Scott Pearce's
Master Essay Method

Real Property

REAL PROPERTY APPROACH

Minimalist Approach

I. Land Ownership

II. Land Use

III. Landlord Tenant

IV. Remedies

Elaborate Approach

I. Land Ownership

A. Adverse Possession

1. Mental Element
2. Physical Element
3. Time Element

B. Estates and Future Interests

1. Fee Simple Absolute: Total ownership and no future interest
2. Fee Simple Determinable: Possibility of Reverter
3. Fee Simple Subject to a Condition Subsequent: Right of Re-entry
4. Fee Simple Subject to an Executory Interest
   a. Shifting - between grantees
   b. Springing - from grantee back to grantor then to new grantee
5. Life Estate: Connected to Reversion or Remainder

C. Concurrent Ownership (community property crossover)

1. Joint Tenancy: Each tenant has an undivided interest in the whole.
2. Tenancy by the Entirety: Joint Tenancy by a married couple.
3. Tenancy in Common: Each owner has a separate share.

D. Land Sale Contracts and Mortgages (contracts crossover)

E. Deeds and Conveyances

1 Deed Formalities
2. Recording Acts
3. Equitable Conversion

F. Possessory Rights Related to Land (torts crossover)

1. Water Rights
2. Lateral and Subjacent Support
3. Waste, Nuisance, Trespass

II. Land Use

A. Easements: Express, Implied, Prescriptive, Estoppel

B. Licenses: Always revocable, except where executed or coupled with an interest.

C. Covenants: Writing, Intent, Touch and Concern, Privity of Estate

D. Servitudes - Legal and Equitable

E. Land Use Regulations (Constitutional Law crossover - 5th Amendment taking)

1. Zoning

2. Police Power

3. Eminent Domain

III. Landlord-Tenant (contracts crossover)

A. Types of Tenancies

1. Tenancy for Years - Fixed Term
2. Periodic Tenancy - Automatic Renewal, Notice to Terminate
3. Tenancy at Will - Either side can terminate without notice.
4. Tenancy at Sufferance - Holdover tenant in possession

B. Condition of the Property (torts crossover)

1. Waste
2. Fixtures

C. Assignment and Sublease

IV. Remedies

A. Damages

B. Restitution

C. Equitable Relief

1. Specific Performance of Contracts
2. Temporary and Permanent Injunctions

D. Defenses to Remedies

Real Property

Ann, Betty, and Celia purchased a 3-bedroom condominium unit in which they resided. Each paid one-third of the purchase price. They took title as "joint tenants, with right of survivorship."

After a dispute, Betty moved out. Ann and Celia then each executed a separate deed by which each conveyed her respective interest in the condominium unit to Ed. Each deed recited that the conveyance was "in fee, reserving a life estate to the grantor." Ann recorded her deed and delivered the original deed to Ed. Celia also recorded her deed and left the original deed with Ann in a sealed envelope with written instructions: "This envelope contains papers that are to be delivered to me on demand or in the event of my death then to be delivered to Ed." Celia recorded the deed solely to protect her life estate interest. Ann, without Celia's knowledge or authorization, mailed a copy of Celia's deed to Ed.

Subsequently, Ann and Celia were killed in a car accident. Betty then moved back into the condominium unit. She rented out one bedroom to a tenant and used the other bedroom to run a computer business. Betty paid all costs of necessary repairs to maintain the unit.

Ed commenced an action against Betty, demanding a share of the rent she has collected. He also demanded that she pay rent for her use of the premises.

Betty cross-complained against Ed, demanding that he contribute for his share of the costs of necessary repairs to maintain the unit.

1. What are the property interests of Betty and Ed, if any, in the condominium unit? Discuss.

2. What relief, if any, may Ed obtain on his claims against Betty for past due rent for her use of the condominium unit and for a share of the rent paid by the tenant? Discuss.

3. What relief, if any, may Betty obtain on her claim against Ed for contribution for the costs of maintaining the condominium unit? Discuss.

Real Property – Outline of Issues

I. Property Interests of Betty and Ed

- A. Ann, Betty and Celia buy the condo as joint tenants
- B. Betty moves out: no severance
- C. Ann's deed to Ed
- D. Celia's deed to Ed
- E. Ann and Celia die
- F. Betty retakes possession of the condo
- G. Conclusion: Ed has 2/3, Betty 1/3 as tenants in common

II. Ed v. Betty

- A. Past due rent from Betty
- B. Share of rent from tenant
- C. Conclusion: Ed gets 2/3 of rental income

III. Betty v. Ed: probably no recovery

Real Property – Answer

I. Property Interests of Betty and Ed

To determine the property interests of Betty and Ed in the condominium, it is necessary to examine the chain of title.

