

REAL PROPERTY

Professor K. McCarthy

KCC College of Law

Midterm, Fall 2020

Question 1

In 2007, Able inherited Blackacre, a 5-acre parcel of undeveloped real property on the outskirts of town. The public had used Blackacre as a dumping grounds for many years, depositing trash and other refuse all over the property. Able never visited Blackacre after he inherited it, or ever had knowledge of its condition.

In 2009, Able had a traumatic brain injury which left Able incompetent to manage his own affairs as declared by his treating physician. This was not a matter of public knowledge, there were no physical signs of Able's brain injury, and on any given day it may be difficult for someone who did not know Able to reasonably determine that Able was "incompetent." The doctor's declaration of incompetency remained in place at all material times.

In 2010, Charles began leaving his trash on Blackacre every week, and he continued to do so to present. Also, on a monthly basis in 2010, Charles began sifting through the refuse left by others on Blackacre, removing items he found, and selling those items from his home on the internet. He also began making separate piles on Blackacre of different types of refuse for later sale, and he continued that practice to present.

In 2011, Charles began to sell items from a table he found on Blackacre. He set up the table in the middle of Blackacre so anyone coming onto the property to dump refuse would be able to see him, though the table was not visible from the adjacent public street. He manned the table every weekend between 9:00 a.m. and 2:00 p.m., and has continued that routine up until present.

In 2012, Charles posted "Keep Out" signs at all entrances onto Blackacre. That same year, he began telling people, "Get off my property," if he caught them depositing refuse he did not want, and but said nothing if they were depositing refuse he wanted.

In 2014, Charles placed a large sign at the front of Blackacre, facing a public street, that read "Charles' Treasures for Sale."

In 2020, Able (more accurately Able's legal guardian) sold Blackacre to David.

Assume this jurisdiction has a 5-year statute for ownership of real property by adverse possession. Assume further that this jurisdiction has a 4 year "disability" statute for purposes of tolling the applicable statute of limitations.

Discuss the rights of Charles and David under the theory of acquisition of Blackacre by adverse possession (ignore any claim by David against Able).

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Question 1 Issue Outline (Adverse Possession)

(Many facts crossover in the analysis of the elements, but must be addressed in relation to the particular element (e.g. fact of possession may also be fact for continuity of use))

⌘ Actual Possession

- o Was Charles using land as an owner might? Undeveloped? Better use than mere dumping ground? Preventing unwanted disposal?
- o Keeping out trespassers/ asserting control to the public / organizing garbage (recall case about manure piles)
- o Fencing (lack thereof) or substantial improvements (lack thereof) not determinative.

⌘ Exclusive Possession

- o Timeline come into play here
- o No concurrent use by public or owner
- o Charles begins excluding people – gives ostensible permission only to those he wants to leave garbage
- o What about during weekdays/was public still dumping/is that determinative?

⌘ Open / Notorious

- o Go through timeline of increasing use
- o When likely noticeable to owner – e.g. when piles appeared? Selling items offsite on net likely not enough?
- o Table in center of property – would owner notice (table already rubbish), not visible from street but visible to trespassers who may think he's owner

⌘ Hostile (little analysis, but issue must be noted)

- o Facts indicate Charles had no permission
- o Able's lack of inspection/knowledge irrelevant – trespass is per se hostile

⌘ Continuity of Use

- o Student needs to particularly focus on the timeline here, to walk through when "possession" may have occurred, and when trespass had not yet amounted to "possession"
- o If student analyzes last, easier for student to incorporate prior analyses, much of the above will merely be rehashed into a timeline

⌘ Tacking (little analysis, but issue must be noted)

- o (Conceptual subset of continuity of use.)
- o Tacking of prior time as against subsequent purchaser – statute continues to run after sale to David

o Disability Statute – Tolling of Statute of limitations

- ⌘ If we assume Able is incompetent, statute does not begin to run until 2014 – 4 years after Charles began his occupation
 - o Able is not necessarily "incompetent" for these purposes because not

- ₅ if not incompetent, no tolling at all
- However, better conclusion is the doctor's declaration of incompetency will prevail
 - ₅ how would an adverse possessor know in any case the competency or lack thereof of the true owner?
 - ₅ policy behind AP does not really require that the true Owner's incompetency be common knowledge or apparent.
- ⌘ If we assume tolling, then AP does not start until and must run until 2019 to ripen
 - did it?
 - see above analysis but if one concludes that Charles actions qualify as adverse possession, then he would have been in possession for 5 continuous years by 2019

Question 2

Acme is the owner of a multi-story commercial building.

