

SAN LUIS OBISPO COLLEGE OF LAW

MCL Hybrid JD Program

Real Property II

Final Examination

Spring 2025

Prof. C. Lewi

Instructions:

There are three (3) questions in this examination.

You will be given three (3) hours to complete the examination.

Your answer should demonstrate your ability to analyze the facts in the question, to tell the difference between material facts and immaterial facts, and to discern the points of law and facts upon which the case turns. Your answer should show that you know and understand the pertinent principles and theories of law, their qualifications and limitations, and their relationships to each other. Your answer should evidence your ability to apply the law to the given facts and to reason in a logical, lawyer-like manner from the premises you adopt to a sound conclusion. Do not merely show that you remember legal principles; instead, try to demonstrate your proficiency in using and applying them. If your answer contains only a statement of your conclusions, you will receive little credit. State fully the reasons that support your conclusions and discuss all points thoroughly. Your answer should be complete, but you should not volunteer information or discuss legal doctrines that are not pertinent to the solution of the problem.

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Question #1

In 1950, Abe was the owner of Lot #1. Bill was the owner of Lot #2 next door. Bill wanted to build a warehouse on Lot #2 exceeding the maximum allowable square footage then permitted by the City Code and needed extra parking to get a permit.

On a "parking affidavit" form provided by City's Department of Building and Safety (DBS), Abe agreed to provide eight parking spaces on Lot #1 "to be available at all times" for Lot #2. The affidavit form did *not* contain an express statement the agreement was intended to run with the land or bind the assignees of the original owners.

The notarized affidavit documenting the agreement between Abe and Bill was filed with the City's Department of Building and Safety (DBS), which then issued Bill a building permit for Lot #2, and, ultimately, a certificate of occupancy for the completed warehouse.

The parking affidavit was never recorded; it was not required to be recorded under City's code in effect in 1950. (In 1958, City's Code was changed requiring parking affidavits that allow one property owner to use the property of another for parking must be recorded and provide that the affidavit "shall be a covenant running with the land.")

The parking spaces were constructed on Lot # 1 and were and are in existence at all relevant times. There no evidence the eight parking spaces were ever identified by either Abe or Bill or used by Bill or Bill's successors.

When, Charles, the successor in interest to Abe purchased Lot #1, he did his due diligence, including obtaining a title report from a title insurer, and neither the title policy nor the deed from Abe to Charles said anything about the parking affidavit. Charles did not have actual notice of the parking space affidavit.

For the next 19 years, Charles allocated the parking spaces to his own tenants and not Lot #2.

Then, Diane bought Lot #2 from Bill. Diane did not know about the parking affidavit when she bought Lot #2.

Diane wanted to expand the buildings on Lot #2. The plan checker at DBS told Diane that the parking affidavit from 1950 was on file and explained to Diane that the spaces indicated on the parking affidavit on file with DBS could be "grandfathered in" to meet the parking requirements for any expansion on Lot #2, so long as she notified the other owner (Charles) of the planned construction and Diane's need for the eight spaces described in the affidavit.

Diane then sent Charles a certified letter stating same. Charles received Diane's letter and signed the receipt which was returned to Diane but Charles did not actually respond to Diane.

Diane then provided the plan checker with a copy of the return receipt for the certified letter as proof Charles had been notified. Based on the receipt, the plan checker approved Diane's plans for the warehouse expansion on Lot #2 and DBS issued a building permit for the expansion.

Then over the next 14 months, Diane spent \$600,000 towards the building expansion.

Diane then wrote Charles again asking him again to identify the location of the 8 parking spaces. Charles again did not do so.

Diane sued Charles to quiet title with respect to the 8 parking spaces, asserting an irrevocable license required Charles to provide the 8 parking spaces to Diane.

Discuss the following:

1. The strengths and weaknesses of Diane's irrevocable license argument? If there is an irrevocable license, what does that mean for Lot #1 and Lot #2? And, if there is an irrevocable license, is Charles bound by it?
2. Is there a covenant in favor of Lot #2 against Lot #1? If so, is Charles bound by it?
3. Is there an equitable servitude in favor of Lot #2 against Lot #1? If so, is Charles is bound by it?

IGNORE and DO NOT DISCUSS any arguments that Diane may have against City.

QUESTION #2

O is the owner of Greenacre, a single-family house on a city street. O dies, leaving the house to O's three adult children, A, B, and C, as joint tenants with right of survivorship.

Both A and B have spouses, and each A and B have two minor children. C is unmarried and has one minor child.

A, B, and C agree that A will live in the house. They do not discuss how long this arrangement might last. The rental value of Greenacre is \$9,000 per year, but A does not pay rent to B or to C.

During the first year of A's occupancy, A pays the property taxes on Greenacre, which are \$12,000 per year. B and C each reimburse A for one-third of this amount, which means that A, B and C each pay \$4,000 in property taxes. The three repeat this process during the second year of A's occupancy.

At the end of the second year, C dies, leaving all of C's real property to C's child, D.

In the third year, A again pays \$12,000 in property taxes. A then asks B to pay a share of the taxes. This time, B refuses to do so.

B then notifies A that B wants to move into Greenacre with B's spouse and their two children. In response, A correctly points out that the house is not big enough for two families, but B is indifferent to this fact. After some argument, B files a partition action, naming A and D as defendants. Assume that there is no issue regarding ouster.

A answers the complaint, and alleges that B is demanding partition merely because B is angry at A. Therefore, A argues, B is acting in bad faith, which should defeat B's attempt to obtain partition. In addition, A asserts a counterclaim against B for B's share of the \$12,000 in taxes paid by A during A's third year of occupancy.

Questions

1. Upon C's death, what interests do A, B, and D, respectively, hold in Greenacre? Explain.
2. What is the most likely disposition of B's partition claim? Explain.
3. Is A entitled to recover any of the property tax payments from B, and if so, in what amount? Explain.

Question #3

Landlord (L) owns Whiteacre, a tract of land that contains a building plus a parking lot. L leases Whiteacre to a tenant (T) for use as a grocery store. The lease is for a 10-year term, at a rate of \$3,000 per month. The lease describes the property as, "That tract of land known as Whiteacre, consisting of one commercial building and one hundred (100) parking spaces."

L records this lease in the local recorder's office, where all records related to interests in real property are kept, as required by law.

The parking lot on Whiteacre is bounded on one side by a state highway.

Half-way through the term of T's lease, State decides to widen the highway. To do so, State exercises its lawful power of eminent domain to condemn a strip of land 30 feet wide along the edge of the parking lot. This reduces the number of available parking spaces on Whiteacre from 100 to 65.