A. Ann, Betty and Celia buy the condo as joint tenants

A joint tenancy is a form of co-ownership in which each party has an undivided ownership interest and an equal right to occupy the property. When one tenant dies, the survivors take an equal interest in the decedent's former share. Ann, Betty and Celia bought the condo in which they lived. They took title as "joint tenants with right of survivorship." In this case, the language in the title shows that Ann, Betty and Celia intended to enter into a joint tenancy. Unities of time, title, interest and possession are present. The three women took the same title at the same time. They had the same interest and their possession was equal. Each had her own bedroom and each paid one-third of the purchase price.

B. Betty moves out: no severance

Betty moved out after a dispute. This does not serve to sever the joint tenancy relationship between Ann, Betty and Celia. Although Betty abandoned her right to possess, she did not waive it permanently, as evidenced by her later reoccupation of the premises. No facts are present to suggest that Betty intended to make a gift of her share of the joint tenancy to Ann and Carla, the people she was angry with.

C. Ann's deed to Ed

Ann and Celia each executed a separate deed by which each conveyed her respective interest in the condominium to Ed, each reserving to herself a life estate. To be valid, a conveyance must include a deed, delivery and title. In this case, Ann had good title. She recorded her deed to Ed and delivered the original deed to Ed. Ann's deed to Ed (and Celia's, as discussed below) severs the joint tenancy because it breaks the unity of interest. Ann's deed renders Ed a tenant in common, and it gives Ed a remainder in Ann's one-third interest.

D. Celia's deed to Ed

Celia also had good title to her one-third interest. She recorded her deed, but only to protect her life estate interest. She did not physically deliver the original to Ed. Instead, she gave Ann the original with a note to give it back to Ann if she asked for it or to give it to Ed upon her death. Fortunately for Ed, Celia's recording of the deed protects his remainder interest as well as Celia's life estate. Recording the deed will be deemed a constructive delivery to Ed.

The result of the transaction between Ann, Celia and Ed is that Ed has a remainder interest in Ann and

Celia's shares of the condo. The earlier joint tenancy between Ann, Celia and Betty is severed.

E. Ann and Celia die

Ann and Celia were killed in a car accident after their conveyances to Ed. Their life estates ended at the time of their deaths. Ed's remainder interest matured into a present possessory interest as a two-thirds tenant in common with Betty.

F. Betty retakes possession of the condo

Betty moved back into the condo after Ann and Celia died. Betty occupied two bedrooms and rented out the third to a tenant. As discussed above, Betty's previous departure did not terminate her ownership interest in the property. Betty was acting within her rights to retake possession of the condominium. Her liability to Ed is discussed below.

G. Conclusion

Ed has a two-thirds interest and Betty has one-third as tenants in common.

II. Ed v. Betty

Ed and Betty are tenants in common, with Ed owning two-thirds and Betty one-third. Ed sued Betty, demanding past-due rent from Betty and a share of the rent she has collected from tenant.

A. Past due rent from Betty

Betty was within her rights to reoccupy the condominium after Ann and Celia died. Although it is apparent that Betty and the tenant occupied all three bedrooms - one for Ann, one for her business and one for the tenant - no facts are present which suggest that the Ed ever tried to possess the property himself. He was not ousted from the condo. Betty, as a tenant in common, does not owe rent to her fellow tenant in common rent for her occupation of the property. Certainly Ed would be within his rights to occupy the second bedroom, forcing Betty to move her computer business somewhere else. Ed and Betty might make a deal in which she would pay rent to continue occupying the second bedroom in the future, but Betty is not liable to Ed for her previous occupation.

B. Share of rent from tenant

Tenants in common are entitled to a pro-rata share of income from the property. In this case, Betty is making money from renting out one of the bedrooms in the condo. She only owns a one-third interest in the unit. She must give up two-thirds of the rental income to Ed.

C. Conclusion

Ed is not entitled to rent from Betty. He is entitled to claim two-thirds of the rental income.

III. Betty v. Ed

Betty paid all costs of necessary repairs to maintain the condo. Betty cross-complained against Ed, seeking contribution for his share of the costs of maintaining the condominium. As the occupying tenant, Betty is responsible for these expenses at common law. If Betty were occupying the property by herself, she certainly would not be entitled to recover from Ed.

Betty's claim is strengthened by Ed's demand for two-thirds of the rent from the tenant. As discussed above, Ed has a right to demand his share of the rental income. Under these circumstances, it would be unfair for Betty to be solely responsible for maintaining the premises. It is possible that Ed's recovery of his share of the rent will be reduced to reflect Ed's share of the costs of maintaining the tenant's leasehold.