On January 1, 2018, BankCorp, a bank ("Bank"), began leasing the first floor of the building from Acme on a 10-year written lease for \$3.00 per square foot per month, total of 5,000 sq.ft. of space leased. The lease provides that Bank's employees and customers have the right to use a common area in the central lobby of the building to access Bank's offices during business hours. The lease also provides that Acme will provide 10 onsite parking spaces for Bank's customers.

On July 1, 2019, Acme began to renovate the building, with an anticipated completion date of December 31, 2020.

The renovation creates noise and the occasional, unannounced disruption of electrical service to the entire building for about an hour at a time, sometimes during business hours and mostly at off-hours times, *e.g.*, 1:00 am to 2:00 am so as to avoid as much disruption as possible; still, in today's "24/7, 365" business environment, dependent on the internet and "e" transactions round the clock, losing power does cause a certain amount of disruption to Bank, even in the off-hours (*e.g.*, the servers and routers are turned off and often have to reboot, which does not always go well.) The renovation also prevents the use of six of Bank's parking spaces.

Since September 1, 2019, the central lobby has been inaccessible, and Bank's employees and customers have to use an unmarked side entrance to the building to access Bank's offices, which they can do safely in all weathers and at all necessary times.

On October 1, 2020, Bank moved out of the front half its leased space to another building, where it is leasing space at \$4.00 per square foot. Bank has only paid half of its rent to Acme since September 1, 2019.

We are in California applying California law. What claims and defenses might Acme and Bank assert against one another in an eviction proceeding (ignore any issue about notice prior to commencement of suit)?

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Question 2 Issue Outline (Landlord/Tenant)

- ⌘ Identify type of tenancy: tenancy for years.
 - also, commercial lease, so no issues of Breach of the Warranty of Habitability under California law
 - much more a pure contract analysis
- ⌘ Breach of Covenant to Pay Rent as LL's Basis for Eviction (little analysis)
 - Bank breached covenant by not paying full amount
 - Tenant almost always must pay rent unless there is some good cause excuse, which, of course, what this problem is all about
 - Past due rent / future rent is offset against mitigated damages
- Breach Of The Covenant Of Quiet Enjoyment – Defense to Eviction
 - Substantial interference with use/enjoyment by LL? Temporary? Reasonable in large commercial building?
 - Parking spots – really a problem for bank? Drive up customers common? Local offsite parking? Not really enough here to say one way or another.
 - Discussion of how renovation more than a mere inconvenience, *e.g.* modern bank needs electricity.
 - Cumulative effects – totality of circumstances – occasional interferences add up
- ⌘ Constructive eviction (defense subset of Quiet Enjoyment)
 - Abatement of rent for inability to use/partial constructive eviction of leased premises? Differing jurisdictional views
 - Bank claim for difference in rent from \$3.00/sqft to \$4.00/sqft.
 - For extra credit: Student will “do the numbers”:
 - 15,000 sqft @ \$3.00/sqft = \$45,000/mo rent
 - 10 years at \$45,000/month = \$5.4 million full rent obligation . . . a lot of money
 - But
 - Bank stopped paying full rent 1.5 years into lease and now only is paying \$22,500/month to LL
 - \$22,500/month @ 8.5 years (102 months) = \$2,295,000 that Bank will not pay LL at current practice – Wow, a lot of money.
 - Bank also will claim an offset at \$1.00/sqft @ 7,500 sq ft which equals \$795,000 over 8.33 years (99 mos @ \$7500/mo = \$742,500)
 - So, if one accepts that there was a breach of quiet enjoyment, Bank will say that at worst it has failed to pay an adjusted \$1,552,500 (\$2,295,000 less \$742,500) over the term of the lease, and, more to the

- If one accepts that on these facts there was a constructive eviction, then Bank owes nothing and if fact LL owes Bank \$742,500
- LL, of course will want all of the \$2,295,000
 - ≈ Subject to Bank's duty to mitigate by finding new tenant
- Sounds like a case to settle

Question 3

Oliver, owned Blackacre, a parcel of real property. At his ninetieth birthday party Oliver had a reunion with his niece, Alice, with whom he had had no contact in over 60 years. At the party, Alice told him of her fond memories of spending her childhood at Blackacre. Also at the party, Oliver told many people he expected “a bolt from above” to come for him at any moment due to his age.

