

SAN LUIS OBISPO COLLEGE OF LAW

Real Property

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.

REAL PROPERTY
Professor Christopher C. Lewi
SLO College of Law
Midterm, Fall 2024

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 the 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" Blackcare, 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 premies.
 - No disabilities apply per call of the question so no tolling issues
 - Continuity is established
 - 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 if 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 → Less the \$20,000 for 9/22 + 10/22
- 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. *Owes \$1k b/c already paid*
 - 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?

- 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 ot 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)

Introduction

→ nice

Oliver conveyed Blackacre to Alice in fee simple determinable who then conveyed Bobby an inferior title to lease the land. Because Bobby's usage of the land defeated the condition that attached to bobby in Alice's conveyance, Oliver's interest in Blackacre immediately attaches through a possibility of reverter. Bobby will then be a trespasser, and in his defense he can claim Adverse possession in a quiet title claim, which Oliver will lose. See the analysis below. ✓

OLIVERS CONVEYANCE TO ALICE

FREEHOLD ESTATES

An estate is a persons interest in land measured by duration of time. ✓

OLIVERS TITLE IN FEE SIMPLE ABSOLUTE

Fee simple absolute is an estate in land where the owner has absolute ownership of the land for an infinite amount of time. There are no future interests for fee simple absolute. ✓

Here, Oliver owned Blackacre in Fee simple absolute and he the land is feely alienable, therefore he can convey the land to anyone. Oliver conveyed the land to Alice in Fee simple determinable, see below. ✓

ALICES TITLE/ IN FEE SIMPLE DETERMINABLE

DEFEASIBLE FEES: Defeasible fees, are a type of fee simple, but with strings attached. These types of estates have future interest that may or may not become posessory depending on if the stated event in the conveyance occurs or not. There are 3 ✓

types of defeasible fees: In fee simple determinable, In fee simple subject to condition subsequent, and In fee simple subject to executory limitation.

Here, Fee simple determinable would apply (see analysis below), but fee simple subject to condition subsequent would not because the verbiage of the deed does not say, "of the condition that" or similar type of wording to show that the condition must be met and if cut off then the grantor would have a right to re-enter. Also, Fee simple subject to executory limitation would not apply because, if A does not fulfill the condition, there is no third party that will have an executory interest.



Fee Simple Determinable

A fee simple determinable is an estate where if the stated event occurs or is breached in the deed, title will automatically go back to the grantor by **possibility of reverter** or it will go to some third person stated in the deed who has an **executory interest**

Here, Oliver conveyed Blackacre to Alice, "So long as it is used only for farm purposes". If Alice does not use blackacre for farm purposes, the title will automatically go back to Oliver by a **Possibility of reverter** because there is nobody in the deed that is a third party who has a future interest in blackacre through executory interest. Possibility of reverter is subject to statute of limitations. So even though title automatically transfers through possibility of reverter through a future interest, Oliver must reclaim title before the statute of limitations is up.

ALICE'S CONVEYANCE TO BOBBY

A title holder, that is less than fee simple absolute, may convey title to another if the title is inferior to the title the title holder claims. If the property has a condition attached to it, the condition attaches to the next person in the conveyance.



Here, Alice conveyed Blackacre to Bobby by leasing it to him. The leasehold is an inferior title, so the conveyance would be valid, but Bobby must use Blackacre for farm purposes or the property will go back to Oliver. Bobby used Blackacre as a work yard for his vineyard property that is next door. Bobby and Alice would argue that his use of the property is indeed for farming purposes because it is used for Bobbys 100 acre vineyard that is next door, and the 5 acre parcel (blackacre) is essentially just an add on to the work going on in the vineyard. Bobby would claim that raising new vine on Blackacre is considered a type of farming. On the other hand, Oliver would argue that the event in the deed has been breached and Bobby is not using blackacre for farming purposes and it is essentially a parking lot and storage yard. Oliver would also argue that the new vines that Bobby was raising, are not considered farming because they are taken off blackacre once mature and the cutting are replanted in the vineyard that is not located on Blackacre. The court will probably find that Oliver has the winning argument, and that blackacre is no longer being used for farming purposes,

Thus, Oliver will automatically get title back and Alice and Bobby will no longer have any claims or rights to title.