The applicable law requires the State to compensate for any taking by placing the condemnation award in escrow. All parties with a legal interest in the property must then agree on how to allocate this award among themselves. If the parties cannot agree, then a judge is appointed to decide the matter.

Following this procedure, the State deposits with an escrow company \$50,000 for taking the land from the parking lot. Assume that this amount is legally sufficient compensation for the taking.

T believes that the reduction in parking spaces will hinder T's business. The lease is silent as to the effect of condemnation on the parties' rights and obligations.

Questions:

1. What relief, if any, is T entitled to obtain for the permanent loss of parking spaces?
2. If T is entitled to relief, for how much \$\$\$ and from whom?

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ANSWER KEY: 1

Question is taken directly from Gamerberg v. 3000 E. 11th St. LLC (2020) 44 Cal.App.5th 424.

C wins; D loses says Court of Appeal.

The key issue is NOTICE – was C on notice of the parking affidavit when C purchased Lot #1? NO says Gamerberg, and therefore C was protected by the Recording Act as a bona fide purchaser for value without notice because (1) the parking affidavit was not recorded; the fact that it was on file with the DBS did not impart constructive notice under the grantor/grantee index laws which reference recorded documents, not other documents on file with other public entities; (2) C was not on actual notice of the affidavit or the agreement the evidence showed; and (3) there was no inquiry notice to C because the parking spaces were on Lot #1 – the property C was buying – and there was no evidence that anyone from Lot #2 was using those spaces.

Even if we conclude that the 1950 affidavit – relied upon by D to the tune of \$600,000 -- makes the affidavit an irrevocable license, i.e, an unrecorded easement, C was not on notice and thus not bound. And, there are plenty of reasons to argue that the affidavit was not an irrevocable license based on D's actions; D relied upon it without obtaining C's consent and even though DBS told Diane she was grandfathered in, DBS is not a Court capable of actually making that conclusion that would bind C, a stranger to the affidavit other than being a successor without notice. The Gamerberg court analyzed the irrevocable license issue by using the original 1950 reliance by Bill on Abe's license in building the original warehouse, and then assumed for the sake of analysis that there was an irrevocable license that could bind both Abe's and Bill's successors. But the Court concludes that C's lack of notice kills the notion that C is bound by the non-recorded easement created by the irrevocable license -- "irrevocable licenses do not survive transfer of the property to a purchaser without notice."

We can also do a pure covenant and "running with the land" analysis here in with respect to the 1950 covenant b/t A and B and conclude that because the 1950 agreement for parking did not arise from a conveyance or consideration outside of the covenant, there is no requisite "horizontal privity" to bind any successors. AND, we have the huge lack of notice to C problem – the burdened Lot #1 did not have notice of the burden at the time Lot #1 was conveyed to C and thus there was no vertical privity either and the covenant did not run with the land with respect to C.

Even without privity, using an equitable servitude analysis, the better argument is that there is no equitable servitude either; the 1950 affidavit does not state it is intended to run with the land or bind successors and it is filed in a place – DBS – that is not the type of location where a

reasonable successor like C should be expected to be on notice of the burden on Lot #1. And, again, C is not on actual or inquiry notice of the parking burden on Lot #2.

From the actual Gamerberg opinion:

“The legal question raised in this appeal is whether the 1950 parking affidavit can be construed to create an irrevocable license in favor of Gamerberg that is binding on Soroudi, a subsequent purchaser without notice. Gamerberg dismissed his causes of action seeking declarations of an equitable servitude or equitable easement, each of which typically requires, among other formalities, actual or constructive notice to bind a subsequent purchaser.¹⁴ (See, e.g., Taormina Theosophical Community, Inc. v. Silver (1983) [*429] 140 Cal.App.3d 964, 972 [190 Cal. Rptr. 381] [“[e]ven though a covenant does not run with the land, it may be enforceable in equity against a transferee of the covenantor who takes with knowledge of its terms under circumstances which would make it inequitable to permit him to avoid the restriction”] (quoting Marra v. Aetna Construction Co. (1940) 15 Cal.2d 375, 378 [101 P.2d 490]); see also Mesmer v. Uharriet (1916) 174 Cal. 110, 116 [162 P. 104] [*657] [“A purchaser of land for value takes subject only to interests in the land of which he has actual notice or which appear of record. The rule applies as well to easements as to claims of a greater interest.”].)

2. The Characteristics of an Irrevocable License

“When a landowner allows someone else to use her land, the owner is granting a [***7] license. [Citation.] A license may be created by express permission or by acquiescence (that is, by ‘tacitly permit[ing] another to repeatedly do acts upon the land’ ‘with full knowledge of the facts’ and without objecting.”) (Shoen v. Zacarias (2019) 33 Cal.App.5th 1112, 1119 [245 Cal.Rptr.3d 683] (Shoen).) Unlike covenants that run with the land, such as easements, a license is a personal right and confers no interest in land: “[I]t merely makes lawful an act that otherwise would constitute a trespass.” (Richardson, supra, 233 Cal.App.4th at pp. 758–759; see Eastman v. Piper (1924) 68 Cal.App. 554, 560 [229 P. 1002] [“a valid license to enter on land ... rests on the distinction that a license is only an authority to do an act or series of acts on the land of another, and passes no estate or interest therein”]; see Smith, Neighboring Property Owners (Dec. 2019 supp.) § 7:2 [“A license is best understood as a residuary category, which applies whenever an interest does not meet the definitional parameters of a lease or easement. A license, commonly viewed as an interest of much less significance than other property rights, is often stated to be not an interest in land at all, but only the mere permission of the landowner.”].)

In keeping with a license's permissive nature, “[a] licensor generally can revoke a license at any time without excuse or without consideration to [***8] the licensee.” (Richardson, supra, 233 Cal.App.4th at p. 751; accord, Golden West Baseball Co. v. City of Anaheim (1994) 25 Cal.App.4th 11, 36 [31 Cal. Rptr. 2d 378] [“a license is normally revocable at will”].) Moreover, “a license, being a mere personal privilege, is never extended to the heirs or assigns of the licensee. Indeed, any attempt by the licensee to assign the license ordinarily destroys and terminates it.” (Eastman v. Piper, supra, 68 Cal.App. at p. 562; accord, Beckett v. City of Paris Dry Goods Co. (1939) 14 Cal.2d 633, 637 [96 P.2d 122]; Richardson, at p. 751; see 6 Miller & Starr, Cal. Real Estate (4th ed. 2019) § 15.2.)

