

PEARCE MICRO REVIEW
Real Property

I. Land Ownership

A. Present Estates

1. Fee Simple Absolute – 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 executory interest – between grantees
 - b. springing executory interest – back to grantor then to new grantee
5. Life Estates – reversion or remainder
 - a. for life of grantee
 - b. for life of another
 - c. waste
 1. affirmative
 2. permissive
 3. ameliorative
 - d. renunciation of life estate accelerates future interest
6. Fee Tail – In most jurisdictions, results in Fee Simple

B. Concurrent Ownership

1. Tenancy in Common
2. Joint Tenancy
 - a. creation
 - b. severance

3. Tenancy by the Entirety
- C. Future Interests
 1. Reversion
 2. Remainder
 - a. vested
 1. indefeasably vested
 2. vested subject to open
 3. vested subject to total divestment
 - b. contingent
 - c. Rule in Shelley's Case – No Remainders in Grantee's Heirs
 - d. Doctrine of Worthier Title – No Remainders in Grantee's Heirs
 3. Executory Interests
 4. Possibility of Reverter
 5. Right of Re-Entry – Powers of Termination
- D. Adverse Possession
 1. Open and Notorious
 2. Hostile
 3. Continuous and Exclusive
 4. Statutory Period
- E. Possessory Rights Related to Land
 1. Rights in Common Resources
 - a. light

- b. air
 - c. bodies of water
 - 1. watercourses – streams, rivers and lakes
 - 2. ground water
 - 3. surface water
 - 2. Lateral, Superadjacent, Adjacent and Subjacent Space
 - 3. The Right to Exclude
 - a. trespass
 - b. private nuisance
 - c. continual trespass
 - d. ejectment to remove trespasser
 - e. unlawful detainer to remove tenant
 - 4. Fixtures (including relevant application of Article 9, UCC)
- F. Ownership Interests in Trusts
 - 1. Settlers
 - 2. Trustees
 - 3. Beneficiaries
- G. Special Problems
 - 1. Rule Against Perpetuities
 - a. when the period begins to run
 - b. “must vest”
 - c. “lives in being”
 - d. exemptions

- e. effect of violating the rule
- 2. Alienability
 - a. types of restrains on alienation
 - 1. disabling
 - 2. forfeiture
 - 3. promissory
 - b. valid restraints on alienation
- 3. Descendability
- 4. Devisability

II. Land Use

A. Easements

- 1. Creation
 - a. express
 - b. implied
 - c. prescriptive
 - 1. open and notorious
 - 2. adverse
 - 3. continuous and uninterrupted
 - 4. for the statutory period
- 2. Termination
 - a. by terms of the original grant
 - b. merger – unity of ownership
 - c. release

- d. abandonment
- e. estoppel

B. Covenants Running With The Land

1. Requirements for the Burden to Run

- a. intent
- b. notice
- c. horizontal privity
- d. vertical privity
- e. touch and concern

2. Requirements for the Benefit to Run

- a. intent
- b. vertical privity
- c. touch and concern

C. Equitable Servitudes

1. Creation

- a. common scheme
- b. notice

2. Requirements for the Burden to Run

- a. Intent
- b. actual, inquiry or record notice
- c. touch and concern

3. Requirements for the Benefit to Run

- a. intent

- b. touch and concern
 - 3. Defenses to Enforcement
 - a. unclean hands
 - b. acquiescence
 - c. estoppel
 - d. laches
 - e. changed neighborhood conditions
 - 4. Termination
 - a. release
 - b. merger
 - c. condemnation
- D. Licenses
 - 1. Revocable
 - 2. Irrevocable
 - a. estoppel
 - b. coupled with an interest
- E. Profits
- F. Land Use Regulations
 - 1. Zoning
 - a. reasonable protection of health, safety, morals and welfare
 - b. non-conforming uses at the time a zoning law is passed
 - c. special use permits

- d. variance
2. Police Power
3. Eminent Domain
4. 5th Amendment Takings Issue – Including Remedies

III. Real Estate Transactions

A. Landlord Tenant

1. Fitness and suitability of Premises
2. Types of Holdings – Creation and Termination
 - a. tenancy for years – fixed term
 - b. periodic tenancies
 - c. tenancy at will
 - d. tenancies at sufferance
 - e. hold-over tenants
3. Assignment and Sublease
 1. by tenant
 2. by landlord
 3. distinction between assignment and sublease
4. Rent and Surrender
5. Covenant of Quiet Enjoyment and the Warrant of Habitability
6. Waste
 - a. voluntary
 - b. permissive
 - c. ameliorative