WILL BOBBY RECOVER IN AN ADVERSE POSSESSION CLAIM AGAINST OLIVER?

Adverse Possession

Adverse possession is an **entry** (by a trespasser) onto property that is **actual** and **exclusive**, **open** and **notorious**, **continuous** for the statutory period and **hostile** to a claim of title.

Here, Bobby will essentially be a trespasser once the event is breached since he is no longer using Blackacre for farming purposes, and Bobby will use Adverse possession to

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/ not claim of title under
Lease?

claim Blackacre through a **Claim of Right**. Under a Claim of right, Bobby will only be able to recover the land in which he is occupying. (see adverse possession elements discussed below)


Actual Entry

A trespasser must physically enter onto the land.

Here, Bobby occupied the land by using the land a work yard for his vineyard. The facts state that Bobby "moved right in" to Blackacre. He stored machinery on Blackacre, materials, built worksheds, and set up a nursery. These facts show that Bobby physically went onto the land and took action.

Thus, this element is met.

Exclusive

 Exclusive means that the true owner cannot be on the property at the time adverse possessors are on the property. Other adverse possessors are okay.

Here, Oliver was not on the property. It could be assumed that Alice is still on the property if she lives there, but Blackacre is only farming land and the facts are void of anyone living on Blackacre. Oliver therefore, had Blackacre all to himself because he was occupying all five acres of blackacre, and the facts do not state that anyone else was on the property while he occupied it.

Thus, this element is met.

Open

The property must be visible as to put a reasonable property owner on notice that someone is adversely possessing the land. The adverse possession must be open and obvious that the world is able to see that someone is occupying the land. Small encroachments are not open and visible, but large encroachments would be visible as to put the original property owner on notice.

Here, there is no encroachment so that does not apply, but Bobby is occupying all five acres of Blackacre. The facts do not state that Blackacre is visible to other people around it, but since it is farming land the land is probably nice and tilled with no other vegetation around. The facts do not state that the property is enclosed by trees as that would make it not visible to others. Since Bobby is putting big machines, and shed, and parking cars on Blackacre, the activity Bobby is doing is probably easily visible by others around. As a true owner, It would not easy to miss massive vineyard machinery, sheds, and 20 peoples parked cars occupying your very own property.

Thus, this element is met.

Notorious

The property must be used in a way that a true owner would use the property, and making it look as if you're claiming it as your own. In California, posting signs on your property for no trespass is a way to use the property as a true owner would.

Here, Bobby did not put a fence around black acre, or put any signage on the property saying that blackacre is his. He did build sheds on the property, set up a nursery, and people were parking their cars on the property. Bobby would argue that this is using the property in a way that a true owner would use farming land (to store machines, and build sheds to store material). Oliver would argue, that Bobby was not living on the property

and did not do anything to the property to truly "capture" the land. This is a very close call, it could probably go both ways. ✓

The court would probably find that Bobby did Notoriously use the land. Thus, this element is met. ✓

Continuous for Statutory Period

The possession of the property must be for the amount of time to satisfy the statute of limitations. In order to reach the statute of limitations time, one adverse possessor can tack on time of other adverse possessors to reach the time limitation only if the adverse possessors are in privity with one another. If at the time adverse possession occurs the true owner has a disability, the statute of limitations time will be tolled. ✓

Here, the statutory period is 10 years. Bobby started possessing the property in 2010 which is when the event was breached and title went back to Oliver through possibility of reverter. This is when adverse possession most likely started. There are no facts to show that Oliver suffered from any disability in 2010, so that does not apply. Bobby has occupied blackacre til 2024. Therefore, Bobby has adversely possessed Blackacre for 14 years ($2024 - 2010 = 14$). Since 14 is greater than 10, Oliver can no longer bring a claim for quiet title, and Bobby has adversely possessed the land if the Hostility requirement has been met (see below.) ✓

Thus, this element has been met. ✓

Hostile

For possession to be hostile, it must go against the permission of the true owner. An owners permission defeats the hostility requirement. The majority rule is objectiveness and someones personal thoughts as to if they thought the land was their or not does not ✓

apply. The minority rule is subjective and if a person thought the land was reasonably theirs in good faith, then it would be hostile. also, adversely possessing public lands defeats the hostility requirement.

