

Empire College of Law

Property Law II

Professor M. Lehre

Spring 2025

Answer two (2) Essay Questions

Answer 20 Multiple-Choice Questions

Time Allocated: Three (3) hours

Essay #1

(60 minutes)

In 1990, Bea purchased land consisting of three flat rectangular parcels of five acres each. Bea used the first parcel (Parcel One) on the west side of Greenacre to build a small winery, as well as a house that she lived in.

Bea used the middle parcel (Parcel Two) to plant organic grapes. Bea never used pesticides, herbicides, or synthetic fertilizers. Bea was an avid wine connoisseur and after several years developed her farm into a productive vineyard and winery. In just a few years, Bea had begun producing a spectacular organic Pinot Noir wine. She subsequently won many awards.

The third parcel (Parcel Three) on the east side was never farmed by Bea because it had poor soil. In 2000, Bea needed money and decided to sell Parcel Three to Dave, another organic farmer in the area. Bea included the following language in the deed to Parcel Three, "No pesticides, herbicides, or synthetic fertilizers of any kind shall be used on the land. This covenant shall bind the land in perpetuity and shall burden and benefit all successors and assigns." Bea signed the deed and handed it over to Dave who promptly recorded it.

Unfortunately, Bea failed to reserve an easement in the deed to use Parcel Three for ingress/egress to Parcel Two and, therefore, there was no legal access to and from the public road to the east of Parcel Three for her remaining two parcels. Bea asked Dave if he minded if Bea drove across his property to access her two parcels as she had always done. Dave verbally gave his consent.

Dave could not make a living from Parcel Three because of its poor soil. In 2024, Dave sold Parcel Three to Steve, a farmer who engaged in large-scale production and mechanization farming. Steve employed 20 workers. In order to make a profit, he used stadium lights to work the land day and night. The high-pitched sound of machinery never stopped.

Steve used pesticides, herbicides and synthetic fertilizers in an amount beyond what any farmer would normally use on a vineyard. Excess pesticides used on Parcel Three were sprayed into the air and landed not only on the vines in Parcel Three but drifted onto Parcel One and Parcel Two as well. As a result, Bea lost her certified organic designation and was banned from entering any organic wine contests. Furthermore, tourists stopped visiting her winery because of the machinery sounds in the distance and the smell of chemicals coming from Parcel Three.

In March of 2025, Bea complained to Steve about the noise, lights, and pesticides negatively affecting her vineyard, her winery business, and her quiet enjoyment of her residence, Steve told her that wasn't his problem and that she could no longer use his road to get to her parcels.

The statute of limitations for prescriptive easement in this jurisdiction is 7 years.

Bea sued Steve. What rights and remedies, if any, does Bea have against Steve? What defenses does Steve have against Bea?

Essay #2

(60 minutes)

Since 1986, Dewy and Earl have owned Greenacre, a small parcel of land with a single-family home on it. Greenacre was situated next to a babbling creek on its east side. One dark and stormy night, in February of 2021, Dewy and Earl were awakened by a terrible cracking sound. They ran outside and saw their 40-foot-tall redwood tree, that had been in their backyard next to the creek, crashing down into the creek, causing a landslide that took 8 feet of soil from the backyard with it.

One week later, Dewy and Earl met with a local real estate agent, Barb, who toured the property with them. When she asked them if they had anything to disclose about the property, they did not tell her about the landslide.

The day after meeting with Barb, Dewy and Earl put up a tall fence in the backyard, along the banks of the creek, which hid the creek from view. Two weeks from the date of the storm, Dewy and Earl, with the help of Barb, placed Greenacre on the market.

Gabby and Chloe had never bought a house before. They hired Dan, a local real estate agent, to help them. When they saw Greenacre, they fell in love with it. Their offer was accepted by Dewy and Earl. During escrow, Dewy and Earl, with the help of Barb, disclosed that Greenacre was subject to “natural erosion” along the creek bank. They did not disclose the loss of the tree and part of the backyard during the storm. If Gabby and Chloe had looked over the fence during escrow, they would have seen the 40-foot-tall tree lying in the creek bed. Unfortunately, neither they, nor their real estate agent, Dan, looked.

During the winter storms of 2022, Gabby and Chloe lost 10 feet of their backyard to the creek, as well as lawn furniture, a small hot tub, and a hen house (no chickens were harmed). The County condemned their house because it was now hanging partially above the creek and was, therefore, dangerous to live in.

