

MONTEREY COLLEGE OF LAW

REAL PROPERTY

Midterm Examination

Fall 2022

Prof. J. O'Connell

Instructions:

Answer three (3) questions in this examination.

Total Time Allotted: Three (3) hours.

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.

REAL PROPERTY
Professor Justin O'Connell
Midterm, Fall 2022
Question 1

Blackacre and Whiteacre are adjacent parcels of land, each 50 feet wide and 200 feet long. The parcels are part of a large development in a remote mountain area in which all the parcels are of similar size and shape.

In 2010, Alex purchased Blackacre from the Developer. At that time, both Blackacre and Whiteacre were unimproved. Alex immediately and mistakenly began building a large home on Whiteacre thinking it was Blackacre. Within a few months, Alex completed the concrete slab foundation of the home, paved a driveway and built a shed on Whiteacre, but then ran out of money and never made any more improvements.

In 2014, Ellen purchased Whiteacre from Developer. Ellen assumed that Alex's improvements were part of what she was purchasing as a starting point for Ellen to build a home. Ellen did not know that Alex – not the Developer – had made those improvements.

In 2015, Alex sold Blackacre to Greta. Though Greta's deed described Blackacre, she mistakenly believed Whiteacre was the parcel she purchased. Within months, Greta completed the construction of the home on Whiteacre. Thereafter, she occupied the home from May through September each year as a summer home, which is how all other nearby homes were occupied.

In December 2022, Ellen visited Whiteacre to plan construction of a home there. Ellen found the house that Greta had completed, but no one appeared to have been occupying it for months.

The jurisdiction has a 10-year statute of limitations regarding adverse possession.

Discuss the rights of Greta and Ellen regarding a claim for adverse possession of Whiteacre.

Professor Justin O'Connell
Midterm, Fall 2022
Question 2

Lenny is the owner of a residential apartment building. On January 1, 2020, Lenny leased an apartment to Tina through December 31, 2021, at the rate of \$1,000 per month. Pursuant to the terms of the written lease, Tina was not allowed to have a pet live in her apartment.

After January 1, 2022, Tina remained in possession of the apartment and paid Lenny \$1,000 for rent each month, which Lenny accepted.

On September 1, 2022, Tina told Lenny that the faucet above the tub in her bathroom was dripping water into the tub. Lenny said he'd have someone come out to check it, but he never did.

On October 1, 2022, Tina told Lenny that she found two dead rats in the hallway outside her apartment door and that fleas had infested her apartment and were biting her and her dog. Lenny said nothing in response and took no action to resolve rat or flea issues.

On October 15, 2022, Tina gave Lenny a note stating that another tenant in the building was parking in the parking spot she preferred, and that tenant was playing loud music throughout the day on Saturdays. Lenny did not respond to the note.

Although Tina had timely been paying her rent since January 2022, she only paid \$600 in rent for November 2022 and gave Lenny a note saying it will cost her \$400 to repair the tub and get rid of the fleas.

In December 2022, Tina paid no rent and she continues to occupy the apartment with her dog.

Discuss what remedies might be available to Lenny and Tina.

REAL PROPERTY
Professor Justin O'Connell
Midterm, Fall 2022
Question 3

Oliver, owned Blackacre, a parcel of undeveloped land.

In 2021, Oliver's daughter Alice asked Oliver if he would give her Blackacre when he died, and he told her he would do so now. The next day Oliver executed a valid deed transferring Blackacre to Alice and handed it to her while saying, "It's all yours, but can I hold onto the deed for you." Alice said, "sure," then handed the deed back to Oliver and she left. After she left, Oliver burned the deed.

Later in 2021, Alice asked Oliver to give the deed back to her. Oliver told her he did not have time to look for it, but he would some other time. Alice angrily told him, "Fine, keep the stupid deed."

In early 2022, Oliver executed a valid deed transferring Blackacre to his son Bob for no consideration. Oliver mailed the deed to Bob with a note that said, "Blackacre is now yours – record immediately." Oliver mistakenly wrote Alice's address on the envelope. When Alice received the deed by mail, she shredded it. Bob was never aware of the existence of that deed.

In late 2022, Oliver died with a valid will that stated Charles was the sole beneficiary of any and all property Oliver owned at his death.

What ownership claims might be made by Alice, Bob and Charles? Discuss.