Here, Oliver would argue that he knew Bobby was a tenant on the property, and since he did not tell Bobby to get off the property, he was simply giving Bobby the okay to be on the property. Bobby would argue that Oliver never indicated that it was okay to be on the property. Bobby had no idea that Oliver knew he was on the property. Bobby could claim that he thought that Oliver was just a clueless old man and that Oliver had no idea he was even occupying the property. Oliver's argument would probably fail because he omitted to take any action to show that Bobby had permission to be on the land. Bobby's thoughts are irrelevant as if he truly thought the land was his or not.

Thus this element is met.

Property taxes

Under common law, it is NOT a requirement that an adverse possessor pays property taxes, but under California law it is a requirement.

Conclusion

Bobby successfully has a claim of Adverse Possession in order to claim title through claim of right through an Adverse possession claim. Oliver will lose the quiet title claim, and Alice will get nothing.

This is really, really well
done. 😊

2)

INTRODUCTION

A landlord entered into two separate lease agreements: a commercial lease with a bank tenant and a residential lease for an apartment with an individual tenant. The landlord began renovations to the building, which caused disruption for both tenants. Both tenants raised the issue with the landlord, who did not make changes but assured the tenants it would not go on for much longer. Both tenants subsequently moved out and stopped making rent payments. The differences in the two leases result in different outcomes for the parties despite taking nearly identical actions; a full discussion of the parties duties, shortcomings, and likely outcomes are outlined below.


LEASE #1: LEASE BETWEEN CT AND LL

TYPE OF LEASE: TENANCY FOR YEARS/FIXED TERM LEASE

A tenancy for years, often called a fixed term lease, is a lease agreement for a fixed period of time that is outlined in the lease agreement. The lease automatically terminates on the final day of the fixed period of time; thus, no notice is required to terminate the agreement at the end of the lease.

Here, the lease agreement between LL and CT is a tenancy for years/fixed term lease for 10 years for \$10K per month. Thus, the lease began on January 1, 2020 and would automatically terminate after December 31, 2029. Further, the lease is for commercial space on the first floor. Thus, the terms of the contract control the agreement.

TERMS OF THE LEASE



In general, the tenant has the duty to pay rent, make ordinary repairs, not commit waste, and not use the premises for illegal purposes, and the landlord has the duty to deliver physical possession of the premises. In commercial leases, there is no implied warranty of habitability. However, in all lease agreements, there is an implied covenant for quiet enjoyment, which essentially is a covenant not to disrupt the tenant's enjoyment of the property. Finally, and again, in a commercial lease, the contract terms control the duties of the parties.

Here, CT has the duty to pay rent, not commit waste, make ordinary repairs, and not use the first floor of the building for illegal purposes. LL has the duty to deliver possession of the rented space, as well as the duties in the contract to give CT employees and customers the right to use the common area in the central lobby of the building to access BankCorp offices during business hours, and to provide 10 onsite parking spaces for CT customers. Finally, LL has the covenant of quiet enjoyment.

BREACH OF THE TERMS OF THE LEASE

The duties of tenants and landlords are discussed above. Any failure to comply with the terms likely constitutes breach of the lease agreement.

Here, LL would argue that CT breached their clear duty to pay rent when they stopped making payments beyond October 2022, moved out on September 1, 2022, and did not make any further payments, even though there was another 7+ years left on the lease. LL would highlight that LL did not evict CT for unpaid rent; rather, CT unilaterally stopped paying rent, moved out, and did not assign or sublease the rest of the lease to anyone else.

good ; accurate

Breach is established based on CT's clear failure to pay rent, an absolute duty of the tenant in any lease agreement. CT's counterarguments will be discussed below.