7. Fixtures
 8. Mitigation of Damages
 9. Landlord Remedies
 10. Tenant Remedies
- B. Real Property Contracts
1. Relationships Included
 - a. contracts to buy and sell by conveyance of realty
 - b. installment contract
 2. Creation and Construction
 - a. statute of frauds
 - b. essential terms
 - c. implied conditions or terms
 1. time for performance
 2. title required
 3. burdens relating to title defects
 3. Performance
 - a. fitness and suitability of premises
 - b. marketable title
 1. defects in record chain of title
 2. encumbrances
 3. zoning
 4. time of marketability
 5. remedies until closing

- c. risk of loss
 - 4. Deeds
 - a. form and content
 - b. delivery and acceptance
 - c. covenants for title and estoppel by deed
 - d. recording
 - 1. notice
 - 2. race – notice
 - 3. race
 - 4. those protected by recording statutes
 - 5. Interests Before Conveyance
 - a. equitable conversion
 - b. earnest money deposits
 - 6. Relationships After Conveyance
 - a. condition of premises
 - b. title problems
 - 7. Remedies for Breach of Real Estate Sales Contract
 - a. liquidated damages
 - b. specific performance
- C. Real Property Mortgages
 - 1. Types of Security Devices
 - a. mortgages – including deeds of trust
 - b. land contracts as security device

- c. absolute deeds as security
 - d. sale-leaseback
- 2. Some Security Relationships
 - a. necessity and nature of obligation
 - b. theories
 - 1. title
 - 2. lien
 - 3. intermediate
 - c. rights and duties prior to foreclosure
 - d. right to redeem and clogging equity of redemption
- 3. Transfers by Mortgagor
 - a. distinguishing “subject to” and “assuming”
 - b. rights and obligations of transferor
 - c. application of subrogation and suretyship principles
 - d. due-on-sale clauses
- 4. Transfers by Mortgagee (including the effect of Article 3 of the UCC)
- 5. Discharge and Defenses
- 6. Foreclosure
 - a. Types
 - b. Rights of Omitted Parties
 - c. Deficiency and Surplus
 - d. Redemption After Foreclosure
 - e. Deed in Lieu of Foreclosure

- D. Conveyancing by Will
 - 1. Ademption
 - 2. Exoneration
 - 3. Lapse

- IV. Remedies
 - A. Damages
 - B. Restitution
 - C. Reformation
 - D. Rescission
 - E. Equitable Relief
 - 1. Specific Performance of Contracts
 - a. inadequate legal remedy
 - b. definite and certain contract
 - c. feasibility
 - d. mutuality
 - e. defenses
 - 2. Temporary and Permanent Injunctions
 - a. inadequate legal remedy
 - b. property
 - c. feasibility
 - d. balance hardships
 - e. defenses

Real Property Hypothetical #1

In 1950 Owens purported to sell Greenacre to Able for \$1,000 cash. Greenacre is a parcel of unimproved mountain land which is inaccessible by road during six months of each year due to snow. Owens gave Able a deed which granted Greenacre in fee simple and contained all warranties of title. Able did not have a title examination made. Able immediately recorded his deed and obtained an unsecured loan from Bank, and used the funds to build a vacation cabin on the land. Unknown to Able, Owens' grandfather was the true and sole owner of Greenacre.

From 1950 to the present, Able has paid taxes on Greenacre and lived in the cabin for one month each summer. The cabin and land have otherwise been unoccupied. Bank placed a sign on the land at the time of construction which read: "Built with financing from Bank." The sign has remained in place, readily observable, ever since.

In 1973 Owens borrowed \$5,000 from Charlie. In 1977 Owens' grandfather died, leaving Greenacre to Owens by will. In the winter of 1978, Charlie induced Owens to deed Greenacre in full satisfaction of the \$5,000 debt, which was then past due. Charlie had no actual knowledge of Able's claim to Greenacre.

Title searches in the state are customarily made in the grantor-grantee indices of the official records. The recording statute reads:

"Any unrecorded conveyance is deemed void as against a subsequent taker for value and without notice."

Who owns Greenacre? Discuss.

