MONTEREY COLLEGE OF LAW

REAL PROPERTY
Final Examination
Spring 2020
Prof. Justin O'Connell

INSTRUCTIONS: There are three (3) questions in this examination. You will be given four (4) hours to complete the examination.

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Question 1

Adam bought Blackacre, which was a one-acre parcel of undeveloped property in the country. Blackacre was adjacent to a fifty-acre parcel called Whiteacre owned by David. At the time Adam purchased Blackacre, David operated a small chicken farm on Whiteacre with about 200 chickens. David had a permit to house up 200,000 chickens, and Whiteacre was zoned to permit such use of the property. No foul odors or dust emanated from Whiteacre.

After buying Blackacre, Adam applied for a building permit to build a single-family home for him and his family to live in on Blackacre. While his building permit was pending approval, David sold Whiteacre to Chicken Town, a national egg company, and properly transferred the permit to Chicken Town to house up 200,000 chickens.

After Chicken Town purchased Whiteacre, Chicken Town began construction of an immense, industrial chicken egg operation under authority of the permit and in accordance with zoning regulations. By the time Adam's building permit was approved for his home, the number of chickens housed on Whiteacre had already increased to about 100,000, and Chicken Town employed 75 people on site.

During the construction of the home on Blackacre, Adam could smell an ever-present odor from the chickens at the homesite. Adam also noticed that dust that might be from remote piles of dried chicken manure on Whiteacre was settling on objects at the homesite on Blackacre. Adam set up loudspeakers at the homesite that played the sounds of predatory birds at night, and the loudspeakers were directed at the housing for chickens on Whiteacre. The chickens became agitated from a lack of sleep and stopped laying eggs, thereby causing Chicken Town to lose revenue.

What rights and remedies do Adam and Chicken Town have against one another under the doctrine of nuisance?

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Question 2

Oscar owned two adjoining 40-acre parcels called Blackacre and Whiteacre. Blackacre was undeveloped and adjacent to a paved public road called Greenbranch Drive. Oscar lived in a home on Whiteacre and used a dirt driveway across Blackacre to access Greenbranch Avenue from the home. Whiteacre was adjacent to a public dirt road called Holly Lane that was full of ruts from a lack of upkeep, so Oscar never accessed Holly Lane from the home, and there was no driveway from the home to Holly Lane.

In 2002, Oscar sold Whiteacre to Adam. Prior to and at the time of the sale transaction, Oscar made no representations to Adam about any right for Adam to use the dirt driveway across Blackacre, and Oscar did not grant Adam an easement for the use of the dirt driveway. After the sale, Adam did not live at Whiteacre, but visited several times a year until 2017, and did not visit the home at all after 2017. When he did visit, he drove across the existing dirt driveway on Blackacre to access Whiteacre.

In 2019, Oscar sold Blackacre to Diane. The deed to Diane contained an exception providing "Adam an easement for ingress and egress to Whiteacre" but did not designate the location of the easement.

A week later, Adam sold Whiteacre to Charles. Charles immediately began substantially remodeling the home on Whiteacre. Diane saw the increased traffic along the dirt driveway across Blackacre due to the remodel, so she erected a fence across the driveway to prevent the traffic.

Discuss the rights of Charles and Diane regarding Charles' use of the driveway. (Do not address any prescriptive easement claim.)

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Question 3

In 2015, Able and Charles purchased Blackacre, acquiring title as "Able and Charles, as joint tenants with right of survivorship." Blackacre consists of three acres of commercial property in California. Able paid 80% of the purchase price and Charles paid 20% of the purchase price. The parties never had an agreement about how to apportion income and expenses for Blackacre.

After the purchase, Charles managed the rental income from Blackacre. Charles only gave Able 10% of the net rental income after charging Able's share with a management fee for Charles' services. Also, Charles spent $20,000 of his own money for the necessary repaving of a parking lot on Blackacre, and $5,000 of his own money to repaint the exterior of the buildings on Blackacre from beige to purple.

In 2017, Charles contracted with a professional property management company, Delta Properties, to manage the property. Delta Properties immediately spent $20,000 of the rental income to paint the buildings beige because of complaints by tenants about the purple color. Delta Properties charged a management fee that was one-third of what Charles had been charging Able. Delta Properties sent all net rental income to Charles, which Charles did not share with Able.

