Landlord Tenant (holdovers and delivery of possession)

Topic
Landlord tenant law, specifically dealing with holdover tenants and the delivery of possession.

Source of law
The sources of law are the common law, statutes, the restatement and case law.

Issues (7)
1. What is a tenancy at sufferance?
2. What options does a landlord have with a tenant at sufferance?
3. What is a trespasser?
4. What damages can a landlord recover from a tenant at sufferance?
5. What is the legal duty of the landlord to a new tenant?
6. Who is responsible for a holdover tenant?
7. What can a tenant recover if there is a holdover tenant?

Rules (9)
1. A tenancy at sufferance gives the landlord the option to evict the holdover or bind them to a new term. CRECHALE
2. A trespasser is anyone who enters another’s property without permission. CRECHALE
3. If a landlord evicts a holdover he can recover damages for wrongful occupancy. CRECHALE
4. If a landlord accepts a rent check from a holdover tenant then a periodic tenancy has been created. CRECHALE
5. All landlords have a duty to deliver the legal right of possession to a tenant. HANNAN
6. The English rule, which is the majority in the US, holds that a landlord has an obligation implied in law to deliver actual possession on the first day of the term. HANNAN
7. The American rule, minority, only requires the landlord to deliver legal possession. HANNAN
8. Under the American rule the new tenant takes the property as is, but has the same remedies available a landlord would. HANNAN
9. The L and T can modify an agreement to either waive or require the delivery of actual possession. HANNAN

Rationale
To clarify a landlord and tenants duties, responsibilities and remedies when there is a dispute regarding possession.

Comment
In today’s society the English rule is the better rule since a landlord is generally in a better position to deal with a legal dispute over possession.

Landlord tenant dose (sublease and assignment and abandon and default)

Topic
The topic is sublease and assignment of leaseholds.
Source of law

Issues (7)
1. How do you determine if there has been a sublease and an assignment?
2. Who has the power to assign or sublease?
3. What restrictions can be placed on a tenants ability to transfer an interest?
4. How do the rules of alienability affect the transfer of leases?
5. Why does it matter if it is a commercial or residential lease?
6. What are the landlords options if a tenant defaults?
7. What types of liability will a landlord have for using self help?
8. What duty does the landlord have if a tenant abandons?
9. What remedies are available to a landlord if he mitigates?
10. What options does a landlord have if a tenant surrenders?
11. When is anticipatory breach available?
12. What security devices can a landlord use?
13. Does a commercial landlord have a duty to mitigate?

Rules (9)
1. A sublease occurs when a T transfers anything less than his entire interest in the leasehold to a 3rd party and retains a reversion. ERNST
2. An assignment is the transfer of a T’s entire leasehold interest to a 3rd party. ERNST
3. If an assignee breaches the landlord can sue both T and the assignee, but only recover from 1. ERNST
4. To determine if a transfer is an assignment or a sublease has occurred you must examine the parties intentions. ERNST
5. At CL a landlord could deny consent to a transfer for any reason. KENDALL
6. If T defaults L should use summary proceedings to get possession. BERG
7. In most jurisdictions if T defaults L can use self help to regain possession as long as it is peaceful and only with reasonable force. BERG
8. If T abandons L can accept surrender and terminate the lease, reject the surrender, or retake possession and relet the premises. RIVERVIEW
9. In most jurisdictions and the restatement L doesn’t have a duty to mitigate if T abandons because a lease is an interest in property. RIVERVIEW

Rationale
To ensure that the parties to a lease know what their duties are if a dispute arises over the leasehold.

Comment
It is better to promote the tenants ability to alienate a leasehold.

Floating Issues and rules for landlord tenant (landlord duties, illegal lease, implied warranty of habitability, tenants duties, unaffordable housing)
Issues (10)
1. What are the requirements of a lease?
2. What types of leases are there?
3. What is the numerous clausus principle?
4. What type of interest is a lease?
5. What effect does the statute of frauds have on leases?
6. What are the landlord's duties at CL?
7. What is constructive eviction and how can it be used?
8. What are the tenant's remedies in an eviction?
9. What is an illegal lease?
10. What is the implied warranty of habitability?
11. What is retaliatory eviction?
12. Is a landlord liable for torts that occur on his leased property?
13. How does the law of waste apply to tenants?
14. How does the duty to repair apply to a tenant?
15. What are the effects of affordable housing?