Gabby and Chloe suspect that the loss of their land and subsequent condemnation of their house by the County was a direct result of the use of dynamite by the State’s Department of Transportation to blast a tunnel through the hillside near Greenacre which destabilized the land for miles around. Other property owners also lost land into the creek, and continue to lose land into the creek, and suspect that this loss was directly attributable to destabilization of their land resulting from the ongoing blasting.

What rights and remedies, if any, do Gabby and Chloe have against (1) Dewy and Earl, (2) Barb and Dan, (3) the County, and (4) the State’s Department of Transportation? What defenses do the defendants have if Gabby and Chloe were to sue them?

Monterey College of Law

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Exam Date: Apr 30, 2025
File Name: [REDACTED]_RealPrpty-ECL-SP25-Lehre-OS_20250430_final.xmdx
Exam Length: 179 minutes (Started @Apr 30, 2025, 6:30 PM; Ended @Apr 30, 2025, 9:29 PM)
Downloaded: Apr 29, 2025, 6:55 PM
Uploaded: Apr 30, 2025, 9:31 PM
GRADE _____

Total Number of Words in this Exam = 3837

Total Number of Characters in this Exam = 22786

Total Number of Characters in this Exam (No Spaces, No Returns) = 18951

1)

BEA (B)

DAVID (D)

STEVE (S)

CONVEYANCE TO D

The most common way property is owned is a fee simple absolute, which is absolute ownership rights consisting of all the sticks in the bundle, including right to use, transfer, exclude, and destroy. At closing, the deed becomes the operative document that conveys legal title from buyer to seller. It must be lawfully executed (in writing, signed by grantor, and reasonably describe the land) and delivered. Actual delivery is not required so long as there is a present intent to be bound by the seller. After the deed is conveyed, it is usually recorded so that the world is put on record notice of the buyers interest in the land.

Here, the facts are not clear regarding what interest has been conveyed, therefore, I will assume that it was the ordinary interest conveyed-- fee simple absolute. The facts are clear the Bea, the grantor, signed the deed, but lack detail regarding whether the deed contained a reasonable description. I will assume that the deed was a valid deed. B handed the deed over to D, so delivery was accomplished.

Therefore, the conveyance to D was valid.

REAL COVENANT / EQUITABLE SERVITUDE

A servitude is a non-possessory interest in land. There are several types including licenses, profits, easements, real covenants, and equitable servitudes. Both real covenants and equitable servitudes are promises made between landowner's concerning what they may (or may not) do on their property. One difference between the two is the remedy sought. Real covenants are notable because the remedy sought is money, whereas equitable remedies are sought for equitable servitudes. Depending on whether the servitude is a real covenant or equitable servitude, and depending on whether the property is the burdened property or the benefitted property, the following elements may need to be present: (1) the promise must be in writing, (2) there must have been intent to bind successors, (3) the promise must touch and concern the land (i.e., affect the owner's use and enjoyment of the property), (4) the successor must have notice, (5) there must be horizontal privity (for real covenants only), (6) there must be horizontal privity (for real covenants only).

Here, the deed conveyed to D contained specific prohibitions on the use of pesticides and other materials on the farm. These restrictions were contained on the deed so they were in writing. The language on the deed also clearly indicated the parties intent that the promise would bind successors. Given that D consented to the deed by accepting and recording the deed, it seems that D shared this intent. The promise does touch and concern the land because it restricts a

well done

landowners ability to use their land freely. Because a farmer may want to use pesticides and other chemicals on their land, this promise would touch and concern the land because it affects an owner's ability to use these things on the land. The restriction was contained on the deed, which was later recorded, therefore, any subsequent owner would at least have record notice of the restrictions on the land. This means that there was notice to all. In this case, there was horizontal privity because there was succession of estate. Because B conveyed the property to D, they would have a grantor-grantee relationship, which means the required relationship was satisfied. Finally, there was vertical privity because the D conveyed the property to S. The coveyance created a non hostile legal relationship between D and S as grantor-grantee; this non-hostile relationship created the requisite vertical privity. Therefore, all the elements of required to establish both a real covenant and an equitable servitude have been established. It also means that all the elements for both the burden and benefit to run for each has also been met.

Therefore, B could likely ask the court either for money damages relating to the lost business, lost organic certification, and lost profits from competitions, or B could ask the court for an injunction to require S to stop using the pesticides on his farm.