CT'S DEFENSES TO SUIT FOR RENT OWED

CT would defend on grounds of LL's own breach of the covenant of quiet enjoyment as well as constructive eviction by LL. Again, there is no implied warranty of habitability in commercial leases, but that does not completely render CT's arguments invalid. ✓

CT would argue that LL breached the lease agreement first because they did not deliver on their duties under the terms of the contract to give CT employees and customers the right to use the common area in the central lobby of the building to access BankCorp offices during business hours, and to provide 10 onsite parking spaces for CT customers. CT would argue that LL's renovations to the building created noise, dust, and unannounced disruption of electrical services to the entire building for extended periods of time created significant inconveniences that violated the covenant of quiet enjoyment. ✓
Further, CT would highlight that 6 of the 10 guaranteed parking spaces were unavailable, the central lobby of the building was inaccessible, and CT employees and customers had to use an unmarked side entrance just to access their offices, which is all in direct contrast with CT's agreed upon duties under the terms of the contract. Most notably, CT would highlight that they pointed out all of these issues to LL, who did not do anything to do right by the contract. Rather, LL doubled down and essentially said that getting the work done as quickly as possible to meet the terms of its permit for the work was more important than the 10-year lease agreement between CT and LL. Thus, CT would argue that LL constructively evicted CT because staying at the premises was simply no longer an option, and it was clear that LL was not taking the issues seriously.

CT makes a pretty strong claim. As will be discussed below, this is probably an instance where there is not one clear winner and one clear loser. ✓

OUTCOME OF THE DISPUTE BETWEEN LL AND CT/REMEDIES

As discussed above, both LL's and CT's assertions against the other have merit.

Here, the most obvious remedy available to LL is unpaid rent. However, LL has a duty to mitigate their damages. It is unclear whether/when LL had a new tenant to occupy the space. Regardless, CT remains on the hook to LL for unpaid rent. Specifically, CT moved out of the leasehold on September 1, 2022, but had paid rent up through October 31, 2022. Therefore, CT owes LL rent for the remaining 7 years and 2 months on the lease (November 2022 - December 2029). This adds up to a whopping 86 months of unpaid rent at \$10K per month, for a grand total of \$860K in unpaid rent that CT owes to LL.

However, CT probably will not be on the hook for the full amount of the unpaid rent. CT will be entitled to an offset of the unpaid rent due to LL's failure to deliver on their duties under the terms of the contract to give CT employees and customers the right to use the common area in the central lobby of the building to access BankCorp offices during business hours, and to provide 10 onsite parking spaces for CT customers. Further, CT will probably be entitled to an offset for the noise, dust, and electrical outages. Notably, CT will probably also be given some mercy because CT brought it to LL's attention prior to moving out and withholding rent. The amount of the credit that CT will be given against the \$860K is unknown but likely pretty substantial.

CONCLUSION RE: LEASE #1 BETWEEN CT AND LL

Therefore, CT will owe LL monies for unpaid rent, but it will almost certainly not be the full \$860K that LL is pursuing. OK; soooo good but if CT was constructively evicted, they owe \$0 (and my foot may get a refund). So what is it?

LEASE #2 LEASE BETWEEN RT AND LL

TYPE OF LEASE: PERIODIC TENANCY

A periodic tenancy is a lease agreement for a repeated period of time, such as month to month or year to year, but is not a fixed duration of time. The lease may be terminated by either the tenant or the landlord with reasonable notice to the other party. At common law, 30 days is generally sufficient notice for termination of the lease. ✓

Here, the lease agreement between LL and RT is a periodic tenancy on a month to month basis. Thus, the lease does not have a set end date, but rent is due monthly at a rate of \$1,500.00 per month until either LL or RT provides reasonable notice of termination of the lease. ✓

TERMS OF THE LEASE

Good In general, the tenant has the duty to pay rent, make ordinary repairs, not commit waste, and not use the premises for illegal purposes, and the landlord has the duty to deliver

physical possession of the premises. In all lease agreements, there is an implied covenant for quiet enjoyment, which essentially is a covenant not to disrupt the tenant's enjoyment of the property. Further, in all residential leases, there is an implied warranty of ✓

habitability. Guided by *Green v. Superior Court*, the landlord must ensure that the premises meets the minimum safety standards set forth in the building code. Such minimum


standards include hot water, electricity, heat, etc. Finally, it is worth noting that the parties are also controlled by any other terms added into and agreed upon in the contract.

