



PROPERTY
Practice Question 3

This is the Cover Page. Don't read the Practice Question that follows until you're ready to write an answer to it.

- ***Topic Coverage: Sections II.B.4 and III.B.3.a***
- ***Time: 90 minutes.***
- ***Format: Closed book recommended.***
- ***I would suggest you spend at least 15 minutes or so outlining your answer before you begin to write it.***

Question

Assume the following facts take place in the hypothetical U.S. state of Cania. Note: There is information on Cania law on page 2.

In 2014, Xander bought a small house on Blackacre in Cane Bay. He's lived there since then. The house is currently worth about \$500,000.

In July 2024, Xander is offered a job in Jakarta with a substantial salary increase and decides to move there. He mentions to Latoya – his niece, to whom he's always been very close – that he figures he'll sell Blackacre. Latoya says she'd love to buy his house, but being fresh out of college she can't afford it. She doesn't have a job yet and the only savings she has is about \$2,500 in graduation gifts.

Feeling generous, Xander decides to lease the house to Latoya, effective September 1, instead of going to the hassle of finding a buyer right as he's making such a big move and job transition. The lease is for four years. The lease gives Latoya the right to extend the lease another 4 years, for a total of 8 years. She can exercise this right at her complete discretion by written notice at any time before the end of the first 4 years, or she can just leave after 4 years. The lease sets the rent at \$250 a month, which is way under what Xander could get for it on the rental market. Latoya is deeply grateful for the big price break. She has no income right now, but figures she can spend her graduation gift money on the rent until she finds a job. She and Xander both sign the lease.

Celebrating with her over dinner, a friend of Latoya's who recently graduated from law school raises the question whether maybe she should record the lease. "You lawyers always overthink things," Latoya replies, chiding her friend and dismissing the idea.

Xander moves out on August 25, and Latoya moves in on September 1.

On September 30, Bai stops by the house to say hi to Xander. Bai, a friend of Xander, had been out of town a lot lately for his work as an art dealer and was so busy he missed Xander's text about getting a new job and moving to Jakarta. Bai has always liked Xander's house and would love to live there.

Latoya answers the door when Bai rings the doorbell.

"Hi," says Latoya.

"I'm looking for Xander," replies Bai, surprised. "Who are you?"

"I'm Latoya. Who are you?"

"I'm Bai, a friend of Xander. Is he around?"

"Oh, he moved to Jakarta last month" replies Latoya.

"Really!" says Bai. "And what are you doing here? You bought the house from him?"

"Oh, goodness, no," Latoya replies, laughing. "I'd go bankrupt if I bought it. I'm his niece, a new college graduate looking for a job."

"Nice meeting you!" says Bai as he leaves. He thinks to himself, "Xander has always been so generous. So nice of him to let his niece stay there for a bit until she finds a job."

The next day, October 1, Bai calls Xander in Jakarta. "Hey, just talked to your niece when I stopped by your house. You know I've always loved that house. Any chance you might be willing to sell it to me?" He continues: "I'm kind of short on cash right now, but I'll give you the small Picasso sketch in my living room that you've always admired. I haven't had it formally appraised, but I think it might be worth a couple hundred thousand dollars."

"Wow I do love that Picasso sketch," replies Xander, grateful to have such a good friend. "It's a deal!" He thinks to himself, "It'll be good to get rid of Blackacre and move on to a new chapter in my life. And since Bai has talked to Latoya, he must know she's renting the place. I guess he likes having some steady rental income even if it's not that much."

Closing is set for October 15, 2024. Always a prudent person, Bai does a title search and sees no problem. At closing, Bai gives the Picasso sketch to Xander's authorized local attorney, who in turn gives Bai a proper deed to Blackacre that meets all of Cania's formal requirements. Bai immediately takes the deed to the County Clerk's office to be recorded. Swamped with work, the County Clerk accidentally indexes the deed in the grantor index under "Z," thinking Xander's name is "Zander."

A few days later, on October 19, Bai goes out to Blackacre, and tells Latoya she'll have to leave.

"Leave? What are you talking about?" Latoya says.

"I just bought the house," Bai replies.

"Well I guess you're my new landlord, then," she replies.

"Landlord?!? What do you mean?" Bai says.

"I have a lease to this house," she replies, and shows him the lease. "Give me your address and I'll send you the November rent when it comes due," she says. "Just so you know," she continues, "I really like it here and I just found a great job with a good salary," she adds, "so you better count on me exercising my option to extend the lease another four years."

"No one ever mentioned a lease to me!" replies Bai, shocked. "I assumed Xander was just letting you stay here temporarily because he's your uncle!"

"Well, you assumed wrong," Latoya retorts. "And by the way, that early winter ice storm two nights ago wreaked havoc with the pipes in the bathroom in the basement. They froze and cracked. I shut the water off to that bathroom when I discovered the problem. Looks like it may cost an arm and a leg to fix. Make sure you get a plumber over here right away to fix it. Oh and sorry, I try to be careful in the kitchen but I'm just a super messy person by nature. And now there's a big problem with roaches in the house. You need to get an exterminator over here. I can't sleep at night worrying about the roaches."

"You want *me* to take care of things while *you're* living here?" says Bai. "No way! You do it!"

(1) *Bai comes to you for advice. While he's mad at Xander, he thinks it's too much trouble suing someone who's moved out of the country. What he's seeing you for is whether he can get Latoya out of the house so he can live there himself. He wants what he thought he was getting – ownership of Blackacre free and clear of any burdens on the title, including the lease. "Don't I have that under the law? How could Latoya possibly claim otherwise?" Set out and evaluate the arguments Bai and Latoya would make, and who you think has the stronger arguments on each issue and why.*

(2) *Assume solely for the sake of this subquestion (2) that a court finds in favor of Latoya in subquestion (1). Does Bai have a duty to repair the broken pipes in the basement bathroom and to exterminate the roaches?*

Note: Cania law implies a warranty of habitability into every residential lease. There is no Cania statute providing for an implied warranty. The Cania Supreme Court recognized the warranty in a decision several years ago largely along the same lines as the Vermont case of *Hilder v. St. Peter*. Cania also has the following statute:

Cania Code § 546:

"No conveyance, transfer or mortgage of real property, or any interest therein, nor any lease for 5 years or longer, shall be good and effectual in law or equity against creditors or subsequent purchasers for a valuable consideration and without notice, unless the same be recorded in the county registry for the county or district in which the land to which it related lies."

If there are other factual or legal matters you would need to know, say what they are and why they would matter.