In 2019, Charles obtained a loan from Larry for $10,000 and provided Larry a properly recorded mortgage secured against Charles' interest in Blackacre.

Charles recently died intestate.

Does a cause of action for partition exist?

If a cause of action for partition exists, discuss the claims of Charles' estate and of Able.

Discuss whether Larry retained any rights to repayment and under the mortgage after Charles' death.

1)

Question 1

Prof. O'Connell

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What rights and remedies do Adam and Chicken Town have against one another under the doctrine of nuisance?

Adam v. Chicken Town

Adam may have a claim against Chicken Town for nuisance when they constructed a large chicken farm on Whiteacre, creating a non-trespassory invasion that caused substantial and unreasonable interference of Adam's private use and enjoyment of his property.

Nuisance

A private nuisance is any non-trespassory invasion that causes a substantial and unreasonable interference of another's interest in teh private use and enjoyment of the land. The standard requires unreasonable interference. So a person that is abnormally sensitive to the interference may cause bar a claim to nuisance.

Abnormally Sensitive Individual

The courts, while determining the unreasonableness of teh interference, will consider whether the individual that is harmed from the nuisance is overly sensitive or unusually

sensitive to the interference. If the party is found to be not representative of most people in relation to their sensitivities to the same or similar interference than this may be a bar to a claim to nuisance. Here, we do not see a specific reference that Adam is unusually sensitive to chicken odors or dust. While he does claim that the odor is ever-present and the dust is settling on objects at Blackacre, there is no reference to him or his family being unusually sensitive to this claimed interference. We also see that Adam simply references that he "noticed" dust with no further reference to the extent at which dust is present. Therefore, the abnormally sensitive individual element may not be at play in this case.

Invasion Must be Unreasonable. Abnormally Sensitive individuals to the interference is not unreasonable. A test for unreasonable (Rest. 2nd s. 826) looks at the Gravity outweighs the Utility and the Harm is Serious and Expensive. Unreasonable behavior includes Negligent and Reckless Conduct and Abnormally Dangerous acts.

When Adam bought Blackacre, the parcel consisted of an undeveloped property in the country. Blackacre was adjacent to a fifty-acre parcel called Whiteacre owned by David. At the time, David operated a small chicken farm on Whiteacre with about 200 chickens. There were no foul odors or dust emanating from Whiteacre. Adam will claim that he could not have anticipated a large scale chicken farm such as Chicken Town. When he arrived the property there was only David and 200 chickens next door. He planned to build a home for his family in the country. It was unreasonable for Chicken Farm to expand the chicken egg operation after their purchase and start an immense, industrial operation. He could never envision 100,000 chickens and 75 employees working just next door.

Chicken Town will counter by saying that They are a well known, national egg company and properly transferred the permit held by David to Chicken Town to house up to 200,000 chickens. Adam should have inquired on the scope of the operation that was a potential for David and future businesses. Additionally, Chicken Town was not violating

the permit, which is in accordance with zoning regulations. In fact, they only increased the number of chickens to 100,000, half the capacity of the operation that was authorized by the permit. Additionally, their land is a vast area of 50 acres capable of holding twice the number of chickens. Therefore, their operation is reasonable under the law, the permit, and the current conditions of the local.

Gravity Outweighs Utility and is Serious and Expensive

Adam will claim that the smell of an ever-present odor form the chickens and the dust settling on objects on his property are damaging to the enjoyment and use of his land. The value of his land will decrease not only in use and enjoyment but potential resale now and in the future. The expansive operation far outweighs the utility to his property and the countryside that he chose to live in. The cost to him and his family is serious and expensive for him to solve on his own without Chicken Town stopping their operations.

Chicken Town will say that the employee 75 people from the local community and that they have increased the areas economy through this employment. They may also claim that they have added to their national production of chicken eggs that is valuable to the nation as a food commodity. Chicken Town will claim that the chicken odor around the area is a small price to play for the economic and food stuffs that they provide to the area and nation. The fact that chicken dust settles in the area is no different than dust from other sources, pollen, and foliage from trees that may fall, especially given the undeveloped, countryside area that existed in the undeveloped local when they purchased the fifty-acre parcel from David.

Harm Must be Substantial and Significant (Rest. 2nd, s.821(F). The harm must be real and appreciable, more than a "feeling". The location can be considered when deciding whether the harm is substantial. Duration of invasions is important, but a lengthy invasion

is not required. A one-time event may amount to a nuisance. Ongoing invasions are likely to be substantial.