¹⁴The parking affidavit also failed to comply with the formal requirements then in effect to establish a covenant running with the land. (See Civ. Code, former § 1468.) Former section 1468 provided: “A covenant made by the owner of land with the owner of other land to do or refrain from doing some act on his own land, which doing or refraining is expressed to be for the benefit of the land of the covenantee, and which is made by the covenantor expressly for his assigns or to the assigns of the covenantee, runs with both of such parcels of land.” The parking affidavit, completed on a form provided by the LADBS, did not contain an express statement the agreement was intended to bind the assignees of the original owners.

[*430]

Nonetheless, “[a]n otherwise revocable license becomes irrevocable when the licensee, acting in reasonable reliance either on the licensor’s representations or on the terms of the license, makes substantial expenditures of money or labor in the execution of the license, and the license will continue ‘for so long a time as the nature of it calls for.’” (Richardson, supra, 233 Cal.App.4th at pp. 757–758, quoting Stoner v. Zucker (1906) 148 Cal. 516, 520 [83 P. 808] (Stoner); see Cooke v. Ramponi (1952) 38 Cal.2d 282, 286 [239 P.2d 638] (Cooke); Shoen, supra, 33 Cal.App.5th at p. 1119; Hammond v. Mustard (1967) 257 Cal.App.2d 384, 389 [64 Cal. Rptr. 829].) This principle is grounded upon “the doctrine of equitable estoppel; the license, similar in its essentials of an easement, is declared to be irrevocable to prevent the licensor from perpetrating a fraud upon the licensee.” (Cooke, at p. 286; see Richardson, at p. 751 [in such cases, “the licensor is said to be estopped from revoking the license, and the license becomes the equivalent of an easement, commensurate in its extent and duration with the right to be [**658] enjoyed”].) “[C]ourts [***9] may exercise their power to declare a license irrevocable only if the expenditures in reliance on the license are ‘substantial,’ ‘considerable’ or ‘great,’” a requirement that ensures “courts use their power to create irrevocable licenses sparingly.”²⁵ (Shoen, at pp. 1119–1120.) “‘A license remains irrevocable for a period sufficient to enable the licensee to capitalize on his or her investment. He can continue to use it only as long as justice and equity require its use.’” (Richardson, at p. 758.)

3. An Irrevocable License Is Not Binding on a Subsequent Purchaser Who Takes Without Notice

a. *Noronha* does not accurately characterize the assignability of an irrevocable license

Assuming the 1950 parking affidavit created an irrevocable license in favor of Gamberberg’s predecessor and against Soroudi’s based on the expenditures in building the original warehouse, the determinative issue here is whether that license bound Soroudi, a subsequent purchaser without notice. The trial court based its ruling Soroudi was bound by the license on Noronha, supra, [*431] 199 Cal.App.3d 485, in which a purchaser of a lot in a subdivision received permission from the (apparent)³⁶ owner of the neighboring lot to construct a fence that encroached on the neighboring lot. Though the completed fence [***10] was open and obvious to the couple who later bought the neighboring lot, they claimed they had not realized the fence encroached on their property. The Court of Appeal found the lot owner who built the fence was entitled to an irrevocable license based on his expenditures on the fence, which “acts, for all purposes, as an easement, estopping the grantor and his successor from revoking it.” (Noronha, at p. 490.) The court rejected the claim by the new owners of the neighboring lot that they had not understood the fence was on their property, because the prior owner testified he had told them of this fact at the time of purchase. (Id. at p. 491.) Notwithstanding this factual basis for a finding of actual notice, the court stated, “Nor is plaintiffs’ knowledge required for the license to become irrevocable,” reasoning that once the expenditures had been made, “the license will

²⁵ “Courts have faithfully limited the exercise of their power to declare a license to be irrevocable to those situations in which the licensee has expended substantial amounts of money or labor in reliance on a license. Nearly every case where a license has been declared irrevocable has involved the licensee’s permanent alteration of the land and the ensuing upkeep, whether by building, altering or upgrading a roadway [citations], constructing a ditch, canal or levee to transport water [citations], erecting a wall [citation], or raising living quarters [citation]. The high water mark in this regard is Richardson, supra, 233 Cal.App.4th 744, which upheld an irrevocable license based upon the licensee’s extensive acts of landscaping that entailed the installation of irrigation and lighting systems; the purchase, planting and replanting of several large and expensive trees for more than two decades; and the daily watering and lighting of that landscaping.” (Shoen, supra, 33 Cal.App.5th at p. 1120.)

³⁶ *Noronha* is more frequently cited for its holding that a grantor who subsequently takes title in property is bound under the doctrine of after-acquired title for promises made to a grantee who believed the grantor already held title. (Noronha, supra, 199 Cal.App.3d at pp. 489–490.)

continue for so long a time as the nature of it calls for.’”⁴⁷ (Noronha, at p. 491, quoting Cooke, supra, 38 Cal.2d at p. 286.) **[**659]**

The analysis in Noronha is flawed, however; the court failed to recognize that not one of the cases finding a license irrevocable, including Cooke, Stoner and Richardson, addressed the rule in the context of a subsequent purchaser without notice.⁵⁸ Soroudi argues **[***11]** the correct rule is articulated in Churchill v. Russell (1905) 148 Cal. 1 [82 P. 440] (Churchill), in which the Supreme Court considered a parol agreement (or license) permitting a neighboring landowner and his wife to draw water from a well on the grantor's property. The neighbors not only drew the allocated water from the well but also made valuable improvements on the land. When the grantor died, the subsequent purchaser of the property sought an injunction to stop the neighbors from diverting water. The court agreed the license would have been irrevocable against the original grantor, but held it was not against the subsequent purchaser who had taken the property without notice of the agreement: “Under these circumstances it was necessary for the defendants, **[*432]** in asserting their equitable interest, to allege and prove, and for the court to find, the existence of such notice in order to support their equitable claim. This proposition is so familiar that no citation of authorities is necessary to support it.” (Id. at p. 6; see also Blankenship v. Whaley (1899) 124 Cal. 300, 304–305 [57 P. 79] [license to use and expand ditch for irrigation may have been irrevocable against original grantor but was not against subsequent purchasers if they took without notice, who were “protected by the recording acts” **[***12]** against “secret defects in a title”; case remanded for further findings as to notice].)