DEFENSES

There are several defenses to the enforcement of a real covenant or equitable servitude, including abandonment, acquiescence, and changed conditions. Abandonment is when the holder of the servitude fails to enforce it for a period of time long enough that the servitude can be considered abandoned. Acquiescence is when the holder of the servitude fails to enforce the servitude uniformly against all to whom it applies. Changed conditions applies when the character of a neighborhood or area is so permanently altered that the original intention behind the covenant would no longer be served by enforcement.

Here, S took possession of the property in 2024. B did not file suit until 2025, which is one whole year. Because B knew that S was violating the restrictive covenant and failed to take immediate action, S may have a case for abandonment. However, because B might not have known the extent of the damages she would suffer (lost certification, profits, etc.) and because one year is not a very long period of time, S may still be unsuccessful with this defense.

Furthermore, because S is the only party to whom the restrictive covenant applied, he likely would not have a case for acquiescence. Likewise, because S is the only burdened party, there is no neighborhood whose condition may have been changed; therefore, changed conditions would not apply either.

LICENSE

Servitude (supra under real covenant/equitable servitude). A license is a type of servitude that is characterized by a non-possessory interest in the form of permission by a landowner to enter their property for some limited purpose. It is freely revocable.

Here, D orally gave his consent for B to continue to use the driveway from the public road to Parcel 2. Given that D continues to possess and own Parcel 3 after giving this permission, the interest given to B is non-possessory. Furthermore, the permission to use his land extended

only to use of the driveway, therefore, the entry onto the property was limited.

For these reasons, B likely had a license to use the driveway from D. However, given that a license is freely revocable, when S took possession of the property, he was entitled to revoke the license.

EASEMENT

Servitude (supra). An easement is a non-possessory interest in the land of another that entitles its holder to enjoy some limited use or enjoyment of the land. There are several distinctions: an easement may be affirmative (the power to do something on another's land), or negative (prohibits a landowner from doing something they otherwise would be able to do on their land). Furthermore, an easement may be appurtenant (gives the holder an interest that benefits him in the use and enjoyment of his own land), or in gross (conveys only a personal, financial, or commercial benefit not linked to the holder's use and enjoyment of any of his own land). There are several ways to create an easement: an express easement, an easement implied by prior use, and an easement implied by necessity, or a prescriptive easement. Once established, easements run with the land.

EXPRESS EASEMENT

An express easement is one that is in writing that complies with the statute of frauds.

Here, the facts clearly indicate there was no writing to support B's use of the driveway. Therefore, this is not an express easement.

EASEMENT IMPLIED BY PRIOR USE

An easement implied by prior use occurs when (1) a common owner severs their property, (2) there was an existing, apparent, and continuous use of one parcel for the benefit of another, and (3) that continuation is reasonably necessary.

Here, B severed her common ownership by selling one of the 3 parcels she owned to D. At the time of severance, the use of the driveway must have been apparent, because there was no other means of ingress and egress to parcels 1 and 2 and the public road. Therefore, D must have seen the driveway and reasonably anticipated that B would continue to use it. Finally, as previously stated, because there was no other access to the public road, B's continued use of the driveway was reasonably necessary for her to access her own farm, winery, and home on parcels 1 and 2.

Therefore, B likely has an easement implied by prior use. This would run with the land and bind S.

EASEMENT IMPLIED BY NECESSITY

An easement implied by necessity occurs when (1) a common owner severs their land, and (2) continuation of the use of one parcel for the benefit of another is strictly necessary.

Here, as previously established, B severed her common ownership by conveying one parcel to D. Because there was no other means to enter or exit Parcels 1 or 2 and access the public road, the use of the driveway is strictly necessary.

Therefore, B likely has an easement implied by necessity. This too would run with the land and bind S.

PRESCRIPTIVE EASEMENT

A prescriptive easement allows a trespasser to obtain an easement if the following elements are met: (1) actual, (2) open and notorious, (3) adverse and hostile, (4) continuous for the statutory period.

Here, B's use was actual because she physically used to road to access her land. It was open and notorious because a reasonable owner would notice a car passing their land. It was adverse and hostile because S specifically said that she could no longer use the driveway. However it was not continuous for the statutory period of time because the hostility only began when S took ownership. Between 2024 when S took over possession and 2025 when the action began, only a year had passed which is less than the required 7 years.

Therefore, B would not have a prescriptive easement.

However, based on the 2 possible implied easements B has, she could file a suit to quiet title over the easement to her land.