David will claim that the harm is real. He can see the dust on his property. The smell is ever-present, consisting of an odor from the chickens from Chicken Town. The nuisance created from Chicken Town is ongoing and invasive.

Chicken Town will claim (as above) that dust in the country, such as the locale where they are operating, is common. The vast area of acreage (50 acres) is appropriate for their chicken operation.

Chicken Town v. Adam

Chicken Town may have a claim against Adam for nuisance when he set up loudspeakers at the home-site that played the sounds of predatory birds at night, directing at the housing for chickens on Whiteacre.

Nuisance (Supra)

Invasion Must be Unreasonable (Supra)

Chicken Town will say that Adam's actions are unreasonable. He is not only negligent and reckless, he intentionally directed the loudspeakers at the chickens to disrupt the chickens. The chickens became agitated from a lack of sleep and stopped laying eggs, causing Chicken Town to lose revenue. Furthermore, Adam chose to play sounds of predatory birds at night which is most likely believed would cause the chickens to panic and disrupt them more.

Adam will most likely claim that he has a right to play sounds from his property. However, the court will most likely see his actions and intentional act to retaliate against Chicken Town and disrupt their operation.

Gravity Outweighs Utility and is Serious and Expensive

Chicken Town will claim that Adam's actions have caused them to lose revenue. Their chickens are agitated and losing sleep. These actions cause the chickens to stop laying eggs and reduce the capacity of their business. The playing of the sounds towards the chickens is a grave situation that will cause serious damage to their business and harm the local community due to the jobs that are at risk if Chicken Town would have to close its farm due to Adam's actions.

Adam will claim that the shutting down of the farm will be a good thing due to the fact that it will restore the serious loss of his property value, and enjoyment and use of the property with his family.

Harm Must be Substantial and Significant (Supra)

Chicken Town will claim that the loss of their business due to the reduced egg production on their farm is substantial and significant. It is more than a "feeling", the loss is a physical loss as well as a monetary loss. It is also a loss to the community due to the potential of 75 employees losing their livelihoods. While the duration of Adam's actions is unknown from the facts, duration of the nuisance is not the only consideration that courts take into consideration. Even if Adam has only been playing the predatory bird sounds for a short period of time, if the damage to revenue, economic loss to the community, and business of Chicken town is substantial, expensive, and serious, the duration will play less into the court's decision.

Defense for Nuisance

There are two primary defenses to nuisance: 1) Coming to the Nuisance; 2) Live and Let Live Rule.

Coming to the Nuisance

Chicken Town will claim that Adam came to Blackacre knowing that a 50-acre chicken farm existed under David's ownership. He had an inquiry notice responsibility to investigate the extent to which the permit would authorize future operations. Adam should have been able to discover that David was allowed to house up to 200,000 chickens and that Whiteacre was zoned to permit such use of the property. He should have anticipated the future use and what it could mean in terms of odor and dust. They will claim that Adam was responsible for coming to the country where chickens were already thriving.

Adam will claim that when he purchased Blackacre, there were only 200 chickens located on Whiteacre, a far cry from the 100,000 that are present now. He would also claim that there were no foul odors or dust emanating from Whiteacre. Now, the dust is settling and the odor is ever-present.

Live and Let Live Rule

Modern society requires a compromise. This has led the courts to develop remedies for nuisance that balance the equities. The court will consider the following when considering damages and remedies

Remedies

Remedies for Nuisance. Options for the court include: Damages, Injunction; Both Damages and Injunction; and No Action. Permanent Damages, rather than an Injunction, are appropriate when the damages resulting form a nuisance are significantly less than the

economic benefit derived from the party causing the harm. Here the court will balance the equities.

Conclusion

Adam

Given the above analysis, the court will most likely serve an injunction against Adam. They will have him stop running the loudspeakers at the home-site and playing sounds of predatory birds to disrupt the chickens on Whiteacre. The court will most likely see his actions as very harmful and serious against the business operations and an intentional act to create harm to Chicken Town. The cost of lost revenue, lost job for the community (75 employees), lost national chicken egg production is too great. The court may also find that Adam must pay damages for the lost egg production and costs associated with the damage to Chicken Town's business.