CA(2)[¶] (2) That the Supreme Court in Churchill accurately stated the common law rule that **HN3[¶]** irrevocable licenses do not survive transfer of the property to a purchaser without notice is confirmed by the statements of commentators and holdings of courts in other jurisdictions. For instance, “[a] subsequent purchaser of the servient property takes title subject to an irrevocable license if such purchaser could be charged with notice of the usage at the time of purchase. Hence, a subsequent purchaser with notice cannot revoke the license, but it has been held that a bona fide purchaser without notice receives the land free of the irrevocable license.” (Bruce & Ely, The Law of Easements and Licenses in Land (2019) § 11:9; accord, 8 Thompson on Real Property (2019) § 64.05(b) [“Even though the license is held to be irrevocable it may still be lost if the property is sold to a bona fide purchaser. Thus in the case of a buried water line it was held that the sale of the burdened property to a party who had no notice of its existence resulted in termination of the interest.”]; Industrial Disposal v. City of East Chicago (Ind.Ct.App. 1980) 407 N.E.2d 1203, 1206 [“our courts have held that where an owner of real estate gives a license which becomes **[***13]** ‘irrevocable’ and then sells the burdened estate to a third party, who purchases in good faith for value and without notice of the license, or of such facts as would put a man of ordinary prudence on inquiry, the third party **[**660]** takes the land free of any rights of the licensee”].) Conversely, in Blackburn v. Lefebvre (Ala.Ct.Civ.App. 2007) 976 So.2d 482 the court held that an irrevocable license to use a boat pier was enforceable against a subsequent purchaser because the underlying agreement had been recorded and thus provided notice to the purchaser. (Id. at p. 495; see also Tatum v. Dance (Fla.Dist.Ct.App. 1992) 605 So.2d 110, 112 [“a subsequent vendee having notice of the licensee’s use at the time of purchase

⁴⁷ This language misstates the relevance of notice to irrevocable licenses. Notice to a subsequent purchaser does not affect a finding of irrevocability against the original grantor; rather, it governs the issue of assignability to subsequent purchasers, as set forth below.

⁵⁸ **CA(1)[¶]** (1) Notwithstanding Gamerberg's assertion that the holding in Noronha is “binding precedent,” we are not obligated to follow a decision by a Court of Appeal with which we disagree. (Martinez v. Public Employees’ Retirement System (2019) 33 Cal.App.5th 1156, 1171 [245 Cal. Rptr. 3d 693]; see Gonzalez v. Lew (2018) 20 Cal.App.5th 155, 166, fn. 7 [228 Cal. Rptr. 3d 775] **HN2[¶]** [“[t]here is no horizontal stare decisis in the California Court[s] of Appeal”]; Jessen v. Mentor Corp. (2008) 158 Cal.App.4th 1480, 1489, fn. 10 [71 Cal.Rptr.3d 714] [same].)

takes the land burdened with the license”]; Kovach v. General Telephone Co. of Pennsylvania (1985) 340 Pa. Super. 144 [489 A.2d 883, 885] [“[o]nce irrevocability is established, ‘successors-in-title take subject to an irrevocable license if they had notice of the license before purchase’”].)

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b. To the extent an irrevocable license functions as an easement, it must be recorded to bind subsequent purchasers without actual notice

Struggling to parse the various threads of common law servitudes in the context of modern commercial settings, Division Three of the Fourth District once observed, “Ultimately, the label given to [the plaintiff’s] ‘interest’ is of little importance. Arrangements between [***14] landowners and those who conduct commercial operations upon their land are so varied that it is increasingly difficult and correspondingly irrelevant to attempt to pigeonhole these relationships as ‘leases,’ ‘easements,’ ‘licenses,’ ‘profits,’ or some other obscure interest in land devised by the common law in far simpler times. Little practical purpose is served by attempting to build on this system of classification.” (Golden West Baseball Co. v. City of Anaheim, *supra*, 25 Cal.App.4th at p. 36; see French, Toward A Modern Law of Servitudes: Reweaving the Ancient Strands (1982) 55 So. Cal. L.Rev. 1261 [“[t]he law of easements, real covenants, and equitable servitudes is the most complex and archaic body of American property law remaining in the twentieth century”]; French, *supra*, 55 So. Cal. L.Rev. at pp. 1262-1263 [“[t]he advent of comprehensive governmental land use regulation in the twentieth century actually increased the incidence of private land use arrangements for two reasons: public regulation itself often uses private servitudes as tools of regulation; and the inherent shortcomings of public regulation encourage private arrangements”].)

Attempting to simplify this doctrinal thicket, the Restatement Third of Property, Servitudes, promulgated in 2000, “swe[pt] away negative [***15] easements, equitable servitudes, and executed parol licenses because the doctrinal differences that formerly distinguished these servitude categories have been eliminated.” (French, Highlights of the New Restatement (Third) of Property: Servitudes (2000) 35 Real Prop. Prob. & Tr. J. 225, 228; see Rest.3d Property, Servitudes, §§ 1.2(4) [“[a]s used in this Restatement, the term ‘easement’ includes an irrevocable license to enter and use land in the possession of another”], 7.14, *com. a*, p. 440 [“[i]nstead of drawing a distinction between servitudes based on the way they were created, the rules stated in this section distinguish among them on the basis of the function they serve”].) The Restatement takes the position “that all unrecorded servitude benefits, regardless of the manner of their creation, are subject to extinguishment under the recording act. The rationale is that societal welfare is generally enhanced by increasing the ability to determine land titles by resort to the public land records because it reduces the costs and increases the security of transactions in land. The benefits produced by subjecting all servitudes, whether written or unwritten, to extinguishment under the recording act will outweigh the social costs [**661] involved in the loss of useful servitudes [***16] and the measures knowledgeable servitude holders will take to protect against extinguishment.” (Ibid.; see Citizens for Covenant Compliance v. Anderson (1995) 12 Cal.4th 345, [*434] 354–355 [47 Cal. Rptr. 2d 898, 906 P.2d 1314] (Citizens for Covenant Compliance) [recognizing efforts to merge common law servitude doctrines: “Whether the amendments to [Civil Code] section 1468 have accomplished this fusion in California is beyond the scope of the narrow issue before us”].)

CA(3)[7] (3) Like the Supreme Court in Citizens for Covenant Compliance, we need not determine whether the Restatement Third of Property’s push to simplify the analysis of these doctrines controls here, because California courts have long recognized that **HN4[7]** “[a]n irrevocable license ... is for all intents and purposes the equivalent of an easement.” (Barnes v. Hussa (2006) 136 Cal.App.4th 1358, 1370 [39 Cal.Rptr.3d 659]; accord, Shoen, *supra*, 33

Cal.App.5th at p. 1120 [“such licenses are functionally indistinguishable from easements”]; cf. *Eastman v. Piper, supra*, 68 Cal.App. at p. 562 [“as the qualities of inheritability and assignability are inconsistent with a license, we must conclude that something more than a license was intended to be granted; that it was intended to create an inheritable interest in a servient estate—in short, an easement”].) As one commentator has explained, “[t]he term ‘irrevocable license’ is a contradiction in terms, given the traditional definition of a license [***17] in land. Functionally, an irrevocable license does not differ at all from an easement. The only distinction is that the irrevocable license, if oral, might be invalidated from taking effect as an easement by the Statute of Frauds. ... Analysis of the problem would be much improved if courts would drop the misnomer ‘irrevocable license,’ and instead assume that the parties intended to create an easement having a duration longer than at the grantor’s will.” (Smith, *Neighboring Property Owners, supra*, § 7.2; see also 4 Powell on Real Property (2019) Easements and Licenses, § 34.24 [declaring that an “irrevocable relationship should no longer be called a license, but rather an easement”]; Conard, *An Analysis of Licenses in Land* (1942) 42 Colum. L.Rev. 809, 820 [“[w]hen the parties have so acted that an unwritten license becomes irrevocable, an easement has arisen” (italics omitted)].)