REAL PROPERTY
Professor Justin O'Connell
Midterm, Fall 2022
Question 1

Outline:

Actual possession

2010 – ongoing construction activity indicates adverse possessor is asserting control over property and likely sufficient to constitute actual possession. However, construction ceases, and no facts indicate Alex did anything thereafter to assert possession (no further development, no signs, no fencing, nothing to keep out trespassers).

2015 – Greta restarts construction and thereafter seasonally occupies the home. Ellen will argue seasonal occupation not enough, but circumstance of the area indicate this is how homes in that area are used.

Open & Notorious

2010 – present – clear indication that there is construction and then habitation on the property. Ellen will claim either:

- not so between 2010 when construction ceased to 2015 when it began again because the improvements would not put an owner on notice, or
- not so between 2014 and 2015 because the improvements would not put her on notice due to her belief they came with the purchase.

Both Ellen's claims likely fail due to the visibility of the improvements, and Ellen's duty upon buying to inquire about the improvements (i.e., did Developer make them or someone else).

Exclusive Possession

No facts to indicate true owner ever in possession so this is met.

Hostile

Under modern, majority rule hostility is met due to possession of another's land.

Maine rule: hostility not met because Alex and Greta were unaware

Minority Good Faith rule: hostility is met because Alex and Greta may have acted in good faith under these circumstances (size, shape, location)

Continuous

Yes if from 2010. No if from 2015.

Additional issues:

Tacking on both sides. The circumstances and time limits apply to both the adverse possessors and the true owners since transfer of possession and ownership do not interrupt the process of acquiring adversely

Outline:

Type of lease

Began as term for years, converted to periodic tenancy upon Tina staying in possession and Lenny accepting rent.

Tina:

May claim breach of warranty of habitability:

Faucet – working plumbing falls under the warranty, but the degree of problem might not rise to a habitability issue – how often is it dripping, noise, does it affect her water bill

Fleas – this might be an issue, but it appears she is creating it due to having a dog that one can presume goes outside and brought in the fleas. Fleas don't just appear in human dwellings and no indication they came from another tenant.

Rats – this might be an issue if Tina had evidence they came into her apartment, but dead rats in a common area might not be enough

Parking spot – not a habitability issue and nothing to indicate breach of other terms of the lease (e.g., designated parking spot)

Loud noise – this might be an issue, but the degree of problem might not rise to a habitability issue

May claim breach of warranty of quiet enjoyment

Music by other tenant reduce the value of her apartment, but again the issue is one of degree and this might not be a substantial interference but a normal consequence of living in a building with others

Lenny

Seek eviction for breach of term of lease for having a dog.

Seek eviction for failure to pay rent or just sue for missed rent

Tina's defense may be inadequate because she did not repair and deduct, and she is not likely to be entitled to pay no rent

Outline #3

Present Donative Intent

2021 – Oliver deed to Alice – fact supporting intent?

Tells her he wants her to have it. Give her the deed.

Subsequent destruction – cannot negate prior intent to gift, but might show there never was the intent

2022 – Oliver deed to Bob – more clearly indicates present intent

Delivery

2021 – Oliver handed over deed, and it was handed back. did he have to actually hand it to her; or were his actions enough to keep it for her – physical delivery indicates an objective relinquishment of rights

2022 – Oliver mailed deed – expectation of delivery but was never delivered.

Acceptance

(presumed unless item of no value)

Will

Only operative if no gift. If Alice was gifted Blackacre then it is not part of Oliver's estate to pass to Charles.

1)

Greta

Adverse Possession

Adverse possession (AP) is when a person takes possession of property they do not own in a hostile manner, then continuously possess that land in an open and notorious manner while excluding others from entering the property without permission. For a person to make a successful AP claim, one must do all of these things concurrently for a specific length of time that is determined by the specific jurisdiction, which is 10 years in this case.

Actual Possession

For a person to make a successful AP claim, they must first demonstrate that they actually possess the property as a true owner would. For residential property, this is typically demonstrated by either moving into the property to live, renting the property out, making improvements to an existing property, or building a dwelling unit (like a house). In this case, both Blackacre (B) and Whiteacre (W) are properties in an area where most property is used as a summer home, meaning they typically are only occupied during summer months. Here, Greta (G) purchased B from Alex (A) in 2015. G, however, believed B was W, and as such believed the property she purchased was W. When G made this purchase, there was a completed concrete slab foundation for a home, a paved driveway, and a shed located on W. Within months, G completed construction of a house on W. She began occupying W from May through September each year as a summer home, which was how all nearby homes were occupied. Ellen (E) will argue that when she came by W in December 2022 it appeared vacant because nobody had been there for months, and as such G did not have actual possession. This argument will likely be

unpersuasive since all the nearby homes would have been vacant in December of any given year, as the homes in the area were all summer homes.