Chicken Town

The court will most likely not serve an injunction against Chicken Town. The stopping of their business will not outweigh the utility of their operation. A more likely approach would be to have Chicken Town pay Permanent Damages to accommodate the loss of the enjoyment and use of Adam's home. This will allow Adam to afford the cost to relocate and recover his losses, while at the same time allow Chicken Town to continue their operations.

END OF EXAM

2)

1. Rights of Charles and Diane to use of driveway

Easements

An easement is a non-possessory interest in land that can either be appurtenant or in gross. An appurtenant easement is one that benefits a piece of property and/or property owner. An in gross easement is one that benefits a person. Under Appurtenant easements there are dominant estates and serviant estates. A dominate estate is the property that needs the easement. A servient estate is the one that serves the dominate estate.

Here, the discussion would be regarding that of an appurtenant easement, given that it is the benefit of property and property owners. Under this theory, white acre would be the dominant estate and blackacre would be the servient estate. White acre would be the dominant estate because White is the property that requires the easement across blackacre to get to greenbranch drive. Black is the servient estate, because the easement sought by White, is on Black.

Under the theory of appurtenant easements, the transfer of the dominant estate does not require the mention of the easement in the deed, and the easement goes with the dominant estate. IN regards to the transfer of the servient estate, the easement does not transfer to the successive owner so long as the new owner is a good faith purchaser, paid value, takes without notice. Notice is in the form of actual, inquiry, and/or constructive.

Originally, Oscar owned both white acre and blackacre. O lived in a dwelling on white, and used a path across black to get to green. Because O owned both properties, there existed no easement. Becuase no easement existed, and when O sold W to A, made no

mention fo such a easement, and did not create such easement in the deed, at the time of A pruchasing white, there was no Express easement created. An express easement is one that is expressly created in written form, satsifying the SOF, created in the deed and is specific in limitations and use, with no ambiguity.

After A purchased the land, with no express easement created, A did not live on the land from 2002 and did not sue the driveway on B until after 2017.

Easement - Implied by Prior Use

As mentioned above, when A purchase white, there was no express easement. However, A did use the driveway starting from 2017, with no mention fo how often or a stopping point. At the time, when A sold white to C, C would most likely argue that there is an easement by prior use.

An easement by prior use is created when there is a prior common owner, the land is severed int more than one parcel, the use of the property existed prior to severance, and easement is reasonable necessary to the dominant estates enjoyment of land, and the use was continuous, apparent, open, and obvious.

Here, both white and black were originally owned by O, satisfying the prior common owner element. The land consists of two separate parcels, white acre and black acre, and the use of the property existed prior the the severance, meaning that O, the original owner, occupied white before selling white and keeping black.

However, the issue would arise out of arguing that the easement is reasonably necessary to the dominants use (C), and that the prior use was continuous, apparent, open and obvious.

When looking to thr aspect of necessity. The standard is not of the easement by necessity to be discussed below. The standard is that the easement is reasonably necessary for the use and enjoyment of the dominant estate. Here, C would argue that the use of the adjoining road to white (Holly Lane), is difficult and unreasonable to use. C would state that Holly lane is undeveloped public road, with ruts, and there is not even a driveway going from his home on white to Holly. C would state that the enjoyment of his land would be to safely, comfortable and easily get on a better kept dirt road (easement) and use such a path to get to green which is an actual paved road. C will state that it is reasonable that he would use the nicer dirt road to get to the actual paved road, as opposed to a back public road which si unkept and filled with ruts, and there are no facts ot state how long said holly lane is, or how difficult it is to get to an actual paved road, such as green, from there.

Next, C would state that the use of said easement by the dominant estate consisted of prior use that was continuous, apparent, and open and obvious, by A. C will state that while A has not used the easement since 2017, before that the easement was used regualrly, and that the easement had not been terminated by lack of use or abandonment. A, the previous owner, did nto abandon or terminate the easement, he simply did not vist all that often. C will argue that the need for such easement, as discussed above, was still in tack, and that there was no termination. The need of such a easement, was still necessary.

Easement - Express

see above

While no express easement was created in the transfer from O to A, C will argue that an easement was expressly crated from O to D in the 2019 transfer.

An express easement is one that satisfies the SOF (in writing), and is expressly granted, or expressly reserved. The express easement also needs to fall within the proper scope, i.e be limited in use, timing, location, duration, etc. If there is ambiguity, the courts will look to common understanding between the parties to see intent.

