

Real estate property rights hypothetical essay samples

[Business](#), [Customers](#)



- 2. 2: Advice

- (a). What it should do about the Timms Lease;

While Chase was making the purchase contract with the Smiths, it was not informed of the additional two years of Timm's lease. Chase has the mandate to sue Timm and prevent him from interfering with the property since they already owned the land, and while performing due diligence, the land had no complications and the process was clear. The reason the company performed due diligence was to avoid situations such as this. Timm being in an unwritten agreement is in no way able to prove allegations. Tim can go and solve his allegations with the Smiths since the contract he entered was with the Smiths. Chase can sue Timm with the tort of trespass of property after his period lapses. The reason behind this is because he will be interfering with its property and preventing the development of the property. Trespass to chattel does not require proof of damage. This is an intentional interference with personal property. It can simply be considered as meddling with property that does not belong to you and causing interference. Trespass to land involves both the sub soil and air space.

Chase can also sue Timm with tortious interference. This is an intentional interference with contractual rights. Timm knew very well the terms of the contract that the Smiths were entering into with Chase but he did not raise concern at the period but had to wait later. This is causing interference with the economic viability of the company and can be sued. Elements of tortious liability are:-

- The existence of a contract of beneficial relationship between two parties.
- A third party with the knowledge of the relationship

- Intention of the party to breach the relationship
- Damage to the party whereby breach occurs.

Timm had shown all the elements of tortious liability and would be liable of getting sued.

First of all he knew very well of the contract between the smith and chase. Chase would benefit from buying a property and developing it whereas the smiths would benefit from pay they would receive from the sale. Timm who in his position as a third party in the contract had prior knowledge of the agreement and as earlier mentioned he should have raised his issues much earlier. He also had the intent of breaching the relationship he had between him and chase since the company had allowed him to use the land for the time being before they started developing it. Chase would also incur damage in terms of financial loss since they had a very well laid investment plan and time frame.

(b). Options available to avoiding purchasing Jackson's Lot;

Under the particular characteristics of the contract entered into with Jackson, Chase has got two options available to it in case they decide not to go through with the contract. Under the provisions of the REIQ standard contract, the buyer needs to express their wish on discontinuous with the contract terms within the cooling off period. The REIQ standard contract provides the cooling off period to be a duration of five (5) working days, that is from Monday to Friday, excluding weekends and public holidays. In the event that chase wish to amend the duration of the cooling off period, they should do so by the help of their attorneys, who indicate the circumstances under which they wish the period be extended, and serve the seller with this

request, within the provided cooling off period. Chase did not take any of these actions, and their will to discontinue their cooperation on the contract is expressed two months after being bound by the contract. Under these circumstances, Chase would have the option of forfeiting their deposit paid to the Jackson in compliance with the REIQ, where the buyer would sue for damages in forfeiture and the balance on the deposit refunded to Chase. The described course of action is not necessary in this case however. Under the facts of the case, Jackson does not reveal under the contract that the parcel of land 'lot 4 on RP153119' is classified under the contaminated lands lists. Under the EP act, the seller is required to reveal to any potential buyer the listing of a property under the contaminated land register. Under the description of the EP act, contaminated land relates to any land that is contaminated by hazardous substances (such as arsenic, DDT or oil) and may pose a risk to human health or the environment. Some of the activities known to cause land contamination include, fuel storage, cattle dips, tanneries and such activities. Under the facts of the case, the land in no Lot 4 on RP153119, is thus contaminated and listed under the contaminated land lists by the fact that an oil container used to be housed within its boundaries and caused spillages to land thus contaminating it. Under the REIQ contract, the provisions 7.4(3)(a) I and II, the seller is under obligation under the ("EPA" act), and at the contract date to;

- Reveal that, there is no outstanding obligation on the seller to give notice to the administering authority under EPA of notifiable activity being conducted on the land and;
- The seller is not aware of any facts or circumstances that may lead to the

land being classified as contaminated land within the meaning of the EPA. (PAMD Form 30c)/REIQ contract.

Jack son fails to disclose this information in the contract and is thus in contravention of the EPA requirement in relation to conduct of residential property sale within the requirements of the REIQ contract. Under these circumstances, Chase has the remedy offered in the provisions of the clause 7. 4, which requires that the buyer may;

- Terminate the contract by notice to the seller if the seller is in breach of a warranty in clause 7. 4(1) or 7. 4(2).

