

REAL PROPERTY
Professor Justin O'Connell
Final, Spring 2022
Question 1

Forty years ago in a city, Doug built a restaurant with a large outdoor seating area with a stage. On most weeknights until 10:00 p.m., Doug has a pianist or harpist play music on the stage. On Friday and Saturday nights until 11:00 p.m., Doug has a live band play music on the stage, and the seating area is cleared for patrons to dance. Revenue from patrons paying to enter the outdoor area on weekends funds most of the operating costs of the restaurant. The restaurant employs about 60 people and has been huge cultural attraction in the city for decades. When built, its location was on the outskirts of the city with no housing nearby. As time went by, city development expanded to include housing near the restaurant.

Pam recently purchased a house near the restaurant. Although Pam knew about the restaurant when she bought her house, she thought that the house was a perfect place to raise her family. When Pam moved into her house, she was shocked by the noise and vibration coming from the restaurant on Fridays and Saturdays. The noise kept her awake at night. Pam's pet fish that she showed in competitions began losing scales and Pam attributed the scale loss to the noise and vibration. Pam learned that all her neighbors that lived nearby had complained to Doug about the noise and vibration, that they were unsuccessful in obtaining relief from Doug or the city, and that they decided to just live with it for years.

Pam contacted Doug and Doug explained that years ago he had already taken steps to mitigate the noise and vibrations by requiring that all loud music end by 11:00 p.m. and by complying with the city's ordinance on maximum noise level. Doug explained that the restaurant could not survive economically without the Friday and Saturday events. Pam told Doug he was causing her and her fish harm and told him he had to stop all outdoor music. Doug told Pam he would not, and Pam told Doug she would sue him

1. Discuss what claims Pam might reasonably assert against Doug.
2. Discuss what remedies Pam might reasonably seek against Doug.

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Question 2

In 2002, Ona bought a small parcel of property with a home on it called Blackacre from Jen. Blackacre is adjacent to a public road, Central Drive. At the time of Ona's purchase, Adam owned Whiteacre, which was a large parcel of undeveloped property adjacent to Blackacre and also adjacent to Central Drive. After Ona's purchase, she moved into the home and has lived there ever since.

In 2003, Ona gave Adam oral permission to drive back and forth from Whiteacre across a 20-foot-wide strip of grassy land on Blackacre to access Central Drive. Use of that access way was more convenient for Adam.

In 2004, Adam told Ona he was going to build a house on Whiteacre and wanted to use the access way for two-years to build to build the house. They agreed that Adam would pay Ona \$1,000 for an easement, which he did. Ona executed a valid deed to Adam for the easement that expressly stated it lasted for two years. The deed was delivered to Adam and was properly recorded.

After two years passed, Adam continued using the access way. He drove his car about once a week to his home on Whiteacre. Ona did not object to Adam's use.

In 2014, Adam built a dairy barn on Whiteacre, and he continued thereafter to drive his car about once a week across the access way. However, on a daily basis Adam's large trucks were hauling milk and farming supplies on the access way. Ona immediately told Adam that she did not want large trucks using the access way. However, did not stop using the access way as he had been.

In 2020, Adam sold Whiteacre to Charles, and Charles continued the same use of the access way over Blackacre with large trucks crossing daily and Charles driving his car about once a week.

In 2022, Ona placed a permanent fence across the access way that prevented all use by Charles. Charles immediately objected to Ona but she refused to remove the fence.

Assume this is a jurisdiction that has a 10-year statute of limitations for prescriptive easements.

Discuss the claims of Ona and Charles, as to each other, regarding the use of the access way.

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Question 3

Odin conveyed his fee simple absolute interest in Blackacre to Manny and Lisa “as joint tenants with a right of survivorship.” Subsequently, without Lisa’s knowledge, Manny conveyed his interest in Blackacre to Peter. Manny died soon thereafter. Lisa paid all property taxes for Blackacre each year.

Peter later leased Blackacre to Sue by way of a written, month-to-month lease for \$500 per month, which Sue always paid to Peter.

Two years passed and Sue is still in possession under the lease. Lisa attempted to sell her interest in Blackacre and learned that Sue was in possession and that Peter had acquired Manny’s interest.

Concerned about conflicting claims regarding Blackacre, Lisa commenced a lawsuit seeking to quiet title against Odin, Manny’s estate, Peter, and Sue, and to obtain from Peter an accounting and contribution for a share of the rent paid by Sue and for a share of the property taxes paid by Lisa.