Here, D will argue that the easement attempted to be expressly created in her 2019 deed purchase was not properly created, and thus void. In the 2019 deed, there was no designation of the location of said easement, the statement in the deed only read: "adam an easement for ingress and egress to whiteacre." D will argue that this statement does not fall within the scope of properly creating an express easement. D will state that one of the most important factors in creating an easement is location. D will claim that white owner does not have permission by way of easement to drive anywhere on her property, black, to get to and from white. And because of this ambiguity, the attempted express easement is void. D will also claim that the easement only applied to A specifically, and that it did not apply yo white property owner, but A the person, and that when A sold white, the easement ended.

However, C will claim that when there is ambiguity in an express easement, the courts will look to determine the intent of the parties. And the court will most likely find that there was one specific dirt road used to get from white to green, and that it was the road used by O originally, and then by A, the purchaser of black. If the court is capable of looking back at the use, and looking at the land, and seeing a specific dirt road for the purpose of the easement, it is likely that the court could fill in the missing information of location, to properly enforce the easement

Therefore, it is likely that the courts will find that an express easements exists on black for white to use, and that the easement should be limited to that of the dirt road, used prior by O and A, and that C has the ability to continue to use the easement, as the dominant

estate. That the express easement transferred with the dom estate, and that the serveitn estate was expressly transferred in Ds purchase deed.

Easement - Necessity

An easement by necessity is one that is created by actual necessity. This standard is much higher that that of discussed above. An easement by necessity is created due to the parcel being landlocked, and thus require said easement. there are two views on easement by necessity. The majority view is that the necessity needs to be strict, only option. The minority view si that it needs to be reasonably necessary. An easement by necessity is created when there is a prior common owner, and the transfer of one of the plots results in the other plot being landlocked.

Here, D will argue for the majority view. D will state that there is no deed by necessity because C does nto strictly need the easement to get off of white, C can use holly lane. D will state that both roads are dirt roads, the easement and holly land. And that while holly lane is a public road with ruts, which does nto have proper upkeep, the lack of upkeep in a public road does nto result in an easement by necessity in her land. D will claim it is a matter for C to take with the city, to repair the public road. Also, D will argue that dirt road and ruts do not call for an inability of use. There are no facts to support that C is incapable of using holly lane. It states there is no driveway from white home to holly, but there is no driveway stated to exist from white home to black easement road. There is also no evidence to support that the ruts on holly result in the road being incapable of being used. C would have to raise such issues with more specificity before he would be successful with a easement by necessity. is the road only capable of being driven on with a 4x4 vehicle? or a vehicle with a certain ride height? Or is in impassable at all? The presence of ruts in a road do not inherently destroy the ability of use.

However, C will argue for the minority view, that the necessity only needs to rise to the standard of reasonably necessary, similar to that of discussed above. C could state that because of the ruts on the road, and no driveway existing from white to holly, it is unreasonable to take such a complicated method to get off his home. That the prior 2 owners both sued the easement for good reason, ease and enjoyment of use. That C had an expectation to sue the easement, and does not want to unreasonable risk damage to his vehicle, or time it would take to drive slowly over the ruts, etc. or to pay for any landscaping that would make it possible to get to holly lane from white.

Therefore, depending on which view the courts follow, the outcome will be different. If the courts follow the majority view, then they will most likely not find a strict necessity for C to sue the easement, however if the courts follow the minority view, it is possible for C to be able to make a showing of reasonable necessity

Easement - Estoppel

Easement by estoppel occurs when the dominant estate detrimentally relies on the easement. Such an easement is created when the dom was given permission to use such an easement, and detrimentally relied on said permission, and then serv attempted to retract, or prohibit, or withdrawal permission, after det rel. If there is no det rel by the dom, then there is no easement by estoppel

Here, C would claim detrimental reliance on the easement because after the purchase of White, C was said to have immediately beginning substantial remodeling of the home on white. In the process of the remodel, C used the easement to get to and from white, implying that workers, work trucks, etc. all used the easement. In the course of the remodel, D, owner of black, erected a fence on black ro prevent the use of the easement driveway by C. C is going to argue that he relied to is detriment on the easement across black to white. That he is trying to remodel the home on white, and that consists of

workers and work trucks going back and forth from white, and that it is unreasonable to use holly lane for such passages. There are no fact stated as to the effect the fence had on Cs remodel, however given the above discussed, it is reasonable to assume that C had an understanding that he could sue the easement, either by prior use (above) or by express (above), or by necessity (minority view), and that in his making of plans to remodel, there was work done in estimates and staff and supplies and getting ti to and from the home on white. There is no driveway from white home to holly lane, and while there is no specified driveway from white home to black easement, the dirt road easement is specifically stated to be a dirt driveway. This implies that it is easir to traverse from white home, to black easement, to green, then it would be to get from white home to holly lane. C will argue that D was actually on notice of said easement, and that C undertook the purchase and remodel of white and white home with the understanding of being able to utilize the easement.

