high quality organic produce which she sells to farmers markets and restaurants. No problems so far, she is keeping within the perimeters of the limitations set by Oliver.

Assignability of a Present Possessory Interest

A grantee may assign all their present possessory interest rights they have to the land to another, but only the rights that they have.

Here, Alice decides in 2010 that she does not want to farm BA any longer but needing the income she leases it to the next door neighbor, Bobby for him to use as a work yard for Bobby's 100-acre vineyard property next door. They have a signed lease agreement about this. Bobby moves in and uses 5 acres for his purpose to park cars there, store materials and equipment, erect work sheds, and set up a nursery using one of the acres to raise new vines and cuttings. Alice has the right to BA acre in fee simple absolute "so long as" it is being used only for farming purposes. There is no language in the original deed that requires her to "get permission" from Oliver to decide if she can rent the space to Bobby. She does have the limitation that the land be used "for farming purposes." Therefore, Bobby would need to use the land for farming purposes.

Oliver's Arguments

Oliver files a lawsuit to quiet title in his name naming both Alice and Bobby. He is going to argue that he transferred the interest to Alice in Fee Simple Determinable as long as she used it only for farm purposes. He is going to claim that Alice is using it to garner rental income not to farm. He will point out that Alice is no longer farming. He is going to state that he is not in privity of contract with Bobby. Privity of Contract means that the grantor and grantee are in contract together. His agreement is with Alice. What is Bobby doing in the middle of this? He is also going to point out that the five acres he gave to Alice isn't being used for farming purposes. Maybe one acre he would agree is being used because there are new vines being raised and cuttings are being replanted to graft into the vineyard. But parking equipment and storage sheds on the 5 acres was not what he envisioned when he gave BA to Alice as a farm.

Alice's Arguments

Alice will argue that the limitation in FSD was that it only be used for farm purposes. All the things on that 5 acres are being used for farm purposes. Farming involves more than just the land that vegetables are growing on. You need to have equipment and storage space. And there is a nursery as part of it. Alice is going to argue hard that this is still being used "only for farm purposes." She didn't put up a shopping mall or another house. → good

Fee Simple Subject to Condition Subsequent

O to A "but, if"

If the limitation is breached then the grantor has a right of reentry which means they MAY gain control of the property back. And if they are going to exercise the right of reentry then they must do so within the Statute of Limitations or else the grantee will have the property in fee simple absolute (theirs to keep to risk of getting it taken away by the grantor).

☆
good

Alice, if she is in California, will also argue that FSD is actually not legally viable in California. Instead it is turned into a FSSCS. If Alice breached the terms of the limitation "only for farm purposes" (which she isn't conceding at this point) it would have been in 2010. In 2024 Oliver files the lawsuit. The statute of limitations would be 10 years. Oliver waited 14 years to try and exercise his right of reentry. Too long. Alice has the stronger argument. However, if we look at it from the original FSD perspective...

Adverse Possession

Adverse Possession allows a trespasser to gain the right to the title if they follow the rules of adverse possession which is open and notorious, continuous, exclusive, actual, and hostile. In California they also would have to pay taxes for five years.

So Alice would run through the elements of Adverse Possession and try to make an argument for title to BA that way.

Open and Notorious: was the owner on notice that she had BA? Yes, Oliver was on notice

Continuous: Was possession continuous for the length of the statute of limitations? Well Alice took possession in 2005 and ran it as a farm, Oliver would only have issue with her turning it into a rental property in 2010 but he waited till 2024 to file a suit. So the continuous element is met

Very Good
But
A would have to take possession
Exclusive: Did Alice have exclusive possession of the property for the required length of time. If we start in 2010 when she turned it over to Bobby then let's look at that. Alice will say that she had exclusive use of the property and then she rented the property to Bobby. She will claim "tacking" to get exclusive use for 10 years. Tacking is when the adverse possessor 1 plus adverse possessor 2 aggregate their time to meet the statute. This can happen if they are in privity which means voluntary transfer. Bobby and Alice are in privity of contract because the facts tell us they signed a written lease agreement. Alice and Bobby can win on the exclusive element through tacking. Oliver will try to complain about that but he won't have a leg to stand on legally speaking.

Actual: Physically there. Alice and Bobby were actually farming and using the land, this element is met.

Hostile: No permission. Oliver will state that he gave Alice permission to be there and permission will eliminate the hostile element. Alice will say Oliver actually was not giving permission because he sued Alice and Bobby. The stronger argument is if it had only been Alice there using it as a farm that wouldn't have bothered Oliver it was the turning

of the property into rental farmland that upset him. On the balance Alice has the stronger argument.

