Q1 85

1)

======== Start of Answer #1 (1374 words) ========

An ***estate*** is defined as a ***possessory interest in land*** measured by a specified ***duration*** in time. There are two broad categories of estate: Freehold, and Non-Freehold.

O Had what?

O *had* a ***Fee Simple Absolute (FSA).*** A FSA is a ***Freehold Estate.*** It is a ***present possessory interest*** known as "the ***greatest estate*** known to man." FSA is ***potentially infinite in duration***, freely ***alienable/transferable*** (in whole or part) ***intervivos*** (while alive) or ***intestate*** (after death by will, trust, or inheritence). Here, O is a ***grantor*** of his property interest (his farm which , again, is held in FSA).

A had what•

A had nothing.

B had what?

B had nothing.

OJ had what?

OJ had nothing.

O will have what?

O will have nothing.

What did O do with his FSA?

O granted his interest to another/others (first in part, then *seemingly* in whole). The language used by O here requires some interpretation, since traditional language was not used throughout thus making it unclear at times.

What does A have?

First, O conveyed part of his present possessory interest (the FSA) "to A for 5 years at $1000 per month." "To A" language indicates ***words of purchase,*** i.e. ***identifies a grantee***/who gets it. "[F]or 5 years" are ***words limitation,*** indicating the ***duration*** (how long the grant good for) for which O intends to this interest to be valid in the grantee (A). Thus, ***A*** is granted a ***Tenancy for years (TY)***. A TY is a ***Non-Freehold/Leasehold*** estate. A TY is a possessory interest with an identifiable start and end date. Termination is automatic upon the end date.

Right And Duties:

TY is alienable depending on the terms of the lease in the form of A's right to assignment/subleting. A has a duty to pay rent -- exceptions include contructive eviction if O breaches his implied duty to not interfer with A's implied rights to ***quiet enjoyment,*** and ***habbiability***. A has the duty to use ordinary care in maintaince of the property -- i.e. not to create waste --diminish the value of the land. A has a duty to vacate when TY is terminated.

O has a duty to deliver possession, maintain the property in safe order and warn of any dangers (exceptions include hidden/latent defects), inhabitable order, make repairs, and not interfer with A's quiet enjoyment. O has the right to collect rent, to assign rent interests, to seek injuction if A commits waste (any of the 3 kinds - amoraitve, intentional), to evict if A stays beyond 5 years.

What will A have?

A will have nothing at the end of the TY.

What does B have?

O states "Then for my brother B to farm for until my son O Jr. (OJ) decides to farm the land." The words "Then for my brother B" are ***words of purchase***, indicating O's intent for B to take possession of the farm. The words "to farm," however, are vague. It's unclear whether O intended B's taking of possession of the farm to be on contingency basis of B actually farming, or whether O just assumed that is what B would do there, i.e. farming, because it is a farm. Thus, creating one of seemly two possibilities:

The later would create in B, a ***Vested Remainder Subject to Complete Divestment*** (with a corresponding present possessory interest in ***Fee Simple Subject to Condition Subsequent*** - discussed infra). The former would seemingly, at first glance, create in B, a ***Contingent Remainder.***

A remainder is *a* ***future interest*** *(an interest that potentially becomes possessory in the future)* which is ***naturally flowing*** from prior estate. ***Contingent Remainders*** require (1) ***satisfaction condition precident and no condition subsequent***, (2) **at the time of the prior estate's natural termination**, (3) **before the grantee can take actual possession** of the land (at which time the interest **"vests"** i.e. when there is a asertainable person in being, no condition subsequent, and satisfaction of the condition president).

A***Vested Remainder Subject to Complete Divestment,*** on the other hand, is a future interest (supra) that could become possessory, with potentially infinite duration (as here because the the corresponding present possesory estate in Fee Simple Subject to Condition Subsequent -- with FS being potentially infinite duration so long as the subsequent condition does not occur). Under this option, there is nothing preventing B from taking possession after the 5 year Leasehold is terminated, naturally; rather, there is a ***condition*** which could occur ***after*** he takes possession, divesting him of his interest, i.e. a ***subsequent***

condition (discussed supra - see "what does OJ have?").