Good Here, RT has the duty to pay rent, not commit waste, make ordinary repairs, and not use their apartment on the 2nd floor for illegal purposes. LL has the duty to deliver possession of the apartment, provide a habitable space for RT that meets minimum safety standards of habitability, and LL has the covenant of quiet enjoyment, meaning that LL cannot be disruptive toward RT and RT's living space. It does not appear that RT and LL added any other particular terms to their lease agreement, so the standard duties of the parties apply. ✓

BREACH OF THE TERMS OF THE LEASE

The duties of tenants and landlords are discussed above. Any failure to comply with the terms likely constitutes breach of the lease agreement.

Here, LL would argue that RT breached their duty to pay rent when they stopped making payments beyond October 2022, moved out on September 1, 2022, and did not make any further payments. LL would highlight that LL did not evict RT for unpaid rent; rather, RT unilaterally stopped paying rent, moved out, and did not assign or sublease the rest of the lease to anyone else.



In addition to RT's defenses that will be discussed below, RT would argue that RT did not breach the agreement because not only was RT current on rent at the time that RT moved out on September 1, 2022, but RT also had paid rent for the following month through October 31, 2022. RT would assert that by moving out and returning the keys to LL on September 1, 2022, RT provided LL more than sufficient notice of termination of their lease, and was not in breach. In sum, RT would argue that RT gave roughly 60 days notice of termination of the lease and paid any rent that RT owed under the lease.

RT likely presents the more persuasive argument, and RT probably does not owe LL unpaid rent. However, in the event that the court determines otherwise, RT has another defense available, discussed below.

RT'S DEFENSES TO SUIT FOR RENT OWED

The implied warranty of habitability can be invoked as a defense to suit for breach of contract for unpaid rent. The covenant of quiet enjoyment can also be relied upon in defense of breach for unpaid rent.

3)

INTRODUCTION

A seemingly well-intentioned but perhaps forgetful elderly man executed a deed conveying Blackacre to his niece. For unknown reasons, the man subsequently entered into a land sale contract with a third party. The details of each conveyance present unique issues, which make the parties' competing claims to interest in Blackacre rather complex. An analysis of the rights of the parties' is discussed below.

PRELIMINARY MATTER: LAWFUL EXECUTION OF THE DEEDS

A deed conveying land must be lawfully executed, meaning that it is in writing and contains a description of the land to satisfy the statute of frauds, and is signed.

The facts indicate that both deeds were lawfully executed, and this is not in issue.


OLIVER'S CONVEYANCE TO ALICE: GIFT

A valid gift inter vivos is made if the donor intended to make the gift, the gift was delivered to the donee, and the gift was accepted. Even though Oliver was 90, there is no indication that the gift was made upon his belief of imminent impending death, which would be a gift causa mortis.


DONATIVE INTENT

The donor must have had the intent to make a present transfer of the property to the donee.

Here, Alice would argue that Oliver had the requisite donative intent to transfer Blackacre to her because he executed a deed in which he specifically granted Blackacre to her, had



the deed notarized, and took it out of his own hands by giving it to Bob with instructions to record it. Further, Alice would highlight that she is the logical object of Oliver's bounty because Oliver was unmarried with no children and they had just had a nice conversation sharing fond memories about Blackacre. Finally, although Oliver is dead now so his intent cannot be confirmed, Alice would argue that his intent was present when he wrote her a letter stating "My dear Alice, I hope you enjoy Blackacre." In sum, Alice would urge that Oliver cemented his intent to make a present transfer of Blackacre to her by executing a deed in writing, having it notarized, and sending Alice a letter. ✓



On the other hand, Pierce would argue that if Oliver truly intended to make a present transfer of Blackacre to Alice, he would not require so many hoops to be jumped through; rather, he would have simply had the deed recorded and called it a day. Pierce would argue that Oliver would not have given the deed to a third party and instead would have just gone and recorded the deed himself. Further, Pierce would assert that it is not possible to have the intent to make a *present* transfer while also having the intent to surprise Alice. Finally, Pierce would also highlight that the voicemails exchanged between Oliver and Bob show that Oliver did not have any real intent to ensure that he made a present transfer of Blackacre to Alice. Pierce would assert that if Oliver wanted to ensure that he gifted Blackacre to Alice, upon receiving the voicemail from Bob that he lost the deed, Oliver would have come up with a plan to either locate the deed or redo it. Instead, Oliver demonstrated zero concern, said that it was "okay," and no further attempts were made/no discussions were had ensuring that the deed was found and recorded. In sum, Pierce would argue that if Oliver intended to make a valid gift of Blackacre to Alice, there would need to be clear and present evidence of his desire to relinquish title, dominion, and control of Blackacre to Alice, not involving middlemen and secrets. ✓

While Oliver makes strong arguments, on balance, Alice probably has the stronger case, given that there are multiple writing instruments that are demonstrative of Oliver's likely intent, and because Alice is the logical object of Oliver's bounty.