The following day, Oliver decided to give Blackacre to Alice. So, he executed a deed that named himself as grantor and Alice as grantee, and designated Blackacre as the property being conveyed and he delivered the deed to Alice. Oliver’s signature was notarized.

Oliver told Alice that he, Oliver, wanted to live on the property until he died so he instructed Alice not to record the deed until he, Oliver died. Alice did as Oliver asked.

Oliver remained living at the property; Alice did not move in and to all the world it looked like nothing had changed.

Six months later, Oliver sold Blackacre to Brian Fred Parker (“Brian”) for fair market value and Brian recorded the deed from Oliver to Brian in due course.

Six months after that, Oliver died and Alice got word of Oliver’s death; she then recorded her deed and tried to move onto Blackacre only to find that Brian had already moved in.

Blackacre is located in California and a “race-notice” recording statute is the rule in the jurisdiction.

Alice goes to see you, her lawyer, and asks to be advised as her rights against Brian and Oliver. Advise.

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Question 3

Question 3 Issue Outline (Gift and Bona Fide Purchaser)

Gift to Alice of Blackacre – YES:

1. Present Donative Intent from Oliver to Alice?
Yes; we do not really have to guess at this one
2. Delivery to Alice?
Yes, the deed – which is a great way to deliver real property – was handed from Oliver to Alice.
3. Acceptance by Alice?
Yes; one, it is presumed, especially with land; and two, Alice did accept

What Was Given to Alice? FSA or Fee Simple Subject to a Life Estate?

- Land deal, so needs a writing and the deed said nothing about a life estate.
- But, intent of parties was for Oliver to preserve a life estate and that is probably the better argument here.

Alice Does Not Record Deed Until After Oliver sells at FMV to Brian and Brian Records – Brian has better Title on these facts.

- As between Alice and O, there is no issue – Alice has title, either in FSA or subject to life estate but in either case Alice has title.
- But what about Brian?
 - Brian is a BFP
 - FMV
 - No facts to suggest that Brian is anything other than a 3rd party to Oliver who paid FMV.
 - Notice to Brian of Alice's Deed?
 - Alice did not record, so there is no "notice" to Brian of that prior deed so Brian takes clean title
 - unless Alice can show that Brian had actual notice of her deed prior but there are no facts to suggest that this is so.
 - Oliver still living there as if it was his property and record title had Oliver, presumably, on title, which is what Brian would have seen in his title searches and on his physical inspection of Blackacre.

Alice Rights Against Oliver and Oliver's Estate:

- Alice may have recourse against Oliver (Oliver's estate since Oliver is dead) for Oliver's improper and unauthorized selling out Alice's title to Brian.
- Purchase price paid by Brian to Oliver paid to Alice is one possible remedy

1)

1. Charles' Rights

Adverse possession validates disputed land titles by putting a statute of limitations on possible litigation over ownership and encourages landowners to be vigilant and responsible about their land. Under adverse possession - possession, for a statutorily prescribed time can ripen into title if certain elements are met. The elements that must be met are that the entry is actual and exclusive, open and notorious, hostile, and continuous. Each element will be discussed in detail below to assess Charles' rights.

Actual and Exclusive

The possessor must make an actual physical entry onto the premises and must take steps to exclude others to start the statute of limitations. The true owner must be excluded from the premises and the property may not be open to the public. Entry cannot be symbolic, fictitious, or hypothetical.

In this case, Charles first began leaving his trash on Blackacre in 2010, which he would do on a weekly basis. He also started going through the refuge and making different piles to sell later on, which he still does now. In 2011 Charles began to sell items from a table he found on Blackacre, which would begin his actual entry onto the land. Charles only stays on Blackacre during the weekends, which still frees up the weekdays to others. Charles did not take steps to exclude others from the property until 2012 when he posted "Keep out" signs at all entrances. He also began telling people to get off "his" property if they were dumping refuse he didn't want.

Charles actual entry began in 2011 but became exclusive in **2012**, which started the statute of limitations.