Easements, of course, are likewise unenforceable against a subsequent purchaser without notice (except in limited circumstances not applicable here).⁶⁹ (See *Mesmer v. Uharriet, supra*, 174 Cal. at p. 116; *Pollard v. Rebman* (1912) 162 Cal. 633, 634 [124 P. 235].) Accordingly, when an easement or other use is not visible and does not provide actual notice to the purchaser, it must be recorded to be enforceable. (See *Civ. Code*, §§ 1213, 1214.) ““The recording statutes operate to protect the expectations of the grantee and [***18] secure to him the full benefit of the exchange for which he bargained.”” [*435] (*Citizens for Covenant Compliance, supra*, 12 Cal.4th at pp. 358–359.)⁷⁰ Soroudi persuasively argues it would make no sense to conclude [**662] that a document evidencing an irrevocable license need not comply with the recording acts, when another creating an easement that conveys an actual interest in land must do so. (See Smith, *Neighboring Property Owners, supra*, § 7:2 [an irrevocable license is “a residuary category” for “failed easements”].)

c. LADBS's failure to require recording of the 1950 parking affidavit and its present belief the parking affidavit was binding on subsequent purchasers are irrelevant

California's recording statutes, *Civil Code section 1213 et seq.*, were enacted in 1872 and establish a reliable system by which the expectations of buyers and sellers of property can be vindicated. Certainly, the lawyers for the City of Los Angeles should have been fully cognizant of the requirements of the recording statutes in 1950 and understood that HN5[7] “[a]n unrecorded instrument is valid as between the parties thereto and those who have notice thereof” (*Civ. Code*, § 1217), but not against anyone else.⁸¹¹

⁶⁹ See *Restatement Third of Property, Servitudes, section 7.14* and *comment b, page 441* (discussing prescriptive easements and those that provide necessary access or utilities to landlocked land).

⁷⁰ As discussed, neither Soroudi nor Gamerberg knew of the parking affidavit when he bought his property. Just as Gamerberg knew he was purchasing a property with limited parking, Soroudi understood the parking spaces on his property were free and clear of encumbrances.

⁸¹¹ CA(4) (4) HN6 We reject Gamerberg's argument the existence of the parking affidavit in the LADBS files provided adequate notice to Soroudi. (See *Field-Escandon v. DeMann* (1988) 204 Cal.App.3d 228, 236–237 [251 Cal. Rptr. 49] “[t]he existence of the permit in the public records of a governmental agency does not have the same presumptive effect of actual knowledge as recorded documents of title to real property, where the act of recording imparts constructive notice of the contents of the instrument”.)

*Thus, it is doubtful the city's lawyers reviewed the 1950 parking affidavit for form, even though it is virtually certain the parking affidavit was intended by LADBS, as well [***19] as its signatories, to create an interest running with the land, that is, a covenant or easement that would be assignable and binding on subsequent purchasers as long as the building stood. The current version of the parking affidavit, which is required to be recorded and supported by consideration, creates a covenant that "shall run with both the covenantor(s) and covenantee(s) above described land, shall be binding upon the covenantor, the covenantor's future owners, encumbrances, and their successors, heirs, or assignees for the benefit of the covenantee and the covenantee's future owners, encumbrances, and their successors, heirs, or assignees and shall continue in effect until the Superintendent of Building in the City of Los Angeles determines the offsite parking spaces covered by this covenant is no longer required by law." (LADBS, Covenant and Agreement Regarding [*436] Maintenance of Off-Site Parking Space, <[---

ANSWER KEY-Q2](http://ladbs.org/docs/default-source/forms/plan-check-2014/covenant-and-agreement-regarding</i></p></div><div data-bbox=)*

1. Upon C's death, what interests do A, B, and D, respectively, hold in Greenacre? Explain.

A, B, and C took title as joint tenants; thus, with the right of survivorship. All 4 unities are present. When C died, A and B remain as joint tenants. D takes nothing from C because a joint tenancy interest cannot pass by testate or intestate succession – the JT interest ends immediately on C's death and there is nothing to convey to D.

2. What is the most likely disposition of B's partition claim? Explain.

Most likely disposition is that it will succeed and the Court will order partition by sale. Where co-owners disagree as to the continuing use or co-ownership of the property, a partition action is proper. While "bad faith" conduct can be a defense to many acts, the better conclusion here is that B does not want to allow A to live at the property without B being able to use it too (remember, all joint tenants have 100% right of the unity of possession) and with an obligation for B to continue paying a share of the property taxes (not to mention insurance, and upkeep etc absent an agreement to the contrary.) Hence, the better conclusion is that B is well within their rights and not in "bad faith" here, particularly since filing a lawsuit where A will have notice and due process and a neutral judge is contrary to bad faith action.

3. Is A entitled to recover any of the property tax payments from B, and if so, in what amount? Explain.

Yes, absent agreement to the contrary, joint tenants are share and share alike for expenses of the property. By the 3rd year, A and B each had 50% ownership, this B should reimburse A \$6,000 (half of \$12,000.)

[-maintenance-of-off-site-parking-space-pc-str-aff27-2014.pdf?sfvrsn=15](#) [as of Jan. 21, 2020], archived at <https://perma.cc/WTC8-Y7Q3>.)

*In light of the absence of any reference [***20] to assignees in the 1950 parking affidavit and the failure of the original signatories to record it, the testimony of the LADBS supervisor that the affidavit remained enforceable can best be understood as a comment on the Department's current practices, which has no relevance to the question in this case. But whatever the supervisor meant, as a nonlawyer, he was not qualified to provide legal advice and appears to have unintentionally misled Gamerberg on the survivability of the unrecorded parking affidavit. That mistake, however unfortunate, does not alter our conclusion.*

ANSWER KEY-Q3

This question requires a discussion of :

- (1) eminent domain compensation to Owner of land vs. Tenant on land;*
- (2) a further takings analysis (very brief on the facts here); and*
- (3) A breach of contract analysis between L and T and whether L owes T for anticipated loss of business for the remaining 5 years on the lease.*

Answer to 1 and 2:

When property is condemned for a public use, State must pay the fair market value of the condemned property to the owner of that property under the “takings clause” of the 5th Amendment of the US Constitution, made applicable to the states by the 14th Amendment. The actual language from the 5th A is: “nor shall private property be taken for public use, without just compensation.”