NUISANCE

Nuisance is a non-trespassory invasion with another's use and enjoyment of land. There are two kinds: private nuisance and public nuisance. Public nuisance is an intentional act that invades a right common to the public. Private nuisance is an intentional, non-trespassory act that creates an unreasonable and substantial interference with the use and enjoyment of land. An act is considered unreasonable if the gravity of the harm outweighs the utility of the conduct.

Here, S uses machinery that creates a high-pitch sound and uses stadium light during the night. Neither the sound nor the light physically invade B's land, therefore they are non-trespassory. The use of this equipment is clearly intentional given that S is using this equipment to run his farm. The utility of the conduct is great because S runs a big farm which presumably makes him a lot of money and employs 20 people. However, the harm suffered by B is also great because she has lost business due to the machinery sounds and smells. It also affects her quiet enjoyment of her home. Because the harms seem fairly comparable, the utility of the conduct is likely not great enough to outweigh the harm caused. Therefore, the invasion is likely unreasonable. For the same reasons mentioned above, the invasion is substantial; it is significant that B is no longer able to enjoy her home OR to make a profit in her business as she had been doing previously, and had presumably expected to be able to do when she bought the land. While there is no relief for those who are hyper-sensitive, the facts indicate that B was

not being hypersensitive. In fact, the fact that more than numerous customers of the winery were disturbed by the smells and sounds and stopped coming as a direct result of those smells and sounds indicates that this was more than a minor intrusion, and more likely a substantial interference with B's use and enjoyment of the property as a winery, home, and organic vineyard.

Therefore, B likely has a claim for private nuisance related to the light, sound, and smells.

TRESPASS

Trespass is an intentional, unauthorized entry onto the land of another.

Here, S's pesticides are raining down on B's organic farm. The spraying of the pesticides is clearly intentional because S is running a farming business where his goal is to grow produce. There has been a physical entry onto B's land due to the physical invasion of the droplets of pesticides onto B's land. The entry was unauthorized because there was an explicit restrictive covenant recorded, and because B's clearly would not consent to the use of pesticides given her status as an organic farmer.

Therefore, B likely also has an action for trespass against S for the invasion of pesticides onto B's land.

2)

GABBY (G)

CHLOE (C)

DEWEY (D)

EARL (E)

BARB (B)

DAN (D)

STATE DEPT. TRANSPORTATION (DOT)

LAND CONTRACT

A contract for the sale of land must comply with the statute of frauds, meaning that it must be in writing, signed by the grantor, identify the parties, reasonably describe the land, and state some consideration.

Here, the facts are not clear, so I will assume that the land contract between G/C and D/E is a valid contract.

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Real Property SP25

Box No. Essay #2

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11" x 8.5" 8 LEAVES 16 PAGES

Essay #2

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Grabby & Chloe (GC) v. Dewy & Earl (DE)

DE's liabilities as Sellers of Real Property:

To convey real property, the first step is for the parties to enter into a ~~contract for the land~~ ~~sale contract~~. As part of the contracting process, the seller is under obligations. At common law the sellers are not obligated to offer a warranty of fitness for the property. The buyer takes as is "caveat emptor" however, the sellers have duties to disclose defects, and to not engage in an ~~fraudulent (intentional)~~ or negligent misrepresentations.

~~DE A Duty to~~

A duty to disclose requires that sellers make buyer aware of any defects they know or reasonably should know of, which materially alter the value of property, and are not readily apparent. Here, the result of the tree falling ultimately causes condemnation of the property, selling @ a price lower than what they paid (~~fair market value~~) which represents a materially impact to value. DE ~~know~~, and Dan, know about the condition of the fallen tree and resulting ~~effect~~.

~~The GC would~~ ~~the~~ DE would challenge that a reasonable inspection would make the fallen tree discoverable, and thus readily apparent, upon reasonable inspection. However GC ~~or~~ could counter by arguing that the building of a "tall fence" would make this condition

not readily apparent to GC upon reasonable inspection.

DE's Duty to Not Misrepresent:

DE has a duty to engage in any misrepresentations regarding the condition/aspects to the property as sellers.

A fraudulent misrepresentation occurs when there is a false statement of a materially fact that induces the buyer and is relied upon, and that reliance causes damage.

DE states ~~that~~ that the property is subject to natural erosion is questionable... ~~is to~~

On the one hand, a tree falling may be considered a "natural event" (however later facts would make this claim questionable as being true). ~~but it~~ Alternatively the claim that erosion was ~~natural~~ and not an acute event makes this a false statement. GC would try to argue this is fraud, but DE may argue this is a carefully worded statement not rising to the level of fraudulent misrepresentation.

