



Alison Monahan: Welcome back to the Law School Toolbox podcast. Today is another installment of our “Listen and Learn” series, where we’re talking about constructive eviction – something you’re sure to see in your Property class at pretty much any law school. Your Law School Toolbox host today is Alison Monahan, and typically, I’m with Lee Burgess. We’re here to demystify the law school and early legal career experience, so that you’ll be the best law student and lawyer you can be. Together, we’re the co-creators of the [Law School Toolbox](#), the [Bar Exam Toolbox](#), and the career-related website [CareerDicta](#). I also run [The Girl’s Guide to Law School](#). If you enjoy the show, please leave a review or rating on your favorite listening app. And if you have any questions, don’t hesitate to reach out to us. You can always reach us via the [contact form](#) on LawSchoolToolBox.com, and we would love to hear from you. With that, let’s get started.

Alison Monahan: Hello, and welcome back to the “Listen and Learn” series from the Law School Toolbox podcast! Today’s topic is constructive eviction – something you’re sure to see in your Property class at, basically, any law school.

Alison Monahan: Well, you probably already know what “eviction” means. It’s when the homeowner or landlord kicks out the person living there. If your landlord literally kicks you out, that’s pretty easy to identify. But what if the situation is murkier? What if they just act so terribly that you kind of wish you were evicted? That’s where constructive eviction comes in. It’s not quite a “throw you out on the street” type of eviction, but it’s bad enough that the law considers it eviction and lets the plaintiff tenant recover damages. So, let’s get started!

Alison Monahan: First off, in Property, there’s an important idea, and that’s called the Implied Covenant of Quiet Enjoyment. You already know that a “covenant” means a promise, and this is basically a promise from the landlord that the tenant can peacefully use the property without the landlord interfering. It’s called the “implied” covenant because it protects the tenant even if it’s not written into the lease. So, if you have a shady landlord who says this doesn’t apply to your apartment lease, they’re wrong. It does.

Alison Monahan: The Implied Covenant of Quiet Enjoyment is part of both residential and commercial leases – that’s why today we’re going to talk about both homes and offices. Now, this distinction in the rule is important to keep in mind as you study. You’ll probably learn about something else called the Implied Warranty of Habitability. That promise only applies to residential leases. You can remember because “habitability” sounds like someone is going to inhabit, or live on the premises. The point here is that you need to keep these two doctrines separate. But, on an exam, if you see a landlord-tenant type of situation, be looking out for facts that could trigger one or both of these, because they often come up in the same type of fact patterns.



- Alison Monahan: Today, we are limiting our discussion to constructive eviction, which is a breach of the Implied Covenant of Quiet Enjoyment. If you're writing an essay, your main header would be "Implied Covenant of Quiet Enjoyment". Then you'd state your general rule. Next comes the sub-header for "Constructive Eviction" because that is a way to show the covenant has been breached. If you don't already have your Property attack plan set up, now would be a great time to start working on that.
- Alison Monahan: Alright, let's go through our rule elements. There are three of them, they're nice and easy to number and remember. First, you need a substantial interference. Second, there needs to be notice from the tenant and a reasonable time period for the landlord to respond, and the landlord has to fail to fix the problem. Third, the tenant has to vacate the premises within a reasonable amount of time after the landlord fails to remedy the situation. A lot of supplements out there might refer to these rule elements using a mnemonic: SING. And that can be a good way to remember your rule. So, if you want to claim constructive eviction, you have to SING: Substantial, Interference, Notice, and Goodbye.
- Alison Monahan: On a law school final, it'll often be pretty clear what the dates are, concerning when the tenant left and when the problem started. It can also be obvious that there was a problem worth complaining about. Typically, these facts are pretty blatant. Now, what you usually need to argue back and forth are over things like the "substantial" element – was the problem really bad enough to be considered tantamount to eviction?
- Alison Monahan: You might also get some argumentation back and forth out of the element of "reasonableness" – did the tenant give the landlord enough of a chance to fix the issue before packing up and leaving? And remember, as with any exam, your arguments come down to what the facts are giving you as clues. And we will go through some examples of this in a few minutes.
- Alison Monahan: Alright, so what does interference by a landlord look like? What you're looking for here is a failure to fix something that is broken – for example a heater or running water, or for something overt like changing the locks, or maybe an ongoing issue like verbally harassing the tenant – basically anything the landlord is doing or failing to do that makes it hard for the tenant to enjoy the property they are paying to rent.
- Alison Monahan: Now, you can see even from the get-go that the surrounding facts are really going to matter. For example, if the elevator in a commercial building breaks and the tenant's office is on the 40th floor, that would be a much more serious problem than if the tenant happened to be on the first or second floor. If the heater went down and it's summer, or if it's somewhere with a consistently warm climate, that's not such a big deal. However, if there's no heat and it's winter – well, that would cut in favor of the interference being "substantial"