We do not conduct much of an eminent domain analysis other than to say that a public roadway is a “public use” and the proper subject of the State’s eminent domain powers. Further, we are told the \$50,000 is “legally sufficient compensation for the taking” so we know, for purposes of the question, that State paid fair market value for the condemned property.

The hard question here is whether T is entitled to any of the \$50,000? Generally, the compensation is paid to the Owner of the property condemned – L. Thus, the easy answer is the \$50,000 goes to L and T gets nothing . . . but . . .

T may still be compensated from the \$50k eminent domain award for the displacement caused by the condemnation of the 35 parking spaces and any inconveniences T has suffered, and here, in this commercial lease, for the loss of T's business "goodwill."

Additionally, T may have grounds to terminate the lease based on a cardinal change (100 to 65 parking spaces is a significant drop in customer access and convenience for a grocery store.)

Answer to Question 3:

With respect to the \$50k, the question tells us that "All parties with a legal interest in the property must then agree on how to allocate this award among themselves. If the parties cannot agree, then a judge is appointed to decide the matter." The better analysis is that both T and L have claims to the \$50k. T and L will either agree on who gets what from the \$50k or litigate the issue.

The lease is silent on the issue:

L's case is easy; as owner they get all the money.

Competing evidence will be T's to present and may include expert opinion presenting projected lost revenues and lost "goodwill" for the remaining 5 years left on the lease caused by the loss of the 35 of the 100 parking spaces expressly contracted for. It is not hard to develop a scenario where T loses \$50,000 over the next 5 years based on the loss of 35 parking spaces; in a car centric society like ours, if a customer cannot easily and conveniently park, they will go elsewhere where they can. L will counter by saying that this would deprive them of any value for what is, after all, the loss of L's property (not T's.)

Very hard to know how this comes out before the deciding judge.

An alternative approach in resolving the dispute between L and T is a more basic contract analysis: While L is not responsible for the condemnation of the 35 parking spaces, nevertheless, where the lease expressly provided for 100 parking spaces, a material term, T's loss of 35 of those spaces is a "material change" to the terms of the lease, subjecting L to an action for damages and/or T terminating the lease on a constructive eviction basis.

T has the better of this argument; the lease is silent as to the effect of condemnation. The loss of the spaces is easily understood as material diminution of the suitability of the premises for T's use as a grocery store.

If T desires to stay the remainder of the 5 years left on the lease @ \$3,000/mo, T lost 35% of the utility of the premises when they lost 35 of the 100 parking spaces. 35% of \$3,000 = \$1,050. Discounting the lease by \$1,050/mo results in a revised lease payment of \$1,950/mo and this could be the award in favor of T. (\$1,050 @ 60 months = \$63,000; L would be better off letting T take the \$50,000 by way of a settlement in this scenario.) L will argue, with considerable merit, that L did nothing to breach the lease and just like T, is an innocent to the harm, if any, caused by the loss of the 35 parking spaces. A tough call.

If T desires to "get out of the lease," this is probably a better track for T on a constructive eviction basis. I.e.. the premises are no longer suitable for the contracted purposes and no reasonable tenant would be expected to stay. T would have no further rental obligations to L. T may have claims for damages for lost revenues and lost goodwill; and, if T relocates to a similar premises but has to pay more, T would have claim for the difference between the 5 years remaining at \$3,000/mo against the higher rental rate the new location. But, again, aside for being allowed to leave the lease early, here in this "no fault" scenario, it would be hard to impose damages against L, who, again, did not breach the lease.

Suggest that L and T mediate the dispute and resolve some type of allocation of the \$50,000 between them; such a settlement may include T staying at the premises for a reduced rent or a shorter remaining term.

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OVERVIEW OF THE PARTIES' POSITIONS IN CHRONOLOGICAL ORDER

INITIAL AGREEMENT BETWEEN ABE AND BILL

In 1950, Abe and Bill entered into an agreement to provide 8 parking spaces from Lot 1 for Bill's use on Lot 2. The agreement was made via the City's DBS parking affidavit, and was *not* a recorded deed. Although the form did not contain an express agreement that it was their intent for the agreement to run with the land or bind the assignees of the original owners, the argument can be made that the language "to be available at all times" is indicative of their intent for the agreement to run with the land. In the same vein, the argument can be made that the language "to be available at all times" is demonstrative of an appurtenant easement created by express grant/reservation, discussed further below.

good argument.

The parking affidavit was never recorded, and was not required to be, at the time of its execution in 1950. The 1958 amendment to the City Code that the affidavits must be recorded and the affidavit shall be a covenant running with the land is likely immaterial, as there is no indication that parking affidavits from prior to 1958 needed to be recorded to be enforceable agreements.

The parking spaces were constructed on Lot 1, still owned by Abe, and the spaces were never "identified" by Bill or Bill's successors. While the meaning of "identified" in the facts is vague and not clearly explained, it most likely means that the spaces were never explicitly marked that they were for use specifically by Lot 2 and/or Bill and/or Bill's successors. Further, the facts also indicate that the spaces were never actually *used* by Bill or Bill's successors. In short, there does not seem to have been any action with respect to the parking spaces other than filing the parking affidavit with the City then constructing the unmarked or unidentified spaces on Lot 2.

TRANSFER OF LOT 1 FROM ABE TO CHARLES

Charles is a subsequent bona fide purchaser to Lot 1 because he purchased Lot 1 for value and he did not have notice of the parking spaces agreement at the time of the purchase, discussed further at length below. It should be highlighted that Charles "did his due diligence" by obtaining the title report from a title insurer and confirming that the title policy and the deed both did not mention the parking affidavit. This, coupled with the fact that the parking spaces were never "identified" means that Charles did not have actual, constructive, or inquiry notice of the parking spaces agreement or the affidavit at the time of he purchased Lot 1.

Therefore, when Charles spent the next 19 years allocating the parking spaces to his own tenants on Lot 1, and not allocating them to anyone on Lot 2, he did not know his conduct was in violation of the parking lot agreement

*** the end really

between Abe and Bill. However, Charles would urge that because he was a subsequent bona fide purchaser without notice of the agreement, the burden of the covenant did not run with the land, so he did not have to abide by the agreement between Abe and Bill.

