

PROPERTY PRACTICE QUESTIONS

ANSWER 19

Gerry W. Beyer

Governor Preston E. Smith Regents Professor of Law



Caveat: The outline of the answer below provides guidance regarding the main issues which you should address in your answer. The answer is *not* designed to be a model answer.

Kelly v. Olivia

- General rule
 - The duty to *maintain* the retaining wall runs with the land provided that the wall was not negligently constructed to being with
 - Nothing in the fact pattern indicates that Nick had built the wall negligently
 - Olivia bought Nick's property with the retaining wall already built, and thus it was her duty to maintain it
- It is also the rule that a landowner has to support the land only in its *natural condition*
 - Nick built the retaining wall before Kelly had built her house
 - It is unclear whether the retaining wall is falling apart because it can no longer support Kelly's *land* above, or because of the added *weight of the house*
 - Olivia will have to call the experts to determine why the wall is falling apart
- If it is determined that the wall could not have supported the land in its natural condition due to Olivia's failure to maintain it, Olivia will be liable to Kelly for damages

Kelly v. Nick

- General rule
 - The duty to *maintain* the retaining wall runs with the land provided that the wall was not negligently constructed to being with
 - Nothing in the fact pattern indicates that Nick had built the wall negligently
 - Nick has now sold the his house and no longer owns the land
- Therefore Nick is not liable to Kelly for damages to her house