Here, however, a ***Contingent Remainder*** is most likely ***not granted*** (1) because at common law, a contingent remainder ***cannot follow a Non-Freehold estate*** as is the case here (it follows a Leasehold), (2) because of the concurrent existence of a ***condition subsequent*** (discussed supra and infra), (3) because it ***violates RAP*** in that it does not put a limit on when the condition must be satisfied (see infra), (4) there is a strong presumption that because the "for until my son" condition is ***not separated by commas*** and is within the ***same clause as the grant*** itself, that this is not a contingent remainder, and finally (5) because of the ***courts preference towards holding against Contingent Remainders in favor of Vested Remainders,*** when there is ambiguity, such as hered.

Therefore, O most likely created in B a future interest: a ***Vested Remainder Subject to Complete Divestment*** (with the corresponding present possessory interest being ***Fee Simple Subject to Condition Subsequent*** - discussed infra and supra. This of course is *assuming RAP Reform, more - specifically Cy Press/Judicial Reformation, applies* (discussed infra). ***Otherwise, B simply has a remainder in Fee Simple Absolute since RAP would invalidate any grant to OJ*** based on an unspecified limit/amount of years specified before vesting of his interest is to occur.

What does OJ have?

O most likely created in OJ a future interest of a Shifting Executory Interest (with the corresponding present possessory interest of ***Executory Limitation Subject to Condition Precident*** - meaning a condition must be met prior to the vesting/taking present possessory interest of the land. An executory interest divests another grantee of her/his present possessory interest, i.e. the preceding estate ***does not end naturally.*** Here, the words "for until"

are words of duration/limition, limiting B's interest (see supra). The words "my son OJ decides to farm the land," while not perfectly clear, mostly likely will be interepreted as words of purchase -- granting OJ the ***right to "shift"*** B's interest from B to OJ, upon the happening of a ***condition president.*** The Condition Precident here would be "OJ deciding to farm."

Therefore, O most likely created in OJ a future interest of a Shifting Executory Interest (with the corresponding present possessory interest of ***Executory Limitation Subject to Condition Precident*** - meaning a condition must be met prior to the vesting/taking present possessory interest of the land. Again, this of course is *assuming RAP Reform, more - specifically Cy Press/Judicial Reformation, applies* (discussed infra). ***Otherwise, OJ has nothing*** since RAP would invalidate all/any grant OJ based on an unspecified limit/amount of years specified before vesting of his interest is to occur.

Validating both OJ's and B's Interests:

Rule Against Perpetuties (RAP) - any interest must vest or fail within 21 years of a life in being from the time of its creation. Here, under traditional RAP rules ***OJ has nothing*** since RAP would invalidate all/any grant OJ based on an unspecified limit/amount of years specified before vesting of his interest is to occur, i.e. the current wording allows for remote vesting beyond 21 years, i.e. an unspecified limit/no amount of years specified before vesting of his interest is to occur.

Exceptinon: RAP Reform - One modern trend is for the Court to reform the language of inadequate conveyances to conform with RAP's requirements. Here, all the courts would have to do is add ***"within 21 years*** the 5 year leasehold's termination." ***Therefore, the conveyance to OJ is valid, under RAP Reform.***

What will B Have?

B's Corresponding present possessory interest is a ***Fee Simple Subject to Condition Subsequent*** - discussed supra.

What will OJ Have?

OJ's corresponding present possessory interest of ***Executory Limitation Subject to Condition Precident***- discussed supra.

======== Start of Answer #2 (1192 words) ========

Mr. Smith,

Thank you for choosing my counseling on this matter. There may be deeper issues within some of your questions, however, the time allotted will allow me to provide you with a ~~very~~ good grasp of the relevant legal issues and what can be done about them.

There are two concerns here. The first regards you and your brother, Brown Smith, and his cows damaging your crop. The second relates to your wells running dry.

Your brother and you own 40 acres. Thank you for providing the deed as it provides me a great deal of information to draw from. The deed states that it is held

between you two "as brothers in the entirety". "in the entirety" is antiquated language that used to relate to married couples, however, in your circumstance it does not apply. The two of you hold the property as tenants in common. This is due to the fact that there is no explicit words in the deed regarding a right of surviorship. This just means that when you or your brother dies, their interest in the property will pass to their heirs, or whoever they wish it to pass to. You are also allowed to sell or incumber the property as you see fit.