Real Property

Larry leased in writing to Tanya a four-room office suite at a rent of $500 payable monthly in advance. The lease commenced on July 1, 2006. The lease required Larry to provide essential services to Tanya's suite. The suite was located on the 12th floor of a new 20-story office building.

In November Larry failed to provide essential services to Tanya's suite on several occasions. Elevator service and running water were interrupted once; heating was interrupted twice; and electrical service was interrupted on three occasions. These services were interrupted for periods of time lasting from one day to one week. On December 5, the heat, electrical and running water services were interrupted and not restored until December 12. In each instance Tanya immediately complained to Larry, who told Tanya that he was aware of the problems and was doing all he could to repair them.

On December 12, Tanya orally told Larry that she was terminating her lease on February 28, 2007 because the constant interruptions of services made it impossible for her to conduct her business. She picked the February 28 termination date to give herself ample opportunity to locate alternative office space.

Tanya vacated the suite on February 28 even though between December 12 and February 28 there were no longer any problems with the leased premises.

Larry did not attempt to relet Tanya's vacant suite until April 15. He found a tenant to lease the suite commencing on May 1 at a rent of $500 payable monthly in advance. On May 1, Larry brought suit against Tanya to recover rent for the months of March and April.

On what theory could Larry reasonably assert a claim to recover rent from Tanya for March and April and what defenses could Tanya reasonably assert against Larry's claim for rent? Discuss.

Real Property – Outline of Issues

I. Larry's Theory of Liability Arises out of the Real Property Landlord-Tenant Law

- A. The Lease Between Larry and Tanya
- B. Tanya's Breach
  1. Tanya's Oral Termination
  2. Tanya's Failure to Pay Rent
- C. Damages
- D. Conclusion

II. Tanya's Defenses Against Larry's Claim for Rent

- A. Covenant of Quiet Enjoyment
- B. Partial Eviction / Constructive Eviction
- C. Warranty of Habitability
- D. Larry's Failure to Mitigate Damages
- E. Damages Suffered by Tanya
- F. Conclusion

REAL PROPERTY

Builder sold a shopping mall to Owner. The recorded deed from Builder to Owner conveyed the mall and parking lot where the parking spaces were numbered 1 to 100. The deed reserved to Builder the exclusive right to use parking spaces 15 through 20 as a place to set up a stand to sell sports memorabilia and sandwiches on Sundays. The shopping mall was located adjacent to an existing residential neighborhood.

Owner entered into a written 30-year lease with Lois leasing to her a store in the mall and parking spaces 1 through 20. Under the lease, Lois agreed to pay rent monthly and not to assign the lease without Owner's prior written approval. After occupying the leased premises for five years, Lois subleased the store and parking spaces to Fast Food for a term of ten years without first having obtained Owner's written approval.

Fast Food occupied the premises and paid rent to Owner. Fast Food, which operated a take-out restaurant on the premises seven days a week, used state-of-the-art equipment and operated in compliance with all local health ordinances. Notwithstanding this, on warm days when Fast Food was particularly busy, unpleasant odors were emitted from Fast Food's kitchen. The unpleasant odors caused discomfort to many of the homeowners living in the adjacent neighborhood.

On the first Sunday after Fast Food opened its take-out restaurant, Builder set up his memorabilia and sandwich stand in parking spaces 15 through 20. Fast Food, not aware of the provision in the deed, complained to Builder about the competition of Builder's sandwich sales and the occupancy of parking spaces allocated to Fast Food. Builder ignored Fast Food's complaints. Fast Food then informed Owner that it would cease paying rent until Owner took steps to prevent Builder from using the parking spaces. Owner explained that there was nothing he could do about it, but Fast Food insisted that it would not pay further rent until Owner stopped Builder from setting up his stand. Thereupon, owner hired a locksmith, who changed the locks on the space occupied by Fast Food, thus denying Fast Food access to the premises.

1. Did Lois violate the "no-assignment" provision in her lease with Owner? Discuss.

2. If Fast Food brings and action in trespass against Builder for his use of parking spaces 15 through 20, is Fast Food likely to prevail? Discuss.