1. Discuss what ownership interest in Blackacre, if any, the court is likely to find in Odin, Lisa, Peter, Sue, and Manny’s estate when quieting title.
2. Discuss the likely outcome of Lisa’s claim for an accounting and contribution.
3. Discuss the likely outcome if Lisa were to file a separate eviction proceeding against Sue.

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Q1

Pam private nuisance:

Substantial and unreasonable interference with the use and enjoyment of land

Weigh benefits vs burdens.

Coming to the nuisance a defense, but not absolute

Number of employees out of work, close down a part of local culture

Abnormally sensitive plaintiff – music off at 11 and complies with noise standards – other neighbors have come to live with it – harm to fish is hard to prove and is an abnormal harm to begin with

Pam public nuisance

Same rule but must allege harm separate and distinct from the general public only separate harm is the fish, other harm falls within what other's suffer

Abnormally sensitive / unusual circumstances as to the fish

Remedies

Damages – court tend to award for past harm but not permanent harm

Injunction – ban all music – however the weekday music is not bothersome

- Ban weekend music
- Earlier cut off time for bands (e.g. 9:00 p.m.)
- Doug pays for mitigating measures at her home (soundproofing) if Doug wants to continue status quo

Q2 Outline

2003 granted oral license – note that it was never revoked – at all times Ona allowed basic driving across the property – license was personal and permission terminated when Adam sold – Charles did not get the license

2004 express easement – expired on its own terms in 2006

After 2006 any use was subject to license or ripening into prescriptive easement for use beyond easement (dairy farming)

Intensification of use begins in 2014 thus prescriptive easement claim begins (however it does not run for 10 years due to fence).

No facts to indicate implied easement or easement by necessity.

Ona entitled to fence off her property because Charles had 1) no easement , 2) no license, and 3) to prevent ripening of prescriptive easement.

Question 3

Outline

Transfer of a fee simple absolute (O retains no interest)

Manny's inter vivos transfer – valid – severed the joint tenancy resulting in 50/50 tenant in common between Lisa and Peter.

Lisa pays property taxes – owner generally entitled to contribution for pro rata share of carrying costs, including taxes. Likely outcome is Peter owes her 50%

Peter's lease – Peter is entitled to lease to Sue. Sue has a valid lease and cannot be evicted

Co-owners must account for rents – Peter will owe Lisa for half the rents he collected.

Manny's estate has no interest because the inter vivos transfer was valid and severed the joint tenancy.

1)

Nuisance

Nuisance is a substantial interference with the use and enjoyment of another's land; it's either: intentional AND unreasonable OR unintentional and caused by negligence, recklessness, or abnormally dangerous activities.

Private Nuisance: affects a small number of people, with rights not shared with the public.

Public Nuisance: affects a large number of people (even entire communities) but they must show a special harm.

Intentional Act: the person intended to cause the act.

Unintentional Act: the person didn't mean to cause the act, it was caused by negligence, recklessness, or abnormally dangerous activities.

Reckless/Abnormally Dangerous Activities: activities that are inherently dangerous, and unexpected consequences arise from the activities.

Here, since D is operating a restaurant that has a live band and dancing causing multiple neighbors frustration resulting from the loud noise and vibrations, P might possibly have a claim of a private nuisance against D.

The court would hold that this could be a private nuisance claim, but it depends on the interference and unreasonableness.

Abnormally Sensitive Individuals

Pertaining to unreasonable invasion, if a person is just unusually sensitive compared to most people under similar circumstances, that could be a complete bar to a nuisance claim.

D would claim that P is an abnormally sensitive individual because most people love live bands, eating well cooked meals and listening to a peaceful sound of a piano and harp. D would argue that most people in P's circumstance would enjoy the sounds and vibrations coming from the restaurant. P would claim she is not an abnormally sensitive individual because other neighbors that live nearby have also complained and tried to put a stop to the disturbance coming from D's restaurant.

The court would hold that P is not an abnormally sensitive individual, especially because other neighbors nearby are complaining about the same thing.

IS harm to fish an abnormal claim by P?

Unreasonable Invasion

With an Intentional Nuisance, a plaintiff only has to show the conduct was unreasonable.