Rules (12)
1. A lease gives the leaseholder the right of possession of property as long as he fulfills the lease obligations. CB
2. A leasehold is a conveyance of a possessory estate in land and a contract. CB
3. A term of years lease is one that is for a single fixed term of length. CB
4. A periodic tenancy is a leasehold for a recurring period of time that continues until either party gives advance notice. CB
5. A tenancy at will is a leasehold for no fixed period of time that can be terminated by either party. CB
6. A tenancy at sufferance (holdover) is a tenant that remains in possession after their right to do so has expired. CRECHALE
7. If there is no fixed period for the lease as an operation of law it becomes a periodic tenancy. CB
8. The statute of frauds requires that a leases over a year have a signed writing. CB
9. The numerous clausus principle prohibits the creation of all new types of property interests. CB
10. Implied in law, all tenants have a right to quiet enjoyment of their lease. RESTE
11. If the warranty of habitability is implied in your jurisdiction then a residential landlord has a duty of continuing repair. HILDER
12. A tenant has a duty to avoid waste. BAKER

Rationale
To ensure that the parties to a lease know what their responsibilities are to the other party and what remedies are available if those responsibilities are not met.

Comment
Rent controls and other methods artificially suppressing prices actually hurt those that they are meant to benefit in the long run.

Estates/Defeasible Estates
Topics
Source of law
Issues
1. What was a feudal incident?
2. What was subinfeudation and substitution?
3. What is a fee simple and what types are there?
4. What is the hierarchy of inheritance if there is no will?
5. What was the effect and use of the fee tail?
6. What was the effect of the standardization of estates?
7. What are the consequences of judicially recognizing life estates?
8. What are the types of restraint the alienability of life estates?
9. What is the present value of a life estate?
10. What is the difference between a legal and equitable life estate?
11. What are the courts options with legal life estates?
12. What are the differences between the types of fee simple defeasible?
13. Are defeasible fees alienable?
14. What effect does RAP have on defeasible fees?
15. What happens in the condemnation of land subject to a defeasible fee?

Rules
1. There are 2 types of fee simple, fee simple absolute and defeasible fees. CB
2. A fee simple absolute is ownership in a land whose duration is perpetual. CB
3. A fee simple is created by a grant of “to A and his heirs”. CB
4. Inheritance of fee simple has been a matter of right since the 1200’s. CB
5. A fee simple has the characteristics and qualities of a thing. CB
6. If a person dies intestate without will the real property goes to their heirs in the following order: issue, ancestors, collateral, escheat. CB
7. A fee tail descended to the grantee’s issue generation after generation. CB
8. In most jurisdictions, if you try to create a fee tail now you will create a fee simple in the grantee. CB
9. A life estate is a possessory estate that terminates upon the death of the holder. WHITE
10. Absolute disabling restrain on a life estate is void but a forfeiture restraint is valid. CB
11. A legal life estate is an estate for life in the assets themselves. BAKER
12. Courts can order a judicial sale of a life estate due to equitable necessity or waste avoidance. BAKER
13. Life tenants are required to avoid affirmative or permissive waste. CB
14. A fee simple determinable ends automatically when a stated event occurs. CB
15. A fee simple subject to a condition subsequent may be divested, at the choice of the transferor, if a stated event occurs. CB
16. If the use restriction of a defeasible fee materially affects marketability adversely, then it is an invalid restraint on alienation. ODD FELLOWS

Rationale
To clarify what rights and duties different types of estates placed on the holders of those estates.