For the purposes of this case therefore, Chase may invoke the reprieve offered by the clause 7. 4(2) and present a notice of termination to the seller for failure to disclose the status of the property as one classified as contaminated land under the definition of the EPA.

(c). Delaying settlement of Marshner's Lot;

Chase Developments Pty Ltd (Chase) is a real estate development company willing to purchase a decommissioned factory site owned by Kylie Marshner. Although Chase is happy to proceed with the purchase, Chase does not want to complete the purchase before the end of the financial year. It wishes to postpone the settlement but does not believe that Marshner will be willing to grant an extension because he is desperate for payment of the purchase price. By temporarily postponing the decision until the end of the fiscal year, Chase may obtain additional information and may avoid the transaction. The company should consider that delaying the transaction may avail opportunities that are even more decisively favourable, or may allow it to avoid making a transaction that it will subsequently regret but is also

expensive to undo. Such concerns affect both the timing and nature of transactions. Though Marshner is faced with urgent financial difficulties, making such a hasty decision should ring a question to the company. Buying such an estate means making important financial decision which will affect the company's future and as such due process ought to be followed to the latter. Real estate transactions always result in contractual relationships with others and these relationships create legal rights and obligations to both the seller and the buyer. Chase should consider the uncertainties such as interest rates that may create an option value for the company before purchasing the land. The possibility of Marshner increasing the land's price by the time the fiscal year is over is high but once they signed a contract, the price remains the same unless the terms of the contract are breached. Chase should settle for a contract with Marshner and agree on terms that payments will be made once the fiscal year is over but offer the 10% deposit as an assurance. Larger price deviations increase the value of the buy and sell options and, therefore, make it more attractive to wait to extinguish these options. The company should consider the possibility that, if they buy now, the price may subsequently fall causing them to regret their purchase at the end of the fiscal year. Chase should also consider the possibility that if they do not buy now, prices may subsequently fall, giving the company the opportunity to buy the land at even more favourable terms that are less likely to be reversed in the future. On the other hand, failing to buy the land may lead to losing the advantage of that land altogether. It would be advisable for Chase to acquire the land at that particular moment if at all it is not very necessarily to wait until the end of the fiscal year. Though Chase

has decided to purchase the land and Marshner requested for a holding deposit, this does not mean that Marshner is legally obliged to sell the land or that Chase is legally obliged to buy the land. Marshner has the right to withdraw from the sale at any time before the contracts are exchanged without any penalties. This will be a huge blow to the company that will be forced to sort out for some other land elsewhere. As such, it is advisable for the company to wait until that time when it is fully prepared to acquire the land. Moreover, once a company has paid an initial holding deposit to Marshner and another willing buyer quoting a higher value presents himself, the company can receive a refund of the holding deposit with no compensation of any money spent on legal advice, inspection reports, etc. To avoid the occurrence of such an event, Chase should wait until it is ready to acquire the land, exchange the contracts and use their cooling off rights to pull out of the contract in case a problem arises. The cooling off period is only for the benefit of the buyer and not the seller.

(d). Rights that Chase may have in relation to Thomas' purported termination of her contract of sale

Cooling off period represents days allocated to the buyer within which he or she can terminate or walk away from the contract or legal agreement to purchase a property. This period allows the buyer adequate time to assess the legality and feasibility of a property before fully committing his or herself to the terms of the contract. The cooling off period insulates the purchaser from the impacts of making a haste purchase or impulse buying. The cooling off period commences on the day that the buyer accepts the offer from the vendor, either in written form or verbally. The cooling off period takes three

clear business days. Business days are legally recognized as days from Monday to Friday (Ingram, 2009).

Critically, it can be said that the genuine reason for Thomas to cancel the contract was that he suspected that the authorities would not endorse his Development Approval. In this sense, it appears that Thomas's given excuses were merely aimed at cancelling the contract with minimal or no legal liability since the cooling off period has surpassed with 84 days.

The cooling off rights are aimed at protecting the buyer and according to the Sale of Land Act 1962 the purchasers are constitutionally granted the right to terminate the contract after the cooling off period is over. However, there are some legal conditions which should be strictly observed before cancellation of the contract after the cooling off period.