With an Unintentional Nuisance, a plaintiff has to show that the acts were caused by negligence, recklessness, or abnormally dangerous activities (which are also unreasonable acts).

Intentional Invasion: the person acted for the purpose of causing the invasion, OR the knew the invasion was substantially certain to arise from the conduct.

Since operating a restaurant and having a live band is an intentional act, P would need to show that this conduct is unreasonable. P would claim that although D might not be acting for the purpose to intentionally invade her or cause her sleep, D knows and is substantially certain the invasion would arise from the conduct. D is on notice from complaints by multiple neighbors that the noise is unbearable and many neighbors have made complaints to no avail. P will argue that playing loud live band music at all hours of the night is an unreasonable act. If not, then D is negligent because he has a duty as a restaurant owner to not be interfering the with use and enjoyment of others' land and he is breaching the duty by causing P, her fish, and multiple other neighbors to undergo constant noise causing harm to them. D would claim he is not intentionally trying to cause P to lose sleep, nor is he trying to cause her fish's scales to fall off. D would claim the restaurant is not an unreasonable invasion.

The court would likely hold that D is intentionally causing the invasion because he intends to operate the restaurant and live band.

Substantial Interference and Significant Harm

The harm must be real, and more than just a "feeling". Duration of the harm matters significantly, ongoing invasions are likely to be a substantial interference. However, even a single event/act may amount to a nuisance claim.

P would argue there is real harm, she cannot even sleep at night due to the "shocking noise and vibrations coming from the restaurant on Friday and Saturday nights." P would also claim that it's an ongoing invasion because the restaurant is open nearly every day and plays music extremely loudly from the time it opens until 10pm on weeknights and until 11pm on weekends. P would claim that the duration of the noise is constant, 6 days out

of 7 per week; and presumably for about 6-8 hours each night (depending on what time the music starts). P would claim that this is an outrageous ongoing invasion that her and her family are suffering through each night. Pam gets awoken at night because the music is playing so loudly. P would claim this is a substantial interference, not only with the enjoyment of her property but also with her sleep. Furthermore, P's pet fish are also being affected by the nuisance and are beginning to "lose scales" due to the noise and vibrations.

D would claim that P is just speculating to her fish's scale loss, D would claim it could possibly be that the fish don't like being in "show competitions" and traveling back and forth to competitions stresses them out, which is causing the scale loss. D would argue that due to multiple complaints from neighboring residences, he took "steps to mitigate the noise and vibrations by requiring the music to end by 11pm." Furthermore, D would claim that his restaurant operation is legal and he is complying with city policies and regulations, so it is not a nuisance. D would claim he is complying with "maximum noise levels" and has done nearly everything in his power to ensure his restaurant and music doesn't interfere with neighbors. D would also assert that P is actually getting a benefit because everyone at the restaurant is a paying customer and P is basically being able to free load and have the luxury of a live band, which all other patrons are having to pay for.

Gravity of the Harm Outweighs the Utility of The Actors Conduct

Pertaining to intentional and unreasonable invasions, the court will balance the harm cause by the nuisance with the benefit (if any) of the actor conduct.

Pam (P) would argue that the harm she is cause from suffering through the extremely loud and annoying music every night is outweighed by any utility befitted by D's

restaurant operation. P would claim that the court should order a permanent injunction and it wouldn't impact the city because the 60 people could go get jobs elsewhere within the city. P would claim that there is no benefit to the city and residents shouldn't have to undergo constant blasts and vibrations of music at all hours of the night until 11pm on weekends and even 10 pm on week days. Doug would argue that the benefit of his restaurant is outweighs any harm caused to Pam.

D would claim that his restaurant employs 60 people and is "a huge cultural attraction in the city for decades." D would claim it would be a tremendous harm to the city to enforce an injunction on the restaurant and the city could lose out on a lot of revenue gained from tourist coming. D would claim that over 60 families would potentially become homeless if the restaurant shut down and they lost their job, only because P is upset with a little noise from fun and dancing. D would claim that the harm to the city would be more than the harm P is suffering. D would claim for over 40 years his restaurant has enable the city to grow in both attraction and by revenue based on taxes, and it would be an enormous blow to the city to find the restaurant to be a nuisance. D would even claim that if he had to shut down the music or restaurant on Friday and Saturday nights, he "would not survive economically" and would be at risk of his business going under. D would argue that angry P and the harm to her scaleless fish are not as important as the harm that would be caused to 60 employees and the city revenue from taxes and tourist from such a great attraction. Lastly, D would assert that if his restaurant was required to close then this could set precedent and stare decisis, and other court would follow this rule, which would have the effect of shutting down hundreds of restaurants in the jurisdiction, which would ultimately impact the restaurant business as a whole. D would claim every person would say that noise and vibrations from a restaurant "annoyed them" and then restaurants everywhere, possibly even throughout the country would shut down.