Open and Notorious

The possession needs to be the sort of possession the usual owner would tend to make given the particular circumstances. It must also be visible and not covert to allow the true owner notice and the opportunity to assert ownership.

Charles began creating piles of the refuse in 2010 to later sell online. If Able had come to inspect the property he may have discovered Charles' but the act of simply making piles to come back to later on isn't likely what a usual owner would tend to do. He started selling from a table in 2011 in the middle of Blackacre which was visible to anyone coming onto the property, even though he wasn't visible from the adjacent street. In 2012, he posted the "Keep out" and "Get off my property" signs at each entrance which would be visible to anyone coming to the property and potentially to the public passing by. If Able, the true owner, ever came to Blackacre he would see the signs and the table Charles put up. (Able hasn't been to Blackacre and his potential inability to do so will be discussed below.) In the beginning of Charles and Able's story we learned that the public had used Blackacre as a dumping ground for many years. It is likely that the usual owner would use Blackacre in the same way, going through refuse to sell and setting up shop in the middle of the property, while keeping others out.

Charles' entry was likely open and notorious, beginning in 2012.

Hostile

The entry must also be hostile, meaning the possessor did not have the rightful owner's permission to be there. An owner can give permission to be there in order to ensure an adverse claim will not accrue against him. The majority rule is that the possessor's state of mind is irrelevant.

Charles did not have Able's permission to be there. He had never seen Able and have never asked for permission to be on the premises. Charles took it upon himself to set up shop and exclude others from the property. For a trespasser (Charles) to be hostile, the owner (Able) does not need to have inspected the property, a trespasser is per se hostile.

Charles' entry was hostile.

Continuous

Finally, the possessor's entry must be continuous, meaning uninterrupted for the statutory period, which depends on jurisdiction. Seasonal use of a property may still satisfy the continuous possession element if this is the way a typical owner of similar property would use the land. The intermittent activities must be the sort only done by true owners.

This jurisdiction has a 5-year statutory period to assert ownership by adverse possession. Charles began his exclusive entry in 2012 and remained on Blackacre until 2020 when it was sold to David, which would make his possession 8 years. There is nothing in the facts that says Charles stopped using Blackacre at any time. He manned the table every weekend from 9:00am to 2:00pm beginning in 2011 (and continuing until now), which was a year before he started taking steps to make his entry exclusive. Even though he was only there on the weekends, this would be typical of an owner of a similar property. Most likely, an owner of a dump wouldn't live on the premises or be there everyday going through refuse. Charles took it a step further in 2012 when he put up the signs; it became more than just a weekend hobby. He wanted Blackacre to himself and he made the effort to go through the piles, find the sellable items, and make a profit.

Charles' entry was likely continuous from 2012-2020.

Charles will likely argue that he meets all the criteria for an adverse possession claim and that Blackacre is rightfully his.

2. David's rights

Disability

Charles meets all the criteria for a claim of adverse possession, however, the statute of limitations will not run against a true owner who is afflicted by a disability at the inception of the adverse possession. Common disabilities include infancy, insanity, and imprisonment.

Before Charles' entry onto Blackacre, in 2009, Able was deemed incompetent to manage his own affairs by his doctor. This jurisdiction has a 4 year "disability" statute for purposes of tolling the applicable statute of limitations. Using that 4 year statute - David, if he discovered Charles and wants him out, will likely argue that Charles' entry was tolled between 2012-2016 which would only give him 4 years of adverse possession and not entitle him to Blackacre. Charles will likely argue that he began selling items from the table in Blackacre in 2011 which would give him 5 years of adverse possession and thus ownership of Blackacre, however his entry was not yet exclusive until 2012.

Charles' Defenses

Charles could argue against Able's "disability." Able had a traumatic brain surgery which left him "incompetent" by his doctors, however, this was not visible or obvious to others. Able was not considered "insane." Able was able to sell Blackacre to David through his legal guardian in 2020, Charles could argue that Able could have had his guardian come and inspect the premises on any given day between 2007 when he acquired Blackacre to now. Depending on how the jurisdiction defines "disability" Charles may be able to assert this defense.

He could also argue that he made significant improvements to Blackacre because when he first started dumping and rummaging, the property was underdeveloped and covered in refuse. Charles took the time and effort to create separate piles and make improvements to Blackacre in order to open "Charles' Treasures". Able never visited Blackacre, even before he was deemed incompetent and wasn't aware of its condition. Charles created something different at Blackacre and he could argue that it should not go unnoticed.