under the first element of the rule. The bottom line here is, the facts make all the difference. So, you can use them as clues and, in your essay, always explain why they matter when you write your analysis.

Alison Monahan: Alright, let's move into some hypos. This first one is from the [California bar exam Property essay from February 2012](#). We've omitted and made a few really minor changes to some facts to keep this focused on our constructive eviction issue. But, I have to say, this is one of my all-time favorite fact patterns based solely on how the landlord responds when confronted. Pretty soon you're going to see what I mean. Alright, let's get started:

Alison Monahan: "Donna was looking for a place to live. Perry owned a two-story home, with the second story available to lease. Donna and Perry signed a two-year lease. Upon moving in, Donna discovered that the water in her shower became very hot if Perry ran his water downstairs. When Donna complained to Perry about the shower and asked him to make repairs, Perry refused, saying, 'I'll just make sure not to run the water when you're in the shower.' Donna was not happy and threatened to move out. Thereafter, every time Donna took a shower, Perry deliberately ran the water downstairs. Donna was afraid of being scalded every time she took a shower. Perry also adopted a new diet featuring strong-smelling cheese. Donna told Perry that the smell of the cheese annoyed and nauseated her. Perry replied, 'Too bad; that's my diet now.' After constantly smelling the cheese for three weeks, Donna decided to move out. What claims may Donna raise?"

Alison Monahan: Can you see why I said this hypo was great? I love how Perry just says, "Too bad; that's my diet now." And yes, this was in the real bar question; we did not make that up or edit that in.

Alison Monahan: Alright, so we need to use the three rule elements for constructive eviction. First, what was Perry doing that Donna can try to argue was such a "substantial interference" that it effectively kicked her out of the apartment? There were two things going on here, right? The hot water, and the cheese. So, on an exam, you should take each event in turn and walk through the rule elements for each one. So, let's try it together.

Alison Monahan: First element – substantial interference. And we'll look at the hot water issue first. Do you think it is an interference that Donna's water got hot when Perry ran his water? Probably. Well, was it a "substantial" interference? The facts do tell us that she was afraid of being burned every time she took a shower, so that sounds pretty serious. This element is therefore pretty easy to check off.

Alison Monahan: Next element – notice. And remember, the "notice" here means the tenant said something about the problem, gave the landlord a chance to fix it, and he didn't. Did that happen here? Well, we know Donna told Perry about the hot



water problem, because the facts give us that. We were also told that Perry refused to fix the issue. So, we know there was notice and that the landlord did nothing. This checks off at least some parts of element number two.

Alison Monahan: What about reasonableness? We don't know the precise day that Donna moved in or when exactly she told Perry about the problem. The fact pattern didn't give us any dates to work with. But, we have a clue towards the end when it says "after three weeks". This is not included just a background fact; it's actually a clue that you need to use. So, since we know Donna told Perry about the shower before that time, she must have waited around three weeks at the very least before she left. Is that a reasonable timeframe? Probably. It might have been a different story if Perry responded in some other way – for example saying he was working on the problem and trying to fix it. But, he told Donna he wasn't going to do anything, so it was reasonable for her to think that he wasn't going to fix the water.