TRANSFER OF LOT 2 FROM BILL TO DIANE

When Diane bought Lot 2 from Bill, she found herself in the same boat that Bill was originally in, and needed extra parking in order to get a permit to expand the buildings on lot 2. Diane did not know of the parking lot agreement or the affidavit, although it should be preliminarily noted that notice is not required for the benefit of a covenant to run with the land.

Upon learning of the prior agreement from the plan checker with the City, Diane was advised that the agreement could be grandfathered in to meet the parking requirements for the expansion on Lot 2, provided that she notified Charles of the planned construction and her need for the 8 spaces in the agreement between Abe and Bill. Diane acted based on the plan checker's advice, which led to the following chain of events.

At this stage, Charles is using the land for use by him and his tenants on Lot 1 and *still* does not have notice of Abe and Bill's prior arrangement. Meanwhile, Diane sends Charles a letter to give him notice of the planned construction and her need for the 8 parking spaces, as previously agreed upon by Abe and Bill. But Charles would assert that he needed notice at the time of his purchase, and notice cannot be retroactively given to enforce the burden of the covenant. Thus, Charles would urge that his receipt of the certified letters, indicating that he was put on notice of Diane's plan, is insufficient and untimely.

YEP !!!

The plan checker's approval of Diane's plans caused Diane to detrimentally rely on her ability to use Lot 1's extra parking spaces to pursue her warehouse expansion plans.

Diane is seeking quiet title with respect to the 8 parking spaces, arguing that she had an irrevocable license that now requires Charles to provide the 8 parking spaces to Diane.

DIANE'S IRREVOCABLE LICENSE ARGUMENT

LICENSE + EASEMENT BY ESTOPPEL

A license is a revocable privilege to access and use the land of another. A license becomes irrevocable when the licensee detrimentally relies on the privilege to use the property of another and makes a substantial investment.

Here, Diane would argue that she had an irrevocable license because she detrimentally relied on the use of the 8 parking spaces to pursue her warehouse expansion plans. She would highlight that she spent \$600K towards the building expansion, which is a hefty amount, and clearly demonstrative of her good faith reliance on her ability to

use the 8 parking spaces as extra parking to get the permit for the warehouse expansion plans, which was ultimately approved by the city.

On the other hand, Charles would argue that Diane did not have an irrevocable license because she never had a license in the first place that could ripen into an irrevocable license/easement by estoppel. Charles would note that Diane merely mailed one letter to Charles and never received a response, so her detrimental reliance is nobody's fault by Diane's. Further, Charles would note that Lots 1 and 2 are right next to each other, so Diane could have simply walked over to Lot 1 and spoken to Charles and sorted out the issues and potentially come to an agreement to use the spaces before Diane irresponsibly dumped \$600K into the project.

EQUITABLE EASEMENT

Diane could counter Charles's argument by asserting an equitable easement, which is when there is never an actual easement, but she detrimentally relied on her ability to use the land so substantially that denying her the right to use the land would be an injustice. Diane would argue that although there was never a formal agreement or easement between Lots 1 and 2 or between Charles and Diane, her reliance was in good faith, and it was substantial to the tune of \$600K, so leaving her out to dry with nothing would be an injustice.

Diane makes a good argument, but it is likely not strong enough because, frankly, Diane's detrimental reliance is not Charles's fault, especially given that he was a subsequent bona fide purchaser without notice at the time of his purchase AND for the next 19 years.

Therefore, Charles would not be bound by either an irrevocable license or equitable easement.

COVENANT IN FAVOR OF LOT 2 AGAINST LOT 1

A covenant is a promise to do or refrain from doing something on one's land. The burden of a covenant runs with the land if it is in writing to satisfy the statute of frauds, the original parties intended for future successors and assignees to be bound by the covenant, the covenant touches and concerns the land, there is horizontal privity, there is vertical privity, and successors had notice of the covenant (actual, constructive, or inquiry). For the benefit to run with the land, all that is required is writing, intent, touch and concern, and vertical privity.

Similarly, an easement is the right to use the land of another. An appurtenant easement is when there are two adjacent parcels and one parcel has is burdened with an access way for use by the other parcel for ingress and egress from one parcel across the other. The parcel with the access way is the servient tenement, which is the burdened parcel, while the parcel that has the right to use the access way is the dominant tenement, which is the

benefited parcel. Among the ways to create an easement include an express grant or reservation, in which the original parties expressly agreed in writing to satisfy the statute of frauds, to either grant one parcel to use the easement, or to reserve the right to use the easement. Easement appurtenants, particularly those that are written express grants/reservations typically run with the land, and the same elements discussed above for covenants are required for the easement to run with the land.

Here, Diane would argue that the burden of the original parking agreement between Abe and Bill is a covenant running with the land because it was in writing in the parking affidavit, Bill and Abe intended for successors to be bound by it because it stated "to be available at all times" and did not have any sort of expiration date or other indication that the covenant only applied to Abe and Bill, the covenant touches and concerns the land because it has to do with the parking spaces on the land, there is horizontal privity between Abe and Bill, there is vertical privity between Abe and Charles and Bill and Diane, and Diane ensured that Charles had notice because she sent him a certified letter and received a return receipt confirming he received the letter and was therefore put on notice. For essentially the same reasons, she would argue that the benefit of the covenant also runs with the land.

Similarly, or alternatively, Diane would argue that the parking agreement between Abe and Bill constitutes an easement appurtenant created by express grant or reservation that runs with the land. She would argue that Bill and Abe expressly agreed that Lot 2 was the dominant tenement/benefited parcel that could use the parking spaces on Lot 1, and Lot 1 was the servient tenement/burdened parcel that expressly granted Lot 2 the right to use the parking spaces. Further, she would argue that the language "to be available at all times" is demonstrative of an express reservation for the parking spaces to be used by and for Lot 2, which is intended to bind future successors. In sum, Diane would argue that whether the agreement between Abe and Bill is characterized as a covenant, an easement created by express grant, or an easement created by express reservation, the agreement runs with the land and future successors are bound by the agreement.

On the other hand, Charles would note that however Diane wants to attempt to characterize the agreement is moot because under all circumstances, notice is required to bind future successors, and he was a subsequent bona fide purchaser without notice. Charles would argue that that the burden of the covenant or the burden of the easement does not run with the land because there is no indication that Abe and Bill intended for their parking agreement to bind future successors, there is no horizontal privity, and Charles was a subsequent bona fide purchaser without actual, constructive, or inquiry notice of the covenant. Charles would note that there is no horizontal privity because Abe and Bill did not have a relationship other than neighbors agreeing to the covenant (i.e. grantor/grantee, landlord/tenant, etc.) Charles would reiterate his arguments previously noted as to insufficient notice and ambiguous intent by Abe and Bill in their original agreement. The most important element that is missing is notice, so even if Diane had more persuasive arguments on the element of intent, Charles cannot

be burdened with a covenant that he did not have notice of at the time of his purchase of Lot 1 for value *and* for the following 19 years.