Tacking

Separate periods of adverse possession may be "tacked" together to make up the full statutory period.

The statutory period continues to run after David purchases Blackacre. If David does not do anything about Charles, Charles could continue to tack his time against Able to now against David. Depending on what month Charles' exclusive entry began and what month David purchased Blackacre, it might not be long for Charles to tack on.

Conclusion

Given the facts as they are, David will likely rightfully own Blackacre because the statute of limitations was tolled for 4 years while Able was deemed "incompetent." Given the 4 year tolling "disability" statute, Charles does not have enough to meet the 5-year statutory period in this jurisdiction. Charles can argue against the disability but the court will likely side with David because Able's incompetency remained in place at all material times.

END OF EXAM

2)

This hypo revolves around a lease issue. For this purpose, we will first examine what a lease is and then turn our attention to identify what type of lease BankCorp (hereinafter referred to as BC) had with Acme (hereinafter, referred to as A)

Lease

A leasehold is an estate in land. The temporary right to property governed by a lease. The tenant has a present possessory interest in the leased premises whereas the landlord has a future interest (a reversion). A lease is a contractual obligation whereby one obtains rights to something and agrees to pay periodic payments in return. There are four types of leases: **(1) term (tenancies) for Years; (2) Periodic tenancies; tenancies at will; and tenancies at sufferance** (although this last one is a bit debatable)

Periodic Tenancies

Unlike tenancies for years, periodic tenancies have no certain termination date. These types of tenancies can be year-to-year, month-to-month or for a fraction of a year. Each party retains the power to terminate the lease via proper notice.

Tenancies at Will

Today, these types of tenancies are commonly rare. Here, both LL and tenant have the right to terminate the lease at will. This is a tenancy at no fixed duration. It endures at the will of either party.

BC had a Term of Years

Perhaps the most easiest way to identify a Term of Years is that this type of leasehold has a fixed period of time. Although the name says "years", the duration of such an agreement can be less than a year, or more than a year. So long as there is a fixed date of termination. This type of tenancy expires at the end of the stated period without either party being required to give notice to one another. However, at the end of the term, if tenant holds over, LL will treat the tenant as a periodic tenant.

Here in our hypo, the facts tell us that BC leased the premises from A effective 01/01/2018 as a 10-year written lease. This means that this tenancy was set to expire 01/01/2028. Because of this very important fact given to us in this hypo, we can reasonably assert that BC had a Term of Years

BC had a term of years set to expire 01/01/2028.

Was this type of lease in violation of the Statute of Frauds?

The statute of frauds requires a lease agreement that exceeds more than one year to be in writing.

Here, BC had a ten year leasehold agreement with A. It was in writing.

The lease agreement is not in violation of the Statute of Frauds.

What are BC's responsibilities as a tenant?

A tenant must simply maintain the premises and make ordinary repairs. Nothing beyond an ordinary care. Tenant must keep-up with the premises and must not commit waste. Waste includes Voluntary waste, permissive waste, ameliorative waste. Tenant must also Pay Rent. Tenant has a duty to pay LL (Landlord) the rent as set forth on their agreement. Failure to oblige by this duty constitutes a breach. If tenant does not pay rent, tenant becomes a Tenant in Sufferance and in breach of the lease.

Here, BC has refused to pay the entire rent to A since 09/10/2019 and 14 months later in 10/01/2020, BC moved out. BC can argue that they offset half of the rent towards mitigated damages. BC does not seem to have committed any waste.

A could argue that BC has been in breach of their lease contract. BC could argue that A has breached their duties as a landlord.

What are A's responsibilities as a Landlord?

The landlord is a person who owns Real Property and who in return leases or rents to another person (entity) in return for rent. A landlord grants the right of occupancy to another by construction of an agreement. The landlord has a duty to (1) Deliver Possession, (2) ensure the Covenant of Quiet use and enjoyment and (3) the implied warranty of habitability (in residential cases)

Duty to Deliver Possession

LL is required and obligated to deliver and provide physical possession of the property to the tenant. Here, A provided physical possession to BC for their first floor of their building at \$3.00 per square

foot for a total of 5,000sq.ft. By giving them the keys to the property, A has satisfied this duty of Delivery.