Because G almost immediately began construction on a home on W and then occupied that home in a way that was typical for the area once the home was finished, a court would determine that G took actual possession of W in 2015.

Hostile

A hostile taking of land is when land is taken without the true owners permission. Here, when G purchased B from A, G believed B was W. Owners can only sell the interest in a property that they actually have, and as such even though A believed he was the true owner of W, he was not, and as such he could only sell the interest he did have in W, which was nothing at that time. In 2015 E was the true owner of W, which means that G took possession of W without the true owners permission. However, there is a jurisdictional split when it comes to the intent required for a taking to be hostile, which will be discussed below.

Majority Rule (CN)

The majority rule for intent in a hostile taking is that the intent is irrelevant and only the taking of a land without the true owner's permission is required for a taking to be hostile. As discussed above, G did not have W's true owner's permission, E, to take possession of the land. Therefore E's taking of W would be considered hostile under the majority rule.

Maine Rule

The Maine Rule is followed in a minority of jurisdictions. Under this rule, the person making the AP claim must have taken possession of land they knew they did not own. Here, while E purchased B, E believed she had purchased W. Therefore, when E took

possession of W she believed she was taking possession of land she owned. Because E did not know she did not own W, E would not have the required intent for this to be a hostile taking under the Maine Rule, and E's AP claim would ultimately fail in a jurisdiction following this rule.

Good Faith Rule

An extreme minority of jurisdictions follow the "Good Faith Rule". Under this rule, a person making an AP claim must honestly believe they own the land in which they are taking possession of. As discussed above, E believed she had purchased W. Therefore, E would have the required intent to have this be a hostile taking under the Good Faith Rule.

Open and Notorious

Once a person has possession of a property, they must possess it in an open and notorious manner. This means they must use the land as any true owner would, and not conceal that use. Whether a true owner actually is aware of the possession is immaterial, the adverse possessor (APer) must only possess the property in a way that would be enough so that a typical true owner could or should know the property is being possessed. As discussed above, E immediately finished construction of a house on W, and through 2022 occupied that house from May through September every year. A typical true owner of a property like W would have attempted to finish construction of the house so they could either use the house themselves or rent it out. Here, the true owner of W, E, did not realize G finished construction of the house on W until 7 years after the house was built, and 8 years after E purchased W.

A court would determine that E should have known G had taken possession of W because E built a house and immediately began using that house once it was done, as a

typical true owner would likely have at least looked at their property once over the course of 7 years.

Exclusive

A person must possess the property in an exclusive way for an AP claim. Here, G built a home on W and occupied it from May through September annually. There are no facts that show any other people had access to the house on W, nor that anybody else came onto W without permission. Because there are no facts to indicate G did not exclude others from W, a court would likely find her possession to be exclusive.

Continuous

Finally, in this jurisdiction a person must possess a property in a continuous way for 10 years to make a successful AP claim. The possession must be consistent with how a true owner would possess the property. Because W is a summer home, G can still claim continuous possession if she consistently occupies W during the summer months. As stated above, G occupied W every summer after building the home on W. However, G this continuous occupancy over the summer has only happened since 2015, which is 7 years. This would not satisfy the statute of limitations in this jurisdiction.

Tacking

When an APer purchases a property from another APer, they can add the years the original APer possessed the land to their own time of possession for purposes of the statute of limitations. Here, G will argue that because she bought W from another APer, A, that G can add the years A possessed W to the years G possessed W. Because A initially possessed W in 2010, it would add an additional 5 years to G's possession, bringing the total number of years to 12. However, E will argue that because A only made improvements to the land in 2010 and then never made more or occupied the land after

that, A did not have continuous possession of the land, and as such A would not have had a valid AP claim in 2015 when G believed she purchased W.

Because one must have all the elements of AP concurrently to begin an AP claim, A would not have had accumulated any years of possession for an AP claim when he sold his interest in W to G. As such, G would have started from zero in 2015 when she took possession. This would mean for statute of limitation purposes, G would not have possessed W long enough to make a successful AP claim of W.

Blackacre

If B was still vacant in 2022, G would be the true owner of it as she purchased B from A, who was B's true owner at the time. G would also be able to defeat any AP claim of B that was short of the 10 year statute of limitations.

