1.a) In 1990, L aquired the property in fee simple absolute (assuming D didn't own as a tenant by the entire, in which he would have no right to unilaterally transfer the property). By allowing Dessem to retain possession of the property in essence L granted D a tenancy for years (5) years. When D died in '93, O recived the remainder, 2 years, of this estate. In 1993, O took possession of the property under "color of title"; if the possession of Black Acre was lawful then the doctrine of merger would combine the two estates. However, b/c D did not have Black Acre in fee simple absolute he could only transfer the remaining two years to O. Therefore, O's claim to BA must be looked at through AP. The claim was open and notorious b/c O built a house on BA, which clearly fits the requirement. Her possession was Actual b/c she possessed the land (built house/driveway) in a fashion that definitly meets the standard for undeveloped land, "open lands doctrine." All of this is assuming that O paid taxes on the land. Possession appears to be continous and

there is no evidence that L ever interrupted O's claim. Hostility is met for the period following 1995 assuming that O meets the test of the jurisdiction. The majority test is the objective test in which O would be hostile if occupying the land in a fashion similar to how the owner would. Subjectively, O isn't a squatter so that test doesn't apply, but some states say you must show intent to claim a the right of possession, here, this would probably fail b/c O thought she had title and was not attempting to AP ~~an~~ L's land. '93-'95 is not hostile however b/c O had permission to be there for the 2 years left on D's ~~de~~ estate. Therefore, even if the possession was exclusive (and it appears to be) then O would not meet the hostility requirement for the entire statutory period if that period is less than 9 years. If D owned BA as a tenancy by entirety then he could not unilaterally transfer his interest to L and thus the statutory period would begin running in '93 and O would get title if that period is ~~ten~~ ~~over~~ less than

facts

11 years. Some courts have shortened the statutory period if the land was taken under color of title, but O would have to recieved the land in this fashion, which is unclear. So unless O made an affirmative action to alert L that she was taking possession of BA in '93, the statutory period did not begin to run and the land should be L's. The house and driveway may force the courts to consider an equitable approach and give O the land b/c of her reliance interests or at least give her accounting for the improvements. Also, if D was married, then D's wife could "elect against the will" and prevent O from recieving all of D's worldly possession which probably would pass title of the land to her, but in that case the AP term would begin to run in '93 so O would probably be successful with an AP claim.

1(b) In May 2008, when Johnsen stole the ring from H he aquired a void title if the stealing was strong arm of theft, but if by "stole" you mean J got the ring through fraud, then J will have a voidable title. By picking up the ring, G is the finder and her right will be determined by the classification of the ring. B/c of the value of the ring, J didn't abandon or lose it b/c he voluntarily placed it ~~at~~ along the driveway, also not a treasure trove b/c the owner is probably not dead or undiscoverable, which could be ascertained through the style/age of the ring. B/c the ring was voluntarily placed and forgotten, the ring qualifies as mislaid property and the rights belong to the owner of the premises (O) against all but the TO (H). Because G did not notify L, O, the police, or follow ~~and~~ any of the other common statutory protections, G is probably criminally liable. Also the 5 yr. SOL for AP of personal property will not begin to run b/c ~~H~~ G has hidden the property and not attempted to put the TO on

notice. Even though G cannot sell more rights than he possess (rule of derivative title) and thus cannot give a good title to the ring G can probably transfer a voidable title if his not following of the statutory procedures are not classified as theft, this may fail though b/c he took the ring off the land of O who has a superior title to G, being that O owned the premeses on which the ring was found. If deemed void, then the jeweler aquired a void title. ~~He~~ If we assume the jeweler was a good faith purchaser for value (and followed the statutory procedures; i.e. waiting period), statutory estoppel principles under the UCC could allow him to transfer good title to C if C is a good faith purchaser for value. C then would be able to transfer all of those rights to E following the rule of derivative title. As the TO, H has superior title to everyone, unless statutory procedures were followed that can extinguish his rights (doesn't appear to be followed here). ~~If the theft was void~~ Behind TO, H, O owns a superior

title as the finder against all but the ~~so~~ owner of land, so would go to O
TO (H). If G transfered a voidable title to ~~E~~ the jewler who ~~transfered~~ sold to C, then E would have superior rights to everyone including H, if the requirement of an inter vives gift (intent, delivery, acceptance) were met.