3. Did Owner have the right to change the locks on Fast Food's premises? Discuss.

4. Can the homeowners establish a claim for nuisance against Fast Food? Discuss.

Real Property – Outline of Issues

I. Did Lois violate the "no assignment" provision?

A. Assignment v. Sublease

B. Fast Food paid rent directly to Owner

C. Conclusion: Lois did not violate the "no assignment" provision.

II. Fast Food v. Builder: Trespass

A. Trespass

B. Builder's Defense: The deed gives Builder an easement or executed license

C. Conclusion: Fast Food unlikely to prevail.

III. Did Owner have the right to change the locks on Fast Food's premises?

A. Owner's theory of liability: Fast Food's repudiation of the lease

B. Fast Food's Defense: Owner's apparent breach of the lease

C. Conclusion: Owner did not have the right to change the locks.

IV. Homeowners v. Fast Food: Nuisance

A. Public Nuisance

B. Private Nuisance

C. Defenses

D. Conclusion: Homeowners unlikely to prevail

REAL PROPERTY

Mike had a 30-year master lease on a downtown office building and had sublet to others the individual office suites for five-year terms. At the conclusion of the 30-year term, Olive, the building's owner, did not renew Mike's master lease.

When Olive resumed control of the building, she learned that Mike had failed to comply with the terms in the 30-year lease that required him to renew an easement for weekday parking on a lot between the building and a theater. The theater, which, in the past, had always renewed the easement, used the lot for its own customers on evenings and weekends.

Olive also learned that a week before the end of the 30-year lease Mike had renewed for another five years the sublease of one tenant, Toby, at a rate much below market. Toby ran an art gallery, which Mike thought was "classy." Upon signing the renewal, Toby purchased and installed expensive custom lighting and wall treatments to enhance the showing of the art in his gallery.

Because of Mike's failure to renew the parking easement, the theater granted it to another landowner. As a result, Olive had to request a variance from the town ordinance requiring off-street parking. The Board of Zoning Appeals (BZA) denied the request because a nearby parking-lot operator objected. The off-street parking requirement, combined with the loss of the parking easement, meant that several offices in Olive's building would have to be left vacant. The BZA had recently granted a parking variance for a nearby building under very similar circumstances.

Olive commences the following actions:

1. A suit against Mike to recover damages for waste resulting from Mike's failing to renew the parking easement.

2. An action for ejectment against Toby and to require him to leave the lighting and wall treatments when he vacates the premises.

3. An appeal of BZA's denial of Olive's variance request.

What is the likelihood that Olive will prevail in each action? Discuss.

Real Property – Outline of Issues

I. Olive v. Mike re: failure to renew the parking easement

- A. Waste
- B. Breach of the terms of the lease
- C. Conclusion

II. Olive v. Toby

- A. Ejectment of Sublessee
- B. The lighting and wall treatments
- C. Conclusion

III. Olive's appeal of BZA's denial of her variance request

- A. Due Process
- B. Equal Protection
- C. 5th Amendment Taking
- D. Conclusion

REAL PROPERTY

Alice and Bill were cousins, and they bought a house. Their deed of title provided that they were "joint tenants with rights of survivorship." Ten years ago, when Alice moved to a distant state, she and Bill agreed that he would occupy the house. In the intervening years, Bill paid nothing to Alice for doing so, but paid all house-related bills, including costs of repairs and taxes.

Two years ago, without Alice's knowledge or permission, Bill borrowed $10,000 from lender and gave Lender a mortgage on the house as security for the loan.

There is a small apartment in the basement of the house. Last year, Bill rented the apartment for $500 per month to Tenant for one year under a valid written lease. Tenant paid Bill rent over the next seven months. During that time, Tenant repeatedly complained to Bill about the malfunctioning of the toilet and drain, but Bill did nothing. Tenant finally withheld $500 to cover the cost of plumbers he hired; the plumbers were not able to make the repair. Tenant then moved out.

Bill ceased making payments to Lender. Last month, Alice died and her estate is represented by Executor.

1. What interests do Bill, Executor, and Lender have in the house? Discuss.

2. What claims do Executor and Bill have against each other? Discuss.

3. Is Tenant obligated to pay any or all of the rent for the remaining term of his lease, including the $500 he withheld? Discuss.

Real Property – Outline of Issues

I. Interests of Bill, Executor and Lender in the house.

- A. Joint Tenancy
- B. Mortgage - Severance?
  - 1. Lien Theory
  - 2. Title Theory
- C. No Adverse Possession
- D. Conclusion
  - 1. Bill
  - 2. Executor
  - 3. Lender

II. Claims of Executor and Bill against one another

- A. Executor v. Bill: Rent
- B. Bill v. Executor: Bills, Repairs and Taxes
- C. Conclusion

III. Tenant's Obligations

- A. The Lease
- B. Warranty of Habitability / Covenant of Quiet Enjoyment / Constructive Eviction
- C. Conclusion

REAL PROPERTY

Lori owns a small shopping center. In April 1999, Lori leased a store to Tony. Under the lease Tony agreed to pay Lori a monthly fixed rent of $500, plus a percentage of the gross revenue from the store. The lease term was five years. In part the lease provides:

> Landlord and Tenant agree for themselves and their successors and assigns:
>
> * * *
>
> 4. Tenant has the right to renew this lease for an additional term of five years, on the same terms, by giving Landlord written notice during the last year of the lease.
> 5. Tenant will operate a gift and greeting-card store only. Landlord will not allow any other gift or greeting-card store in the center.
>
> * * *

In July 2000, Tony transferred his interest in the lease in writing to Ann. Ann continued to operate the store and pay rent.