D however, will argue that there was no det rel, because it is still possible for C to remodel white by way of holly lane. That there are no facts to support that is it impossible for work trucks to traverse holly lane to get to white, or that white is so heavily foliaged that it is difficult for a vehicle to get from holly lane to white home.

However, given that above information, it is more likely that the courts will side with C on this matter. D was actually on notice of the express easement, C made quick use of the easement by his remodle of white, and D then decdied to remove permission by erecting a fence.

Defense

One of the defense that D will claim, given that the court is likely to find for one of the above easements, is the termination fo said easement by way of overuse or misuse.

An easement can be terminated by way of overuse or misuse if the easement granted for ingress and egress is overly used or used in a manner not intended. The overuse of an easement can often be the cause of the creation of a business that require permanent, constant use, as opposed to a short term increase, such as a remodel. C will claim that it is not na overuse, when there is an end date for the remdole and use of the easement by hsi workers, and that it is not an over use for him to sue the easement for workers and ultimately for he and his family.

If the court found that the workers in the remodel did in fact use the easement in a manner to rise to that of over use. The court would likely not order a termination, but instead apply an injunction to limit the use.

IT is not likely that the court will find the misuse of said easement, resulting in termination

Therefore, if this defense was to succeed, it would only result in an injunction resulting in limitation, not termination.

And this defense only applies if the court finds an easement exists.

Conclusion

Given the above discussion.

It is likely that the court will find an express easement was created in the 2019 transfer of the servant estate from O to D. And that in the transfer of a servient estate, the easement does nto run with the estate unless expressly stated, putting th ebona fide buyer on notice. Even thought D may argue there was an error in the scope, the court will likily fill in the missing location information, given the original intent of the parties.

The court will likely find that the express easement created between O to D for the serveint black, while not specifically stated, still ran from O to C because easement run with the property of dom estates, and need not be mentioned in deed.

END OF EXAM

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Question 3

Prof. O'Connell

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Joint Tenancy

Joint Tenancy is the ownership by two or more persons of the same property. The owners are called Joint Tenants and share equal ownership of the property and have equal, undivided right to keep or dispose of the property. Previously Joint Tenancy was called "Joint Tenancy with Right of Survivorship".

A joint tenancy requires the four unities (Time, Title, Interest, Possession) and Language of an express right of survivorship. These unities must coincide at the outset to validly crate the Joint Tenancy. All Joint Tenants' interest must vest at the same time. All Joint tenants must be in the same instrument (names on same deed). All joint tenants must take same kind and same amount of interest. All joint tenants must have the same or identical right of possession. The language of grant must clearly reflect the grantor's intent to create a joint tenancy.

Here, Able and Charles purchased Blackacre in 2015 as a three acre commercial property in California, acquiring title as "Able and Charles, as joint tenants with right of survivorship." From the facts a joint tenancy appears to have been created with Able and Charles. Although Able paid 80% of the purchase price and Charles paid 20% of the purchase price, the parties never had an agreement about how to apportion income and

expenses for Blackacre. Here, it is unclear whether the parties discussed their shares or necessarily disagreed on their joint interest that would make those interest unequal and of different amounts. While they paid different amounts, since they did not have an agreement it is possible that they viewed their interest as equal, otherwise they would have been more motivated to come to an express agreement in that regard.

Tenancy in Common

Tenancy in Common is a concurrent estate where two or more individuals own a property with no right of survivorship. The owners may have an equal or non-equal interest in the property. IF it is not equal, must have clear and convincing evidence to show otherwise. In Tenancy in Common, all we have to see is the unity of possession which means each tenant is entitled to possess the whole of the property. Each tenant has exactly the same right as every other tenant.