Among these conditions, include

- Breach of contract by the seller after the cooling off period
- Where property is unfit for occupation
- In the case when the vendor fails to honor the written offer within the stipulated time and
- When the vendor changes the terms of purchase including the prices after the cooling days are over or after all parties are fully committed to the terms of the contract (Ingram, 2009).

In this case, Chase changed the terms of sale 79 days after completion of the cooling off period. The company was at haste to get the development to the market and subsequently made erroneous calculation of the body corporate

levies. Consequently, Chase sent a new disclosure statement to Smith that outlined the new changes in prices of each lot.

Legally, Smith was justified to cancel the contract following a 5% increase of the original body corporate levies.

Apparently, there is no cooling off rights for the vendors since the law was originally meant to protect the buyer. Except for a 0.2% to 0.25% fine to the vendor because of terminating a contract there are no other rights granted to the vendor according to the cooling off law.

However, according to the contract law, the vendor is permissible for some rights. Therefore; Chase may file a case against Smith for breach of contract.

According to the contract law, Chase may be granted the rights to compensatory damages if the jury rules in its favor (Ingram, 2009).

Compensatory damages are aimed at restoring the financial position of the non-breaching party to his or her financial position had the contract not been terminated by the breaching party. Chase may also be granted punitive, compensatory damages that are fines above the point that completely compensates the non-breaching party. Punitive compensation acts as a punishment for wrongful acts.

Chances are that the cooling off rights of the buyer may outweigh the contract rights of the buyer. Thus, Chase may fear presenting a weak case.

Alternatively; the two parties may mutually cancel the contract and enter into a new contract with the correct financial figures. As earlier said, Smith cancelled the contract because of his perceived fear of his DA failing the endorsement test. Chase would thus be presented with a chance to know whether the buyer terminated the contract on genuine reasons or not. In this

case, Chase may be present a stronger case in the event that Smith dishonors or terminates a second contract.

3. 2: Advice

(a). Preventing Danky from using the Access Easement;

In this case, Chase acts as the servient tenement. The servient tenement is the party that grants a right of an access easement to the dominant tenement (Ingram, 2009). The dominant tenement in this case is Manky since it the estate that enjoys the services of the easement under the ownership of Chase. From the facts specified in this case. It is true to say that Manky acquired the easement access through an express grant. An express grant is an agreement between the servient tenement and the dominant tenement that bids the former to grant a pass or re-pass to the former. The express granting this case binds only Manky and Chase as the new owner. Danky is a grantee to Manky and hence holds no legal claim to the easement. Danky is enjoying the legal rights of Manky as the servient tenement. Considering that Manky allowed Danky the easement of access as a second party and that there were no laid down legal procedures, it means that Danky cannot claim that Chase has violated any law in denying the right easement. This is simply because Danky is a grantee, and there is no proof of being enjoined in the legal rights that govern the grant of the easement. On the other hand, there is still a legal loophole that Chase can exploit to deny the access. The fact that the easement grant exists between Chase and Manky means that if Chase can provide the proof that Manky is the easement is a “ non-use” by the dominant servient, then the legal procedures would terminate the access easement existence (Ingram, 2009).

It is with no doubt that Manky on its own has no use of the easement as at now considering that its customer currently gains access to Manky using the car park way at the north boundary of both lots. With the scenario in mind and coupled with the reality that the Danky trailers have been found to obstruct other Chase clients especially at the car park, the court would see the viability of terminating the existing easement access. For one, Danky can be considered to be violating the grant agreement through obstruction of the easement and the car park that serves the servient tenement clients (Ingram, 2009).

With these options at hand, Chase is in a position to have the easement grant terminated. However, Chase should consider approaching Manky with a view to informing them of Chase's intention to terminate the easement access grant. Chase will have an obligation to notify Manky that since at present, Manky is not directly using the easement and that one of Manky's grantees is affecting the normal operations of Chase by frequent blocking of the car park access, Chase has no intention to continue with the grant. In the case that Manky accepts this proposal, the two parties bound by the grant, which is Chase and Manky should follow the legal procedures that are necessary for terminating grant of easement. In the case that Manky refutes the decision by Chase; then Chase should proceed to file a case in court seeking to have the court terminate the grant of the easement. Chase has all valuable proof it requires ranging from non-use of the easement by the dominant tenement and obstruction of it clients caused by usage of the easement by Danky not as a servient but as a grantee to Manky. Chase will provide proof that the easement was created from the express grant as well

as the necessity. Now the necessity does not exist while the easement continues to impact negatively on Chase's operations through obstruction. This can be deemed as a "failure of condition" in this case, and then it foregoes the need to have the easement as it is (Ingram, 2009). In this way, Danky would have no other way out but to stop using the easement.