In February 2003, a drugstore in the shopping center put in a small rack of greeting cards. Ann promptly complained, but Lori did nothing.

Beginning in March 2003, Ann stopped paying the percentage rent, but continued to pay the fixed rent alone. Lori took no action except to send a letter in April 2003 requesting payment of the percentage rent that was due.

In January 2004, Ann sent a letter to Lori requesting that Lori renew the lease according to its terms. Lori denied that she had any obligation to renew.

1. Is Ann entitled to a renewal of the lease? Discuss.

2. Is Lori entitled to the past-due percentage rent from:

   a. Ann? Discuss.
   b. Tony? Discuss.

REAL PROPERTY
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Outline

I. Is Ann entitled to a renewal of the lease?

A. The original agreement between Lori and Tony

B. Tony transfers his interest in the lease to Ann

1. Assignment vs. Sublease

2. Covenants between Lori and Tony will apply to Ann

C. The drugstore card rack is not a breach of the lease by Lori.

D. Ann's failure to pay the percentage rent is a breach of the lease.

E. Conclusion: Ann is not entitled to a renewal of the lease

II. Is Lori Entitled to the past-due percentage rent?

A. From Ann - Yes

B. From Tony - Probably Yes

C. Conclusion

REAL PROPERTY

Able owned Whiteacre in fee simple absolute. Baker owned Blackacre, an adjacent property. In 1999, Able gave Baker a valid deed granting him an easement that gave him the right to cross Whiteacre on an established dirt road in order to reach a public highway. Baker did not record the deed. The dirt road crosses over Whiteacre and extends across Blackacre to Baker's house. Both Baker's house and the dirt road are plainly visible from Whiteacre.

In 2000, Able conveyed Whiteacre to Mary in fee simple absolute by a valid general warranty deed that contained all the typical covenants but did not mention Baker's easement. Mary paid Able $15,000 for Whiteacre and recorded her deed.

Thereafter, Mary borrowed $10,000 from Bank and gave Bank a note secured by a deed of trust on Whiteacre naming Bank as beneficiary under the deed of trust. Bank conducted a title search but did not physically inspect Whiteacre. Bank recorded its deed of trust. Mary defaulted on the loan. In 2001, Bank lawfully foreclosed on Whiteacre and had it appraised. The appraiser determined that Whiteacre had a fair market value of $15,000 without Baker's easement and a fair market value of $8,000 with Baker's easement. Bank intends to sell Whiteacre and to sue Mary for the difference between the sale price and the loan balance.

The following statute is in force in this jurisdiction:

> Every conveyance or grant that is not recorded is void as against any subsequent good faith purchaser or beneficiary under a deed of trust who provides valuable consideration and whose interest is first duly recorded.

1. What interests, if any, does Baker have in Whiteacre? Discuss.
2. What interests, if any, does Bank have in Whiteacre? Discuss.
3. What claims, if any, may Mary assert against Able? Discuss.

REAL PROPERTY

Outline

I. Baker's Interest in Whiteacre

A. 1999: Able grants to Baker an easement over an existing dirt road.

B. Baker did not record.

C. Mary buys Whiteacre for $15,000.
   1. Able gives Mary a General Warranty Deed.
   2. Mary's deed does not mention Baker's easement.
   3. Mary does not inspect the property.
   4. Mary records her deed.

D. Impact of the Recording Statute
   1. If "pure" race, Mary takes Whiteacre without the easement.
   2. If "good faith purchaser" requires inquiry notice, Mary takes subject to the easement.

E. Conclusion: Baker's easement probably is valid; Mary had a duty to inspect.

II. Bank's Interest in Whiteacre

A. Bank holds Mary's Deed of Trust
B. Bank recorded but also did not inspect.
C. Mary defaulted and Bank foreclosed.
D. Conclusion

   1. Bank's interest in Whiteacre is subject to Baker's easement.
   2. Bank can pursue Mary for the deficiency.

III. Mary v. Able

A. Theory of Liability: The Warranty Deed
B. Remedy: Damages
C. Conclusion: Able indemnifies Mary for the value of Baker's easement.