In Tenancy in Common, estates are freely alienable, tenants can do what they want with the property. Similar to Joint Tenancy, Tenants in Common can partition by Voluntary Agreement or Judicial Action.

When Able and Charles purchased Blackacre in 2015, they were Joint Tenants. They each had the right to posses all of the property. No co-tenant had a right to exclude the other.

Accountability

Does a co-tenant (Charles) have to share profit that he received from the property?

Getting an accounting means you are receiving a fair share of profits form a co-tenant.

Payments Received (General Rule)

A co-tenant does not share net rents or profits. Unless there is an Ouster or Agreement to the Contrary. An ouster is where one co-tenant refused the other co-tenant entry onto the property. Actual entry must be attempted and denied.Also, a co-tenant does not share net rents or profits unless the profits are from the exploitation of the land (e.g. mining) or some reduction of the property value. There is no accounting required for a co-tenant's own use of the land. For example, when a co-tenant harvests crops. Both have equal ownership.

Additional exceptions to the general rule above (co-tenant does not share net rents or profits) is when there is an agreement to share or there is a "lease" by the co-tenant to a third party.

In this case, the parties never had an agreement about how to apportion income and expenses for Blackacre. While Able paid 80% of the purchase price and Charles paid 20% of the purchase price, without an express agreement, they both had equal interests. After the purchase, Charles managed the rental income from Balckacre. Charles only gave Able 10% of the net rental income after charging Able's share with a management fee for Charles' services. From the numbers, it appears that Charles was keeping 70/80 of the proceeds if he was charging Able's share (80%) with a management fee for Charles services. This seems excessive and Able would want to be compensated fairly. In this case Charles was not required to share the rent income. However, Able is most likely interested in requesting a partition from the court based on the fact that Charles is not compensating Able with net rental income. By claiming a partition action, Able may be able to seek reimbursement.

Does a cause of action for partition exist?

If a cause of action for partition exist, discuss the claims of Charles' estate and of Able

Contribution

One tenant wants the other co-tenant to contribute fair share of some expenditure(s).

Taxes and Mortgage

Co-Tenants are responsible for proportionate share (if they sign a bank note). IF a tenant has been in sole possession and enjoyment, they can not get contribution.

Here, while not stated specifically, it appears that both Able and Charles were located near the commercial property on Blackacre. The both acquired title. The purchase price appeared to be paid in total (80% by Able and 20% by Charles). There is no indication that they were required to pay on a mortgage after the acquisition. Presumably, they both paid equal or agreeable shares of the property taxes on the property as we see no dispute otherwise.

Payments in Excess

Co-tenant may make payments in excess ot their pro-rata share. This includes taxes, repairs, mortgage payments. There is no automatic right to collect pro-rate share of these payments. The may collect form rents received. A co-tenant may seek reimbursement "off the top" if the property is sold or partitioned.

Improvements and Repairs

There is no right for improvements. A party may seek fair share after sale or partition. The courts will consider the value and not the cost of improvement. Parties may seek for necessary repairs to preserve the property. The may seek fair share after the sale or partition for non-necessary repairs or improvements.

Charles spent $20,000 of his own money for the necessary repaving of a parking lot on Blackacre, and $5,000 of his own money to repaint the exterior of the buildings on Blackacre from beige to purple. Charles would claim that both are necessary improvements. However, Able would claim that the parking lot may seem reasonable depending on the state of repair it was in. However, the $5,000 for painting Blackacre purple appears to be not necessary. The court would weigh the value of the improvements to the parking and whether the color of purple valuable to the property asset (future resale or increase in rental proceeds, or attracting new tenants).

In 2017, Charles contracted with a professional property management company, Delta Properties, to manage the property. Delta Properties immediately spent $20,000 of the rental income to paint the buildings beige because of complaints by tenants about the purple color. It seems likely that the painting was not a lucrative move on Charles behalf, especially since Delta properties repainted the building after the tenants complained.

Delta Properties charged a management fee that was one-third of what Charles had been charging Able. This is another indication that the management services fees that Charles was deducting from Able's net rental income was excessive. Able will be able to point to this fact and argue that the fact that Delta Properties is a professional service organization designed to manage rental properties and Charles (perhaps) is a sole-proprietor, that he was not getting fair contribution. Additionally, Delta Properties sent all net rental income to Charles, which Charles did not share with Able. Again, Able will be able to argue that he should receive his fair share after sale or partition. While Able did pay 80% of the purchase price, he will still have to provide convincing evidence that they had an agreement about how to apportion income and expenses for Blackacre. There is no automatic right to collect pro-rate share.