The court would likely find that the utility of the conduct benefiting the city over the past 40 years is significantly greater than the little harm P is suffering from.

Defenses

Coming to the Nuisance

When the conduct was already taking place prior to the plaintiff acquiring the property, then the plaintiff came to the nuisance. It is not a complete defense, but it is something the court will consider because the plaintiff should have been on notice that a potential nuisance existed prior to purchasing the property.

The facts indicate that the restaurant has been operating for over 40 years. When the restaurant first opened, it was located "on the outskirts of the city with no housing nearby." The so called "nuisance" had been occurring for over 40 years when P decided to purchase her property. Once the city started to grow and "expand to include housing near the restaurant," that is when P recently purchased her house so P came to the nuisance. D would argue that P was on notice of the restaurant and had to be familiar with it prior to purchasing her residence because it has been operating for so long, and nearly everyone in the entire town had so much fun, and had a blast at the restaurant both eating and dancing. D would claim that P even knew about the restaurant before purchasing her home and the close proximity, and she even still believed that it would be "a perfect place to raise her family."

The court would find that P came to the nuisance.

Live and Let Live,

Modern society is based on compromise requiring us to "give and take; live and let live". Liability is imposed in circumstances when the harm or risk is not one that a person should have to bare, at least not without just compensation.

D would argue that people are social creatures and need to have a good time and be allowed to get entertained by delicious food, dancing, and music from the piano and harp. D would claim that this is a part of living in a modern society, and if P wants to be a grumpy old grouch, enjoying her peace and quiet then she should have purchased a residence in the outskirts of town, away from a popular "cultural attraction." D would claim part of living in a civilized society is you will have to deal with noises from operating restaurants and businesses, that comes with industrialization of America.

The court would likely hold that P needs to live and let others live, and shouldn't be compensated because the "harm" is part of modern society.

Remedies:

Generally, there are 4 remedies to nuisance.

- (1) Permanent Injunction: the court agrees to order an injunction to permanently stop the nuisance.
 - (2) Permanent Damages: The court will order an injunction unless the DEFENDANT agrees to pay permanent damages for the nuisance (for past and future harm)(less favored by courts because a person shouldn't just be allowed to pay but continue causing harm)
 - (3) Issue an injunction only if the PLAINTIFF pays the defendant damages (to relocate and stop the nuisance)
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(4) No Nuisance, NO REMEDY

The court would likely hold that there is not a nuisance, so there is no remedy for P. Not only did P come to the nuisance and was aware, but part of living in a civilized society among others requires some compromise, give and take. Otherwise, if there is a nuisance, which likely there isn't the court would hold that P would have to pay the defendant damages in order to relocate his restaurant on the outskirts of the city, where it doesn't interrupt residential neighborhoods. But since the city was build around the D's restaurant that has been operating for over 40 years, D's conduct is legal and within city ordinance limitations, and P came to the nuisance, that is likely not going to happen. Especially because P is just a individual and most likely cannot afford to pay for an extremely popular restaurant costing from hundreds of thousands to even millions of dollars to relocate.

The court would hold that there is no nuisance, so there is no remedy for P.

2)

Appurtenant Easements- easements are appurtenant if they run with the land. The test is whether it would increase the marketability of the property from being able to have access to an easement. Another test is whether there are two properties being used (a dominant and servient estate). The dominant estate is the one that receives the benefit of the easement, and the servient estate is the one that is burdened by the easement.

In Gross Easements: usually apply when there is only one property and a person or entity is receiving the benefit/permission to use that single property. (Ex: utility lines, gas line, cable lines, recreational purposes such as fishing or hunting etc.)

License: is merely permission to use or be on someone's property and can be revoked at any time.

Profits: is similar to a contract (in writing) to remove natural resources from another's property; and typically comes with an easement because the person needs a way to ingress and egress to access the natural resources.