CALIFORNIA: Taxes must be paid on the property for five years.

The facts don't tell us if this is happening in California. But if it was in California Alice would have to be paying taxes for five years. However, if it is in California the FSD would have been turned into FSSCS and that is a stronger argument for Alice's possession of BA than Adverse Possession.

In short, Alice has a really strong argument that she has fee simple absolute to BlackAcre through both FSSCS and AP. If she is in a state that allows FSD then she would need to argue Adverse Possession, if she is in California it is better for her to argue FSSCS.

Bobby's Arguments

Assignment

A present possessory interest can be assignable especially absent any terms between the original grantor/grantee that would limit assignability.

Here, Bobby will argue that he is in privity of contract with Alice. He did not sign a new contractual agreement with Oliver (a process called novation). He will argue that maybe he is in privity of estate with Oliver which means he has the right to use the estate and in this case he has abided by the limitations that Oliver had with Alice that BA only be used "for farm purposes." He is not in any contractual arrangement with Oliver and therefore Oliver has no right to pursue him legally in this matter. If Bobby causes any issues with BA Alice is going to legally be responsible to Oliver for them because Alice is the one that is in privity of contract. He will argue that Oliver needs to settle things with Alice.

Conclusion:

Alice has the stronger argument for fee simple absolute possession of Blackacre because she abided by the limitation of "used only for farming purposes" and she only had a contractual relationship with Bobby who also abided by that limitation. Also, Oliver waited at least 4 years too long to begin legal action as the statute of limitations is 10 years.

This I also Know:

Apparently the guy who came up with all the fee simple defeasibles, fee simple absolute, life estate, and fee tails was named William the Bastard and if that wasn't his actual name that his mother gave him back in feudal times, I'm pretty he would have been named that by successive generations of law students stuck with memorizing these types of land estates.

END OF EXAM

WINNER !!!

The only quarrel I have is A claim for AP; she is not a possessor but if she took over from B, she surely could tack. You make up for by correct use of CA law + effect of same.

2)

LL's Claims Against CT

Commercial Fixed Term Lease

LL has a commercial lease with CT. This lease serves as a contract, with each party being responsible for maintaining their ends of the bargain agreed upon within the lease. While there is no implied warranty of habitability within a commercial lease, the landlord must still uphold the terms to which they agree upon within it. CT's lease included several building specific features which were guaranteed to them: right to use of the common area in the central lobby for access to their employee offices during business hours as well as 10 onsite parking spaces. CT had a lease with LL guaranteeing these amenities for a 10 year period. For the first two years of their lease they were able to fully utilize the office building, including the lobby area and 10 onsite parking spaces. As a commercial bank this is important. It allows for not only employees, but customers as well to have parking to easily access the bank. The lobby entrance is also important to a bank in that it allows for a formal, recognizable entrance for clients to enter the bank. For the first two years that CT was a tenant we can assume that they paid their rent timely without issue. The first two years of the lease are not at issue. With the rent being \$10,000 per month, for the first two years of the lease, CT paid \$120,000.00 (I think....math is not my forte) as the lease required, and they maintained full access to everything the lease guaranteed to them.

However, in 2022 issues began to arise. From the moment the construction began, on 1/1/22, LL arguably knew that it would be disruptive to his tenants and would impact their ability to fully utilize their spaces promised in the lease, including CT. By 2/1/22 LL was formally put on notice that CT's ability to use the property they leased from LL was being significantly impacted. The parking spaces and lobby access were specifically stipulated to be available for use by CT in the lease. It is unclear what the lease says about access to electricity, but it can be presumed that CT knew that the bank could not function properly with unplanned electricity outages. The noise, dirt and dust from the construction are also something that would be recognizable as an interference to CT's use of the property, and a violation of the lease and CT's right to fully possess the property for the duration of their lease.

Tenant's Cures to Breach of Contract

Tenants have several options to cure breaches of the lease by the landlord. If the issue is something they are capable of fixing themselves, they can fix it on their own dime and deduct the amount spent on the repair from their next rent payment. They can inform the landlord of the issue and stop paying rent in relation to the portion of the property they are unable to fully use as a result of the defect, or they can move out and stop paying rent entirely.