Comment
The courts should prefer determinable fee simples, since the possibility of reverter automatically transfers the property interest, which leaves titles unencumbered and promotes the marketability of property.
Executory Interests

Topics

Source of law

Issues
1. What are the future interests that are retained by the transferor?
2. What are the future interests that are created in a transferee?
3. What is a future interest’s legal status?
4. What is the difference between a reversion and a remainder?
5. What is the difference between vested or contingent remainders?
6. How were executory interests enforced?
7. What does an executory interest do?
8. Prior to the statute of uses what was the standing of shifting/springing interests?
9. What effect did the statute of uses have?
10. What was the purpose of a use?
11. What is a trust?
12. What is the effect of the statute of uses on trusts?

Rules
1. A future interest is a presently existing property interest that gives the future right to possession. CB
2. A reversion is an interest that is retained by and is vested in the transferor of a lesser estate. CB
3. The possibility of reverter is the interest remaining in the transferor when a fee simple determinable is transferred. CB
4. The right of reentry is the interest remaining in a transferor when a fee simple subject to a condition subsequent is transferred. CB
5. A vested remainder is a future interest that is created in a known 3rd party and will is ready to become possessory whenever the proceeding estates expire. CB
6. A contingent remainder is a future interest in either an unknown 3rd party or is contingent upon an event occurring. CB
7. An executory interest is a future interest in a transferee that in order to become possessory must divest some interest in another transferee or diver the transferor in the future. CB
8. The law prefers vested remainders over contingent remainders. CB
9. A remainder looks like a reversion but it is created in a transferee. CB
10. Historically contingent remainders couldn’t be transferred but vested always could. CB
11. A use was an interest in equity that the chancellor could enforce but was not recognized by law. CB
12. Prior to the statute of uses there could be no springing or shifting interests. CB
13. The statute of uses (1536) converted the use into a legally recognized interest and recognized executory interests. CB
14. A trust is the division of legal ownership and equitable ownership of property. CB
15. The statute of uses doesn’t apply to trusts if the trustee has active duties. CB
16. A trustee is a fiduciary and must act for the exclusive benefit of the beneficiaries. CB
Rationale
To denote which types of future interests could be created in different parties and clarify what their effects were.

To ensure that lords could not avoid feudal incidents by creating uses.

Comment
The trust is the modern day manifestation of the feudal use.

RAP
Topics

Source of law

Issues
1. what is RAP?
2. What is the perpetuities period for the RAP?
3. What is the rationale behind the RAP?
4. What property interest are not covered by the RAP?
5. What are subject to the RAP?
6. What property interests always violate the RAP?
7. How does the RAP apply to options to purchase residential or commercial land?
8. How do remainders in a class of people violate the RAP?
9. When is a subjected conveyance tested for the RAP?
10. When does a subjected property violate RAP?
11. What happens when a property interest violates the RAP?
12. What are the recent statutory modifications to the RAP?

Rules
1. A contingent remainder, an executory interest, and a commercial option are all void, shall be destroyed, and are unenforceable if; at the time of creation it cannot vest within the perpetuities period. (Crusto)
2. a time period represented by the life time of anyone alive and casually connected with the interest at the time of creation, “validating life,” plus 21 years. This is approximately 120 years.
3. It was a compromise between wealthy landowners and their children that allowed the grantor to control his land for a specific period and then had to convey it to someone else. (this occurred from beyond the grave)
4. Vested remainders and future interests retained by the grantor, such as reversion, possibility of reverter, and right of entry, are not covered by the RAP. Some states limit these period by statute, such as 30 years in CA. Others allow longer periods if they are recorded.
5. Options to purchase both residential and commercial land, contingent remainders, and class gifts to open classes.
6. Executory interests following a determinable fee simple or a life estate in an unascertained person are always subject to, and destroyed by, the RAP.

7. The option to purchase land violates the RAP if it lasts beyond the perpetuities period, which is 21 years in commercial transactions because there can be no measuring life (symphony space)

8. If a remainder is in a group of people, the RAP considers it is vested only if all members of a class are ascertained.