- I. Able's Claims to Greenacre:
 - A. Adverse Possession
 - 1. Physical element: "actual, open and notorious"
 - 2. Mental element: "color of title"
 - 3. Time element: "continuous" for the statutory period.
 - 4. Conclusion
 - B. Estoppel By Deed
 - 1. Majority: Able's claim fails because Charlie has complied with the recording act.
 - 2. Minority: Able wins, because estoppel by deed is automatic.

- II. Charlie's Claim is Based on the Recording Statute.
 - A. Discharge of Debt is Payment for Value.
 - B. Notice
 - 1. Actual notice depends on Charlie's duty to inspect.
 - 2. Constructive notice is not present because Able's deed is outside of Charlie's chain of title.

- III. Conclusion

Real Property Hypothetical #2

In 1980, Fred, a widower and the owner of Blackacre, a farm, died and his will devised Blackacre to his three children, “Art, Bob and Carol as joint tenants with common law right of survivorship.” Art, who lived with his father on Blackacre, continued to occupy and farm it after Fred’s death. Bob and Carol, although claiming equal rights to Blackacre, preferred to continue living in the cities in which they owned their homes and never went into possession of Blackacre.

Art lost money in his farming operations in each of the years 1980 to 1985. At the end of 1985, without consulting either Bob or Carol, Art conveyed by quitclaim deed all of his “right, title and interest in Blackacre to Dan and his heirs.” Dan immediately took possession of Blackacre.

In 1990, Bob died intestate survived by Sam, his sole heir, and by Art, Carol and Dan. During the period from 1986 to 1995, the net profits resulting from Dan’s operation of the farm amounted to \$80,000. During the period from 1992 to 1995, Dan also received net rentals of \$8,000 from a tenant renting a cottage on the farm.

Assume that there is a 10-year statute of limitations for the recovery of land and that no other statute of limitations applies.

1. What interest does each of the following have in Blackacre: Dan? Sam? Carol? Discuss.
2. What rights do Sam and Carol have with respect to the profits in the years from 1986-1995 and the rents from 1992-1995? Discuss.
3. Is Carol liable to Art for any of the monetary losses suffered by Art from 1980 through 1985? Discuss.

- I. Ownership Interest In Blackacre
 - A. Dan
 1. Art quitclaimed his interest to Dan.
 2. Adverse possession
 - a. Mental Element
 - b. Physical Element
 - c. Time Element
 - d. Conclusion
 - B. Sam
 - C. Carol
 - D. Conclusion
- II. Sam and Carol's Rights to Profits and Rents
 - A. Profits from farming from 1986 - 1995
 - B. Rents from the cottage tenant from 1992 - 1995
- III. Carol's liability to Art for Art's losses from 1980 - 1985

Real Property Hypothetical #3

In 1990 Albert owned Blueacre, a vacant 40-acre tract of land worth about \$70,000. In January 1991 he borrowed \$35,000 from Clara and gave his note secured by a mortgage on Blueacre. The note called for a single payment, including interest, on January 1, 1994. Clara promptly recorded the mortgage.

In June 1992, in exchange for \$500, Albert granted an easement in Blueacre to his neighbor Donald. The easement was for a road 40-foot wide along the northern boundary of Blueacre to allow Donald more convenient access to his adjoining land. Donald immediately constructed a 20-foot wide road along the northern boundary of Blueacre, but he never recorded the document granting the easement.

In June 1993 Albert borrowed \$10,000 from Eve. He gave Eve a note, due June 1, 1996, secured by a second mortgage on Blueacre. Eve promptly recorded the mortgage.

Albert failed to pay Clara's note when it became due. Clara filed suit to collect the debt and foreclose her mortgage. She did not give notice to or join either Donald or Eve. Albert defaulted and Clara obtained a judgment on the note and an order authorizing the foreclosure sale of Blueacre. On June 1, 1994 the property was sold to Clara at the foreclosure sale for the amount of her judgment.

Only July 1, 1994, Clara sold Blueacre to Pat for \$80,000. She gave Pat a standard form warranty deed.

1. What rights, if any, does Donald have regarding the easement? Discuss.
2. What rights, if any, does Eve have against Pat and against Clara? Discuss.
3. What rights, if any, does Pat have against Clara? Discuss.