The statement may be negligent misrep. nonetheless.

This occurs when a seller makes a false statement of materially fact they ~~the~~ know or have reason to know is false, justifying the buyer to rely and damage result.

GC may pursue this charge as well, since DE may have reason to know this was NOT natural erosion.

DE would try to use slippery language that technically it's not a false statement. ~~The~~ DE will probably be liable for some sort of misrepresentation.

Concealment:

The court may view DE's actions to put up a tall fence as concealment of a known condition on the property that would affect value, and the concealment induces buyer into the sale.

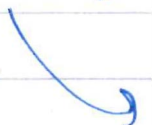
DE's defense:

- Claims that the statement wasn't a false statement (supra.)
- DE may also argue that caveat emptor, that ~~the~~ GC takes the property as is, however the potential misrepresentations/concealment is likely to defeat this defense.

GC vs. Barb & Dan (BD)

- ~~Barb~~ Dan's (D) involvement (likely resembles DE's involvement. (duty to disclose as their agent))
- D was actively involved in the misrep./concealment. The facts say that Barb (B) was also involved. So her liability could be held also to DE and ~~B~~ D.

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GC v. County:

County's condemnation Action:

A condemnation is the legal process by which a Gov. body exercises its power of eminent domain.

Eminent Domain refers to the idea that government can take private property, when it is for public use and provides owners with just compensation.

➡

A taking can occur either through physical intrusion or through regulatory action. Here, the County is using the police powers to protect the public's health or ~~the~~ lives. These police powers ~~are~~ derive from the 10th amendment and as long as they are ~~for~~ reasonably concerned to achieve some rational public good, are constitutionally authorized. ~~to~~

The County, is ^{saying} ~~say~~ that that they are condemning the property, and taking control of it to protect people's lives, this is an appropriate use, because of the danger the house represents to inhabitants (~~that~~ as the condition worsens ~~is~~ unpredictable). It passes Euclid test as it is not unreasonable ~~of~~ public interest or ~~the~~ arbitrary enacted, as long as they institute the proper legal process.

~~The County~~ ~~must~~ GC will argue that the action taken by the County represents government

interference that amounts to a full taking, since they are completely unable to live in the house and must be sold or otherwise disposed of. ~~the~~

A per se taking occurs when there is permanent physical intrusion by Gov or Regulation is so intrusive to completely deprive owner of all use/enjoyment of property. GC will argue a taking has occurred, and under the 5th Amendment the country (gov) must ~~offer~~ offer just compensation (Fair Market Value). ~~the~~

County Defenses to Condemnation:

~~The county - A taking is~~

When property is taken by regulation that would otherwise be acceptable by some long standing principal in property law (like Nuisance) then it is not a taking. The County, ~~is~~ trying to not have to pay for this land, would probably argue that this was a valid use of police power to control the use and enjoyment of ~~the~~ private Real Property and is reasonable based on an intention to protect the public. The County would point to the dangerous conditions and show how it's conceivable that w/o their action the land could subside @ any time and hurt or kill someone. The County may very well be successful in this argument.

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↓

GC v. State Dept. Trans. (SDT)

Lateral Support

~~The facts~~ A right incident to property ownership is lateral/adjacent support. This right confers the land to be supported in its natural state, and to have the surface not unreasonably disturbed. The land had a house built, so it is developed. If GC can show that the actions of SDT would have caused subsidence in its natural state, then SDT is strictly liable for damages. If this cannot be shown, then the negligence standard.

~~Private~~
Nuisance

Nuisance Supra / Private Nuisance Supra - Essay #1 - sorry)
SDT could be liable as their blasting activities sent a shockwave which passed onto GC's land and cause interference with the right to use / enjoy the land. SDT would counter that social utility of blasting is high, and that GC didn't own the property at the time. GC could argue for public nuisance and claim special damages as a result of their conduct which interfered w/ right of public → to have their land supported in natural state. This may be a stretch. They continued to lose land but the blast was already done so the GC should ask for damages.

~~§~~

Concepcion:

↳ Intentional conduct ~~was~~ resulting in complete interference of property right. The ~~land~~ personal property was swept ~~an~~ away and lost. They suffered damage and could sue for damage.

GC. Remedies

- Breach of land contract — GC should sue for damages as a result of the breach.

~~- Under if~~

The facts suggest that escrow closed, ~~§~~ but they could and should ask to rescind the contract and get their money back.

- GC should also sue for Just Compensation to the county.