

ID:

Exam Name: Prop1_LSN_(Bernhardt)_Final_F08

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Grade: _____

1)

1. Brilliant (B) v. Edna (E) & Frank (F)

I am happy to advise you on your situation. First things first, it seems to me that you hold a valid lease with E&F because leases have a fixed duration that is not terminable at will. Also, provided that the lease is written for Statute of Fraud purposes, you are bound. Finally, because the lease specifically defines the first floor as the space to be rented, the lease is further validated. Therefore, it seems that you are liable for the rent (\$10,000 a month) because of your express agreement and your liabilities do not terminate upon transfer.

However, there is some good news. Because your lease has a fixed commencement and termination date it is a tenancy for a term. These may be for any fixed amount of time and terminate at the end of term without having to give notice. Therefore, you can only be held liable for rent during the twenty years and only as they fall due. Regarding your assignment and sublet restraint, it is a valid restraint on your alienation. At common law, if a lease is silent on alienation, tenants are free to transfer. On the otherhand, express restraints are valid so long as they are not disabling restraints (outright prohibitions). Here, you do not have a disabling restraint because alienation is not prohibited outright, rather it is subject to the E&F written consent. At common law, consent could be held unreasonably, but in CA, consent must be reasonable.

In this instance, E&F did provide written consent, so your sublease with Stacker (S) is valid and he will be liable to you for the monthly rent (\$10,000). It is a sublease as opposed to an assignment because it was not a grant of an entire interest because you reserved one day for yourself. So your liability for rent to E&F may be offset by what you can collect from S. In addition, consent from E&F for the sublease was given because S fulfilled the condition of assuming your liabilities. In this case, E&F will probably be able to collect from S directly. Assumption provides that the subtenant and the landlord enter into an agreement whereby they become liable to each for the original lease since they are now in privity.

Nonetheless, E&F may simultaneously seek rent from both you and S because you still have privity of contract and estate with E&F.

B v. S & Asgood (A)

Since you have a valid sublease with S, via consent from E&F, he is liable to you for \$10,000 a month as it falls due because he is in privity of contract and is therefore liable. Also, under Dumphy's Rule, E&F consent to your original sublease with S prevents them from requiring consent for any subsequent assignment or sublease. As a result, S's subsequent assignment to A was valid because consent was not necessary. Nonetheless, the acceptance of the rent payments from A to E&F would provide any

required consent.

Because there is no express agreement, there is no privity of contract between you and A for any rent liabilities and you would not be able to collect from A. Also, since you did not convey or transfer the property to A (S did), there is no privity of estate that you could collect on. However, S can collect from A any rent due because they are in privity of estate and contract. So as S collects from A, you can collect from S and you would not be entirely liable for the rent owed to E&F.

2. S v. E&F

I am pleased to help you with your problem. Lets get started.

Because you assumed all the lease obligations, you not have an express agreement with E&F, placing you in privity of contract with. The will make you directly liable to E&F. Because E&F are tenants in common, they own proportional interests in any rent collected and they therefore have a proportional interest in the rent you owe. Because consent was not required for you to assign or sublease you interest, you have not abandoned your interest. Had you abandoned without assigning or subletting, your interest would not have terminated and E&F would have three options for recourse under the common law: 1) do nothing and sue you for rent as it becomes due, 2) accept your abandonment as a surrender or 3) rerent the property on your account and then sue you for the difference between what she can get for it and what you owe. In CA, the first option is eliminated and mitigation is required.

Nonetheless, you did not abandon and you are still directly liable to E&F because you assumed all obligations of the lease through a contract.

S v. B

As a sublessee, you are directly liable to B (sublessor), via privity of contract. You agreed to pay \$10,000 a month for possession of the property and are liable for the payments since the property was conveyed to you in operable condition.

Had the property been possessed by B when it was transferred to and had he not relinquished possession, you may not have been liable to B under the English common law rule governing holdovers that actual possession must be provided (as opposed to American Rule where legal possession is sufficient).

However, actual possession was provided and you remain liable directly to B because of you sublease agreement.

S v. A

Your assignment with A was valid because consent from E&F was not required. Further, he possessed the entire remaining interest because it was an assignment. As a result, A would be liable to you for the remainder of the lease and liable for rent to you as it falls due. Since he has only paid you \$4000 dollars for the last two months, you will be able to recover \$12000 from him because that is the difference between the rent paid and the rent owed to you. The fact that business is no longer prosperous has no affect on the commitments between you two and A will be responsible for the remainder of the rent.

The fact that A has Newson (N) as an alternative subtenant may be relevant in what you can collect from A. In CA, there is a duty to mitigate. Therefore, you should probably accept Newson at \$7500 dollars a month for future monthly rent and sue A for \$2500 (the difference between rent paid N and rent owed by A).

However, you can still collect \$12000 (\$6000 times 2) from A because that rent is past due.

3. A v. E&F

Because you are not privity with E&F, they cannot collect from you directly. Nonetheless, your relationship with them is still important. Your best bet would be to assign or transfer your interest to N for \$7500 a month because E&F no longer has to consent. This would reduce your liability from the entire rent to only \$2500 a month. So long as the rent obligation to E&F are not fulfilled, the interests of you assignor in collecting rent from you to fulfill the rent obligations to E&F will remain.

As a result, you will be liable for at least \$2500 a month for the remainder of the term unless you can find another subtenant/assignee who will pay

A v. B

With respect to B, I have some good news. There is no privity between you two, thus you are not directly liable for rent to B.

A v. S

Because you have an agreement for assignment with S, you are in privity of contract and estate, and you are directly liable for rent to him. The fact that it is an assignment makes you liable for the rest of the term.

Your best bet would be to transfer your interest to someone who can pay more rent so that you are not liable for the entire \$10000. Also, you would be liable for less than \$6000 a month (the difference of what you can pay and what you owe)

4. E v. F

Since you and F are tenants in common, you both have the legal right to possess the whole property, no right to survivorship, and are presumed to own the property in proportion to the share of funds you put up to buy it unless otherwise specified. Both you and F have equal rights to exclude third parties and receive a proportional share of rental income.

Concerning tenancies in common and transfer, each co-owner is free to convey their separate interest without the permission of the other owner. Therefore you can accept Newson's proposal even if F objects. However, you will have to give F his proportional share. Under the Statute of Anne, rent accepted by one tenant in common is holding it in trust of the estate and is liable to other co-owners for their proportionate share.

If you chose not to give F his share of N's rent, F's recovery may be offset by him recovering his interest with a greater share of what can be collected from B, S, A, or N. Also, F may be less liable for mortgage debts if he is not completely reimbursed for his rental income.

To resolve your dispute, I would suggest that you two have the property partitioned. This means the property will be sold and the proceeds will be divided among you two according to the proportionate interest owned. You two can either partition the property voluntarily (by mutual agreement) or have a judicial partition. They will either equally divide the property among you two (In Kind) or sell it and divide the proceeds (By Sale). This would be the best way to receive your proportionate interests while avoiding future disputes.

END OF EXAM