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1 a) continued

Because L orally agreed to let D stay on the property, this probably is not enforceable because of the statute of frauds. This could make D a licensee in which he could be kicked off at pretty much anytime. B/c it is ~~for a set~~ number of years it is probably an easement. This ~~positive~~ affirmative easement could be considered an ~~easement by estoppel~~ express easement by grant (though not in writing). If this easement is deemed in gross (personal in nature, only to D) then D cannot transfer it to O.

If L owns BA, then L can attempt to get an easement for use of the driveway. A neccessity claim will likely fail b/c there is no strict necessity

b/c his property borders the road (even though the forrest is there). An easement based on prior use will fail too b/c there is no severance of title to land held in common ownership, eventhough the ~~easement~~ driveway already exists. A prescriptive easement will probably fail too b/c even though use is presumed adverse, if the driveway is shared w/ O then the use is presumed to be permissive. An irrevocable license or easement by estoppel is L's best argument b/c

4-14 (8)

(2)

P took possession of the building in a tenancy for years (5) in which C+L retained the vested future interest of reversion. The agreement ~~suggested a~~ included a covenant that Powell was to pay 5% of his annual profits which suggests that this was a commercial lease, which will be important later. It appears that the lease is silent on the issue of alienation and in ambiguity such agreements are interpreted in favor T, so most jurisdictions will allow P to sublease the property if it is reasonable. For commercial lease, a LL can often prevent the sublease but the upstairs apartment probably suggest that even if Powell had a business there, it was probably inferred that at least part of the building was to be used for residential purposes, so a sublease would probably be ok here. The sublease would give W privity of K and Estate with P, so unless for tort action, W cannot be sued directly by C+L. B/c W used the apartment for her business, violating the terms of the lease, if it

was a commercial lease, which could be argued b/c W did not even live there. However, if the lease is a residential lease, the use restrictions are only enforceable if reasonable, which it could be argued that the restrictions against a home business is unreasonable. W took the premises as a tenant for years and P retained a reversion interest. If W's lease is deemed a residential lease, then P is subject to the implied warranty of habitability. In order for P to have violated this, the ventilation proballem has to have a substanial ~~impa~~ impairment effect to the use or enjoyment of the property. Also the breach must be one of a substancial threat to T's death and safety. Here W can make a good argument that the smoke did make the place uninhabitable. W doesn't even have to prove it was P's fault, just that there was a condition that made it not habitable. The fact that W's incense cased the place to fill with smoke won't matter to P's responsibilities. W needed to give P notice of the problem

W may have waived the warranty of habitability which courts may enforce it for a reduction in rent.

so that he could fix the problem before W could move out in a reasonable time. In terms of the renovation costs, if they are substantial but necessary (i.e. the building would be condemned if they don't happen) some courts will place the burden of fixing costs on C+L, as owners, even if P was a triple net leasee. If P is successful in arguing that the lease between P + W was actually a commercial lease, then courts will not impose the implied warranty of habitability. W could also argue that her right to quiet enjoyment was breached through constructive eviction if she can prove by not repairing the ventaliation, P interfered with W's right to possession in a way that is intentional, substancial, and perment. This probably will be successful which would allow W to abandon the premises w/in a reasonable time. If this argument fails, then W will have been deem to have abandoned the lease and thus be liable for the remaining rent. If

the property is deemed residential, then P will have a duty to mitigate damages by finding another tenant; if the lease is deemed commercial, based on W's use of the property, the P traditionally has no duty to mitigate, although a minority of courts now require mitigation.

B/c P found a new tenant, S, after only 2 months, W is only liable to P for those 2 months rent because the rent amount is the same (this is assuming W was in breach). S's four-year lease can not be given to her (divestative title) b/c P's lease is two months short of that. Most courts will use the blue pencil rule and change the lease to ~~the sa~~ end when P's does. S would have a cause of action against P because of this.