Thus, donative intent is satisfied.

DELIVERY

Delivery may be actual, constructive, or symbolic. When the gift is something that is not a movable item, constructive or symbolic delivery are satisfactory.

Here, Alice would argue that Oliver delivered Blackacre to her via the deed, which constitutes constructive or symbolic delivery. Alice would argue that since Blackacre is real property that cannot be actually delivered, a deed is the most common and acceptable method of delivery, which is met here. *How was deed delivered?*

On the other hand, Pierce would argue that Oliver did not deliver the deed to Alice; rather, he delivered the deed to Alice's dad Bob. Pierce would urge that under *Rosengrant vs. Rosengrant*, a deed that is delivered to a third party to be held in escrow is revocable, which renders delivery of a gift invalid. *Revocable vs. irrevocable exam*

It is another close call, but Pierce likely has the stronger argument here. For completeness, the final element of gift will be quickly analyzed.

ACCEPTANCE

Acceptance is generally presumed upon delivery.

Here, because the gift was probably not validly delivered, there is no gift to accept.

Thus, this element is not met, and Oliver's gift to Alice is likely invalid.

However, Bob still recorded the deed, and Alice eventually learned of it, to her pleasant surprise. The timing of the recording of the deed between Oliver and Alice presents issues in relation to Pierce's claim to Blackacre, discussed further below.

OLIVER'S SALE OF BLACKACRE TO PIERCE - IS PIERCE A BONA FIDE PURCHASER?

A bona fide purchaser is one who obtains title to land for value or consideration.

Here, Oliver's sale of Blackacre to Pierce appears to be a typical land sale contract. However, Pierce has not yet issued any payment or consideration to obtain title to Blackacre. Thus, Alice would highlight that Pierce is not a bona fide purchaser, which has significance, discussed further below. Despite not paying \$100K yet for Blackacre as promised in the contract, Pierce promptly recorded his deed. Thus, there are two recorded deeds with competing interests to Blackacre.

RECORDING RULES

RACE-NOTICE JURISDICTION

In a race-notice jurisdiction, a subsequent bona fide purchaser takes title of the land if they recorded their deed and did not have notice of the prior conveyance.

Here, Pierce would argue that he prevails in this race-notice jurisdiction because his agreement with Oliver was for value, and because he recorded his deed without notice of the prior agreement that Oliver had with Alice.

On the other hand, Alice would argue that even though Pierce recorded his deed first and did not have notice of the deed from Oliver to Alice, Pierce is not a bona fide purchaser

because he has not yet paid \$100K or given any sort of consideration in exchange for Blackacre. Thus, Alice would assert that she should prevail.

Pierce's counterargument to Alice's assertion is that Alice obtained a title report and found out about Pierce's deed; thus, she had notice of the conveyance from Oliver to Pierce.

In a situation such as this, in which neither party fits squarely within the requirements or meets all of the elements of the race-notice statute, we revert back to common law. Therefore, the true owner of Blackacre is determined by the principle of first in time is first in right.

Under the common law, Alice would obtain title to Blackacre because she made plans to move onto the property and was therefore first in time. Further, Pierce did not and never has moved onto the property. Further strengthening Alice's right to Blackacre would be asserting estoppel by deed, by demonstrating that she detrimentally relied upon obtaining title to Blackacre and moved onto the property. It can be inferred that Alice's decision to move onto Blackacre resulted in moving costs, selling her current home, etc.

After sorting through all of the mess and balancing all of the factors at play, the most likely scenario is that ~~Alice has title to Blackacre.~~

CONCLUSION

~~Alice would most likely prevail in her action to quiet title.~~

END OF EXAM

Good ; what event, exactly, is it that is material for the "1st in time" analysis?