Alison Monahan: Finally, for our last element – did Donna say "Goodbye"? Yes, she did. This one is easily checked off. There is nothing to argue, so you would want to get through this part very quickly. Does that all make sense?

Alison Monahan: Alright, let's move on to the example about the stinky cheese. What's our first rule element? Substantial interference. The interference was the smell of the cheese. The question is whether it meets the hurdle of being "substantial". What do you think? On the one hand, the facts tell us that Donna was annoyed and nauseated by the smell, and it was bad enough that she moved out. This sounds like a pretty substantial problem. I mean, how nasty was that cheese he was eating?

Alison Monahan: On the other hand, we could dig even deeper into the facts. Perry lives downstairs, and his cheese is so incredibly strong that Donna can smell it through the walls or windows or whatever, and actually get sick? That seems a little strange, right? Note there's a reason the fact pattern used "cheese" and not something more noxious. Imagine if the problem was radiation, carbon monoxide, a pesticide, or the smell of sewage leaking through the walls. We'd probably have a more substantial problem on our hands, because these things could really harm a person's health. Do you see how different facts could really turn the argument in a different direction?

Alison Monahan: However, here what we are dealing with is food. Not even rotten food – cheese that is perfectly fine for Perry to eat. The only problem is that Donna happens to think it's gross. When you read through fact patterns, see if you can visualize the scene playing out in real life, and give it your gut-instinct response. For example, if your friend told you they moved out because their neighbor's cheese smelled so terrible, that would seem kind of weird, right? It's more likely that Donna is the problem here. Maybe she's just too sensitive. Again, what is or



is not a “substantial” interference is going to be based on what a normal, reasonable person would think.

Alison Monahan: So, Donna probably doesn’t pass that first element of the rule when it comes to the cheese. Yes, the bad smell was an interference, but it wasn’t a substantial enough interference to a reasonable person. Should we stop our analysis there? No. Always continue on and be sure to hit the remaining rule elements to get those points, and in case you’re wrong. So, did Donna give Perry notice and a chance to fix the problem? Yes. Donna told Perry that the cheese annoyed and nauseated her. Did he do anything? Nope. He said, “That’s my diet now; deal with it.”

Alison Monahan: And did Donna say “Goodbye” after giving Perry a reasonable time to solve the issue? Yes, she did. She endured the bad cheese smell for three weeks and then she left. So, these elements are easily met.

Alison Monahan: You can see how most of the discussion about the cheese is going to center around that first element about “substantial” interference. That’s where most of the facts were in this fact pattern. That means that’s where more points are going to be when you write your analysis. This is when you would really want to argue both sides, because there were facts that allowed you to do that.

Alison Monahan: Alright, let’s go through another hypo. This one is from the Property essay on the [July 2007 bar exam in California](#). And again, we’ve shortened this one up a bit so it fits just our issue for today. Here we go:

Alison Monahan: “Larry leased in writing to Tanya a four-room office suite at a rent of \$500 payable monthly in advance. The lease commenced in July. In November, Tanya experienced several issues: Elevator service and running water were interrupted once; heating was interrupted twice; and electrical service was interrupted on three occasions. These services were interrupted for periods of time lasting from one day to one week.

Alison Monahan: On December 5, the heat, electrical, and running water services were interrupted and not restored until December 12. In each instance Tanya immediately complained to Larry, who told Tanya that he was aware of the problems and was doing all he could to repair them. The office was on the 12th floor.

Alison Monahan: On December 12, Tanya orally told Larry that she was terminating her lease on February 28, 2007 because the constant interruptions of services made it impossible for her to conduct her business. She picked the February 28 termination date to give herself ample opportunity to locate alternative office space. Tanya vacated the suite on February 28, even though between December



12 and February 28 there were no longer any problems with the leased premises. What causes of action can Tanya bring against Larry?"

