

1)

O starts out with a fee simple absolute. This is the highest property interest one can have in real property. It is alienable, devisable, capable of infinite duration, inheritable, and O has the right to lateral and subjacent support of his land, it also comprises both the present and future interest in the land and has seisen. O conveys his entire interest in the property, giving the present interest with a life estate subject to an executory limitation to A, and the future interest giving an vested remainder subject to complete divestment to B and C and an executory interest to D. Thus O has no more interest in the property.

A has a life estate subject to an executory limitation. A life estate is a present interest in the property which terminates at the end of some life in being (A). This is freely alienable and entitles A to the same present possessory interest that O had in the land. Thus the property can be used in a similar manner as it was used by O. However, a life estate isn't devisable or inheritable, as it will terminate at the end of A's lifetime. The life estate also has duties attached to it as A cannot hurt the rights of the future interest holders. Thus A can't commit waste upon the property. Waste has three categories, voluntary (affirmative), permissive and ameliorating. Voluntary waste would occur if A intentionally damaged the value of the property. This would include mining the land of resources, if the practice wasn't already being engaged in by the prior interest holder O (open mines doctrine). Permissive waste occurs when A allows the property to fall into disrepair. A thus has a duty to make reasonable repairs to the property. A must also not change the use of the land in a way not intended which thereby increases the value of the land, this is called ameliorating waste. If A commits waste the future interest holders B+C can seek an injunction, A might lose her interest in the property, or be liable for damages.

Further A's life estate is subject to an executory limitation. If alcohol is ever present on the property then the present interest in the property would shift to D. Thus D has a shifting executory interest. *ROE*

B and C while A is alive have a vested remainder subject to complete divestment. It is a remainder because their interest in the property will not cut short the previous interest holder's interest (A's life estate). It is vested because there is no condition precedent to them getting the property. It is subject to complete divestment, because on the happening of some event (alcohol being present) the interest will be divested and instead given to D. B and C are free to sell or convey the property, their interest is also devisable and inheritable. They should also be diligent and can seek action against A, if A commits waste upon the property. *ROE*

At the death of A, B and C would at common law most likely hold the law in concurrent ownership as joint tenants in fee simple subject to an executory limitation. Joint tenants, because the conveyance fulfills the four unities of time (created at the same time as the prior estate), title (in the same instrument), interest (with an equal undivided interest in the property), possession (and with an equal right of possession). This was favored at common law. As joint tenants they would each enjoy the right to survivorship. Thus any attempt by B or C to devise the property while they were alive would result instead in the property going to the other joint tenant. However, this is avoidable because a joint tenancy is alienable and can be conveyed. If for instance B sold his interest then C and the new owner would share as tenants in common. A joint tenancy is also partitionable. Either party could seek to partition the property, either by splitting it in half (or if impossible splitting as best one could and then the party with the more valuable share would pay the other in an owelty) or by selling the property and splitting the proceeds. There are also two other types of concurrent ownership, tenancy in common and tenancy by the entirety, we will get into those below.

D would have an executory interest in the property. This is a shifting executory interest. Upon the happening of some event the interest in the property would shift to D. Thus D would have the property in Fee simple absolute.

However, there is a problem. This conveyance runs into the rule of perpetuities. The rule of perpetuities states that no interest is valid unless it must vest, or fail to vest, if at all within 21 years of some life in being at the creation of the interest.

Here it is possible that B and C could die and then 22 years later their heir brings alcohol onto the property. Thus after 21 years of some life in being the interest of D may or may not vest. Since the rule against perpetuities is violated the conveyance will be cut off up unto the point where it makes sense and doesn't violate the rule. Thus It would read:

O to A for Life and then to B and C.

SO D HAS NOTHING

Thus the O analysis would be the same. A would just have a life estate with no executory limitation. As such he still must not commit waste upon the premises as discussed supra or action may be taken against him by B and C. B and C would have an indefeasibly vested remainder. Indefeasibly vested because there is no condition precedent to them getting the property, and no condition subsequent which would divest them of the property. Thus they (or their heirs) are certain to get the property.

We have already discussed if A dies then B and C may have an interest as Joint tenants at common law. Modernly, unless there is specific language in the conveyance (or they are married) their interest would be a tenancy in common. This interest is freely alienable, devisable, inheritable and has the potential of infinite duration. The only unity they share is the unity of possession. Each has the right to full possession of the property. This would also entitle them to an accounting and an equal share to any rents collected. They also would be entitled to an equal share of any profits derived from mining the land.

If B and C are married modernly the majority view would consider it a tenancy by the entirety. This because it would satisfy the four unities (discussed supra) and the fifth of marriage. The right of survivorship exists the same as in a joint tenancy. However, the property isn't freely alienable, or able to be partitioned. The only way to sever the property interest (absent one dying) is divorce, at which point it would become a tenancy in common.