Quiet Enjoyment Duty

Loss of Electricity

This is a substantial interference with the use and enjoyment by landlord. It is noteworthy to mention that in commercial spaces, some interference may be reasonable. That is why we will examine this part of the hypo based on each individual factual pattern in our question.

The tenant has the right to possess real property without material interference with the property interest. In a conveyance of title, the conveyance of quiet enjoyment promises that the grantee's possession and enjoyment of the property will not be disturbed by someone who holds superior title. In a lease the implied covenant of quiet enjoyment guarantees that the tenant's possession will not be disturbed by the landlord or anyone else claiming an interest superior to the tenant's interest. There are three ways a covenant can be breached. (1) Actual Eviction; (2) Partial Eviction, and (3) Constructive eviction.

The question would be if A's interference with BC's use was reasonably temporary or created a substantial interference with their operation. The facts tell us that sometimes during business hours, the electricity would be lost. This can establish hardship for a bank. In modern times where customer service is an essential key element in maintaining and running a business (specially a banking business where this is an imperative factor), BC could say that A's renovation caused them material and substantial hardship. The facts are silent if this interference causes financial damage to BC yet it would be reasonable to assess that such interference would reflect negatively on the entire business of BC. Additionally, the facts indicate that even during off-hours, electricity would be lost causing certain amount of disruption to BC's business.

BC could use to assert that such electrical interference substantially affected their business and therefore was a breach in the implied quiet enjoyment and use warranty/duty of the landlord.

Loss of Parking Lots originally outlined in the lease agreement

BC was given 10 parking spots. As a result of the renovation initiated by A, BC has lost six available spots. The question would be to what extent has this elimination and unavailability of the parking spots affected the overall operation of BC. Are there any other available parking spots that have been assigned to BC by A during this transitional time? Does BC provide their customers the

ability to have a drive through for banking purposes? A may argue that the lack of parking spots is not a substantial interference with BC business operation and thus does not reach the threshold that would justify a breach under the doctrine of quiet enjoyment. BC would have to counter that based on available argumentative angles.

Noise and nuisance as a result of the renovation

The facts are silent the extend of the noise at debate. Is it noise that is so loud that people cannot hear themselves inside the branch causing hardship on customers and employees? Or is it noise that would be reasonable accepted for a commercial building undergoing a renovation? If BC can show that eben the occasional noise is so grave that it reaches a substantial, material interference of their right of quiet enjoyment, BC would likely assert a breach on the aspect of the noise.

Three ways a covenant can be breached. (1) Actual Eviction; (2) Partial Eviction, and (3) Constructive eviction.

Actual Eviction

This is when the landlord, paramount title holder or even in some rare cases a hold-over tenant exclude the present tenant from the entire lease premie. Such an actual eviction would terminate the lease agreement.

This is not the case in our hypo. Let us look at the other ones.

Partial Eviction

When a tenant is physically excluded from only part of the lease remissness, a partial eviction occurs. There is a slight difference when it comes down to partial eviction. (1) the partial eviction is the result of the landlord action (tenant is excused from paying the entire rent for the premises). However if (2) the partial eviction is facilitated by a third party, tenant is responsible for the reasonable rental value of the portion that they continue to possess.

BC may argue that the fact they had lost to the common areas that were outlined on their original lease agreement constituted some form of partial eviction The facts tell us that effetteve 09/01/2019, the central lobby had been deemed inaccessible. And that BC's customer's and employees were subject to accessing the aera vis a vis an unmarked side entrace. The question is again, to what extend has this affected BC's business and operation.

BC may argue that the notion that they no longer had access to the lobby cause their staff and most importantly their customers hardship to support a claim of partial eviction.

BC's remedy against A. Constrictive Eviction

In a situation in which the premises becomes uninhabitable (not applicable in our hypo because we are not talking about habitability. this is a commercial building), or unsuitable for their use (applies here), so as to force the occupant to abandon the premises. The following three are needed:

- (1) Landlord or persons acting on behalf of landlord breached this duty to the tenant.
- (2) The breach must have caused a substantial or material deprivation on the tenants use of enjoyment of the premises.
- (3) Tenant must have given the LL notice and reasonable time to repair;
- (4) After such reasonable time and as a result of improvements to the situation tenant vacates the premises.