The issues caused by the construction were not issues that CT would have been able to cure on their own and deduct from the rent. This is why they directly approached LL to fully apprise him of the problems they were experiencing. While LL was sympathetic to their situation he did not do anything about any of the issues and did not offer any discount in rent. In essence CT was paying for amenities that they no longer had. Not only did CT voice their issues to LL, they brought it up over the course of a 6 month period between February and July, LL was very much on notice that there were issues with CT's use of the property. Throughout this time, they continued to pay their full rent. As a bank, the noise, dust, unreliable electricity, loss of parking spaces, and marked entrance for such a prolonged period of time likely caused them to lose business, and maybe even employees who didn't want to continue dealing with the hassle. Rather than continue to deal with the issues the landlord created without offering any relief they decided to give a 30 day notice and vacate the property with rent being paid through October of their 3rd year in their 10 year lease. Typically leases for longer than one year require notice of 180 days, however, modernly, most leases allow for 30 day notices. However, since they were in the middle of their lease term, CT was not at a point in the lease in which they were able to give a notice. Additionally, since their lease was for a fixed term, notice would not have actually been required at the end of the 10 years. If they did not wish to renew the lease they simply could have moved out on their own accord and stopped paying rent when the lease expired.

LL will claim that CT is liable for the full rent for the entire 10 year term. However, even if the property had continued to be in pristine working order throughout CT's tenancy, landlord's have a duty to mitigate. Meaning that they must make an effort to mitigate their loss. This means that LL would have need to put in good faith effort to move new tenants into CT's suite to take over paying the rent as quickly as possible. It is unlikely this would have taken the remaining 7 years of CT's lease. As a result, CT would have only been liable for the lapse in time between breaking their lease in October of 2022 and whenever the new tenants were able to move in.

However, since LL breached the contract by significantly impacting the property CT agreed to rent, and they gave him notice of the issues and lack of access they were dealing with, it was within their rights to terminate the lease early and cease paying rent. In fact, the 30 day notice that they gave is

more than was required of them. Not only did CT have the right to break the lease, they had the right to deduct the value of the lost services and amenities that they experienced between January 2022 and October 31, 2022.

Let's say that CT is entitled to a \$100 reduction in rent weekly for the noise and dust created by the construction, an additional \$100 per week for the sporadic, daily internet issues, \$600 per week for loss of the six parking spaces, and an additional \$400 per week for the loss of use of the lobby and main entrance. This amounts to a total of a \$1,200.00 reduction in rent per week to offset the inconvenience and inability to fully utilize the property as agreed upon in the lease. For argument's sake, let's say there are 4 weeks in every month. This means that CT is entitled to a \$4,800 reduction in rent monthly while this construction takes place. This occurred between January and the end of October of 2022 - meaning there were 10 months during which CT occupied the property and were entitled to a rent reduction, totaling a reduction of \$48,000. The normal rent for the space would have equalled \$100,000.00. Meaning that CT actually only owed \$52,000.00 for the period between January 1, 2022 and October 31, 2022. Since CT continued paying their full rent between January 1, 2022, and October 31, 2022, at \$10,000.00 per month, they actually paid the full \$100,000.00, and LL owes them a refund of \$48,000.00 for this time period, and CT is not liable to pay for the remainder of their 10-year lease.

LL will likely argue that he informed CT that the construction would be complete by 12/31/22, and the only thing CT is entitled to is a reduction in rent for the period of time that the construction was occurring. However, there was no guarantee that would be the case, and after continuing to deal with the issues associated with the construction, CT had the right to vacate the property early. He may also argue that since it is a commercial lease there is no implied warranty of habitability and he does not have to maintain or guarantee things like electricity, lack of noise, etc. Reviewing the lease would assist in attempting to overcome this claim. He may also claim that since the tenants did not formally put him on notice until February that is when they are allowed to start deducting rent, not January.

It is unlikely that LL will prevail in his claim against CT, and in fact it is likely that the court will find that he actually owes CT \$48,000 for the period of time in which the building was under renovation.

LL's Claims Against RT

Residential Periodic Tenancy

LL has a periodic (month to month) lease with RT. As such, either party has the right to end the

tenancy at any time with proper notice. Being that it is month to month, a 15 day notice would suffice.

The same rights to cure a breach in contract by the landlord as discussed above applies to RT in that he can choose if the issue is something they are capable of fixing themselves, they can fix it on their own dime and deduct the amount spent on the repair from their next rent payment. They can inform the landlord of the issue and stop paying rent in relation to the portion of the property they are unable to fully use as a result of the defect, or they can move out and stop paying rent entirely.

Implied Warranty of Habitability

All residential leases have an implied warranty of habitability which basically guarantees a minimum sufficient level of livability within the premises including things like heating, electricity, functional windows, etc. Typically building code standards are used as the comparison point for this implied warranty.

Rt paid rent for the apartment between January and the end of October of 2022 while the building was under construction. On September 1st he gave notice that he was vacating the property and turned over possession of the property to LL. He gave adequate notice and can not be held liable for any future rent beyond October of 2022.

