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1) The Easement

Jan purported to grant an easement to Sid for ingress and egress to his parcel adjacent to the property she owned as a tenant in common with Irma. As tenants in common, Irma and Jan must both consent to burdens on the property. Jan did not seek Irma's consent before granting the easement. Therefore, the easement is invalid because Irma did not consent.

Even if Irma had consented to the easement, it would be a breach of the lease with Ting. As a lessee, Ting is entitled to the entire property as it existed at the time of executing the lease. The property cannot be encumbered or changed after the lease without violating Ting's interest in the property. Since Jan did not get Ting's consent, the easement would materially alter his use of the property and be a violation of the lease.

The easement also violates Whiteacre's deed restriction. When conveyed to Jan and Irma in 2007, Whiteacre was burdened by a deed restriction that prohibited the property from being used "for restaurant purposes" for 25 years. As a general rule, these type of deed restrictions limiting the use of the property are valid. The easement violates this deed restriction because it allows the property to be used for a restaurant drive through. Should Fast Food Co. discover this restricted use, it may bring an action to enjoin the easement as violating the restrictive covenant in the deed.

2) Reimbursement

Irma paid for repairs to the property out her separate funds. Tenants in common are each liable for proportional shares of the costs of repairs and maintenance on commonly owned property. The repairs to the roof cost \$2000. Therefore, Jan was liable for half of that repair cost, or \$1000.

Rather than seek payment for Jan's \$1000 liability for the roof repair directly from Jan, Irma collected Jan's half of Ting's rental payment. Jan's half of the rental payment was \$750. This amount was owed to Jan under the terms of the lease. Accordingly, Jan is entitled to an offset of the \$1000 she owes Irma for the roof repairs in the amount of \$750 for the amount Irma owes Jan for keeping Jan's half of the rental proceeds for one month. After the offset, Jan will still owe Irma \$250.

3) Ned's Interest

Irma conveyed an undivided $\frac{1}{4}$ interest in Whiteacre to Ned. This was proper. A tenant in common may sell all or part of her interest in tenancy property. Irma owned $\frac{1}{2}$ of Whiteacre and sold $\frac{1}{2}$ of that interest (or $\frac{1}{4}$ of Whiteacre) to Ned. This was a valid transfer of a portion of her rights to the property.

Jan is not entitled to any of the proceeds of the sale of Irma's transfer to Ned. The sale of Irma's interest does not affect Jan's interest in Whiteacre. Therefore, she may not collect any of the proceeds of the sale.

END OF EXAM

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(1) Jan did not have the right to grant the easement to Sid.

First, when Fast Food Co. conveyed Whiteacre to Irma and Jan as tenants in common, the deed included a restriction which prohibited the use of Whiteacre for restaurant purposes for 25 years. Assuming this is a valid restriction, this means that the restriction would be valid through 2032. Although Jan may argue that the easement "for the purpose of providing car and light truck vehicular ingress and egress to and from the restaurant on Greenacre" is not in violation of the restriction, because the ingress and egress was granted for the purpose of providing services for the Taco Hut restaurant, it is for "restaurant purposes" and it violates the restriction on the deed.

Moreover, Jan and Irma are tenants in common of the Whiteacre. As tenants in common, each tenant has a right to undivided 1/2 interest in the Whiteacre. Each tenant may alienate, devise, and descend her undivided 1/2 interest without the other's consent. However, Jan's easement to Sid does not involve an undivided interest. It specifies a specific tract of land, including some of the parking spaces on the east side of Whiteacre. This violates the undivided 1/2 interest in Irma. If Jan wanted to give a specific tract to Sid, she would have needed to exercise her right to partition the land in kind through a court proceeding (or if it was impossible, to have the court conduct a sale of the land and divide the proceeds equally). The fact that Jan specifically identified a tract of land is in violation of Irma's undivided 1/2 interest.

Additionally, both Jan and Irma gave Ting "exclusive use of Whiteacre for office purposes" for a five-year term. The term would have ended in 2014. Therefore, Jan violated the lease term as a landlord.

Therefore, Jan did not have the right to grant the easement to Sid.

(2) Irma is entitled to reimbursement from Jan of roof repair costs. However, Jan may offset on account of the month's rent that Ting paid solely to Irma.

As tenants in common, each tenant is entitled to equal shares of rent proceeds from a third person. Each tenant is also equally responsible for reasonable repairs and upkeep of the property. Additionally, there are relevant lease terms related to the roof repair and rent payments. Here, Irma

and Jan leased Whiteacre to Ting together. On the lease, both promised to repair the roof of the small commercial building they leased Ting. The lease also indicated that Ting would pay Irma and Jan each 1/2 of the \$1,500 monthly rent.