Ellen's Rights

Because E purchased W directly from the developer, E would not have to make an AP claim to assert ownership of W. E would merely have to successfully argue G does not have a valid AP claim. As stated above, even if a court found G had taken actual possession of W in a hostile manner and occupied W in an open and notorious way while excluding others, G would only have done so for 7 years. As such, G's AP claim would fail because G would not meet the statute of limitation requirements.

85

2)

To determine the obligations, rights, and remedies of Lenny and Tina, the courts will consider the following.

Lease

A lease is a contract that governs the relationship between the landlord and tenant. Here, Lenny is the landlord (LL) and Tina is the tenant (T).

Lease Type - Residential

A lease can be either for residential or commercial purposes. Here, it is for personal home use by an individual T, therefore the lease is residential.

Lease Type - Term of Years

A lease is for a term of years when there is a specified begin and end date. With a lease that is term of years, there is no obligation to give notice of the end of the lease. Here, the original lease was from January 1, 2020 through December 31, 2021. This established a term of years, and both Lenny and Tina were already on notice for the termination of that original lease on December 31, 2021.

When a lease for years expires, and the tenant remains and tenders rent (which the landlord accepts), the lease converts into a periodic lease.

Periodic Lease

Unlike a term of years, a periodic lease has no specified end date. It continues as long as both parties meet their obligations and no notice to terminate is given. Most periodic leases are month-to-month, although this can vary. Here, in January 2022, Tina tendered

one month's rent for \$1,000, which Lenny accepted. This initiated a periodic month-to-month lease.

A periodic lease requires notice to terminate. In the majority of states the notice required is 30 days. No notice of termination was provided at any time by Tina or by Lenny, so the periodic lease remains in effect.

Lenny (LL) - Obligations - Habitability

A landlord has certain obligations to their tenants. These include a covenant (obligation) to make habitable, meaning the LL must maintain the property such that it is reasonably safe, secure, and free of pests. Here, there are several different challenges that Tina will raise against Lenny regarding the habitability of the apartment.

To raise a claim against a LL, the T must show that they gave reasonable notice and that the LL had a reasonable time to remedy the situation. They must also show that the issue rises to the level of a significant and continuous problem.

Faucet Dripping - September 1, 2022

When Tina raised the issue of the faucet dripping water into the tub she appropriately notified Lenny. Lenny said he would have someone check it, at which point he acknowledged the notice. Lenny never sent anyone to address this issue, which Tina will claim amounts to a violation of his obligation to make the apartment habitable. This claim, however, is relatively weak. A dripping faucet in a tub is not causing any material damage, and at most is a nuisance caused by the sound of the dripping. It also falls under the normal wear and tear that a T can take care of themselves. Further, there is no additional damage indicated in the facts. Lenny might not be a nice guy for promising to send someone out and then not following up, however he will argue this does not amount to so significant or harmful a problem as to constitute a violation of habitability.

Most likely, a court would agree with Lenny that this particular issue does not rise to the level of a violation of habitability.

Dead Rats - October 1, 2022

Tina appropriately reported the dead rats to Lenny on October 1, 2022, and Lenny took no action. Two rats were found but no infestation was identified, no cause of death or source of where the rats came from is indicated in the facts. Therefore, it is reasonable for Lenny to believe that this is not an infestation but rather an isolated incident. Without any evidence to the contrary, Lenny's obligations for habitability are likely met. He did not need to respond to the rat issue without additional indication of a continuous or more serious problem, such as an infestation.

Fleas - October 1, 2022

Tina appropriately reported the flea infestation to Lenny on October 1, 2022. In contrast to the two dead rats, this was reported as a serious infestation. Not only were they infesting the apartment, they were harming (biting) both Tina and her dog. This could cause real injury to Tina and was a pervasive problem. Therefore, Lenny did have an obligation to respond and redress this problem because it violated his obligation for habitability.

Other Tenant - October 15, 2022 (Quiet Enjoyment Interference)

Tina also reported complaints about another tenant in the building. She would likely intend to raise a claim of interference. A LL has an obligation to not interfere with the quiet enjoyment of the property by the T. Interference can take place by a predominant claim, the landlord themselves interfering with quiet enjoyment, or a person under the LL's control doing so. Here, the other tenant is not directly under the LL's control, so the

burden would be on Tina to show that Lenny had some influence or control over this other tenant that was interfering with her quiet enjoyment.

