

Empire College School of Law  
Professor Ornell  
Real Property – Fall 2013 Midterm  
Issue Outline

**Question 1**

O my farm to A for 5 years at \$1,000 per month. Then for my brother B to farm for until my son O Jr. decides to farm the land.

Define who had/has what and why. Explain rights, duties, and responsibilities.

**O** had a fee simple absolute

During the lease right of entry reversion Landlord duties to include: is this a commercial rather than residential lease.

Post lease reversion if you found brother B to have a life estate, with the duties that would flow from having the reversion. If your position was there was no life estate O would have reserved nothing and would therefore have nothing.

**A** had nothing. During the lease a non-freehold estate. Tenancy for years.  
Commercial vs. residential lease

**B** had nothing. Has a vested remainder in Fee Simple subject to an executory limitation a sub-category of Fee Simple subject to complete divestment. Duties of a remaindermen.

**O Jr.** had nothing Has a shifting executory interest. That would ripen into a Fee Simple Absolute.

This fact pattern does not trigger the need to even mention the Rule Against Perpetuities.

**Question 2**

Having just become an attorney, you open your own law practice. The first paying customer hires you for one hour to provide written guidance on the below fact pattern.

My brother, Brown Smith, and I have 40 acres. I farm **my** 20 acres and he grazes a few head of cattle on **his** 20. We both have several wells. This past season all of **my** wells went dry by the end of July and my **brother's** wells did not go dry. Not so coincidentally, my next-door neighbor pumped well water for the entire month of June in order to build a wine cellar. Last week some of the cattle made it over into **my** fields and damaged my crop. What can be done? I've provided a copy of the deed.

0 to Able & Brown Smith as brothers in the entirety

(Emphasis added)

The key to answering this question is to correct the client's misconception that there is a **my** and **my brother's** part of a cotenancy. Co-tenancy includes: tenancy in common, joint tenancy or tenancy by the entirety. Hence, the central issue is not impacted by the defect in the deed. At most the defect would warrant an opening remark of "Although your deed states the property is held "in the entirety" this type of ownership is only available to married couples. Therefore, you actually hold title as "tenants in common." Both of these types of ownership are co-tenancies. The same rules of occupancy and use apply equally to both" With perhaps in the closing something along the lines of: as "tenants in common" you and your brother are free to will your interest in the property to anyone you want to. If you want your interest in the property to automatically go to your brother on your death or if he dies first to have his interest come to you automatically, you will need to have a new deed. That is something I can assist you with."

A practical solution would be to offer to draft a co-ownership contract that would define: rights, duties, responsibilities and the consequences for a breach. The letter should also touch upon the legal exit strategy of partition.

As for the wells, the client has the right to use the well that is providing water; has the right to deepen the nonproducing well and seek contribution for this maintenance cost.

As for the neighbor with the wine cellar, this is the issue raised in *State v. Michels Pipeline Construction, Inc* A dewatering case -- page 209.

I expected the letter to be one typed page.