

**Real Property -- Prof. Belle
Midterm Examination –December 2017
Answer Outlines -- Essay Qs**

Question 1 (based on 10/07/17 in-class exercise)

Part One:

O, who owns Blackacre in fee simple absolute, conveys Blackacre “to A and her heirs for life, then to B.” As a result of this conveyance, what interest does each party have?

→ A has a life estate; B has a vested remainder; O has nothing.

Part Two:

Thereafter, consider each of the following alternatives independently:

(1) B dies while A is still alive. What happens to B’s interest, and why? What interest does A have, and why?

→ B’s remainder does not fail just because A is still alive. It is descendible and devisable. So it passes to B’s successors (heirs or devisees), who become the present owners of the remainder, even though possession under it is still in the future. A still has a life estate.

(2) While A is still alive, B executes a document stating in pertinent part: “I hereby convey Blackacre to C in fee simple absolute.” What interest does C acquire, and why? What interest, if any, does A have, and why?

→ C acquires B’s remainder, which is alienable inter vivos. A still has a life estate.

(3) A begins intentionally damaging the improvements. What is B’s remedy, if any?

→ B can sue A in “waste,” for either damages or an injunction. B’s remainder is presently owned and is protected against waste, even though possession under it is still in the future.

(4) While A is still alive, the state government exercises its eminent domain authority and condemns Blackacre for construction of a new freeway. In this situation, all owners of any interest in Blackacre will be entitled to receive compensation from the state. Who will receive compensation, and how will that compensation be determined?

(N.B.: No math is required for your answer.)

→ Both A and B will receive portions, which in total will equal the fair market value of Blackacre. A receives the present value of the right to use Blackacre for A’s lifespan, which is determined (estimated) actuarially. B receives the present value of the right to receive the value of Blackacre at a future date when A’s lifespan (as actuarially determined) will end.

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Question 2 (based on 11/16/17 in-class exercise and text pp. 559-567)

S and B enter into a written contract whereby S will sell Blackacre to B. Both parties sign the contract. At the same time, B gives a check to S, as an “earnest money” deposit. Neither party uses a real estate agent or an attorney for the transaction, and there are no witnesses with personal knowledge of the contract or the check, other than S and B. At S’s suggestion, and with B’s consent, S retains both the original, signed contract and the check for “safekeeping.” There is no copy of the contract or the check. During the escrow period, S changes his mind and refuses to complete the sale. S also refuses to return B’s check. B sues S for specific performance. During discovery, S refuses to produce the contract or the check, claiming that there was no written contract or check at all. Before trial, S files a motion for summary judgment, arguing that the action is barred by the Statute of Frauds (which is a “typical” Statute of Frauds).

(1) Does the Statute of Frauds require B to introduce the contract itself? Why or why not? If B cannot produce the contract itself, can B introduce some other writing(s) sufficient to satisfy the Statute of Frauds? If so, what type of writing might suffice, and what must it include?

→ Even if the contract is not available, B is allowed to introduce some “writing” or several related “writings” that will satisfy the Statute of Frauds. The writing(s) generally must be some form of “memorandum” (e.g., a letter, a check, a document filed in another court action), signed by “the party to be charged” (here, S), that includes the “essential terms” of the contract. The “essential terms” generally are: Identification of the parties, description of the land to be sold (preferably the legal description, although a street address may be deemed sufficient), and words indicating that a sale is intended. Most courts also require that the price be stated.

(2) If B can produce a writing sufficient to satisfy the Statute of Frauds, would the existence of such a writing ensure that the contract will be enforceable? Why or why not?

→ Even if the writing(s) can satisfy the Statute of Frauds, this alone will not make the contract enforceable. B must prove the existence and terms of the contract, which the writing(s) might not be sufficient to do.

(3) If B cannot produce any writing sufficient to satisfy the Statute of Frauds, is the contract a nullity? Why or why not? If B cannot produce any writing, can B prove the existence and terms of the contract some other way?

→ The contract is not automatically a nullity. If no such writing exists, B might be able to prove the existence and terms of the contract by parol evidence, which can include B’s testimony about the contract based on B’s personal knowledge, and/or testimony about B’s part performance (here, arguably, tender of the “earnest money” deposit check). Evidence of part performance may make the contract enforceable. Alternatively, B might seek restitution of the earnest money.