Additionally, her claim would be flawed because it is based on a parking spot that she preferred--not one that she was entitled to in the lease. Further, the other tenant was playing loud music throughout the day on Saturdays. Again, because Lenny has no control over the other tenant's behavior (So long as it does not violate their lease) he cannot be liable for this interference.

If there is a noise statute that the other tenant is violating, Tina could bring a cause of action for nuisance and report the other tenant for violating noise ordinance. However, in these facts it seems that the loud music was during the day and on a weekend; therefore, it is unlikely that this would be prohibited by statute.

Tina has no recourse against Lenny for the behavior of the other tenant, and would be limited to bringing a separate claim against the neighbor.

Tina (T) - Remedies

A tenant has remedies available to them when there is a violation of the habitability or quiet enjoyment of the leased property. Here, Tina is claiming several violations from September 1 through October 15, 2022.

Typical remedies that are available for tenants are: (1) to withhold rent, at which point the LL can sue to recover; (2) to cure the damages and deduct costs from rent; (3) constructive eviction.

Constructive Eviction

Constructive eviction requires that the tenant has abandoned the property. Here, Tina remains in the apartment. Therefore, there is no constructive eviction.

Withhold Rent

In December 2022, Tina withholds rent entirely. She will claim that this is done in response to the violations of the warranty for habitability by Lenny. A tenant does have the right to withhold rent when there is an outstanding claim that the property is not habitable. However, this also gives the LL cause to sue.

Lenny could sue to recover December 2022 rent, however he would have to justify his lack of action on the issue of the fleas. Most likely a court would not support withholding rent for the dripping faucet or two dead rats with no further evidence of infestation. However, if Tina and her dog are still suffering from bites as of December 2022, a court would probably consider that the LL obligation for habitability was violated.

Deduct Damages from Rent

In November 2022, Tina paid only \$600 in rent and deducted the remaining \$400 for the costs to repair the faucet. She will claim that it was Lenny's responsibility all along to ensure that the faucet did not drip. First, to make this claim effective, Tina will need to justify the costs of repair. Next, she will need to show that the issue was beyond normal wear and tear, and not something that she herself had caused by damage or waste. If the costs were reasonable and she did not cause the damage, a court would likely find that this deduction was appropriate.

Tina (T) - Obligations

A tenant has certain obligations implicit in any lease. These include the obligation to not cause waste, to provide reasonable notice of any defects, and to pay rent.

Lease Terms

A tenant must abide by the terms of a lease. This includes prohibition of pets. Tina violated this term from at least October 1, 2022 when she reported to Lenny that fleas were biting her *and her dog*. She gave Lenny notice of this violation, therefore opening up his opportunity to seek remedy.

Waste

Waste is caused when a tenant causes damages to a property that a landlord must later fix or return to a previous state. Here, the facts do not specify the cause of the dripping faucet. If this was caused by some misuse, or ameliorative effort, on Tina's part, then there may be a violation of this obligation. Because this is not specified, the presumption would be that Tina did not cause the damage and was not responsible for any waste.

Reasonable Notice

A tenant must provide reasonable notice of any defects in a property in order to assert any claim regarding lack of habitability or interference (lack of quiet enjoyment). In each of the situations here, Tina provided reasonable notice to Lenny. For the tub, he responded that he would have someone come to check (but never did). For the rats and fleas, Lenny did not respond.

Reasonable notice is such that a reasonable landlord would be made aware of the defect and have the opportunity to resolve or redress the issue. Here, just because Lenny did not respond does not mean that reasonable notice was not provided. He should have responded, as a reasonable landlord would do. Therefore, he would not be able to claim that he was not provided notice of the defects.

The same would be true for the other tenant that Tina reported. Reasonable notice was provided, irrespective of Lenny's lack of response.

Pay Rent

A tenant has an obligation to pay rent. Here, Tina consistently paid rent - first on her Term of Years Lease, next on her Periodic Lease - through October 2022. In November 2022 she deducted repair costs from her rent, and in December 2022 she completely withheld rent.

A tenant may withhold rent or deduct damages when there has been a violation of their rights of habitability or quiet enjoyment of a property. Here, this is precisely what Tina will claim as justification for the reduced and then withheld rent payments.

This opens the opportunity for Lenny to sue to recover the unpaid rent.