- Alison Monahan: Well, first things first. This was a commercial lease since it was for an office suite. However, we've got no problem under the Implied Covenant of Quiet Enjoyment, because we know that covers both residential and commercial leases.
- Alison Monahan: Alright, let's get into our elements. Was there a substantial interference? Well, at various times, Tanya didn't have an elevator, running water, heat, and electricity. To see whether these interferences were substantial or not, we need to look at the other facts.
- Alison Monahan: First, we know the office is on the 12th floor – that means an elevator is important. No client is going to want to walk up 12 flights of stairs. What about running water? Well, there aren't facts specifically about how this impacted Tanya's business, but we know this is an office, which means there's presumably a need for water to flush toilets, wash hands, and maybe even make coffee. We can surmise from general common sense knowledge about the world that cutting off water is a substantial interference for any office. You never want to go outside the facts, but on an exam, doing this kind of very common sense extrapolation from the facts is a good idea.
- Alison Monahan: How about heat? Like we said earlier, let's look at the specifics. We don't know where this office is located – maybe the climate was warm – but we know that the heat shut off in November and December, which means it was winter – at least in the Northern Hemisphere, where we're assuming this office probably existed. That means we can surmise it was likely cold. Again, we don't know with 100% certainty that it was cold, but the November and December facts are clues you should bring up when you're talking about this assumption and explain why the interference was substantial. Once again, it's the explaining part that's important. If you just say, "It was November, so this interference was substantial" – that's not going to really cut it. You need to piece the analysis together by spelling it out directly. For example, "It was November, which means it was winter in the Northern Hemisphere and likely cold, which means it was more of a substantial interference not to have a heater." Do you see how you really want to explain your reasoning?
- Alison Monahan: Finally, what about electricity? Same thing as with the water. All businesses probably need to run their computers, lights, and telephones. Again, there's nothing in the facts about computers, lights, phones, etcetera, but you can make this logical leap because this is common sense. This one is easy to check off. The interference of having no electricity would be substantial. You could get even more specific in your explanation by using the dates and the length of time each problem lasted. You should definitely do that in a real exam situation. For



our purposes today, I'm just trying to focus on the most important parts of the analysis.

Alison Monahan: Also, on an exam, be sure to always walk through each fact and go step-by-step. For example, you don't want to merge the facts about the water, and the power and heat together and simply conclude, "Yep, all that stuff was a substantial interference." Even though you'd be correct that it was, you would miss almost all of the available points for not explaining how you got to that end result. Just like a Math class, you need to show your work. So, go through these individual events one by one and do the analysis.

Alison Monahan: On to step two of our analysis: Did Tanya give Larry notice? Yes. Was it within a reasonable timeframe? Sure, because she told him "immediately". Did Larry fix the problems? Yes, in this hypo he actually did, so this is a key fact you would want to argue in Larry's favor. Use all the facts about what Tanya said and did, when each event took place, and what Larry said and did.

Alison Monahan: And how about the final element? Did Tanya say "Goodbye" within a reasonable time? Well, we know she left, but there is some room to argue about whether she got out fast enough. You would want to use that fact about her needing to look for an alternative office space, and again, argue both sides about whether this decision to wait until the end of February was reasonable. And of course, don't actually use the phrase "Say Goodbye" on your real exam. Keep it professional and say something like, "Vacate the premises", or simply "Left the property", or something along those lines. "Goodbye" is just for you to remember.

Alison Monahan: Alright, with that, we're out of time! If you want some practice, you can go through and IRAC these hypos out on your own. Again, these were from the California bar exam Property essays from July 2007 and February 2012.

Alison Monahan: If you enjoyed this episode of the Law School Toolbox podcast, please take a second to leave a review and rating on your favorite listening app. We would really appreciate it. And be sure to subscribe so you don't miss anything. If you have any questions or comments, please don't hesitate to reach out to Lee or Alison at [lee@lawschooltoolbox.com](mailto:lee@lawschooltoolbox.com) or [alison@lawschooltoolbox.com](mailto:alison@lawschooltoolbox.com). Or you can always contact us via our website [contact form](#) at LawSchoolToolbox.com. Thanks for listening, and we'll talk soon!

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