(b). Whether Expo Sure could prevent Chase from carrying out its proposed construction works on the Centre;

A deed poll is a legal agreement that binds only one party to commit to doing or not doing something (Ingram, 2009). In this case, Chase agreed to submit to deed poll not to increase the height of the shopping center building in an agreement that this deed poll will carry its intention to successive owners of the property previously under the ownership of Ansonia and now under the ownership of Chase. Expo-Sure was the grantee of this deed poll. In the previous ownership of Ansonia, there only existed a mutual agreement in regard to the restriction of increasing the height of the shopping center buildings. In the conveyance of real estate property, a deed poll binds a single party to a legal obligation of abiding by the agreement throughout the duration stated by the agreement. It is different from the covenant that binds a party to commit to a promise to do or not do something. The covenant can be terminated without any legal implications being subjected to the party that decides to terminate the covenant. In the case of a deed poll, the party named in the deed poll remains under legal obligation to fulfill and maintain the agreement until the time when the deed poll expires or ceases to exist (Ingram, 2009).

This deed poll restricts Chase from its proposed construction works. This is

because; the construction works would involve increasing the height of the buildings within the shopping center while a deed poll exists that restricts Chase from increasing the heights of the building within the Center. Expo Sure is the beneficiary or grantee of this stipulation. To avoid legal implications resulting from acting against the deed poll stipulations, Chase should not rush to begin the construction works. Considering that Chase agreed with WBD to submit to the requirements of the Deed poll it would be surprising how a fortnight after submitting to an agreement, Chase would decide to act against the same stipulations it signed to abide. Such action would place legal hurdles along the way, and Expo Sure would be legally right to pursue legal proceedings against Chase's project that contravenes an undersigned deed poll by the Chase.

In this case, Expo Sure holds the upper hand against Chase. There is no doubt that as long as Expo Sure has in its possession the duplicate copies of the deed poll, and understands that it is the unnamed party in the deed poll, it will seek to maximize any possible benefits arising from this deed poll. Thus engaging in a tussle with Expo Sure at this time would render Chase to present a weak case in a court of law. Expo Sure on the other hand, either as a complainant or defendant would have a strong case and evidence that would impact negatively on Chase. Chase could be forced into paying for damages resulting from contravening the stipulations of the deed poll as would be claimed by Expo Sure and affirmed by the court (Ingram, 2009). However, Chase is not in a position of absoluteness in this matter. There is still chance that Chase can begin the construction to increase the height of the buildings. This scenario however will require a diplomatic approach from

Chase. It should seek for mutual agreement with Expo Sure to have them agree to alter the restrictions in a favorable way. In the event that Expo Sure does not agree to such a proposal, Chase should seek to institute legal proceedings against Expo Sure. Taking this option will, however, require time and thorough research. For one, Chase should seek to know the genuine reasons as to why Expo Sure is against increasing the height of the buildings outside its own lot. In the event that Chase realizes that the reasons are either weak or not genuine, Chase should not hesitate to institute legal proceedings to have the deed poll terminated. In the event that the court finds that the reasons submitted by Expo Sure are not genuine, the court would be required to terminate the deed poll and Expo Sure could face further legal implications. Some of these would be a claim by Chase that the construction delay caused by the deed poll stipulations has severely affected its operations amidst the fact that the deed poll was not genuine in its reasons of existence (Ingram, 2009).

(c) What rights Borders may have against Chase in respect of Borders' Lease;

Under the circumstances of the sale of the complex by Ansonia to Chase, the ownership of the property transfers to Chase, subsequently, the leaseholds issued under the ownership of Ansonia and are not expired as to the date of the sale transfer to Chase as well. In this regard, Chase assumes the responsibilities and duties under the tenancy act as would be expected of a property owner. In consideration of the leasehold held by Borders, Chase holds the responsibilities under the leasehold as Ansonia previously had. By the actions and inactions of Chase under the requirements of Tenancy act,

may have contravened the rights of Boarders as follows.