Similar to CT's situation, RT was entitled to deduct rent while dealing with the lack of access to electricity and encumbrance on his right to quiet enjoyment of the property free of interference from the landlord. Since his rent was \$1,500, and he did not have any guaranteed parking spaces or access to the lobby, let's say he is entitled to a \$200 per month reduction in rent for the sporadic electricity issues and ongoing noise and dirt. Between January and October this would have equated to a \$1,000 over payment of rent which LL would owe back to him. However, being that the lease is a periodic tenancy, LL may argue that Rt should have left at his first opportunity when in February he was informed the construction would continue for several months, and that it was his own choice to continue staying in the apartment, and he is only entitled to the reduction for January and February. Similar to above, he may argue that he is not entitled to the reduction for January because RT had not put LL on formal notice at that point.

Overall Conclusion

All in all, taking these parties to court is not a good move for LL and it going to end up costing him money instead of gaining money. A better option for him would have been to discuss the upcoming

construction with his tenants from the get go and to offer the rent reduction up front with full transparency about how long the construction would take. Instead he is likely to be paying CT \$48,000 and RT \$1,000 to compensate them for their lack of ability to use their leased premises.

3)

Question 3

Uncle Oliver gets into all sorts of problems when he tries to convey title to Blackacre to his niece, Alice, but then also tries to convey title to Ben Pierce through a sale of property. Alice has filed a quiet title action against Pierce, when all is said and done she will prevail.

Conveyance of Deed

A deed is properly conveyed when it is legally executed and properly delivered.

Legally Executed

A deed must be in writing, notarized, signed by the party, contains a legal description of the property, no consideration is needed.

Here, Uncle Oliver wants to convey the deed to Blackacre to his niece, Alice. He executes a deed that names the parties (himself and Alice) and has his signature notarized and spells out that BA is the property being conveyed. For the purposes of this analysis it is assumed the legal description of the property was sufficient. This appears to be a legally executed deed (especially since the notary was involved to witness his signature.) Plus the facts tell us the deeds are in proper form.

Properly Delivered: Donative Intent/Delivery/Acceptance

The grantor must have a present intent to irrevocably transfer the deed, there must be irrevocable and present delivery and acceptance by the grantee.

Here we have donative intent on the part of Uncle Oliver. He went through all the steps of getting a proper deed and he turned the deed over to Alice's dad, Bob who as a 3rd

Yes !!!

party is serving as an escrow agent. An escrow agent is a 3rd party that helps facilitate the transfer of property between the grantor and grantee. If this was a typical housing sale there would be a title company handling this and they would handle the deed and the money transfer and make sure the seller gets the funding and the buyer gets a title to the property. Here, we have Bob. And Bob messes up because he loses the deed temporarily.

Alice is going to argue that Uncle Oliver really wanted her to have the property. He went through all the trouble of preparing the deed and he handed it to Bob. She is going to argue that the moment Oliver handed Bob the deed that anything that transpired afterwards should relate back to that moment when he irrevocably handed the deed to Bob. In addition, Oliver sent Alice a letter which she received soon afterwards that stated "My Dear Alice I hope you like Blackacre. Between Bob's testimony of being handed a proper deed and Alice's letter there is enough parole evidence here (information outside a contract) that would allow a fact-finder to infer that Oliver really did have intent to transfer the property right then and irrevocably."

However, Pierce is going to argue well if that's the case then why did Oliver tell Bob "Heard about the deed. That's, OK" when Bob called to tell him he lost the deed. Since Oliver went and sold Blackacre to Pierce it seems fishy that Alice can state so strongly that Oliver intended her to have the deed to Blackacre especially since Oliver had not wanted to tell her he was going to give her Blackacre. Also there are no facts to suggest that Alice accepted the gift. For example, where is a return letter thanking Oliver for the gift? Also, the amount of time between Oliver giving the deed to Bob and Oliver entering into an agreement to sell BA was only a matter of weeks. While Oliver is around 90 years old there is nothing to suggest he is incompetent to conduct his affairs and simply forgot that he had deeded the property to Alice. Pierce will argue that Oliver really intended Pierce to buy the property. They had agreed to sell the property for \$100,000.

Oliver might like his niece but he's had no contact with her for over 60 years. Would Alice seriously suggest that based on the strength of her telling Oliver she had fond memories of spending her childhood at BA that Oliver would simply deed over a property worth six figures? Plus Oliver lived on the property for another year before passing away. Where is the "wrench of loss" that comes with irrevocably and presently parting with the possessory interest?

