REAL PROPERTY ESSAY QUESTION #8

In 1984, Grant subdivided a tract of land into two parcels, A and B. He then sold Parcel B to Nell, and thereafter, Parcel A to Owen. Owen constructed a house on Parcel A, close to the boundary with Parcel B.

In March 1985, Owen leased Parcel A to Tim under a ten-year lease. The lease provided for an annual rent payable in monthly installments. Since 1984, first Grant and then Owen allowed Nell access to Parcel B by use of a road through Parcel A.

In January 1989, Nell notified Owen of her intent to construct a building on Parcel B near the common boundary. Nell's contractor excavated for a deep basement for the new building. In March 1989, that portion of Parcel A land under Owen's house subsided, causing material damage to the house.

Owen refused to repair the damage, insisting that Nell or her contractor should do so. Tim moved out and refused to make further monthly payments of rent during the balance of the lease. Owen then refused to allow Nell further access over Parcel A.

1. What are Owen's rights against Tim for the remaining monthly rent payments? Discuss.

2. What are Owen's rights against Nell for damage to the house? Discuss.

3. Does Nell have a right to continue use of the road through Parcel A? Discuss.
MODEL ISSUES CHECKLIST

I. What are Owen's rights against Tim for the remaining monthly rent payments? Discuss.

LANDLORD / OWEN V. TENANT / TIM.

STATUTE OF FRAUDS. No Indication of Lack of a Sufficient Writing.

TYPE OF TENANCY.

  TENANCY FOR YEARS. Fixed Term Lease. Tim May Be Liable for Remainder of Lease for Rent, Five Years. Monthly Rent Does Not Make Lease a Month-to-Month Tenancy.

INDEPENDENCE / DEPENDENCE OF COVENANTS. At Common Law, One Person’s Rights and Duties Remained Independent of the Other Person’s. Modernly, There Is a Growing Tendency for Dependence of Covenants, and One Person’s Rights and Duties Will Interact With the Other Person’s Rights and Duties.

TENANT AND LANDLORD’S RIGHTS.

  POSSESSION. Tenant Given Possession.

  QUIET USE AND ENJOYMENT. For Both Residential and Commercial Leases.

    CONSTRUCTIVE EVICTION. No Duty to Pay Rent Where Landlord is Responsible for Tenant’s Loss of Quiet Enjoyment. Tenant Not Liable for Remainder of Rent if Leaves Within a Reasonable Period of Time.

    PARTIAL EVICTION. Tenant Unable to Use Part of Property Due to Third Party, Still Liable for Rent at Common Law. Nell Causes Damage.

  WARRANTY OF HABITABILITY. For Residential Leases. Duty of Landlord to Keep Premises Habitable, May Have Been Breached.

  WITHHOLD RENT. Not Available at Common Law, but Available Modernly Where There Are Dependent Covenants.

  RECEIVE RENT. Landlord Entitled to Rent.
II. What are Owen's rights against Nell for damage to the house? Discuss.

**OWEN V. NELL, LATERAL / SUBJACENT SUPPORT.**

**LATERAL SUPPORT.** Adjoining Property Owners Strictly Liable if Interfere with Right to Lateral Support Against Unimproved Property, and a Negligence Action Where Adjoining Property Has Been Improved.

**PROPERTY IMPROVED.** Nell Must Have Been Negligent for a Proper Claim, and She Would Be Held to the Standard of a Reasonable Excavator. Must Show Duty, Breach of Duty, Causation and Harm.

**OWEN.** Contributorily, Comparatively Negligent by Constructing House to Close to Property Line. Must Mitigate.

III. Does Nell have a right to continue use of the road through Parcel A? Discuss.

**NELL V. OWEN, EASEMENT OF WAY.**

**EASEMENT APPURPETANT V. EASEMENT IN GROSS.** Easement Appurtenant because Nell’s Property Enhanced as a Private Person. Nell has Dominant Estate. Parcel A is Servient Estate.

**CREATION OF EASEMENT.**

**Necessity.** Strict Necessity is Required. May Have Been Only Way Nell Could Access Property. Grant and Owen Allowed Use of Easement by Nell.

**Implication / Grant.** Requires Common Grantor of One Parcel of Land Later Dividing Land into Two Parcels, Reasonable Necessity of Easement as Well as Prior Use. New Owner of Second Parcel Must Have Notice.

**Prescriptive Easement / Adverse Possession.** No Indication of Hostility.

**SCOPE OF EASEMENT.** Road through Parcel A to Parcel B. No Indication of Abandonment, Destruction, or Other Type of Termination.

**TAKING WITHOUT NOTICE.** We Are Not Told of Whether Nell Recorded. However, It Appears as Though Owen Took With Notice of the Easement, Inasmuch as He Immediately Continued the Same Practice as Grant to Allow Nell Access to the Parcel A Road, After Owen Purchased Parcel A.
**TRESPASS UPON EASEMENT.** Owen Stopped Nell from Access to Easement. She May Seek an Injunction Allowing Her to Use the Easement.

**LICENSE.** Permission to Use Land, Revocable at Will.