

Empire College School of Law
Professor Tinney
Remedies – Midterm
Monday, December 12, 2011

Question 1 – One Hour

Con is a building contractor and contracts in writing with Cust to build her a house and a detached garage on Con's lot, which he will sell to her for \$700,000. He builds it. Before building he hired Sur to survey his lot to make sure it was correct. Sur mistakenly draws the line 60 feet off, so that Con unfortunately builds the detached garage on the land of Nay and Bro (his brother) on a four acre parcel next door. Both Con and Cust mistakenly believe that the garage is being built on Con's lot.

The parties are unaware of it until Nay notices the problem shortly after construction is finished but before the sale is complete. Con offers to buy a small portion of Nay's lot to house the garage, but Nay refuses, saying he and his brother wanted to build their dream houses on the lots, each to have a two acre parcel. The county requires two acre minimums in that area, and if they sell a portion to Con, they will not be able to split the lot for two homes.

Cust wants the original house with the detached garage where it was planned, and she is unhappy. Con says he cannot afford to re-build the garage on the existing lot, because due to local ordinances, costs to get permits and to re-figure the driveway, it will cost him \$100,000 to re-build the garage in another portion of the lot. Cust says she doesn't want the garage in the new place as she was only happy with it as it was. Con offers to sell her the lot as is, for the contract price less \$30,000, which was his cost to build the existing garage. Cust refuses.

When Sur learns of the problem, he gets so upset he suffers a heart attack and dies broke.

What are the equitable rights and liabilities of the parties?

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Question 2 – One Hour

May Bee is an animal lover. At her home on two acres just outside the city limits she keeps a number of dogs, cats, chickens and other animals. She acquires two squawking peacocks and two turkeys, which are the most permitted on her property by county ordinance. But, before obtaining them she tells her new neighbor, Olbag, that she is getting these birds, and he says, “That won’t bother me,” not knowing what a problem they might be. By multiplication and by other acquisitions she now has a dozen of each type of bird, which are beyond the county ordinance. The peacocks are extremely loud when they squawk, awakening Olbag at night. Further, when they squawk it sets off May Bee’s dogs, who howl, especially at night. Further, the turkeys fly over May Bee’s fence and eat Olbag’s organic vegetables, which he grows to sell to a local farmers market. He says he needs this income to supplement his social security, because he is not a rich man.

Getting angry, Olbag tells May Bee to get rid of her animals. They have an argument and May Bee ends up telling Olbag, “Go to hell.” She then begins yelling at the peacocks at midnight, which causes them to squawk and the dogs to howl, which upsets Olbag greatly. He responds by shooting and killing one of the turkeys and one of the peacocks, which was witnessed by May Bee. After May Bee told Olbag she was getting the birds she hired a contractor to build a shelter for her turkeys and peacocks at a cost of \$12,000. She then orders six more of each. When Olbag hears of this, he hits the roof. He says he wants to sell and move out, but his realtor says that with all the noisy birds and turkeys he will have a hard time selling his property for the price he paid. Olbag then demands that May Bee get rid of her animals and she refuses. Olbag threatens legal action.

What are the equitable rights and liabilities of the parties?