The following are appurtenant easements:

Express Easements:

Creation:

Express Easements must be in writing; identifying the grantor and grantee; identifying the property that was subject to the easement; identifying the location of the easement; and the use of the easement. If there is not specification, the court would need to be able to salvage the deed. The easement needs to be in an instrument, such as a document or

usually a deed. The deed must be recorded in order to put other people on notice that the property was subjected to an encumbrance (the easement).

Ona (O) and Adam (A) signed a valid deed which expressly stated the easement could be used by A to drive back and forth across Blackacre in order to build a house on Whiteacre. The facts do not indicate the specifics in the deed, but presumably it indicated O was the grantor, and A was the grantee; the property subject to the easement is Blackacre; and the location of the easement would be the 20 foot wide strip of grassy land. A would argue the court would be able to salvage the location of the easement because it was the 20 ft area of grassy land located on blackacre. The deed was recorded, putting other people on notice that there was an easement on Blackacre. In conclusion, the facts indicate that the deed was properly recorded.

The court would likely hold the deed was properly created.

Scope:

Physical Location/Boundary:

Here, the facts indicate that Ona (O) and Adam (A) agreed to an easement where A could drive across the 20 ft. wide strip of grassy land on Blackacre in order for A to be able to build a house.

Duration:

The facts indicate that A was allowed an express easement for 2 years.

Use:

A could use the easement for driving back and forth from Whiteacre to Blackacre.

Termination:

Easements can be terminated by: written release, eminent domain, abandonment, merger, estoppel, overuse and misuse.

An express easement terminates by its set terms. Here, the agreement was the easement would terminate after 2 years. The deed would expire/terminate in 2006. O would claim the easement no longer existed and terminated by its express terms that were in a valid recorded deed. O would claim that A and C continued to misuse the access way without her permission. O would claim misuse and over use is another way to terminate an easement.

The court would hold there was an express easement.

Prescriptive Easements

Creation:

Prescriptive easements can arise solely by use of property or even by misuse or over use of an express easement. If the user continues to use that property for a certain time, then they could have the right to continue using the easement in that way.

Actual Use

The person must be actually using the easement. The person is using the easement in a way that a reasonable true owner would use the easement.

Adam was actually using the easement to drive back and forth across Blackacre onto Whiteacre. A used the easement from 2004 until 2020.

The court would hold Adam was actually using the property.

-yeah, but you are adding in time we did so anyway

Open and Notorious

The person must be using the easement in a notorious manner. A manner in which if a reasonable owner of the property came to inspect the land, they would be on notice that someone is using the property. The person cannot be using the property discretely, or in secret, has to be open and obvious.

Here, Adam was using the property in an open and notorious manner. Adam was visibly driving back and forth on the property. Furthermore, A was driving his car to his home at least once per week onto Whiteacre. Additionally, in 2014, A built a dairy barn and would drive large trucks on a daily basis hauling milk and farming supplies across the accessway. Additionally, once A conveyed the property to C, C continued to use the access way on blackacre to get to his property on whiteacre in an apparent manner. Neither A nor C was hiding or acting discrete in the way they were using the access way.

Hostile

Not hostile as in punch the true owner in the face. But, the use of the property/easement has to be hostile against the true owners rights to possession/use.

There is a split of authority on hostile, depending on the jurisdiction (JD):

Maine Doctrine: required the user to have a bad faith intent, they are using the property in bad faith because they know they aren't supposed to be using it in that way.

Connecticut Doctrine (majority view): doesn't care about the intent of the user; they just didn't have permission to be using the property in that manner, or they didn't have permission to using the property at all.

Good Faith Possessor: The person using the property was innocent, but mistaken; they thought they were using the property correctly, or they thought that was their property, but they're mistaken.

Here, in 2006 (after the express easement terminated), A continued to drive across the easement but "O did not object to Adams use." But, in 2014 when A built the dairy barn and began driving the large truck loads of milk and farm supplies across the easement, O immediately told A she "did not want large trucks using the access way." However, the facts indicate that A did not stop, and continued to drive the large farming truck across the easement, which is hostile against O's true rights of ownership, use and possession of the easement. Also, once the property was conveyed to C, C began to continue using the access way in a hostile manner because O didn't want large trucks driving back and forth. If this was the Maine Doctrine JD, then A would have a bad faith intent because O told him to stop driving the trucks back and forth across the access way, and yet A continued to do so without her permission. So in the Main Doctrine JD, A would be a bad faith user, using the easement in a hostile manner. If this was a Connecticut JD, then A's mindset doesn't matter; A clearly was using the easement in a wrong way and was not permitted to drive large trucks back and forth hauling milk and farming supplies. If this was a Good Faith Possessor JD, then A does not have a good faith intent of using the access way. A is aware that O does not want him driving big trucks back and forth and he is not innocent but mistaken by his use.