Partitions

The courts consider two types of partitions: 1) Partitions in Kind; 2) Partitions by Sale.

Partitions in Kind

Partitions in kind divide the property into physical parcels according to each party's interests. Historically, this is the approved method over partitions by sale. The courts consider practical and equitable partitioning (zoning, equitable, costs). IF not practical, equitable, costs-effective, court may not partition in kind. The courts will consider zoning laws, current and future.

Here, the court will most likely not partition in kind. Blackacre is a commercial property designed for a rental complex. The property is three acres, indicating that it is quite large. While large enough, perhaps, to partition into single family resident complexes, that cost in doing so seems to not make that a viable option. The fact that a commercial management company such as Delta Properties was hired also indicates that the property is substantial in design, structure, and layout limiting the court's ability to partition adequately.

Partition by Sale

Partition by Sale is the ordering the sale of property and dividing proceeds according to each party's interests. This is a valid option when physical characteristics of land make partition in kind impractical. This option must better promote the owner's interests than partition in kind. Once the sale is complete, the reimbursement to the parties can occur according to their rights, contributions, and other clear and sufficient evidence that would support their pro-rata share.

Here partition by sale seems to be the most likely option if Able or Charles Estate (or Charles before death) were to request a partition. Able would claim that his 80% interests in the property is based on his portion of the purchase price and that he should be

compensated or reimbursed for the difference that he did not receive from Charles when Charles managed the rental property. Able will also claim that he did not (or does not) support the painting of the building purple ($5000 expense) or the requirement for Delta to repaint the building beige ($20,000) (this was a bad business decision on Charles' behalf). Charles' Estate will argue to the contrary. However, Able has solid arguments on his side.

Discuss whether Larry retained any rights to repayment and under the mortgage after Charles' death

Severance

Severance is a Unilateral action by one Joint Tenant that may sever the Joint Tenancy, converting it into Tenancy in Common. The legal standard is severance results whenever facts show that any of the four unities is disturbed. Joint Tenancy cannot be severed by Will, severance must be done in one's lifetime.

Severance can occur through: 1) Voluntary Agreement to Partition the Property; 2) Judicial Action; 3) Conveyance; 5) Mortgage; 6) Creditor's Sale

Since we do not see a voluntary agreement to partition the property, judicial action (initially); conveyance, or creditor's sale, I will not discuss those in order. However, we do see a mortgage transaction.

In 2019, Charles obtained a loan from Larry for $10,000 and provided Larry a properly recorded mortgage secured against Charles' interest in Blackacre.

Mortgage

When an individual creates a mortgage, deed, trust, they are said to hypothecate - put the property up for collateral for a loan). One Joint Tenant may not encumber the interest of the other Joint Tenant. The effect on a Joint Tenancy depends on the Jurisdiction;

Lien Theory (Majority) (California)

Under a Lien Theory Jurisdiction, a mortgage by one Joint Tenant does not sever Joint Tenancy. When a Joint Tenant hands a mortgage to a bank, a lien attaches to the Title. Teh title does not transfer form the borrower to the bank. The bank can only sell if not paid) Th unities are not disturbed, therefore no severance.

Here, we see that the sale of Blackacre was in California, a lien theory jurisdiction. Therefore, the loan that Charles obtained from Larry for $10,000 and the subsequent mortgage to Larry for properly recording and securing against Charles interests in Blackacre did not severed the Joint Tenancy between Charles and Able at that time.

Title Theory (Minority)

Under a Title Theory Jurisdiction, a mortgage by a Joint Tenant severs Joint Tenancy as to his share only. The title passes from the Borrower to the Bank and back to the Borrower when paid. The unities are disturbed at the time the mortgage is executed. This would have severed the Joint Tenancy between Charles and Able if the property was in a Title Theory Jurisdiction.

Based on the fact that the property is in California and a Lien Theory Jurisdiction, the Joint Tenancy between Charles and Able was not severed. At the death of one Joint Tenant, the remaining Joint Tenant automatically becomes the owner of the deceased Joint Tenant's interests. Last Joint Tenant standing gets Descendible and Devisable rights. Larry appears not to have retained any rights to repayment.

END OF EXAM

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