A still being alive has the right to lease the property to D. Since this lease is monthly it would be considered a periodic tenancy. Thus there is a known start date, but no ending date. Notice must be given then by either party in order to terminate the lease. At common law the notice period was the same as the lease (in this case a month) not to exceed six months. Modernly the majority of states require one month notice. This is different then a term of years which has a specific end and start which requires no notice and a tenancy at will which has no end date, but no regular duty to pay rent.

A as the landlord (LL) shares both privity of contract, since they have a lease and privity of estate since they share an interest in the land. D has a leasehold estate, which is the right to use the land for a period of time. A owes certain duties to the tenant D; duty to convey actual and right to possession, covenant of quite enjoyment, implied covenant of habitability, duty to make repairs.

At common law the LL owed no duty to hand over actual possession of the property only the

right to possess. Thus it was up to the tenant to evict any hold over tenants. Modernly the LL must hand over both the right to possession and actual possession of the property. failure to do so would allow D to rescind the lease and sue for damages resulting from having to find another place to live.

LL also owes the duty to quite use and enjoyment. This is not to actually evict, partially evict or constructively evict D. Actual eviction would result by A ousting D from the property (or another with a greater property interest. This would allow D to rescind the lease and sue for damages for back rent and to find a new place. Partial eviction occurs if A takes possession of any part of the premises. D would be liable for no rent until LL gave possession back. Constructive eviction occurs when LL robs D of a substantial amount of the use and enjoyment of the property. At common law and in a majority of states D to claim constructive eviction would have to actually vacate. The restatement 2nd doesn't require this. D again could rescind the lease and sue for damages for back rent and to find a new place.

At common law the landlord didn't have to provide a habitable premises. However, with changes in housing needs and an increasingly less agrarian society there is now an implied covenant of habitability. Most municipalities have rules regarding what constitutes habitable but most include adequate plumbing, electricity and heating. D would if claiming breach of this covenant would first have to give notice to A that he was in violation of the covenant and give him adequate time to repair. After this period D could either; vacate under constructive eviction, stay and make reasonable repairs and deduct, deduct an amount of rent based upon the value as is, or he could stay and sue for damages. If he stays and sues for damages there are basically two methods for calculating them. Value as warranted allows D to collect the difference between the value if the tenancy was habitable versus what it is worth in its uninhabitable condition. It is presumed the value as war rented is the rental price but it is rebuttable if D could affirmatively show it would be worth more. D could also just collect the difference in the rental amount vs. what it is worth in its uninhabitable condition. D may also be entitled to damages based upon aggravation do to the inhabitable premises. Also punitive damages have been allowed in cases where there is willful neglect by the LL.

D also has duties as a tenant. He has the duty not to commit waste (see analysis supra), not to be a nuisance, to make ordinary repairs, the duty to pay rent, to not use the premises for an illegal purpose and to not lie about the purpose for which it will be used for. If D fails to comply with any of these duties he would be liable for damages or may face eviction.

2)

To: Senior Partner Smith

Re: Water Law brief

12/16/2010

Dear Mr. Smith,

Per your request I've prepared the following brief on water law issues that you might want to mention in your speech:

Water in General

The law recognizes that any developing or developed society must have access to adequate amounts of clean and healthy water in order to survive and flourish. Countless needs including health and hygiene, sustenance and nourishment, growth of crops, recreation, and commercial uses make water one of our most precious necessities. Water can also be destructive and unwanted, as in the case of flood or drainage water running along the surface of land, and it is not always apparent who owes a duty or who has a right to address these issues. As such, when conflicts occur, water itself becomes a substantial matter of law, as well as life. Typically, water law is divided into three distinct areas, although it is possible for them to overlap, and for issues to merge.

Riparian Water

The law regards any stream or pond sitting on or running across the surface of land to be riparian waters. People holding an interest in land with riparian waters are said to own riparian lands and as a consequence possess certain riparian water rights. Where a piece of land is

traversed by or bordered by a stream or pond, the land is said to be riparian. Each owner that abuts a stream or pond, or across whose land a stream traverses, has certain rights and duties with regard to the water. Because conflicts over water use do arise, there are a variety of ways in which water rights are enforced. In the eastern states, riparian water has been historically subject to something called the "natural flow" doctrine. This doctrine holds that any owner of riparian land is entitled to the full use and enjoyment of the water unhindered by quantity, quality, or direction of flow. An upstream landowner that diverts the stream, drains it in his own use, or otherwise pollutes or reduces the quality of the water would be liable for either an injunction or damages.

