

# Real Property Midterm 2010 2011

## Question Number 1

O to A for life then to B&C but if alcohol is ever sold to D. A enters into a monthly lease with D. Define current interests. Rights, Duties, and Responsibilities.

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**O:** Current interest None.  
Rights, Duties, and Responsibilities None.

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**A:** Current interest Life Estate.  
As the Life Tenant to B&C  
Rights: Alienable (measuring life is A)

The “use and enjoyment” of the current possessory interest (peaceful enjoyment, exclude others, rental income, etc.)

To surrender the life estate.

To sell the property with the agreement of the remaindermen

Duties: Not to violate the legal doctrine of waste which prohibits life tenants from damaging or devaluing the land. Waste: Voluntary/Affirmative, Permissive, and Ameliorative

Responsibilities: Pay the mortgage, taxes and insurance on the property.

As the Landlord to D

Rights: To the rent.

To have the property returned undamaged at the end of the agreement (except for ordinary wear and tear)

To enter under certain circumstances the rental unit. (emergency, with statutory notice)

To end the month-to-month tenancy

The right to sue the tenant for violations of the law or lease.

Duties: To account for or refund the deposit upon termination of the tenancy.

To comply with implied warranty of habitability for example:

1. Effective waterproofing and weather protection;
2. Hot and cold running water connected to a sewage system;
3. Safe drinking water;
4. Smoke detectors
5. Safety from fire hazards;
6. Appliances and air conditioning in working order if provided
7. Good ventilation;
8. Working keys, locks and window latches for all entrances and windows;
9. No garbage or rodents;
10. Adequate plumbing, heating and electrical equipment in good working order;

## Real Property Midterm 2010 2011

### 11. Walls, ceilings, floors, stairways and railings in good repair

Not to retaliate against the tenant. (to include rent increases)

Not to evict because of sex, race, color, marital status, children, national origin, physical or mental disability, the need for a guide dog or other service animal, source of income.

To put D into possession.

As to invitees and guests.

Responsibilities: To keep the structural and mechanical elements of the premises in good repair

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### D

Current interest: Possessory non-freehold estate tenant

Rights: Peaceful possession.

To end the month-to-month tenancy (30 day notice)

Repair and deduct- withhold rent, move out. (This can only be done when the landlord fails to comply with an important responsibility.)

To report violations.

The right to sue the landlord for violations of the law or lease.

To the continued lease until terminated by either party or death of A.

Under the implied warranty of habitability.

To sublease/ assign to seek a novation.

Duties: Pay rent.

To maintain the property.

To return the property undamaged at the end of the agreement. (Except ordinary wear and tear)

Responsibilities: To inform the landlord of defective conditions.

To test the smoke detector regularly and to replace worn out batteries.

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### B&C

Current interest Indefeasibly vested remainder. (Rule against perpetuities - violation)

Rights: To sell interest in the property even before the life estate interest terminates.

To sell the property with the agreement of the life estate owner.

To compensation for any adverse condemnation or eminent domain.

For apportionment of damages.

To the property on A's death. (Notwithstanding the lease.)

To institute legal action for waste.

(Money damages .Injunctive relief. Accelerate the passage of title in the land)

Duties: Not to interfere with A or D's peaceful enjoyment of the property

Responsibilities: as noted under duties.

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Between B & C

Current interest remaindermen

Rights/Duties/Responsibilities: That of fair dealing. (B could not acquire the property at a tax sale thereby terminating C's interest)

# Real Property Midterm 2010 2011

## Question Number 2

To: Partner Smith

From: Assoc. \_\_\_\_\_

Subj: Speech today at the Rotary

Water Issues.

We all want water so we are able to flush the toilet then we all want that water to go away.

We know we need the rain, we also don't want that water standing on or flooding our land.

So there is water we want. Water we don't want. Water above the ground. Water below the ground.

Water we want:

Three areas: riparian rights, surface water rights, and underground water rights.

A riparian land owner or possessor that abuts a natural stream, river, pond, or lake has certain rights to water that are incident to possession of the adjacent land. Depending on the jurisdiction in which the water is located, riparian rights generally fall into one of three categories.