REAL PROPERTY

Sam and Paul entered into a written contract on September 1, 1999, for the sale by Sam to Paul of a mountain lakefront lot improved with a residence (hereinafter, "the parcel") for $100,000. The contract was silent as to the quality of title Sam would convey, but provided that a quitclaim deed would be used. Paul failed to tender the agreed-on price on the performance date. Sam sued Paul for specific performance on July 5, 2000. Paul defended the suit on the ground that Sam's title is not marketable.

Sam's claim of title goes back to Owen, who owned an unencumbered fee simple absolute in the parcel. The parcel, which was accessible only during the summer months, has been occupied by Owen and Owen's family as a summer vacation home since 1980. In 1984, Owen conveyed the parcel by recorded deed to "to my daughter, Doris, and my son, George, so long as they both shall live, and then to the survivor of them."

Owen died testate in 1987. Owen's will made no specific reference to the parcel, but the residuary clause left to Doris "all my other property not specifically disposed of by the will." Doris and George and their families continued to use the vacation home each summer. Doris died testate in April 1988, her will "devising and bequeathing all my estate to my son, Ed."

George executed a deed in May 1988, purporting to convey a fee simple absolute in the parcel to Cain. Cain and his family occupied the parcel during the summers of 1988 through 1996. In May 1997, Cain conveyed the parcel to Sam. Sam's family occupied it during the summers of 1997 through 1999.

The statute of limitations on actions to recover land in this jurisdiction is 10 years. There is no statute or decision by an appellate court either repudiating or affirming the common law doctrine of destructibility of contingent remainders.

Who should prevail in Sam's suit against Paul? Discuss.

REAL PROPERTY

Outline

I. Sam v. Paul

A. The Contract

B. Paul's Breach

C. Paul's Defense to Breach

D. Sam's Interest in the Parcel

1. Owen
2. Owen to Doris and George
3. Owen's Death
4. Doris' Death
5. George to Cain
6. Cain to Sam
7. Adverse Possession - Tacking
8. Destructibility of Contingent Remainders

E. Conclusion

II. Specific Performance

A. Definite and Certain Contract

B. Satisfaction of Conditions by Plaintiff

C. Legal Remedy Inadequate

D. Feasibility

E. Mutuality

F. Defenses

G. Conclusion

REAL PROPERTY

Since the early 1960's, Artist has had a year-to-year lease of the third floor of a small loft building which, like most buildings in the area, has mixed commercial and light manufacturing uses. Artist has used her space, as other local craftspeople have used theirs, for both residential and studio purposes. She has enjoyed the serenity of her unit and the panoramic views of the distant hills and of the nearby park to which she has had easy access.

In July 1998, Landlord rented a lower floor of the building to Machinist, whose operations are extremely noisy. Artist's complaints about the noise to both Machinist and Landlord have been to no avail.

At about the same time, Developer began building a large office tower nearby which will block Artist's view when completed. The office building will provide needed employment for the community.

The State Power department, a State governmental agency, has also begun construction of electric and communications lines for Developer's office building. For the next several years, the State Power Department construction will block a path across an undeveloped lot which separates Artist's neighborhood from the park. The path has been regularly used for many years by Artist and other neighborhood residents because the only other access to the park is by a much longer circuitous street route.

1. What are Artist's rights and remedies, if any, against Landlord, Machinist and Developer? Discuss.

2. What are Artist's rights and remedies, if any, against the State Power Department for blocking the path? Discuss.

REAL PROPERTY

Outline

I. Artist v. Landlord

- A. Breach of Real Estate Covenants
- B. Breach of Contract
- C. Remedies
- D. Conclusion

II. Artist v. Machinist

- A. Private Nuisance
- B. Damages
- C. Equitable Relief: Prohibitory Injunction
- D. Conclusion

III. Artist v. Developer

- A. Nuisance
- B. Easement
- C. Conclusion

IV. Artist v. State Power Department

- A. Easement by Prescription
- B. Public Nuisance
- C. Remedies - Conclusion

Tenant entered into a written lease of an apartment with Landlord on January 1, 1995. The lease provided that Tenant would pay $12,000 per year rent, payable in $1000 per month installments, commencing immediately.

Tenant moved into the apartment. Soon thereafter Tenant was visited by Inspector, who told Tenant that landlord had received numerous warnings over the years about the unsafe electrical wiring in the bathroom, and had been cited and fined once for it. Tenant called Landlord and asked him to fix the wiring. Landlord promised to send someone to fix the wiring, but when no one cad come for several weeks, Tenant decided to fix the wiring himself. While he was doing the work, he also put mirrors on the ceiling and tore out the tub and replaced it with a whirlpool bath.