The court would conclude based on the Maine and Connecticut JDs that A is using the easement in a hostile manner. However, if this is a Good Faith Possessor JD, then A is not hostile in good faith. But in the Majority Jurisdiction, A is using the easement in a hostile manner.

Continuous

The use of the property has to be continuous throughout the statutory time period. In this case, the statute of limitations (SOL) is a continuous 10 year duration.

Here, the facts indicate that Ona (O) purchased the Blackacre in 2002, from Jen (J), O has lived at Blackacre ever since the purchase.

In 2003, Adam (A) was given oral permission to use the property to drive back and forth. However, in 2004 O granted A an easement recorded on a valid deed for consideration of \$1,000 to use the access way in order for him to build a house. The express easement terminated in 2006, but the facts indicate that A "continued to use the access way." A continued using it even until 2014 when he decided to build a dairy barn and used the easement to drive large trucks that hauled milk and farming supplies. Although O told A immediately to stop having big trucks use the easement, A continued to do so without permission, he continued "using the access way as he had been." In 2020, A sold whiteacre to Charles, and Charles continued to use the access way across blackacre, still using large trucks to cross over the Blackacre access way "daily." It wasn't until 2022 when O placed a permanent fence across the access way "preventing all use by Charles." Charles immediately told O to remove the fence, but she refused to do so.

Tacking:

Owners can take their time together, and the wrongful users could tack together their time.

Since A had been using the access way on O's property (blackacre) to get across to his property (Whiteacre) from 2004 until he told whiteacre to Charles in 2020, the two owner's time could be tacked together. Charles continued to use the access way on blackacre up until 2022 when O built a permanent fence that prevented Charles' access.

Since A conveyed Whiteacre to Charles, their time can be tacked together for a total of 18 years. The SOL in the fact pattern indicates there needs to be a 10 year continuous use in order to have a prescriptive easement claim.

Tolling:

Tolling stops/pauses the clock on the time period if: the person is incarcerated; incapacitated; or a minor. The time starts back up/ticking/counting once the disability/capacity issue has stopped.

Nothing in the facts tolled the continuous use.

The court would conclude (with A's ownership tacked onto C's) that the property was continuously used for 18 years.

Scope

Boundary/Physical Location of the Easement: A and C had been using the 20 ft grassy access way to drive back and forth across blackacre (O's property) to Whiteacre (A and C's property).

Use:

With prescriptive easements the use is based on how the person was using the another's property.

Initially in 2003, O gave A permission to drive "back and forth from Whiteacre onto Blackacre in order to access Central Drive" since it was more convenient for A. But O and contracted a valid express easement that was recorded for a two year duration. A began to use the property to haul in large truck loads on milk and farm supplies to get to his dairy barn on whiteacre.

O would claim misuse/overuse. I would claim that both A and C were misusing the easement because she did not want them using large trucks on the access way. O would also claim they were overusing the easement, because at first A would just use his car to get to whiteacre, then it progressed to hauling in big loads, which should terminate the easement.

- tie this in - O would argue that even if C gets a P.E., it is only for personal car use b/c large truck use has not occurred in 10+ years

Termination:

Once the property is stolen, the true owner doesn't get it back, similar to adverse possession. What the user is awarded through prescriptive easements, they get to keep using the property in that manner.

The court would hold C has an easement by way of prescription and is allowed to continue using the access way across blackacre to continue getting to whiteacre.

The court would order O to remove the permanent fence.

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3)

Joint Tenancy

Joint tenancy is co ownership of property that require unity in Time, Title, Interest, and Possession. The JT must have express language on the deed that states that the co ownership is a joint tenancy with a right of survivorship. The four unities require that the co owners: acquire title at the same time, there is one document of title, there is equal interest, and each co tenant has a right to possession of the entire property at all times. In a JT there is a right to survivorship meaning neither owner may devise or bequeath their interest to an heir.