Alice will counter that Oliver wanted to surprise her so that's why she wasn't involved in being handed the deed and rather Oliver went through the escrow agent of Bob. Plus Oliver sent her a letter the day after he gave the deed to Bob stating he hoped she liked Blackacre. She will also point out that acceptance is presumed when delivering something of value and by delivering the deed to Bob in escrow (without asking to have his name put on the envelope a la *Rosengrant*) that he really intended that Alice get the property. She will point out that if she wanted to reject the gift of the deed she would have to have proactively rejected it outright. Which she did not.

Sub-Conclusion: This is turning into a he said/she said sort of situation with each side having viable points so it's time to turn to how the deeds got recorded to see if this can help determine the situation.

The Recording Acts

The recording acts are intended to protect a bona fide purchaser or mortgagee by ensuring that they have proper title to a property. Recording of deeds in the county registry office allows a person with an interest in a property to determine the chain of title to that property. There are three types of jurisdiction: Pure race, pure notice, and race notice.

Race-Notice Jurisdiction

A race-notice jurisdiction protects the BFP who records first and without notice. Notice can be either constructive, actual, or inquiry.

The question is do Alice or Ben qualify as BFPs, because if they do then we can figure out if the race-notice jurisdiction will help protect one or the other against the competing claim.

Bona Fide Purchaser

A bona fide purchaser (BFP) is one that takes for value and without notice.

In this case, Alice is not a BFP because she did not take for value. In other words, she did not pay anything for Blackacre. If Oliver did give it to her it was as a gift. → Yes; And BFP / race - note not really applied to A as 1st transferee. When it comes to Ben he will try to state that he is a BFP because he had agreed to pay Oliver \$100,000 for the property. That may be fair market value, we don't know based on the facts. However, Ben didn't actually PAY Oliver any money. When it comes to real estate, real estate is a business transaction governed by contract. A contract requires an offer an acceptance and consideration. Here we have the offer and acceptance, but there is no consideration paid on the part of Ben. If this had been a legitimate contract he would have needed to put down some earnest money. Which he did not do. The facts tell us that Pierce has not actually delivered any money to Oliver. Ever. Oliver gave Ben the deed "on reliance on Ben's promise" which sounds a lot like promissory estoppel when one party relies to their detriment on a promise that falls through. Ben promptly went out and recorded that deed which means he is unjustly enriching himself by getting a piece of property worth \$100,000 that he hasn't actually paid any money for but for which he has a properly recorded deed. If I remember my Contracts right, that means that if promissory estoppel is at play then the remedy is to put the one who relied on the promise to their detriment back in the position he would have been in originally. Which

is this case Alice will argue was to wipe out the "transaction" between Ben and Oliver like it never happened and Ben gets his recorded deed cancelled. Let's look at this from another angle...

Notice

Notice can be actual, constructive, or inquiry.

Notice means that either one of these parties would have been able to determine that there potentially might be another BFP at play in a title dispute over the property. However, it has already been determined that neither of these parties actually qualify as a BFP because Alice got the property as a gift and Ben never actually paid for the property so he didn't "take for value." When it comes to notice Alice went down to the recorder's office and got a title report (which is constructive notice) and saw that Pierce had recorded a deed. However, there would have been no actual notice because Pierce never moved onto the property. Doing a reasonable search of a property (inquiry notice) because something had tipped a reasonable person off that further inquiry is necessary wouldn't have yielded anything for either party because neither one of them had moved onto the property.

Hmmm....

Rosengrant: Irrevocable Escrow/Revocable Escrow

Neither Ben nor Alice qualify as BFPs so the race-notice jurisdiction laws can't help here because those are created to protect BFPs. The next course of action would be to revert to *Rosengrant* where it was determined that a grantor that had written his name and the grantee's name on the envelope set up a revocable escrow so the grantee was not awarded the property. In order for escrow to be proper it needs to be irrevocable (wrench of loss and all). Alice will say that Bob was a revocable escrow agent, Ben will argue that by Oliver

saying, "Heard about the deed. That's Ok," would tip it into Oliver making it irrevocable (as in it's ok, I take it back.).

First in time equals first in right

The very first rule in the book on real property.

It appears that the most legitimate aspect to this situation is that Oliver handed out two deeds that are both "in proper form." By relying on the first in time first in right rule, Blackacre should go to Alice because Oliver executed a valid deed and delivered it to Bob BEFORE he executed another deed and gave it to Ben.

Conclusion:

Alice gets Blackacre and hopefully she can create many more fond memories. Since this is a 10 acre parcel with a 3 bedroom house, a barn, stables, all of which are well cared for and in good condition it is highly likely she will be able to.

Very good job.

END OF EXAM