A few months later, a noxious slime began oozing from the fixtures in the kitchen sink. Tenant complained of this condition to Landlord, but Landlord refused to have it fixed. The ooze continued, and it became so bad that Tenant was forced to stop using the kitchen. Tenant reported the problem to Inspector, who caused Landlord to be cited and fined for the condition. Despite this, Landlord did not make the repairs and the kitchen remained unusable. Tenant has remained in the apartment but has stopped paying rent.

On December 1, 1995, Tenant received a registered letter from Landlord giving him notice to vacate the apartment on January 15, 1996. In a subsequent telephone conversation, Landlord told Tenant that the notice was given because he was tired of Tenant's demands for repairs and angry because of the fine.

What are Landlord's and Tenant's rights and obligations?

Discuss.

REAL PROPERTY

Outline

I. Landlord and Tenant's Rights and Obligations

- A. Landlord
- B. Tenant

II. The Bathroom Wiring

- A. Warranty of Habitability
- B. Covenant of Quiet Enjoyment
- C. Tenant's Remedy: Restitution

III. The Ceiling Mirrors and Whirlpool Bath

- A. Ceiling Mirrors: Voluntary Waste
- B. Whirlpool Bath: Ameliorative Waste
- C. Landlord's Remedy: Damages

IV. Noxious Slime

- A. Warranty of Habitability
- B. Covenant of Quiet Enjoyment
- C. Partial Eviction
- D. Constructive Eviction
- E. Tenant's Remedies

V. Landlord's Letter and Conversation with Tenant

- A. The Letter: Validity of Notice Depends on the Nature of the Lease
- B. The Conversation: Retaliatory Eviction

REAL PROPERTY

Orin owned Blackacre, a heavily wooded 160-acre parcel of vacant land in State X. Arthur was an outdoorsman and friend of Orin, who, with Orin's permission, frequently hiked and camped on Blackacre. Orin decided to give Blackacre to Arthur and had a real estate salesman prepare a deed stating that Blackacre is conveyed to Arthur "from and after Orin's death." Orin signed the deed, showed it to Arthur, and then placed the deed in the metal security box which he locked and handed to Arthur. Orin kept one of two identical keys which he told Arthur were keys to the box. He told Arthur to open the box and record the deed after he, Orin, died. He explained that he did not want the deed recorded while he was alive because certain of his relatives might be disappointed and he did not want to suffer their harassment. He told Arthur to treat Blackacre as his own and to use it as he wished.

Arthur took Orin at his word and erected a vacation cottage in the middle of Blackacre. He and his family occupied the cottage on their frequent visits to Blackacre.

Orin died 12 years after the deed transaction without interfering with Arthur's use of Blackacre, except that three years before his death Orin cut and sold all the timber from ten acres on one corner of Blackacre. Arthur was angered by this act but did not protest.

The year before Orin died, a creditor, Charles, obtained and recorded a judgment against Orin.

Immediately upon learning of Orin's death, Arthur attempted to open the box with his key but found that it did not fit. He then forced the lock and extracted and recorded the deed.

In a validly executed will, Orin devised "all of the real property which I own at my death to my brother Bart."

State X has the following statutes:

"Every conveyance of real estate which is not recorded shall be void as against any subsequent purchaser, mortgagee, or judgment creditor who has acquired an interest for valuable consideration and in good faith without notice."

"An action to recover title to, possession of, or damages for the injury to real property shall be brought within 10 years after the cause thereof accrues."

What are the rights and liabilities of each of the following:

1. Arthur? Discuss.
2. Bart? Discuss.
3. Charles? Discuss.

REAL PROPERTY

Outline

I. The Rights and Liabilities of Arthur

- A. Transfer of Blackacre to Arthur by Deed
  - 1. Deed
  - 2. Delivery
  - 3. Title
- B. Arthur's Adverse Possession Claim
  - 1. Mental Element
  - 2. Physical Element
  - 3. Time Element
- C. Arthur's Waste Claim Against Orin

II. The Rights and Liabilities of Bart: Orin's Will

III. The Rights and Liabilities of Charles: Judgment Creditor.

IV. Conclusion: Arthur takes Blackacre free and clear.

REAL PROPERTY

Arthur owned Whiteacre, upon which there is a building which was used as a grocery store. On November 1, 1984, Arthur rented Whiteacre to Broderick for a term of six years. Both signed the written lease. Broderick promised to pay rent at the annual rate of $24,000, payable monthly. Broderick also promised to pay any amount that the real property taxes on Whiteacre exceeded $4,000 in any year. Arthur agreed to keep the exterior of the building in good repair during the rental term. In 1985, Arthur conveyed and assigned his interests in Whiteacre to Caspar. In 1986, Broderick assigned the balance of his leasehold to Darrell. Darrell promptly remodeled the building and converted it into four units: a drugstore, a dentist's office and two doctors' offices. In so doing, Darrell installed plumbing in each of the four units as well as window air conditioners. Some of the remodeling included repairing and repainting the exterior of the building, which had fallen into disrepair. He then leased the units to tenants for two-year terms.

