

Question 8 – February 2019 – Selected Answer 1

(A) Lisa's estate is required to pay the \$400 for the roof repair and the \$19,000 in property taxes.

At issue is a life tenant's obligations to the remaindermen and under the lease with Mark.

When a grantor grants property by deed to one party for life with the remainder in another party, he has created a life estate in the first party and a vested remainder in the second party. The life tenant owes duties to the remaindermen to make reasonable repairs, not to commit any kind of waste including ameliorative waste and to pay the property taxes. If the life tenant dies, his or her estate will remain liable for any repairs made during the life tenancy and any property taxes incurred during the life tenancy.

Here, Tom conveyed a life estate to Lisa and Lisa assumed the obligations of the lease and the duties mentioned above to the remaindermen, Steve and John. Under the lease, Mark was not required to make roof repairs even if they cost under \$500 and the conveyance from Tom to Lisa required the life tenant to assume the landlord obligations. The repairs were done while Lisa was in possession and Roofco was hired by Lisa. As the life tenant and landlord, she was required to pay for the roof repair. Lisa as life tenant is also required to pay the \$19,000 in property taxes incurred during her life tenancy.

(B) Lisa's estate is entitled to \$2,000 of the rent representing the overdue portion and Steve and John as tenants in common are each entitled to half of the other \$2,000.

At issue is the life tenant's rights to income during the life tenancy and the rights of tenants in common.

A life tenant is entitled to the income from the property during the life tenancy and the remaindermen are entitled to the increase in value of the land. Here, the \$2,000 rent was owed during Lisa's life tenancy therefore she is due the overdue rent.

Pursuant to the conveyance by Tom and because it is favored under Texas law, Steve and John are tenants in common with respect to Greenacre. This means they each own an undivided one half interest in the land. Therefore, after Lisa died, the remainder passed to Steve and John as tenants in common. As such, they are now entitled to the rental revenue from Greenacre. Therefore, they each have a claim to one half of the \$2,000 for the January 2017 rent.

(C) As a tenant in common John is obligated to pay \$800 of the \$6,500 bill sent by Steve.

At issue is the obligations of a tenant in common to account to each other for improvements to the land, costs in repairing the land and for maintaining the land.

Tenants in common each own an undivided portion interest in the land. They must account to each other for rental revenue and profits from the land and must pay reasonable upkeep expenses for repair expenses. They also must share in the cost of paying property taxes and maintaining insurance. If one tenant in common improves the land, he has a claim to the increase in value of

that land pursuant to that improvement, but the other tenant has the choice to reimburse him to also share in that value.

Here, Steve and John each own an undivided one-half interest in Greenacre as tenants in common pursuant to the conveyance from Tom. Therefore, pursuant to their portions, they must share in the \$1,000 property insurance premiums. John would be obligated to pay \$500 of that. John is also obligated to pay for reasonable repair and maintenance. Since Steve took it upon himself to remodel the bathroom instead of fixing the sink, John will likely only be on the hook for half the cost of the repair, so what would have been \$300. Therefore, John is obligated to pay \$800.

If John would like, he can pay the entire \$6,500 to participate in the increase in value from the improvement. Given that would only entitle him to \$3,000 at the moment, that is a questionable decision.

Question 8 – February 2019 – Selected Answer 2

A) Lisa is obligated to pay the \$400 owed to Roofco subject to the lease entered into by Tom and Mark and she has a duty to pay the 2016 property taxes subject to her being the life estate owner. The issue is whether the obligations of a current lease pass to a subsequent life estate holder and whether the duty to pay property taxes is on the owner of the life estate. In Texas, owners of real property may sell or transfer all or part of their property. This includes the right to enter into a lease with another party, which gives the other party (tenant) the right to exclusive control of the property subject to the terms and conditions of the lease agreement. A lease may be oral, however, if the lease is for a term that exceeds 1 year, it must be in writing in order to comply with the statute of frauds. If the owner of property transfers his property or devises his property, the person who acquires the interest acquires the property subject to the existing interest on the property. The holder of the life estate interest in the property property also has a duty to maintain the premises and to not commit any waste on the premises. Here, Tom owned Greenacre which had a house. In February 1, 2014, he leased Greenacre to Mark for a period for 3 years. The agreement was in writing so there is no statute of frauds issue. Under the agreement, Tom was to pay for all roof repairs and for any other repairs costing more than \$500. Mark was to pay Tom \$2000 in rent. After he died, he left a deed in which he left a valid life estate to his sister in Greenacre. Lisa's life estate is valid, however, it is subject to Mark 3 year lease. Since she takes the life estate subject to this lease, she takes subject to the rights and obligations set forth under the lease. Since the lease provided that Tom, as the landowner, would pay for all roof repairs, Lisa had a duty to pay for all roof repairs. She was the new landowner and she hired Roofco to fix a leak on the roof. Subject to the terms of the lease, she was responsible to pay for the roof since she had the current life estate on the property. The roof repair would likely qualify as a maintenance repair that she is responsible for. In addition, Lisa was receiving \$2000 in monthly rent from Mark from the time of Mark's death until her death in October 2016. Her estate representative's letter stating that Steve and John are responsible since they are now receiving the benefit of the property and the repair is incorrect. These expenses were incurred when Lisa had the exclusive right to possession. Thus, Lisa is responsible for the \$19,000 property taxes to the extent of such profits.

