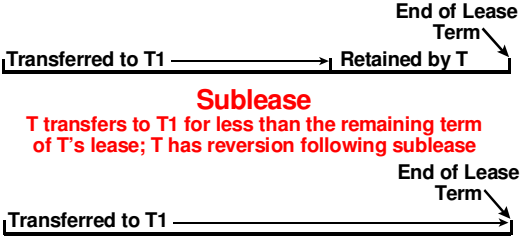
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Sublease
 T transfers to T1 for less than the remaining term of T's lease; T has reversion following sublease


Assignment
 T transfers to T1 for the remaining term of T's lease; T has no reversionary interest



Assignment/Sublease Problem

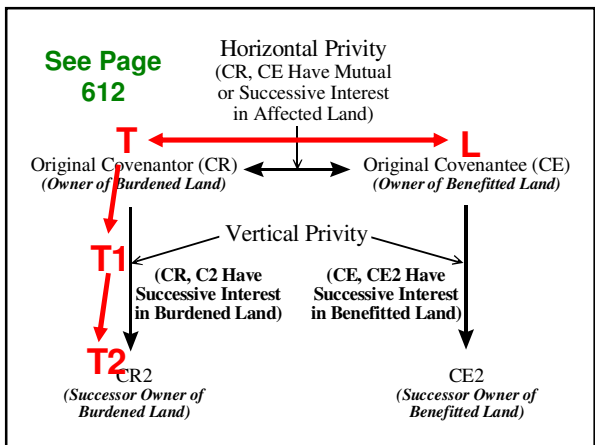
- T leases an apartment from L for a 3-year term, at a rental rate of \$500/month
- After 12 months, T assigns lease to T1
- After 24 months, T1 makes assignment to T2
- T2 takes possession, but does not pay rent
- From whom can L collect rent as it accrues?


A. Only from T B. Only from T2
 C. From T or T2 D. From T, T1, or T2

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Covenant to Pay Rent

- T's covenant to pay rent is a covenant that personally binds T (privity of contract)
- The covenant also "runs with the land" to bind a transferee who is in "privity of estate" with L
 - After T's assignment to T1, L and T1 are in privity of estate, until T1's subsequent assignment to T2
 - Thus, T1 is personally liable for rent that accrued during months 13-24, but not thereafter



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Assignment Problem

- L can get a judgment against T for rent as it accrues (L and T are in privity of contract)
- L can get a judgment against T2 for rent as it accrues (L and T2 are now in privity of estate)
- L cannot obtain a judgment against T1 (T1 was never in privity of contract with L, and is no longer in privity of estate with L as the unpaid rent is now accruing)

Ernst v. Conditt

- 6/1960: Ernsts lease land to Rogers (1 yr)
 - Rogers installs go-kart track
- 7/1960: Rogers sells go-kart business to Conditt
 - In context of sale, Ernsts and Rogers extend the lease term by 13 months
 - Rogers then enters into "sublease" transferring his interest in the land to Conditt
- Conditt paid rent for a few months before shutting down the business
- At end of lease term, Ernsts sue Conditt to collect the remaining rent due under the lease



Ernst v. Conditt

- Issue: was transfer from Rogers to Conditt an assignment or a sublease?
- If transfer from Rogers to Conditt was a sublease, Conditt would not be personally liable to Ernst for unpaid rent
 - No privity of contract exists between them
 - If T only subleases to T1, L and T remain in privity of estate (no privity of estate between L and sublessee)



Ernst: Assignment or Sublease?

- Common law (and vast majority rule): determination is solely a matter of form, *i.e.*, has T transferred its entire interest?
 - If so, it is an assignment
 - If not, it is a sublease
- “Modern” (minority rule): determination is a matter of intent of the parties (T and T1)



Ernst

- Held: transfer to Conditt was an assignment (both under traditional “form” rule and modern “intent” rule)
 - Rogers retained no interest
 - Parties intended this transfer to be an assignment (Rogers transferred all rights; mere fact that they called it a “sublease” is not determinative)



Questions re: Ernst

- Does court’s analysis of the parties’ “intent” make good sense?
- Could Conditt have avoided liability by insisting that Rogers retain a right of entry in case Conditt breached their agreement?
- How could Ernst have better protected against this risk?



Ernst

- Because lease contained a no-transfer clause, Ernst could have conditioned his consent upon Conditt’s agreement to be personally liable for rent (creating privity of contract)
 - But, Conditt might have refused, and Ernst might not have been in an economic position to “drive such a hard bargain” (if Conditt walked away, there may have been no other prospective transferees)



Tenant’s Use of the Premises

- Tenant may use premises for any legal use, unless L obtains an enforceable use restriction by contract, *i.e.*, in the lease
- Use restraints are common, and typically come in one of two forms
 - Prohibitory (T can’t make certain uses, *e.g.*, “T cannot operate a bar/tavern”)
 - Authorizing (T can only make a particular use, *e.g.*, “T can only operate a restaurant”)



Use Restrictions: Authorizing vs. Prohibitory Restrictions

- Why would L use an authorizing restriction (“only a restaurant”) rather than a prohibitory one?



Use Restriction: Hypo

- 2005: T becomes a franchisee of Paper Depot (a national retailer of paper and office products)
- 2006: T signs 10-year lease with L for space in a local shopping center
 - Lease: “T will use the premises for operating a Paper Depot store, and for no other purpose”
- 2008: Paper Depot (franchisor) goes bankrupt. Can T argue that the lease is now terminated, and refuse to pay further rent to L?



Use Restrictions

- Problem: the more narrow the use restriction (“only as a Paper Depot”), the greater the risk that T may be able to terminate the lease based upon impracticability or frustration of purpose if that narrow use becomes impracticable
 - Contrast: if lease allows “any lawful use,” this would make it more difficult/uncertain that T could successfully raise such a defense



- L leases Blueacre to T for 25 years
- T begins constructing a Waffle House
- T sued by neighbor, X
 - X gets an injunction, because a deed in L’s chain of title contains a residential-use-only covenant
- Must T still pay rent to L?

Similar, or Different?