**First**, riparian owners may be entitled to the "natural flow" of a watercourse. Under the natural flow doctrine, riparian owners have a right to enjoy the natural condition of a watercourse, undiminished in quantity or quality by other riparian owners. Each such owner maintains a qualified right to use the water for domestic purposes. This qualified right does not entitle riparian owners to transport water away from the land abutting the watercourse. Nor does it permit riparian owners to use the water for commercial enterprises.

**Second**, riparian owners may be entitled to the "reasonable use" of a watercourse. States that recognize the reasonable use doctrine found the natural flow doctrine too restrictive. In replacing the natural flow doctrine, a majority of jurisdictions in the United States now permit riparian owners to make any reasonable use, to facilitate commercial endeavors, of water that does not unduly interfere with the competing rights and interests of other riparian owners.

## Real Property Midterm 2010 2011

**Third**, riparian owners may be entitled to the "prior appropriation" of a watercourse. Where the reasonable use doctrine requires courts to balance the competing interests of riparian owners, the doctrine of prior appropriation initially grants a superior legal right to the first riparian owner who makes a beneficial use of a watercourse. This has been codified and states now issue permits to individuals, commercial and governmental entities. The rules vary as to the quantity of water that can be removed. Some have a first-come-first-served basis other states consider the degree of beneficial use.

Surface water that seeps underground can also create conditions ripe for litigation. Sand, sod, gravel, and even rock are permeable substances in which natural springs may form and moisture can collect. Underground reservoirs can be tapped by artificial wells that are used in conjunction by commercial, municipal, and private parties. When an underground water supply is appreciably depleted by one party, other parties with an interest in the well may sue for damages. There was an interesting cause of action out of the Mid-West where a municipality in order to lay pipe had to dewater, lower the water table. This not only depleted the water supply for some domestic use, but the land subsidence caused considerable structural damage.

As with surface water and riparian rights, three theories of underground water rights have evolved. The first theory, known as the **absolute ownership theory**, derives from common law and affords landowners the right to withdraw as much underground water as they wish, for whatever purpose, requiring their neighbors to fend for themselves. Under the second theory, known as the **American rule**, landowners may withdraw as much underground water as they like as long as it is not done for a malicious purpose or in a wasteful manner. This theory is now applied in a majority of jurisdictions in the United States. California has developed a third theory of underground water rights, known as the **correlative theory**. The correlative theory provides each landowner with an equal right to use underground water for a beneficial purpose. But landowners are not given the prerogative to seriously deplete a neighbor's water supply. In the event of water shortage, courts may apportion an underground supply among landowners.

Water you don't want

The disposal of diffuse surface waters, which consist of drainage from rain, springs, and melting snow, is typically the source of much litigation. This type of water gathers on the surface but isn't part of a stream, lake, or other well-defined body of water.

Litigation arises when one owner drains excess surface water onto neighboring property. Individuals who own elevated property may precipitate a dispute by accelerating the force or quantity of surface water running downhill, and individuals who own property on a lower level may rankle their neighbors by backing up surface water through damming and filling. Courts are split on how to resolve such disputes.

Some courts apply the common-law rule of "common enemy" that allows landowners to use any method of surface water removal they choose without liability for flooding that may result to nearby property.

## Real Property Midterm 2010 2011

Application of this rule generally rewards assertive and clever landowners and does not discourage neighbors from engaging in petty or vindictive squabbles over surface water removal.

Other courts apply the civil-law rule, which stems from Louisiana, a civil-law jurisdiction. This rule imposes liability for any damage caused by a landowner who interrupts or alters the natural flow of water. The civil-law rule encourages neighbors to let nature take its course and live with the consequences that may follow from excessive accumulation of standing surface water.

Over the last quarter century many courts have begun applying the reasonable use rule to surface water disputes. This rule enables landowners to make reasonable alterations to their land for drainage purposes as long as the alteration does not unduly interfere with a neighbor's right to do the same. In applying this rule, courts balance the neighbors' competing needs, the feasibility of more appropriate methods of drainage, and the comparative severity of injuries.

(Now that everyone has finished eating) I will close with Sewer effluent. Riparian owners have the right to an undiminished quality of water. The legal question is does a waste water treatment plant that is properly operated violate this right. The court has ruled that it does not. In fact one court ruled that the effluent was cleaner and actually beneficial to a stream. A stream that fed into a public park pond. A psychological injury is not sufficient under the law.

I'll be at my desk 867-5309 if there's anything else I can help with.