9. If any member of a class might vest outside of the perpetuities period, then the RAP destroys it.

10. A conveyance is tested for the RAP at the creation of the interest.

11. An interest is created by will when the person who creates the will dies.

12. An interest is created by inter vivos transfer when the gift becomes irrevocable.

13. A subject property interest violates the RAP if there is any possibility that at the creation of the subjected property interest, the subjected property interest could become vested or possessory outside of the perpetuities period. (casebook)

14. If a property interest violates the RAP, the violating language is eliminated via the “blue pencil” rule and the total conveyance is read as if the invalidated wording never existed. (Symphony Space)

15. The RAP should be applied on a wait and see approach to actually see if the case violates the RAP.

16. The RAP should make the perpetuities based n a specific period, 120 years, instead of on the fluctuating difficult standard of a measuring life.

17. The RAP should not use blue pencil to just cross things out and be based on the intent of the grantor.

18. THE RAP does not apply to perpetual trusts, where the trustee has the power to sell the land.

Rationale
The compromise between wealthy landowner who wanted to control their estates for ever and their children who wished to have control over their inherited estate.

Comment
Fixing the perpetuities period to a set number of years would significantly improve peoples understanding of RAP and therefore make it more efficient.

Cotenants/coowners
Topics

Source of law

Issues
1. What are the 5 types of concurrent interests?
2. What are the 4 unities to joint tenancy?
3. What is survivorship?
4. How can a JT be destroyed?
5. What effects does a mortgage have on joint tenancy?
6. What were the limits to transfers in a joint tenancy?
7. How can JT or tenants in common divide property?
8. What remedies are available to a cotenant?
9. What are the cotenants responsibility for taxes and mortgages?
10. What are the cotenants responsibility for repairs and improvements?
11. What part of rents are the concurrent owners entitled to?
12. What effect does a cotenants exclusive possession have?

Rules
1. Tenancy in common is a separate but undivided interest in property that, the interest of each can be conveyed by will or deed. CB
2. Joint tenants have the right of survivorship and must have the 4 unities at all times. CB
3. The 4 unities are: time, title, interest and possession. CB
4. Disputes in joint tenancy are solved by judicial partition. CB
5. A joint tenancy is destroyed when any of the 4 unities is violated. CB
6. Tenancy by the entirety requires the 4 unities plus a 5th, that they are married. CB
7. Neither of the tenants in the entirety can defeat survivorship on their own. CB
8. Survivorship means that the other parties in the tenancy get a decedents interest, they are not transferable. CB
9. A joint tenancy can avoid probate and bar creditors recovery if the creditee dies. CB
10. The title theory of mortgages (CL) says that a mortgage is a conveyance of an estate that vests the title in the mortgagee which destroys one of the 4 unities > destroys JT. HARMS
11. The lien theory of mortgages (modern view) says that a mortgage places a lien on the mortgagors interest in the property which leave a JT intact. HARMS
12. A JT can be divided by partition in kind or partition by sale. SWARTZBAUGH
13. A cotenant can seek the following remedies: partition, ouster or accounting. SWARTZBAUGH
14. Each cotenant must pay their share of taxes and mortgages. CB
15. If there isn’t an express agreement then cotenants do not have to pay for repairs or improvements that are done by another cotenant. CB
16. Rents received and profits must be divided by the cotenants. CB
17. If a cotenant has exclusive possession of the property he doesn’t have to pay rent to the tenants out of possession unless there has been an ouster. SPILLER

Rationale
To establish interests, duties and rights for different forms of coownership.

Comment
The lien theory of mortgages promotes inefficiency and economic waste and should not be used.

Easements
Topics

Source of law
Issues
1. what are the 4 types of easements?
2. What must be done to properly record an easement?
3. How an easement retained by a grantor of property?
4. What does it take to make an easement?
5. How does a license differ from an easement?
6. Why were negative easements limited?
7. What is a quasi easement?
8. What effect does the public trust doctrine have?
9. What are the limits on the assignability of easements?
10. What are the limits on the divisibility of easements?
11. How can the location of an easement be changed?
12. What is the rule of extending an easement?
13. What are the 7 ways you can terminate an easement?