Joint tenancy is severed if one party sells their interest, if a party obtains a mortgage, or if a party leases their interest. If the JT is severed the co ownership becomes a Tenancy in Common or the owners ask the courts for a partition.

If a party takes out a mortgage there are two theories of what happens to the JT. In a lien theory jurisdiction a JT is not terminated and the lien transfers to the property if one party dies. In a title theory the JT is terminated and the lien cannot be collected if the mortgagee dies.

Tenants in Common

Tenants in common share only a unity of possession. This is the default method for co ownership of property. Tenants in common do not have a right of survivorship which means each can deed their property interest to their heirs.

1. Ownership interest in Blackacre

Odin

Odin conveyed his fee simple absolute interest in Blackacre to Manny and Lisa "as joint tenants with right of survivorship". This means that a deed was properly prepared and recorded because JT require unity of title. O conveyed his interest and is no longer a part of the equation. ✓

Lisa

Lisa became a Joint Tenant with Manny when Odin conveyed Blackacre to them. Lisa has equal 1/2 ownership of the property with Manny. When Manny conveyed his interest in Black acre to Peter this effected a severance of the Joint Tenancy because the four unities are disrupted. Because there are only two parties with interest in Blackacre Lisa becomes a co tenant with Peter. ✓

Peter

Manny conveys his interest in in Blackacre to Peter. Peter is now a Tenant in common with Lisa. Lisa was not given notice and no agreement was formed so it is assumed that Lisa and Peter own equal interest in Blackacre. Peter should pay half of the property tax to Lisa for every year that there was tenancy in common.

Sue

Sue is leasing Blackacre from Peter by way of a written month to month lease. Sue does not have ownership interest in Blackacre but she has the right of possession if she pays rent that month. ✓

Manny's estate

Manny died soon after conveying his interest in Blackacre to Peter. Manny's estate does not have any ownership interest in Blackacre. Even if Manny did not convey his interest

in Blackacre to Peter, his estate still would not have an ownership interest because he owned the property in joint tenancy with Lisa and there would be no right to survivorship when he died. ✓

2. Lisa's claim for accounting and Contribution

Property Tax paid by Lisa

Tenants in Common are entitled to reimbursement of property tax based on each co owner's share. Here, Peter and Lisa have equal ownership in Blackacre because it was never decided otherwise. Lisa has paid the property taxes for each year. Peter will need to pay half of the property tax for each year since he and Lisa were in a Tenancy in Common.

Rent paid by Sue

Tenants in common are not entitled to the pro rata rent from leases unless there is an ouster. Tenants in common are entitled to profits that was made on the property from natural resources such as coal or crops. Because tenants in common have the right to possession and have separate interests on owner may lease or rent their interest in the property without paying to the other owner and without permission. Lisa is not entitled to any of the rent Sue paid to Peter.

Lisa also has a right to possession of the entire property and will argue that Sue is preventing her from taking possession which may be viewed as an ouster. An ouster is when one co owner is prevented from entering the property. In the case of an ouster the ousted party is entitled to pro rata rent. Lisa will argue she is still owed the pro rata rent which is half the rent paid for being ousted by Sue's possession.

Partition - wasn't asked about

A partition is when the court divides up the co ownership. There are two types of partitions: partition in kind and partition of sale. A partition in kind is dividing the property into separate properties for each owner. A partition in sale is when the property is ordered to be sold and the profits from the sale are divided for pro rata interest. Courts prefer a partition in kind but it is not always feasible.

Lisa may move for the court to grant a partition of Blackacre because her co owners have been so sneaky and deceitful. The court will decide in the property is better suited for a partition in kind or a partition of sale.

3. Eviction proceeding against Sue

Lisa is not in privity with Sue because Peter is the one who leased his interest in Blackacre. Lisa may not file an eviction proceeding against Sue because Sue has a valid lease to Blackacre that was contracted through Peter. If Lisa were to ask for a partition of the property then Lisa could regain her property interest and be done with this mess.

Right of Tenants

Tenants have a duty to pay rent and if that duty is satisfied they have the right to possession, quiet enjoyment, and habitable living conditions.

Periodic tenancy- This is right to possession with a beginning and end date.

Sue is entitled to possess Blackacre if she has paid rent until her lease is expired. However, Lisa gained possession to Blackacre under a month-to-month lease. Lisa may give notice to Sue that at the end of the month her lease will not be renewed.

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END OF EXAM