In 1988, upon completion of his tenants' lease terms, Darrell could not locate new tenants. He then removed the plumbing and the window air conditioners, which he had previously installed, left the property and notified Caspar that he was treating the lease as ended. Caspar, after a month, advertised the property for rent but could find no tenants. In February, 1989, Caspar sold and conveyed Whiteacre to Elmer by quitclaim deed. Real property taxes for 1988, in excess of the $4,000 paid on them by Caspar, are due and unpaid.

1. Are either Broderick or Darrell liable to Elmer for rent? For the unpaid taxes? Discuss.

2. Are either Arthur or Caspar liable to Darrell for his costs in repairing and repainting the building exterior? Discuss.

3. Is Darrell liable to Caspar for remodeling the building and later removing the plumbing and air conditioners? Discuss.

REAL PROPERTY

Outline

I. Broderick and Darrell's Liability to Elmer for Rent and for the Unpaid Taxes

A. Elmer has obtained the rights and liabilities previously held by Arthur and Caspar.

B. Broderick's liability to Elmer for rent and taxes:
1. There is privity of contract.
2. There is no privity of estate.

C. Darrell's liability to Elmer for rent and taxes:
1. There is privity of contract.
2. There is no privity of estate.

II. Arthur and Caspar's Liability to Darrell for Repairs and Repainting the Exterior

A. Arthur's liability for repairs and repainting:
1. There is privity of contract.
2. There is no privity of estate.

B. Caspar's liability for repairs and repainting:
1. There is privity of contract.
2. There is privity of estate.
3. The covenant to repair runs with the land.

III. Darrell's Liability to Caspar

A. Remodeling: Darrell probably is liable to Caspar.

B. Removal of the plumbing: Darrell is liable to Caspar.

C. Removal of the air conditioners: no liability.

D. Darrell may be liable to Elmer.

REAL PROPERTY

Oscar was the owner of Sandyacres, a seafront property which lies between a highway and a public beach. In 1950 he sold Alan an option to purchase the southeast quarter of Sandyacres for $2,500. The option agreement provides that the option can be exercised "by Alan or his widow at any time while either shall live." Alan promptly recorded the agreement. Alan and his wife are alive.

In 1955, Oscar constructed a tunnel through a sand dune on Sandyacres to provide convenient access to the beach. He also conveyed to Nabor, an adjoining owner, a right-of-way easement across Sandyacres and through the tunnel to the beach for the use of Nabor and guests at Nabor's motel. This deed of conveyance was acknowledged before a notary public whose commission had expired. Nabor promptly recorded the deed. In 1979 the tunnel collapsed. It has not been reconstructed.

In 1962 Oscar granted Sandyacres for value to Edward "in fee simple so long as he never marries." Edward, who had no actual knowledge of Oscar's transactions with Alan and Nabor, promptly recorded his deed. Edward is alive and unmarried.

Client is now negotiating to buy Sandyacres from Edward. Client plans to build a resort hotel, a portion of which will be situated directly above the collapsed tunnel.

A title insurance company has agreed to insure Client's title to Sandyacres subject to exceptions as to any limitation on its use, or any claim of interest therein, which might arise out of each of the following matters:

1. Alan's option agreement;

2. The conveyance to Nabor;

3. The conveyance to Edward.

How would you advise client regarding the extent, if any, to which each of the matters referred to in the title insurance exceptions may affect his rights in or to Sandyacres if he purchases that property? Discuss.

REAL PROPERTY

Outline

I. Alan's Option Agreement Probably Is Valid.

- A. There are no defenses to the formation of the option contract.
- B. The option violates the rule against perpetuities.
- C. Modern courts would waive a strict interpretation of the rule against perpetuities.

II. The Conveyance to Nabor Probably Created a Valid Easement.

- A. The notary's acknowledgment was defective.
- B. Nabor's Easement is Valid.
- C. Mere abandonment does not terminate the easement.
- D. Conclusion

III. The Conveyance to Edward:

- A. Edward was granted a fee simple determinable.
- B. Public policy may give Edward a fee simple absolute.
- C. Conclusion