The western states have traditionally used a "prior appropriation" doctrine, which is based on the notion of "first in time, first in right." In prior appropriation states, the prior user of the water owes no duty of reasonable use or other limit to his usage. Usually, in order to secure the rights to the water, a prior appropriator will file for a use permit with his local governing agency. The filing of this permit would serve in court as strong evidence of the prior establishment of a right to the use of the water. Uses are often prioritized not only by time, but by beneficial use as well. Therefore, a subsequent seeker of water rights could apply to the same agency, show a more beneficial or necessary use, and essentially usurp the prior appropriator's rights, but they will usually have to pay some compensation in order to do so. In this scheme, besides being first in time, the following uses are prioritized; 1) domestic use, 2) agricultural use, and 3) commercial and other uses. In prior appropriation states, those with inferior rights in the water (say a commercial water user who was last in line to obtain a permit) may have to go without water if the supply becomes scarce.

Surface Water (Drainage)

Drainage water that is flowing on the surface is usually referred to as surface water, and is dealt with in three different ways. One is the "common enemy" doctrine, which held that drainage water was a common enemy, the fault of no one in particular, and land owners were free to alter their land in any way necessary to divert the water off of their property, regardless of whose land it flooded, as long as their alterations did not cause any subsidence, or loss of lateral or subjacent support, to a neighbor's land. The policy behind this law was that if A diverts the water to B, B will divert it to C, and C will divert it along, and eventually, the water will end up somewhere where it bothers nobody. This has not always worked out so well, because it leaves C to be an unwitting recipient of untold amounts of unwanted drainage water, which he now has to suddenly go to great expense of money and time to remedy, and with no legal recourse for compensation or relief.

The alternative doctrine is the "civil law doctrine," which holds that land owners must receive the water that naturally flows onto their land, and apart from allowing it naturally flow onward, the landowner is not permitted to adjust or alter the course of the drainage in anyway that impacts his neighbor's property. The problem with this doctrine is that it sometimes renders property that is subject to flooding valueless, where that same property, with a simple ditch system or other remedy, would not be subject to flooding and hence would be valuable for a variety of uses.

Finally, there is the modern American doctrine of "reasonable diversion," which allows a landowner to take any steps necessary to divert or otherwise get rid of unwanted surface drainage, but he must not do so in anyway that creates an unreasonable burden on his neighbor. Therefore, a landowner could make a system of ditches to divert rain or other drainage of his property, and into a common stream, drain, or gutter, but not in a way that causes it to flood across his neighbor's property. Doing so intentionally could make a landowner subject to liability for a physical trespass or perhaps negligence, where either his intentional or negligent

diversion of the water causes damages to the neighbor's property. If this results in a serious interference with the use and enjoyment of his neighbor's land, he may be subject to an injunction requiring him to correct the harmful diversion of the water.

Underground (Percolating) Waters

The last classification of water under the law is that of underground or percolating waters, which refers to water that flows or collect underground, in the form of a watershed or water table. Because this type of water is what supplies most private wells with a supply of clean water, it too is subject to legal protections. Under the common law, the system for appropriating underground water was that of correlative rights. This means that if A & B both own property over a water table, and A owns 70% of the property, he would have a right to 70% of the water. Today this system is still considered a factor but underground waters are subject more to the reasonable use doctrine. This requires that no owner use the water in any way that unreasonably interferes with neighbor's use, and that the water may only be used for property directly above it.

Parties who use quantities of water that exceed their correlative right or are deemed unreasonable are subject to liability to surrounding owners with rights to use that water. They may have to pay for the deepening of wells or other means required to get access to the water should the conditions of the water table or watershed be changed so drastically by their use. In addition, the unreasonable use of water may lead to damages to other rights of the neighboring owners, such as the right to lateral and subjacent support. If a water table is unreasonably drained, and the empty space under the earth causes a sinkhole, which leads to either subsidence or a caving-in of the land, the unreasonable user could be subject to liability for the repair. In cases where subsidence is an issue, most are held to strict liability, which means no showing of fault other than the consequential subsidence or cave-in occurred. In cases where subsidence causes damage to a structure, absent a showing of negligence, the injured property owner must show that the subsidence would have occurred even if the weight of the structure had not been present.

Other Considerations

Because water rights are an interest in land, they are subject to the mechanisms of the law that land is subject to. Water rights, for example, could be condemned by the government or other local authority in an eminent domain action, if a very beneficial or necessary public use is realized, and the owner of the water rights is fairly compensated for them. Where the government was to use water unreasonably or take so much that land is deemed useless or unirragable, a title holder may have an action for inverse condemnation, which occurs when a landowner is able to show a court that a "taking" has occurred, of the typed contemplated by the Takings Clause of the constitution, for which just compensation must be paid. This taking may be such that it effects only the rights to the water, and it may be so extreme as constitute a taking of the entire parcel on which the water sits. As well, water rights could become adversely possessed, where an unknown or transient user exclusively uses the water open and notoriously, without the permission of the true owner, for a period of time determined by statute. In this case, the law may regard the use of the water by the adverse possessor to be a more favorable legal interest than the one held by an absent estate holder that does not use the water. With so many angles to consider, it is no wonder that the ownership of land and water, with all the accompanying rights and duties, is such a rich and diverse area of law.

Please let me know without hesitation if you require any further information.

With kind regards,