Lenny (LL) - Remedies

When a tenant fails to pay rent or causes waste, a landlord has certain remedies available to them. Here, there is no indication of waste, but Tina did fail to pay full rent in November 2022 and all rent in December 2022, totaling \$1,400 in possible back rent owed. Lenny has the remedy available to him to sue for this back rent, to provide notice of termination of the lease and begin eviction proceedings, or to accept Tina continuing to live there without paying rent. He could also respond to her claims by eliminating the fleas, or agreeing that the repair in November was reasonable.

Sue

Lenny can sue for the rent that he is possibly owed for \$1,400 from Nov and Dec 2022. To recover all or part of this amount he would need to show that Tina's withholding rent

was not reasonable. To do this he must establish that he had not violated his obligations to provide a habitable residence or ensure quiet enjoyment.

With respect to the neighbor, and a possible claim of interference, Lenny would most likely prevail against Tina. The other tenant is not in Lenny's control, so it was unreasonable for Tina to expect him to do anything. Interference only happens when the landlord or someone under their control (or a prevailing title claim) is the cause of the lack of quiet enjoyment.

With respect to the faucet, whether or not this is upheld by a court will depend on the cause of damage, not specified. If it is normal wear and tear that a tenant would normally be expected to deal with, they may reject the reduction of rent in November. However, if the damage was not caused by Tina and was not typical wear and tear, but something more significant, then the court will likely uphold the reduction of November's rent.

With respect to the rats, there were only two dead rats on one occasion with no further evidence, so it is unlikely that a court would consider this a violation of habitability.

For the flea issues, however, if a court finds that Tina's rights to habitability were violated by Lenny not responding to the flea infestation, then they would give significant weight to Tina's claim that her withholding rent was justified.

Lenny would have a reasonable chance to recover some part of the rent he is owed, however he would not recover all of it if the court found that the habitability of the apartment was sufficiently violated.

Notify and Evict

Because the lease is periodic as of December 2022, Lenny has the option to notify Tina that he intends to terminate the lease. 30 days later, Tina will need to have left or Lenny

can begin eviction proceedings. This process would be considered separately by the court from any action related to withholding rent. Lenny could attempt an eviction even sooner, but he would need to show that Tina's withholding rent was egregious and unjustified. Here, it would be far better for him to provide notice and begin eviction after the 30 days was up. This way he would be free of his obligations after the 30 days, and the lease would convert to a lease at-sufferance.

A lease-at-sufferance is created when there is a holdover from the end of a lease term.

Accept

Lenny could also accept the lack of payment of rent as reasonable in November, and could acquiesce to lack of rent payment in December. He could also seek a combination of these by accepting November's damages as reasonable and continuing to demand rent for December.

If he continued to allow Tina to remain without demanding or collecting rent, the lease would convert into a lease-at-will. There are no covenants or obligations under a lease-at-will, so Lenny would no longer have any obligation to correct the problem of the flea infestation. He would also give up his rights to collect rent.

At any time thereafter, Lenny could demand that Tina leave, turning the lease into a lease-at-sufferance.

Lease-at-Sufferance

A lease-at-sufferance exists when a party holds over and remains on the property beyond their obligation to vacate. If the lease became at-sufferance by Tina remaining after Lenny properly terminates the lease and demands she leave, Tina would have no rights or remedies, and Lenny would be able to initiate eviction at any time.

Repair

Lenny could also repair the flea problem by hiring an exterminator. He would then be in a much better position to sue for withheld rent beyond the point where he fixed that issue.

90

3)

When Oliver died in late 2022, Alice, Bob, and Charles will also bring a claim of ownership of Blackacre. Because there is a probate process for Oliver's will, it would likely be in contesting this will that Alice and Bob would raise their claims in objection to the will's transfer to Charles.

Alice's Claims of Ownership

Alice's claims of ownership will rely on what transpired between her and Oliver in 2021. For transfer of a deed it must be valid, there must be donative intent by the grantor, it must be properly delivered, and accepted by the grantee.

Valid Deed

For a deed to be valid it must be in writing and signed by the grantor. The facts state that Oliver executed a valid deed transferring Blackacre to Alice.

Intent

For transfer of a deed there must be donative intent. Oliver told Alice in 2021 that he would give her Blackacre when he died. The condition provided (Oliver's death) does not invalidate his donative intent. *↑ no valid int*

However, Charles will raise this as evidence that because it was conditional on Oliver's death, this deed was essentially a will. Because the will transferring all property to Charles was valid, if Oliver's promise to Alice to give her Blackacre upon his death was a will, it was presumably invalidated by the will stating Charles as sole beneficiary.

