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Blackacre

1. What right, title, or interest in Blackacre if any is held by Cathy, David, Ellen, and/or Fred?

I set out below the interests for each in turn.

i. Cathy

We are told that Cathy received a gift from Amy of her interest in Blackacre by way of a deed. Amy owned Blackacre in joint tenancy with Bob. When a joint tenant conveys their interest in a property, this severs the joint tenancy and it becomes a tenancy in common. When Amy gifted her interest in Blackacre to Cathy, the joint tenancy was severed and Amy and Bob became tenants in common.

We are told, however, that Blackacre is located in a race-notice jurisdiction. In a race-notice jurisdiction, a party's interest in land is determined by the order in which it is recorded; whichever interest is recorded first takes priority. Here, we are told that Cathy received a deed from Amy, but she did not record her deed until **after** David had recorded his deed. As a result, the subsequent sale of Blackacre by Amy and Bob to David renders Cathy's interest in the property invalid.

ii. David

As mentioned above, Amy and Bob sold Blackacre to David (despite Amy having already gifted her interest in Blackacre to Cathy).

We are told that their sale was in the form of a quitclaim deed. This form of deed

contains no warranties as to defects in the chain of title. However, this does not exclude the sellers' warranties of sale which are applicable up to the time of closing, such as the right to convey (which in this case Amy has breached). After closing, these warranties are extinguished and replaced with the warranties set out in the Deed of sale.

It would appear from the facts provided that David purchased Blackacre without notice of Amy's prior gift to Amy: He did not appear to have actual notice (by the recording of her deed), constructive notice, or enquiry notice of her interest, as she did not appear to have taken possession of Blackacre at the time of the sale to David. Accordingly, David would be classed as a bonafide purchaser for value, and was duly entitled to record the deed as he did, taking priority over any unrecorded interests at the time of recording. Because he recorded his deed before Amy, he will be the rightful owner of Blackacre.

iii. Ellen

We are told that Ellen entered into a 15 year lease with David in relation to Blackacre: Ellen's interest is that of a tenant under a tenancy for Years (a tenancy for an express term for a fixed term, expiring at the end of said term).

As an express term of the lease agreement, Ellen covenanted to provide Hazard insurance covering any damage to Blackacre, and to use any payments for damage to the property only to repair such damage. We are told that Ellen did not purchase this insurance, so she is in breach of her covenant under the lease.


However, a landlord provides an implied covenant of habitability to their tenants. Damage to the property which renders it uninhabitable is arguably the Landlord's responsibility to repair, and thus Ellen could argue that this covenant is unfair and unduly burdensome.

We are also told that after 5 years of leasing Blackacre from David, Ellen transferred all of her remaining interest to Fred.



If a tenant transfers their interest in land to a third party, whether the transfer amounts to a sub-lease or an assignment depends on whether the tenant purports to retain any possessory interest in the land.



As we are told here that Ellen transferred the remainder of her 15 year tenancy to Fred (ie, the remaining 10 years), she did not retain a right to re-occupy the property and thus her transfer to Fred would be classed as an assignment rather than a sublease. 

A tenant is entitled to assign their interest in land provided that it is not prohibited by the terms set out in the lease agreement, and provided that the landlord does not object (provided that such objection is not unreasonable). Here, the assignment to Fred appears to be valid as there is nothing to indicate that David objected to her assignment.



Although Ellen no longer has a possessory interest in the land, she is still in privity of contract with David and thus must comply with her obligations in the lease agreement. Therefore, Ellen is still liable to David to ensure that the terms of the lease are complied with. If Fred does not perform his duties under the lease as assignee, Ellen as assignor is still liable to David.

iv. Fred

As explained above, Ellen assigned the remainder of her lease of Blackacre to Fred. Fred is therefore a tenant for years at Blackacre, with a remaining leasehold interest of 10 years. When Fred was assigned the lease by Ellen, he assumed all of the benefits and duties thereunder. This means that Fred is required to pay rent to David, and comply with all of the terms of the lease. As



discussed above, one of the express covenants is the duty to provide hazard insurance. We are told that Fred did not obtain such insurance and thus he is liable to David for failure to comply with this covenant.



2. Is David likely to prevail in his suit against Ellen and David?

For the reasons discussed above under Ellen and Fred's respective interests in Blackacre, while Ellen is no longer in privity of estate with David (as she has moved out), she is still in privity of contract under the terms of her tenancy agreement. This obligation applies irrespective of whether she has assigned her lease to Fred.

A landlord can seek to recover damages from a tenant with whom he has privity of contract, as well as a subsequent assignee with whom he has privity of estate.



For the reasons stated above, Ellen and Fred are likely to argue that the covenant to provide hazard insurance is unduly burdensome and conflicts with David's implied covenant of habitability.

David is likely to recover damages from both Ellen and Fred for failure to obtain hazard insurance for Blackacre.



As to the level of recovery which David may be awarded in damages, the court will consider whether the damage caused by the fire was foreseeable, and whether by not procuring hazard insurance Ellen and Fred assumed the risk of a fire and the substantial damage it could cause.



(Question 2 continued)

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