Under the tenancy agreement, Chase as the Landlord to the property is required to maintain and repair all the common areas to the property which include;

- Stairways, escalators and elevators; and
- Malls and walkways; and
- Parking areas; and
- Toilets and rest rooms; and
- Gardens and fountains; and
- Information, entertainment, community, and leisure facilities (Retail Shop Leases Act 1994)

Under this broad description of common areas under the act, Chase has the obligation to maintain the escalator under the requirement that the lessee pays the required fees known as the outgoings, if apportionable to the lessee under the terms of the leasehold. By this definition, Chase has the responsibility to maintain these areas for the common benefit of all units served by the areas. Failure of Chase to maintain the elevator serving the third floor of the property, in light of a rejected bid to buy out the leaseholds held by the tenants in the floor is actionable under the provisions of the tenancy act. Going by the establishment that Boarders is a legitimate tenant to the property, and under the provisions of the tenancy act, damages are payable to a tenant in the event where;

- Substantially restricts access to the tenant's shop
- Substantially restricts or alters customer access or the flow of potential customers past the tenant's shop

- Significantly disrupts trading to the tenant's business or fails to take reasonable steps to prevent a disruption that is within the landlord's control
- Does not rectify as soon as practicable any breakdown in plant and equipment under the landlord's care or certain types of defects in the building or common areas
- Neglects cleaning, maintenance or repainting of the building or common areas which are the landlord's responsibility
- Causes the tenant to leave the shop before the lease expires for the purpose of extending, refurbishing or demolishing the building (Retail Shop Leases Act 1994)

Boards', being a legitimate tenant to the property is liable to institute actions against Chase for the violations of all the counts stated above. BY conducting cleaning actions during work hours, Chase violates restrictions (i), (ii) and (iii). By failing to repair the elevator, Chase violates restrictions (iv) and (v), and finally, if the lessee is able to prove the motivation towards their exit from the property as arising from the need by Chase to build a modern complex, then, Chase will have violated regulation (vi).

- (d) Whether it can retain the various items left behind by Mann Investments

The move by Mann to terminate the contract and vacate the premises was as a result of the much inconvenience caused by the conflict between Chase and Expo Sure. The conflict originated from different interests by Chase and Expo Sure. Convincingly, Chase was committed to honoring the terms of the contract earlier stated within the terms of the lease. Although the lease between was silent on some property such as computers, printers and

keyboards Chase has the right to retain the property if at all they were inconveniencing Chase in terms of space. In the event that Mann vacates to new premises leaving this property behind, it is assumed that in case Chase wants to lease the vacated premises, the left properties may increase the complexity of the agreement. It will be extremely hard to seal an agreement with another party, with properties belonging to a third party that is unknown to the lease. Therefore, in the event that Mann files a case against Chase for illegal retention of property they had legally acquired, Chase may argue in these lines. In this case, Chase is the property owner for the entire premises and is allowed by the law to retain properties left behind a tenant if at all the properties prevent entering into a new lease agreement. However, Chase should not possess full possession of the property without seeking consent or agreement with Mann. This cushions Chase from legal liabilities in the event that Mann sues Chase for illegal possession of the property. If Mann happens to sue Chase for illegal possession of their property, chances are that the jury would rule in the favor of Mann since they may present ownership documents or certificates to ascertain their ownership. It is, therefore, recommended that Chase enter into a legal agreement with Mann before retaining the remaining property. It has an effect of easing the legal burden of Chase. Alternatively, Chase may sue Mann for inconveniences caused. The jury would treat leaving property behind without any legal permission or agreement between Chase and Mann as trespass. In this finality, Mann may be forced to pay for damages caused to Chase due to inconveniences caused by the property left behind. Chances are that the value of damages would amount to the lease fee for all the months that

Mann's property remained in the premises. This will be justified by the assumption that Chase would have acquired a new tenant, but the property left behind hindered its occupation (Ingram, 2009). In some cases, the amount to be paid in the form of damages is left for the jury's discretion. Punitive damages would also be paid for the wrongful act of trespassing (Ingram, 2009). It is, however, advisable for Chase to seek resolution outside the court due to the nature of the case. In the event that Mann gives its reasons for terminating the contract; Chase's illegal storage of contaminants near food substances that contradict the law may be exposed.

References

Ingram, G. K., & Hong, Y. (2009), Property rights and land policies, Cambridge, Mass: Lincoln Institute of Land Policy.