This would likely be BC's best argument. They should say that the continuous interruptions (strongest argument would be disconnection of electricity and noise) has caused them great deprivation and has caused hardship to operate properly, effectively and professionally run their business. BC should assert that these elements created substantial and material interference of their right to use and enjoy the premises. BC should assert that the reason why they paid half of their rent throughout the months they were faced with such hardship as a result of the renovation would be an abatement of rent and therefore not only legal but surely justifiable. Therefore the past-due rent that A is claiming should be offset against the mitigated damages.

A's remedies against the balance BC owes them

There are several options that A has at their disposal. The most important rule when it comes to such instances like the ones in our hypo is that the LL must not engage in unlawful ways. If the tenant fails to pay the rent and the tenant is gone from the premises as outlined in our hypo (although they paid 50% of their lease for 14 months), the landlord has the following three options available (S.I.R -> Surrender, Ignore the Abandonment, or Relet the Premises)

Surrender

A could treat BC's actions as a surrender. A could accept this and the lease is amicably discharged.

This would not be the wise course of action for A.

Ignore the Abandonment

A could hold BC liable as if the BC were still there. The rent would then pile-up so that eventually A could proceed in a lump-su action against BC. (accepted only in minority states This is essentially when the landlord does nothing)

This would not be the preferred course of action as our state requires LL to try to mitigate.

Relet the Premises on BC's behalf and hold BC liable for any shortfalls.

Majority of the states require that the aggrieved landlord at least "try" to relet the premises at debate. It is noteworthy that the LL does not have to succeed in finding another suitable tenant, LL must however reasonably try to do so. This is the mitigation principal of contract law that applies here.

This would be the most reasonable course of action for A.

END OF EXAM

3)

Rights of Alice against Oliver

Gift

A gift is an irrevocable transfer of property. A gift requires three elements: Present intent; 2) Delivery; 3) Acceptance. There are two types of gifts, an inter vivos gift and a causa mortis gift. An inter vivos gift is given within one's lifetime. This includes items like grants and deeds. A causa mortis gift is a gift that is given after the gift giver's death.

Present Intent

The person giving the gift, the donor, must show a present intent to give the gift to the donee.

Here, Oliver ("O") has executed a deed to transfer title of Blackacre to Alice ("A") upon his death. This appears to be an inter vivos gift.

Delivery

Delivery may be by either actual or physical delivery when possible or by constructive or symbolic delivery when physical delivery is not practical.

Here, A may argue that O made a symbolic delivery of the property by handing A the unrecorded deed.

Acceptance

A gift is generally presumed to be accepted if the person verbally, physically or in some way shows acceptance.

Here, A accepted the deed and per O's wishes, she did not record it until after his death.

Thus, this appears to be a valid inter vivos gift to A.

Deed

A deed transfer in real property can be accomplished by a deed if the transfer meets all of the necessary requirements, such as: it must be in writing, unambiguous, indicate words of intent,

signed by the grantor. A valid deed is not considered transfer of an interest in realty unless it has been delivered. Delivery requires evidence of the grantor's intent.

Per the statute of frauds (SOF), a deed must be in writing and signed by the grantor. Here, Oliver has met these two elements. The SOF also requires that the description of the land be unambiguous, with words of intent. Oliver has also met these elements by clearly naming Blackacre as the property to be transferred in the deed and that A was the grantee. Additionally, O delivered the deed to A, which may be construed as a symbolic delivery..

Thus there appears to be a valid deed. Unfortunately A did not win the race to record and thus B will likely prevail in claiming the property.

2. Rights against Brian

Race Notice

A bona fide purchaser (BFP) in a race-notice jurisdiction allows that the BFP to prevail against a prior transferee. The BFP must purchase the property for pecuniary value and the buyer must at the time of closing have been without notice of a previous buyer. A BFP does not protect donees, heirs, or devisees. Additionally, in a race-notice jurisdiction, the person who records first, wins.

Here, Brian purchased the property for pecuniary value, and recorded his deed six months prior to O's death. There is no indication that Brian had any notice of Alice. Conversely, Alice may argue that O was mentally disabled since he had told people he "expected a bolt from above." Therefore, he could not have the capacity to sell the property to B. However, this argument would likely shoot herself in the foot since if he was without his faculties to sell the property to B, then he was also unable to give the property to A.

Thus, Brian is a BFP and Alice likely has no claim to the property.

END OF EXAM