Jan may argue that the roof repair was an improvement that she was responsible for paying for it. This would fail both because as a tenant to tenants-in-common property, each tenant is responsible for the ordinary repair of the property, and because Jan and Irma both agreed to repair the roof. Therefore, Jan should repay Irma \$1,000.

In terms of the rent Ting paid Irma directly and not Jan, Ting is in violation of his lease term where he promised to pay Irma and Jan each 1/2 of the \$1,500 rent. However, Ting may not be liable because this was done on direction of Irma. Irma, on the other hand, would need to give Jan the 1/2 of the \$1,500 because Jan is entitled to equal share of rent proceeds from leasing the property to a third person.

Therefore, Jan would be able to offset the \$1,000 she owes Irma with the \$750 Irma owes Jan and Jan owes Irma \$250.

(3) Jan is not entitled to receive any part of the money Irma received from Ned.

As tenants in common, each tenant is free to dispose of her own interest in the property. Here, Irma sold "an undivided one-fourth interest" in Whiteacre to Ned. This is specifically allowed in tenants in common situations. The result would be that Jan owns an undivided one-half interest in Whiteacre, Irma owns an undivided one-fourth interest in Whiteacre, and Ned owns "an undivided one-fourth interest" in Whiteacre. And now all three would be tenants in common. Because Irma was free to alienate her portion of the interest in the property, Jan is not entitled to any money Irma received from Ned relating to the sale.

END OF EXAM

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1. No, Jan did not have the right to grant the easement to Sid. An easement is a right given to someone that allows for the dominate estate owner to egress and ingress on to the servient estate. Here, Jan, granted her son Sid an express easement to use a 20 ft wide strip on the side of her property that she owned jointly with Irma and was leasing to Ting. A co-tenant must seek the consent of the other co-tenant before allowing any encumbrances to be added to their estate. Here, Jan granted Sid a perpetual easement on to Whiteacre without seeking Irma's consent. This created a perpetual encumbrance on their jointly owned property. It also may be construed to be a direct violation of a restriction placed on their deed. Their deed of conveyance from Fast Food Co restricted that the Whiteacre be used for restaurant purposes for 25 years. Jan granted this easement only 4 years after their conveyance, risking the loss of their estate. An interpretation of the deed may or may not conclude that a "drive through lane" and parking spaces is a restaurant purpose.

Jan also did not seek the consent of Ting before granting Sid an easement. Ting was a valid leaseholder of Whiteacre before the easement granted and he now has an encumbrance on his lease that may prevent him from the quiet enjoyment of his lease by the infringement of a drive through lane and parking spaces. Irma and Jan as lessors, owe Ting as a lessee, the right of quiet enjoyment. Jan should have sought Ting's consent before granting Sid an easement.

Jan did not have the right to grant an easement to Sid.

2. Yes, Irma is entitled to reimbursement from Jan for the roof repair costs and Jan is entitled to an offset on account of Ting's rent paid only to Irma. Co-tenants owe each other a duty of fair accounting and reimbursement. Co-tenancy is a co-ownership by 2 or more persons where an estate is jointly owned. Here, Jan and Irma were co-tenants who owned an equal share of Whiteacre. They agreed in their 5yr lease agreement with Ting that they would pay them each a 1/2 share of the \$1,500 monthly rent and they would repair his roof. The cost of this repair was covered solely by Irma for \$2,000. As co-tenants, Irma is entitled to a \$1,000 reimbursement cost from Jan for the cost of this repair. Irma is entitled to reimbursement from Jan for the roof repair costs.

Jan is entitled to an offset of Ting's rent payment. Co-tenants owe each other a duty of fair accounting and reimbursement. Here, Ting paid only Irma his rent payment at Irma's request and

without Jan's consent. This is not a fair accounting and Irma must pay Jan her \$750 share or offset the roof repair costs.

3. No, Jan is not entitled to receive any money Irma received from Ned. A Co-tenant is permitted to sell any portion of their share to a buyer and does not need consent or must share in their purchase. Here, Irma sold undivided 1/4 interest of White to Ned. This permitted and it simply reduces Irma's share of the estate and adds Ned as a tenant in common. It has not impacted on Jan share. No, Jan is not entitled to receive any money Irma received from Ned.

END OF EXAM