When L sold his interest in the building to T, the joint tenancy was broken and T + C then held the property as tenants in common. T has the right to seek partition but while the courts prefer partition in kind (split) they

often end up doing a partition by sale. But b/c T is rich he could buy C out and hold the property in fee simple absolute as sole owner (cowelty). P ~~was in violat~~ breached his lease by abandoning the property, unless this is one of the minority jurisdictions that would allow P the right of first refusal ~~Re~~ when a new owner comes in. This will likely fail since the property was held as joint tenants, so as of now T's ownership is equal to C's. T+C have the option of letting the premises vacate and sueing ~~P~~ P for rent, or can accept his surrender and seek to find a new lessee at a higher rate. This is a commercial property, so T+C have no duty to mitigate traditionally. Also P may be in violation of the % covenant which C+T could recover in K. ~~B/c~~ S ~~has the~~ B/C C+T have superior title to P, C+T could choose to evict S from the property. S would have a cause of action against P, but she still could be evicted, C+T

could choose to let S stay on as a holdover T or rework a new ~~the~~ lease, in which case S's rent would be deducted from P's liability, unless C+T accept P's surrender.

Even if W was successful on her constructive eviction claim, she still had a duty to pay rent (her recovery lies under K law), until Powell accepted the surrender and found a new tenant. ~~After P left the property~~ A potential eviction by S, who now is a holdover tenant, would give S a cause of action against P for breaking the covenant of quiet enjoyment for not protecting S against claims of paramount title. C+T can choose to evict S but they cannot use any self help measures and their damages would be limited to 3x rent due. Accepting payment of rent by C+T from S also might create an implied periodic tenancy in which either party would have to give the other party 1 period's notice before eviction or abandonment.

(3)

a) Structuring the sale of an iPhone as a grant of a determinable estate would allow Apple to retain the possibility of reverter and thus if a customer breached, the property interest would return to them. However, this would be difficult to enforce, and courts generally disfavor restrictions on use. The right to use and transform property is one of the most fundamental rights and courts tend to only enforce if they are ~~reason~~ not unreasonable. An example is restrictions on use in commercial leases is generally enforceable for a particular legitimate business interest. Here I believe that there is a big difference b/w buying the phone and contracting to the network. A ~~cow~~ own should be able to transform his phone to other networks, if he so chooses. Apple would be better off in protecting itself through K law instead of attempting to file injunctions in order to have the property returned back to them should there be a breach.

A promissory servitude would probably be a better option to restrict the use

So you Determinable

because they bind parties who were not part of the original action if they can be successfully established. An equitable servitude where an injunction is sought can be established if the original parties intended to bind the successors, the restriction touched and concerned the land (not likely here although there is an argument to be made that the benefit of less technical problems justifies the burden on the use restriction), and the successor took w/notice (all you would have to do is record it). Real Covenants, in which damages are sought, add the element of privity of the original and successive parties. Horizontal privity through the original parties will be easy, but vertical privity to the successive owners will be difficult b/c new owners are continually added (2nd hand buyers will be on constructive notice though). If a CIC can be established then the restriction would have more effect b/c the privity requirement is relaxed and new members can be added. However, the traditional CIC gives its members voting rights so the covenant

could easily be done away with through a vote. Overall though both options would be difficult to implement and enforce.

3 (b) From a policy perspective I do not believe Apple should be able to restrict the use of original owners. Even if a contract is signed that restriction on use violates one of the fundamental property rights being the right to use and transform. Restrictions on use in the commercial context in which the buyer paid for the good should never allow a private company to restrict its use. If they are having problems with technical issues, Apple can fix it through limitations on their insurance policies or increase rates. After the good is sold, Apple should no longer have a property interest in the phones (thus no action for conversion). The RS 3rd supports this position as it would void any restrictions or servitudes if they imposed restraints on trade, are unconscionable, or unreasonable burden fundamental constitutional

rights. While "jail breaking" is not an "approved" use according to the manufacterors, it certainly is within the scope of uses for a cell phone. I would be ok with the manufacterors enforcing a contract that limits their liability if the phone doesn't work b/c of tampering, but to restrict use on its own should be void. If they are suffering a lot of damages, manufacters could try recovery under the liability rule in which they would have no ability to exclude cell phone users from jail breaking and using other networks, but potentially the networks could have a cause of action for damages based on the breach of that entitlement.

(21)