B) Lisa's estate is entitled to receive the December 2015 payment for past due rent and Steven and John are entitled to receive the other \$2000 as tenants in common. The holder of a life estate who is not in possession of the property is entitled to the profits received from renting the property during this time. The holder would also be liable for property taxes to the extent of the profits. When 2 parties are tenants in common, if they rent the property, they have a right to the profits. Here, the \$2000 payment for past due rent is a payment for when Lisa held a life estate in the property. She is no longer alive, but the payment can go to her estate. The estate should use this to pay the \$19,000 property tax debt due from the 2016 year during which Lisa had a life estate. The remaining \$2000 is from January 2017 when Steve and John had already become tenants in common of the property. Dan's will provided that upon Lisa's death, his 2 brothers were to inherit the property as tenants in common. It does not matter that Steve undertook to manage Greenacre. Thus, the \$2000 belongs to the brothers in equal shares.

C) Steve is entitled to half of the money spent on the premium insurance for the property but is not entitled to 1/2 of the price for the remodeling of the property because that is considered ameliorative waste. As tenants in common, the parties are responsible for the maintenance of the property. However, one tenant in common may not commit ameliorative waste on the property without the consent of the other. Ameliorative waste applies when a tenant remodels or undertakes to improve the property without the consent of the other tenant, even if the property's value increases due to this improvement. Here, Steve purchased an insurance premium for \$1000, this is likely a reasonable expense and the court will award him half. However, when the bathroom sprung a leak, which would have cost \$600 to repair, he instead chose to remodel the bathroom without John's consent. The cost for remodeling was \$12,000 and included the plumbing repair, so Steve would be able to recover \$300 for the plumbing repair. However, he will not be able to recover the remaining \$5700 because even though the remodeled bathroom increased the value of the property by \$6000, he did not have the consent of John and should not have engaged in this ameliorative waste without the consent of the other cotenant. Thus, Steve may recover for 1/2 of the insurance premium and half of the cost for the plumbing leak, but nothing for the cost of remodeling the bathroom or the increase in value of the property.

Question 8 – February 2019 – Selected Answer 3

(A) Lisa's estate is required to pay the \$400 due Roofco and the \$19,000 in 2016 property taxes.

Obligation to pay Roofco

A landlord and tenant are allowed to write a lease and express terms control. In 2014, Tom and Mak entered into a term tenancy (a tenancy for a period of time) which would last for three years. They did not enter into a periodic tenancy because it is for just one term of three years, and Mark is not a tenant at sufferance (a holdover).

Under the lease, Mark agreed to pay \$2,000 a month and Tom agreed to pay for all roof repairs and for any other repairs costing more than \$500. Tom then conveyed a life estate to his sister Lisa with the remainder to Steve and John. The deed also stated: this conveyance includes all rights and obligations under my lease to Mark, including the obligation of Grantees to assume

the obligation of the landlord in said lease. This means that Lisa is under the same obligation that Tom had to pay for all roof repairs and any other repairs costing more than \$500.

In November 2015, which was during the valid lease with Mark, Lisa hired Roofco to pay the leak. Lisa is obligated under the lease to pay for the \$400.

After Lisa dies and Greenacre goes to Steve and John, Lisa's estate tells them that they have to pay for the \$400. However, Lisa's estate has to pay for this expense because the expense was incurred while she was the owner of Greenacre. She had the obligation under the lease. Her obligation still exists and does not go to John and Steve, therefore her estate has to pay Roofco.

Obligation to pay property taxes

Lisa's estate also has to pay for the property taxes of 2016. Lisa was the owner of Greenacre and had the duty to pay the taxes on the property, therefore, her estate needs to pay. Lisa's estate can claim that John and Steve should pay a portion since Lisa died in October and was not the sole owner all of 2016. Which a court can grant. But the estate has the obligation to pay the \$19,000.

(B) Lisa's estate is entitled to the December 2015 payment and John and Steve are entitled to the January 2017 payment.

A person who owns the land has the right to collect on the rent of the property (aside from having to upkeep and pay taxes on the property). Therefore, the December 2015 will go to Lisa who was the owner of the property at the time the payment was due. The January 2017 payment will go equally between Steve and John because they are the owners of the property as tenants in common.

(C) John is obligated to pay for half of the premium for the property insurance (\$500) on Greenacre and half of the bathroom leak repair cost (\$300).

As tenants in common, they both have the right to use and enjoy the property in full (unless one excludes the other). However here as tenants in common, John and Steve are both obligated to pay for necessary costs on the property such as repairs. The property insurance is a cost that is shared by both tenants therefore, John has to pay Steve half of the cost -- \$500. Repairing a leak in the sink bathroom is also a necessary repair, which cost must be shared among tenants and Steve can be reimbursed. However, Steve needed to notify John about the remodeling of the bathroom so that John could accept or deny helping with that. Because John had no notice, then John only has to share the expense of the leak repair, which would have been \$600, therefore John only has to reimburse Steve for \$300.

As a result, John only has to pay Steve \$800 instead of \$6,500.