Delivery not complete

For transfer of a deed there must be a valid delivery of a deed. When a grantor gives a deed and immediately takes it back, this is an illusory delivery. The grantor maintains possession and control over the deed. Here, Oliver asked Alice if he could hold onto the deed for her. She acquiesced.

In Alice's claim she will argue that this delivery was not illusory, because Oliver simply asked for permission to hold onto the deed, he did not insist on taking it back or make that a condition of his gift. In refuting Alice's claim, Charles will argue that Oliver never truly relinquished the deed, and that because he took back possession there was no effective delivery. The fact that Oliver burned the deed after Alice left lends significant weight to Charles's claim on this point.

not really. It might go to intent, but delivery occurred or not before the burning

If Oliver truly intended to deliver the deed eventually, he would not have burned it. The act of burning is a reasonably clear signal that the delivery was invalid. If the court finds so, then Alice's claim will be defeated for lack of delivery.

not so clear, but it might indicate he never believed he had given it up & therefore had the right to destroy

Acceptance

Alice initially accepted the deed, although she did not sign it. Some jurisdictions require the signature of the grantee for acceptance to be valid. If Blackacre is in such a jurisdiction, then Alice's acceptance was incomplete. If the jurisdiction does not require signature of the grantee, then she will have accepted the deed. Alice will argue in her claim that she believed Oliver was simply holding the deed in good faith, and that her acceptance had been clear.

Alice will also argue in her claim that when she asked Oliver to give her that deed later in 2021, she was clearly acting under a good faith belief that she had already accepted the deed.

Later Rejection of Acceptance

When Oliver told Alice he did not have time to look for the deed, she responded that he "keep the stupid deed." Charles will raise this as evidence that her acceptance was incomplete all along, and eventually rejected by this statement. Alice will claim that this was merely words in anger, and that she had in fact intended acceptance all along. Unfortunately for Alice, her outward actions do lend themselves to a claim by Charles that her acceptance was incomplete.

Alice's Claim - Conclusion

Alice will raise a claim of Blackacre on the grounds that it was properly gifted to her in 2021. However, Charles will be able to respond to show a lack of complete delivery when Oliver took back and burned the deed, and a lack of proper acceptance. Even if the court finds for Alice that she did properly accept the deed, the facts point to the conclusion that delivery was incomplete. Therefore, the gift to Alice never occurred and her claim will fail.

Bob's Claims of Ownership

Bob could potentially assert a claim of ownership of Blackacre in response to the will naming Charles the sole beneficiary, but for one major hurdle--he never knew of the existence of the deed. If he should learn about it from Alice in the course of the proceedings, this could provide him with the basis to raise a claim. Or, if he was otherwise aware of an intended gift by Oliver to transfer Blackacre to him, Bob could argue that even though the deed was not recorded, it was still a valid transfer of ownership.

Not a BFP - no consideration

A person who provides consideration in exchange for a property deed and who has no prior notice of a superceding claim is a bona fide purchaser (BFP). BFPs have additional rights relating to the transfer of deeds beyond those of a grantee who is not a BFP. Although there is nothing to indicate that Bob was aware of or had notice of any

superseding claims on Blackacre, he did not provide any consideration. Therefore, he cannot be a BFP.

Similarly, Alice provided no consideration and cannot be a BFP.

Still Valid even though not recorded

When a deed is recorded it provides constructive notice that there is a valid claim on the property to any subsequent BFP or grantee. The type of jurisdiction will influence precisely what rules are needed to establish the preeminent claim to the property.

In a race jurisdiction, the first to record will win the claim. In a notice jurisdiction, the most recent BFP without notice will win, and by recording the BFP will put all others on notice. Although Alice and Bob were not BFPs, they would still have an opportunity to record since there had been no notice to either of them of a prior claim. In a race-notice jurisdiction, the first person to record who had no notice at the time of recording will have the winning claim.

Here, the specifics of the jurisdiction do not influence the outcome so much as the simple fact that neither Alice nor Bob recorded a deed. This does not invalidate either of their claims to title, however, it does limit their claims significantly, especially in a race or race-notice jurisdiction.

Donative Intent - Bob

Donative intent, *supra*, is necessary for a valid transfer of deed. Bob wrote a note to Bob along with the deed sent to him in early 2022 stating "Blackacre is now yours--record immediately." This statement clearly establishes donative intent by Bob. Further, it constitutes an affirmative transfer of title ("now yours"), which gives Bob's claim significantly more weight than Alice's, since the transfer to her was conditional upon

Oliver's death. Since Oliver had not died when he gave Blackacre to Bob in 2022, he still had the right to rescind the transfer of deed to Alice.