Therefore, there is likely not a covenant or an easement in favor of Lot 2 against Lot 1 that Diane can enforce against Charles. ✓

EQUITABLE SERVITUDE IN FAVOR OF LOT 2 AGAINST LOT 1

An equitable servitude is similar to a covenant, but is enforced for equitable relief only and not monetary damages. The key difference between a covenant and an equitable servitude is that in order for an equitable servitude to run with the land, no privity is required. Thus, Diane would only need to prove that the parking agreement was in writing, Bill and Abe intended for future successors to be bound by the agreement, the agreement touches and concerns the land, and Charles had notice of the equitable servitude.

Here, the parties would argue much of the same of their previous arguments. While Diane is assisted by not having to establish privity, she still cannot overcome the notice issue, and she cannot firmly overcome the vagueness of Abe's and Bill's intent. She would have a slightly stronger argument if the parking spaces were at least identified for use by Lot 2, but without that, and without anything else for 19+ years, it would be extremely unfair to enforce a burden on Charles, who is actually making use of the parking spaces by allowing his tenants to use them. Thus, Diane would likely not be able to establish an equitable servitude in favor of Lot 2 on Lot 1.

CONCLUSION

Diane invested \$600K based on detrimental reliance, but there is not likely a legal theory that is favorable to her because it would be improper to enforce a burden against Charles since he was a subsequent bona fide purchaser without notice of any prior agreements and used his property accordingly for 19+ years.

END OF EXAM

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(1) A, B, and D's respective interests in Greenacre following C's death

CONCURRENT INTERESTS

People can co-own properties (i.e., have concurrent interests in land). Three common types are (1) joint tenancy (JT); (2) tenancy by the entirety (TBE); and (3) tenants in common (TIC).

Joint Tenants

Good

Joint tenants hold the property interest with the right of survivorship, meaning if one joint tenant dies, the remaining joint tenants absorb the interests. Thus, JTs are not alienable. JTs can be transferred, but the transferring party severs the joint tenancy between the new tenant, creating, instead, a tenancy in common. The other joint tenants who did not sever maintain the JT and their rights of survivorship. Traditionally, the four unities had to be present for JTs to exist: (1) time -- parties take at the same time; (2) title -- parties take by the same interest; (3) interest -- parties have identical interests; and (4) possession -- all parties have right to possess the whole. Modernly, the unities have begun to erode, and so, for example, no longer have to take by the same instrument (i.e., title). This move eradicated the need for a straw, where the grantor transferred the interest to a "straw" (i.e., third party) only for the straw to transfer the interest back to the grantor and the other joint tenants. JTs are generally not favored/the presumption because JTs avoid probate; rather, TICs are the presumption. So, JTs require express language establishing the interests as such.

Here, O conveyed Greenacre to A, B, and C: (1) at the same **time** (upon death); (2) in the same **title** (the will/etc.); (3) giving the same **interest** (A, B, and C have 1/3 share each of Greenacre); and (4) giving all three rights to **possess** the whole. The facts indicate O used express language leaving Greenacre to A, B, and C "as joint tenants with right of survivorship." Without such express language, there could be a risk that the children are tenants in common. So, upon O's death, A, B, and C are joint tenants. Upon C's death "at the end of the second year," A and B were still joint tenants, and thus maintained the right of survivorship. C's 1/3 interest was absorbed by A and B, shifting their respective shares from 33% to 50%. Thus, D did not inherit any interest of Greenacre even though she received "all of C's real property."

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Therefore, upon C's death, A and B were joint tenants with right of survivorship as to each other, and each held 50% interest in Greenacre. D, however, has no interest whatsoever in Greenacre upon C's death.

(2) B's partition claim

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3)

(1) What relief, if any, is T entitled to obtain for the permanent loss of parking spaces?

TAKINGS

The state and federal governments have the power to take private property from owners, provided (1) it is for public use and (2) the property owners are justly compensated. Takings can be through (1) eminent domain or (2) inverse condemnation (i.e., regulatory taking). The government can contract with private entities to exercise the taking power (e.g., through CalTrans) if the aforementioned requirements are met. Takings generally manifest as acquisitions, condemnations, or physical occupations.

Eminent Domain

The 5th Amendment gives the government the power to take private property from owners, provided (1) it is reasonably related to a legitimate public purpose (see *Kelo*) and (2) the property owners are justly compensated, generally by Fair Market Value at the time of the taking. The possessor of a legitimate land interest, including a tenant, has standing to recover for eminent domain proceedings. Residential tenants may recover displacement costs; commercial tenants may also recover displacement costs, generally, and may also recover for loss of goodwill (e.g., brand recognition and customer loyalty). Profit holders can similarly recover if (1) the agreement is in writing and (2) for an indefinite duration or for a person's lifetime. License holders cannot recover.

Here, there is a compensable taking: the State exercised eminent domain to "condemn a strip of land 30 feet wide along the edge of the parking lot." Because of this, T lost 35 parking lots (but, notably, kept 65). Because the State's action constitutes a permanent physical occupation, it is a per se taking that must be compensated (see *Loretto*). The State compensated their taking with a "legally sufficient" amount of \$50k. L, as Whiteacre's owner, is entitled to the compensation. T is also entitled to compensation because he is a commercial tenant: T leased Whiteacre "for use as a grocery store." Indeed, L recorded the lease in accordance with law, meaning T has a valid interest in Whiteacre as a tenant. As a commercial tenant, T has the potential to recover for displacement costs and loss of goodwill (if the right circumstances exist). Notably, though, the government's taking was just a portion of the parking lot, so T's loss is actually 35 parking spaces -- not the entirety of Whiteacre. T could argue that, given the high amount of traffic grocery stores generally get, losing 35 parking spots could work a detriment to his business. Customers, realizing the limited space, might eventually opt to shop at different stores to avoid the hassle. Further, the loss means fewer customers can shop at a given time, reducing T's daily revenue. After all, T's lease was for 10 years, in which he paid \$3k per month. Over the 5 years that remain in the lease, T's decrease in income could arguably be substantial compared to what he could have expected had the taking not occurred. This could in turn harm T's goodwill, as his reputation may fall in the eyes of prospective customers. Additionally, T's

good