Since you are tenants in common, you both have an indivisible equal right to the entire property. You and your brother have free reign to use and enjoy the whole property as you see fit. What it seems that you have created is your own areas, he has his 20 acres and you have your 20 acres. This creates a situation where you have explicity barred him from a portion of the estate, your 20 acres, for the purposes of his cattle roaming. This is completely allowed and justified. However, legally, he does have the right to access that portion of the property. Just because he has access does not allow his livestock to damage your crop however. This might be considered waste, as he has a legal right to your side of the property, but cannot voluntarily, even though the cows didnt mean it, destory your embelments. I would talk to him about the damage and how they got onto your side. This would provide a greater possibility of an easier solution without going to court and incurring more expense.

If you want to make sure in the future you are more protected from damages, you may want to consider partitioning your land. This would be a legal seperation of your two pieces of property. This would allow you to completely restrict your brother from accessing your land. You can do this voluntarily, if your brother agrees to the current 20 acres each. However, should he not, you may need to go to court where they would seperated as fairly as possibly. If this is not possibly, one of you might end up with more valuble land, say if there is a house involved, and need to pay the other an amount to make it equitable. This might not be a great option if you live in a house on your 20 acres, as your crop space would likely be greatly diminished to make the offset as fair as possible. If one of you wants to get out of the property, he can buy the other

out as well.

If you choose any of the partition choices, there will be some drafing of documents needed. I would be glad to help you should you choose to go that direction.

Moving forward, your second issue relates to your well running dry. Here in California, we have an appropriation system for water. This means that water is limited by the State and certain activities are given preferencial treatment over a scarce resource. This appropriation is over any riparian water. This could be streams, ponds or underwater streams as well. It is possible that your well and your neighbor taps into the same underwater river. As such, he has certain duties to you as a downstream individual. He must not deplete your quantity, quantity or flow. If we can show that there is an underwater stream, we will likely prevail here, as it seems to indicate that his pumping of a whole month depleted your quantity or flow. There are other possibilities that need to be explored however.

If the underground water for your well is the result of surface water going down to a aquifer, there are other water rules in place. Depending upon jurisdicition, your neighbor may have an absolute ownership claim and be allowed all the water that he wants to use. There are also areas where you may use an amount of water that correlates to the amount of land you own. Both of these option are not the case here, as we have a reasonable use rule. Neighbors may use underground water resources only if it does not impact their neighbors. If it does, it is judged on a reasonable use standard. Like determining if there is an underwater stream, here we must determine if your well is in the same aquifer as your neighbors. Due to the fact that your brothers wells didnt run dry, we need to investigate further to determine if your neighbor has liability here. A good start would be to find out how deep your brothers wells are and map out where they are on the property. Then if possible, do the same with your neighbors wells. Should the depths of your neighbors wells and yours match up, but your brothers are deeper, you will have a strong case. That would seem to indicate that his pulling of water effected you. Likewise if the wells of your brother are far away from yours and the neighbors.

Your brothers water usage is also something necessary consider. You have access to the wells as a tenant in common. This will change the analysis regarding the neighbors usage. However, there is more evidence that might help us here. Knowing little about farming, I would conclude that your fields take more water than his few cows. If we can show that your brothers usage of water is so minimal, that you drawing water for your crops would have depleted his wells as well, we will have a very strong case. So determine your water needs, as well as how much your brother pulled out as well for information purposes. If your brother only pulled out a little bit, that helps us greatly.

I would suggest proceeding in the investigation of the location and depth of the wells, as well as your brothers water usage before deciding a course of action. That information will give us a strong indication of exactly how to proceed. It is likely that your neighbor is responsible for your water outage, but we may need to partition your and your brothers land before we can get damages from him. Should hat need to occur, or should you wish to get further advice after your get the information I suggested, please contact me. I would be happy to help you with anything you should require.

======== End of Answer #2 ========
END OF EXAM