Delivery

As supra, a deed must be properly delivered for an effective transfer to have taken place. When Oliver mistakenly addressed the envelope containing the deed to Alice instead of Bob, it provided basis for both Alice and Charles to claim that this delivery was ineffective. Although Oliver's mistake was an honest one, and his intent was to give to Bob, the deed still never was delivered correctly to Bob. Bob did not even know about its existence, and was never made aware of it. If Bob raises a claim to Blackacre in challenging the will leaving it to Charles, his claim may fail for ineffective delivery.

However, delivery does not necessarily require physical delivery. Words alone can be enough, and no words are required. However, delivery does require that the grantee have knowledge and notice of the delivery. Here, because Bob was never aware of the deed's existence, a court would likely find that this delivery was ineffective, in spite of the clear intent by Oliver to transfer. Even if the court does find that the delivery was valid, Bob's claim will still have to show that he accepted the deed transfer.

Bob unaware - no acceptance

Supra, acceptance is required for transfer of a deed. Here, Bob was unaware of the deed's existence, therefore he could not have accepted it. Acceptance is generally presumed unless a signature is required, but that presumption is based on the grantee having knowledge. Because Bob had no knowledge of the deed for Blackacre, there could not be an acceptance, and therefore his claim will likely fail for lack of acceptance. This would especially be the case in a jurisdiction that required a grantee signature for valid acceptance.

Conclusion - Bob

Bob's strongest claim is rooted in the note, meant for Bob and attached to a deed that named Bob, where Oliver stated "Blackacre is now yours." If Bob has any other evidence to show that he was aware of this, then he will claim that even though the deed was not delivered, the transfer of title was valid when Oliver definitively stated that "Blackacre is now [Bob's]." Unfortunately for Bob, the facts do not point to such knowledge on Bob's part. However, to Bob's advantage, there are no further claims against Blackacre until Charles by will after Oliver's death.

If a court does find that Oliver transferred title to Bob in early 2022, then Oliver would no longer have owned Blackacre. Therefore, it would not have been part of the estate transferred to Charles. Without any evidence showing knowledge of the transfer of title, however, Bob's claim for this is relatively weak.

Charles's Claims of Ownership

Charles will refute both Alice's and Bob's claims to Blackacre, and argue that it was part of the estate transferred to him by will upon Oliver's death.

He has a strong claim to bring in challenge to the claims of both Alice and Bob.

Valid vs. Alice

For a grantor to properly transfer a deed to a grantee, there must be donative intent, delivery, and acceptance. Here, Charles will argue that Oliver never effectively delivered the deed to Alice. By taking it back, he frustrated a complete delivery. The fact that Oliver burned the deed lends significant weight to this argument. Alice's claims to Blackacre will likely fail against Charles's interests as beneficiary.

Additionally, Bob will claim that title never transferred to Alice at all, because Oliver's intent was that she have the property after Oliver's death. Later, Oliver expressed through his written instructions that he was transferring title immediately to Bob. Alice could raise the same challenges to Bob's subsequent claim as Charles would raise.

Valid vs. Bob

Supra, there must be donative intent, delivery, and acceptance. Here, unlike with Alice, there was some evidence of a transfer of title. The court will consider this if Bob is able to bring a claim. To succeed in such a claim, Bob would need to show knowledge and provide further evidence that is simply not indicated in the facts provided. Therefore, Bob will not be able to show that his claim is superior to Charles's. If Bob had been able to record the deed, as instructed in the note from Oliver, this would lead to a very different conclusion. However, with no knowledge of the deed, and nothing to indicate knowledge of title transfer, Bob's claim on the property is weak compared to that of Charles.

Conclusion - Charles

If neither Alice nor Bob owned Blackacre when Oliver died, then it transfers to Charles by Oliver's valid will. Alice and Bob (assuming he has any knowledge of title transfer) could both potentially claim that they own Blackacre. If they succeed in such a claim, then the property was not part of the estate and Charles has no claim to it.

However, both Alice's and Bob's claims are weak for reasons stated above. Namely, delivery and acceptance are incomplete for both. Further, Bob is not a BFP, which might provide him with additional grounds to claim a valid transfer of title--but if he had provided consideration, which here it is clear he did not.

Therefore, Blackacre will most likely belong to Charles.

50