- I. Donald's Rights Regarding the Easement
 - A. Classification of Donald's Interest
 - B. Donald v. Clara
 - 1. Clara recorded her mortgage before Donald bought the easement.
 - 2. Clara did not give Donald notice.
 - 3. Conclusion
 - C. Donald v. Pat

- II. Eve's Rights
 - A. Eve v. Clara
 - B. Eve v. Pat

- III. Pat v. Clara
 - A. Covenant of Seisin
 - B. Covenant against Encumbrances
 - C. Conclusion

Real Property Hypothetical #4

In 1950, Al properly executed and delivered a quitclaim deed granting his neighbor, Betty, an "easement of way, thirty feet wide" along the southern boundary of Al's five-acre residential parcel. Betty never recorded the deed. In 1951, Betty graded and graveled a twenty-foot wide road along the southern boundary of the five-acre parcel. Since then, Betty has used the road daily to reach her house and has maintained the road as needed.

In 1955, Al conveyed his entire parcel to Cal by a properly executed and delivered quitclaim deed. The deed to Cal made no mention of any easement. Cal paid Al \$15,000 for the conveyance.

In September 1988, Cal and Dot signed the following contract concerning the five-acre parcel:

"Cal agrees to sell and Dot agrees to buy the following land [valid legal description]. Price, \$90,000 cash, closing December 15, 1988."

On December 15, 1988, Dot paid Cal \$90,000 cash, and Cal properly executed and delivered a warranty deed conveying the land to Dot. The deed contained no mention of the easement. Dot promptly recorded the deed. Betty has continued to use and maintain the road.

In June 1989, Dot built a fence blocking the road to Betty's house.

1. What right, if any, does Betty have to continue to use the road? Discuss.
2. What right, if any, does Dot have against Cal based on the contract, the deed, or both? Discuss.

- I. What right does Betty have to continue to use the road?
 - A. Al's 1950 quitclaim to Betty: Express Easement
 - B. Al's conveyance to Cal
 - 1. Actual Notice
 - 2. Constructive Notice
 - 3. Inquiry Notice
 - 4. Conclusion
 - C. Cal's conveyance to Dot
 - D. Prescriptive Easement
 - 1. Mental Element
 - 2. Physical Element
 - 3. Time Element
 - E. Conclusion

- II. Dot v. Cal
 - A. Contract Analysis
 - B. Deed Analysis
 - 1. Cal executed and delivered a warranty deed.
 - 2. Cal breached covenants and warranties.
 - C. Conclusion

Real Property Hypothetical #5

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 could 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.

- 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 Hypothetical #6

Phil owns a large parcel of rural land. Twenty years ago he leased a portion of it to Dolomite for a term of 50 years. The lease, which was in writing and signed by both parties, allows Dolomite to use the land for “mineral exploration, development and production purposes.” The lease also allows Dolomite to use a road through the non-leased portion of Phil’s property for access to the leased portion.

Dolomite tunnels underground for and mines valuable minerals from the leasehold tract. It originally processed these minerals elsewhere. Ten years ago it constructed, and has since continuously used, a processing plant on the leased premises.

Phil has recently complained to Dolomite about its operations and has demanded that Dolomite dismantle its processing plant and move it elsewhere. There are four conditions to which Phil objects:

1. Vibrations from the plant have caused unstable soil conditions on the portion of Phil’s land that he irrigates and farms, resulting in localized landslides and damage to the irrigations system.
2. Noise and fumes from the plant prevent Phil from converting another portion of his non-leased land into a vacation-home subdivision.
3. Dolomite is cutting large trees on the leasehold for firewood which it uses as fuel for its plant’s furnaces.
4. Dolomite is using increasingly heavy trucks which are destroying the access road through the non-leased portion of Phil’s property.

What rights does Phil have against Dolomite, and to what relief, if any, is he entitled? Discuss.

- I. Phil v. Dolomite: Theories of Liability
 - A. Vibrations and Subjacent Support
 - 1. Nuisance
 - 2. Violation of Lease: “production” is not “processing.”
 - B. Noise, Fumes, and Phil’s planned subdivision
 - C. Cutting the Trees: Waste
 - D. Use of the Road: Abuse of an Easement
 - E. Defenses
 - F. Conclusion: Dolomite is liable under each of Plaintiff’s theories.

- II. Remedies
 - A. Damages
 - B. Equitable Relief
 - 1. Legal remedies are inadequate.
 - 2. Property Interests are present.
 - 3. Equitable Relief is feasible.
 - 4. Balancing the hardships:
 - 5. Defenses
 - C. Conclusions
 - 1. The processing plant will be shut down or substantially modified.
 - 2. No more trees will be cut, and damages paid for those already removed.
 - 3. Smaller trucks will be used on the road, and Dolomite will repair the damage.