Rules
1. The main goal in deciding what interest was transferred is the grantors intent. WILLARD
2. The regrant theory allowed a grantor to retain an interest in transferred property at CL. CB
3. Easements can be created by express grant, estoppel, prescription or implication. CB
4. An easement by estoppel can be created when a licensor grants a license and the licensee reasonably relies upon it. HOLBROOK
5. An easement by implied prior use can be found when a person used a right of way before transferring part of his property which had the right of way on it. VAN S
6. An easement by prescription can be created in a similar manner to adverse possession and the use must be adverse. OTHEN
7. The fiction of the lost grant was used in England to give someone an easement if they had been using it for over 20 years, based on the idea that the grant had been lost. CB
8. An easement appurtenant gives a parcel of land an easement over another land. CB
9. An easement in gross is an easement that is created in person. CB
10. States hold beach area in a public trust. BAY HEAD
11. To stop a prescriptive easement from forming the landowner must interrupt or stop the adverse use. CB
12. Easements are generally divisible, unless they are contrary to the intent of the original parties or unreasonably burden the servient estate. MILLER
13. An easement cannot be used for the benefit of land that is not the dominant estate. VOSS
14. At CL the location of an easement couldn’t be changed without the permission of the owner of the dominant tenement. CB
15. A taking occurs when the govt. takes the title or use of a property whose interest is owned by a private party. PRESAULT
16. An easement can be terminated by release, expiration, merger, estoppel, abandonment, condemnation or prescription. PRESAULT
17. In England negative easements were limited to 4 types. CB
18. In US a negative easement cannot be acquired by prescription. CB

Rationale
To allow parties to have legal rights of use to other estates property.
Comment
The divisibility of easements should be severely limited since they can unfairly place large burdens on the servient estate.

Covenants
Topics

Source of law

Issues
1. What is privity of estate?
2. How is a real covenant created?
3. What is the difference between horizontal and vertical privity?
4. What was the purpose of the equitable servitude?
5. What are the differences between real covenants and equitable servitudes?
6. What is a reciprocal negative easement?
7. When can an affirmative covenant be transferred?
8. What is the difference between using defeasible fees or servitudes to control land?
9. What restrictions have been placed on restrictive covenants?
10. How can a covenant be terminated?
11. When can the courts terminate or modify a restrictive covenant?
12. When are common interest restrictions enforceable?
13. What restrains on the alienability common interest communities are there?

Rules
1. A real covenant is a promise that is enforceable at law by successors in title to the original parties. CB
2. Due to the Statute of Frauds a real covenant must be made by a signed writing. CB
3. In 1800’s England only parties that had privity of contract could sue on the promise. CB
4. If the parties had privity of estate then the covenant was enforceable. CB
5. Privity of estate only existed in the landlord tenant relationship. CB
6. Vertical and horizontal privity were required for the benefit and burden to run. CB
7. The remedies available for the breach of a real covenant were in a court of law were money damages. CB
8. Equitable servitudes, which were invented in 1848, allowed the Chancellor to enforce covenants without privity, in equity. TULK
9. The remedy for the breach of an equitable servitude an injunction. TULK
10. Negative equitable servitudes can be created by implication. SANBORN
11. A reciprocal negative easement is one that is implied when a developer sells lots in a subdivision from a general plan and some of the deeds have the promise. SANBORN
12. An affirmative covenant to pay will be valid if it touches and concerns the land and effects the legal advantages and burdens of the owners of land. CB
13. Using defeasible fees as a land control gives you the remedy of forfeiture. CB
14. The classification of single family residence is based on the style of house, not the lifestyle of the residents. HILL
15. Equal rights legislation has made covenants that restrict the sale of homes to only certain races are not enforceable. SHELLY
16. Covenants can be terminated in the same way as easements. CB
17. An owner cannot abandon their property interest in an attempt to terminate their obligation to pay affirmative covenants. POCONO

Rationale
To allow the attachment of benefits and burdens to estates through promises.

Comment
The restatement 3rd is a step in the right direction of unifying all benefits and burdens attached to land by moving away from an antiquated system whose categories and distinctions no longer apply.