

ID:

Exam Name: Prop1_LS3_(Stanley)_Final_F08

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Grade: _____

1)

Question 1

When considering what Tenant's legal rights, responsibilities and remedies are, we must first discuss his lease. Tenant was originally in a term lease for 2 years. When Tenant stayed passed the expiration date, and LL continued to accept his rent checks (section 7) he accepted his continued leasehold as a year-to-year lease because the original lease was for an annual rent. As with any tenant, Tenant has three duties (1) to pay rent, (2) to prevent waste, and (3) to not use the premises for illegal activity. One of Tenant's problems arises from the duty to pay rent. As T found out upon his return from vacation, Fingers, had stopped paying rent on his behalf. T owes LL 3 months of rent.

T may argue that the lease should be terminated because of the destruction from the hurricane (section 5). However, the only damage to the premises was the window, which was easily fixed. He may further argue that because he did not have power or phones, and that sanitation, police, fire and health services were down for 3 months, that he should not have to pay those months of rent. Although those things are out of the LL's control, it is one of the LL's duties to provide and maintain a habitable premises and being w/o electricity and sanitation certainly is not habitable. T may not have to pay rent for those months that he could not have used the business.

T may try to argue that LL breached his duty of interfering with T's quiet enjoyment by causing his constructive eviction, however, the uninhabitability must be the result of something the LL did or did not do, which it is not, and the T must have vacated the premises, which he did not. Therefore, that would not be a remedy that T could use.

LL would argue that T has many responsibilities within the shop when it comes to prevention of waste. There are three types of waste: (1) voluntary waste, (2) ameliorated waste, and (3) permissive waste. In our case the waste was neither voluntary, where the T did something intentionally to casue damage, nor ameliorated, where the T changes the premises in a way that changes the nature of the property. In this case the waste was permissive. In leaving someone else

in control of the property, and not keeping tabs on what was happening there, all of the extra damage that resulted after Fingers left would be the responsibility of the T. Had appropriate measures been taken in the beginning, the stolen fixtures and other damage could have been prevented. As a result of T not using ordinary care, according to section 11, T is responsible for all of the repairs needed in the shop.

T would argue that Fingers is responsible for the damage. In our case, where a tenant has taken on a sublessee, T must still answer to LL because he is the only one with privity of contract and privity of estate with LL. Fingers has privity of contract with T. This means that violation of covenants in the contract between T and Fingers would be a remedy that T could pursue. Fingers has not paid rent to him either, therefore, T would have grounds to terminate that sublease and sue for the unpaid rent, as well as the damages that resulted from Fingers not using ordinary care.

Should T want to terminate the lease as soon as possible, the best he could do is to give proper notice to LL for termination of the lease on March 31, 2010. It is too late to terminate for the end of the current lease period. For a year-to-year tenancy, notice needs to be given 6 months before the end of the current lease period, and this period ends on March 31, 2009, only 4 months from our November meeting. T is stuck in this arrangement for a long time, so he should buckle down and start making repairs so that he can reopen the shop and make the money he will be spending on the repairs.

Question 2

In deciding this case, first we must determine if Old E's use of the driveway constituted an easement. An easement can be created in several different ways, (1) by express contract or reservation, (2) by implication by necessity, (3) by estoppel, (4) by implication by prior use, or (5) by prescription. In our case, there was no agreement between the parties that Old E could use the driveway to get from parcel A to the open space to ride his horse, therefore, there is no express easement. For an implied easement by necessity, there would need to be strict necessity for ingress and egress and the necessity would have to have been created by the severance. Our facts do not support these requirements, therefore there is not an implied easement by necessity. In order for there to be an easement by estoppel, there would have had to have been an agreement for use in the first place that Old E was relying on and changing his position in reliance of. That did not happen, so there is no easement by estoppel. In order to have an implied easement by prior use, there must be a severance of land, prior use of the tract of land before the severance, and some necessity (majority rule says reasonable necessity, minority rule says strict necessity) for the easement. In our case there appears to have been a prior use of that ridge, by Old E to get to the open space. Our facts are unclear as to how necessary it was him to use that route, but under the majority rule, a reasonable necessity is all that's required. There may possibly be an

implied easement by prior use. However, Old E's best case that the driveway is an easement would be that it is a prescriptive easement. In order for use of a tract of land to ripen into a prescriptive easement, the user of the tract must satisfy all of the requirements of adverse possession (except exclusivity). In our case, Old E's use of the land was hostile and adverse. Doc and Architect never granted permission for him to use the driveway. They never complained, but acquiescence is not permission. The use was continuous. He rode his horse on that driveway every day. The use was open and notorious. Doc and Architect often saw him riding as they came to and from their home. And finally, he used the driveway for longer than the statutory period for our jurisdiction, which according to section 1 is 5 years. Old E had used it for 6 years when he died. I find that Old E acquired an easement of the driveway by prescription.

Because this easement benefitted the use and enjoyment of another parcel of land, Parcel A, it is an easement appurtenant. Appurtenant easements run with the land, thus, the easement now belongs to Son E because when he acquired Parcel A upon his father's death, he also acquired the use of the easement.

Our next issue is whether the use by Son E of the easement has expanded to an unacceptable level. There are two different parts to this question. (1) Would the increased volume of horses at the stables violate the scope of the easement? and (2) Can Son E use the easement for his use and enjoyment of Parcel B? First, when Son E inherited the stable, it was designed to board 20 horses. That had been the size for 25 years. Now, he has decided to expand the stable to accommodate 100 horses. Although that is quite a large increase, this would not be a violation of the use of the easement. The dominant estate has the right to grow in way that would be reasonable for the type of property that it is. In this case it would not be unusual for a stable to grow and take on more boarders. The increased volume of traffic on the driveway would not be an unreasonable burden to the servient estate, as long as the driveway is still being used in the manner to which it has customarily been used. In this case, people could not start parking on the driveway, but use as a path to get from Parcel A to the open land will still be permissible.

The second part of our question concerns the use of the driveway to accommodate the use of Parcel B. This new use is not acceptable. The scope of an easement cannot be expanded to include use in getting to a different piece of land that is not the dominant estate. It does not matter whether or not there is an increased burden on the servient estate. If the easement is there to benefit Parcel A, it cannot be used to benefit Parcel B. Architect will be granted an injunction against Son E's use of the easement for passage to Parcel B. He will not be granted an injunction to stop all use.

END OF EXAM