

A landowner leased a plot of land to a bamboo farmer on a month-to-month basis, with rent due at the beginning of each month. The farmer planted dwarf bamboo crops on the land. For several years thereafter, the farmer would divide the roots of each bamboo plant and replant them on the land in early spring. Each October, the farmer would harvest some of the plants to sell to local landscapers.

On October 31, the farmer paid rent to the landowner, at which time the landowner notified the farmer that the lease would terminate as of November 30 because the landowner had sold the land to a large farming corporation. Although harvesting season was over, the farmer attempted to reenter the land on December 15 and remove the remaining bamboo plants.

The landowner filed suit against the farmer to prevent the removal of the plants.

In whose favor should the court rule?

- A. The farmer, because all emblements remain personal property.
- B. The farmer, because the farmer planted the bamboo and the lease was for an indefinite duration.
- C. The landowner, because the farmer had already harvested the bamboo plants.
- D. The landowner, because the owner of the land is irrebuttably presumed to be the owner of the crops.

Explanation:

Ownership of emblements

Type	Status	Upon transfer of land
Planted, cultivated crops (<i>fructus industriales</i>)	Personal property	Pass with land <i>except</i> * when: harvested – severed from land ripe – mature (some courts) planted by tenant with indefinite leasehold <i>or</i> planted by adverse possessor under claim of right
Wild, uncultivated crops (<i>fructus naturales</i>)	Part of real property	Pass automatically with land

*Then prior owner has right to reenter land to remove crops.

There are two types of **emblements** (ie, crops) that are generally conveyed with the land:

Fructus industriales – **produced through cultivation** and considered personal property

Fructus naturales – **occur naturally** (ie, without human assistance) and considered real property

A landowner is presumed to own both types of emblements grown on the land and to **convey them with the land** upon its sale. However, there are certain exceptions to this presumption with respect to *fructus industriales*. One exception, called the **doctrine of emblements**, applies when a **lease of uncertain duration** is **terminated** through **no fault of the tenant**. Under this exception, the tenant has the **right to reenter** the land to **remove, harvest, or cultivate crops** that the tenant **planted during the tenancy**.

Here, the landowner is presumed to own the bamboo crops planted by the farmer (*fructus industriales*). However, the farmer planted the bamboo on land that was leased month-to-month *indefinitely*, and the landlord terminated the lease to sell the land to a farming corporation—not due to any fault of the farmer. This gave the farmer the right to reenter the land and remove the bamboo plants under the doctrine of emblements. Therefore, the court should rule in favor of the farmer.

(Choice A) *Fructus industriales* are considered personal property, but *fructus naturales* are considered real property. As a result, not all emblements remain personal property.

(Choice C) Even though the farmer had already harvested some of the bamboo, the farmer can still reenter and remove the rest of the plants under the doctrine of emblements.

(Choice D) Although a landowner is presumed to be the owner of crops on his/her land, this presumption can be rebutted by evidence of the parties' contrary intent—ie, this presumption is not irrebuttable.

Educational objective:

Under the doctrine of emblements, a tenant has the right to reenter land to remove, harvest, and cultivate crops that the tenant planted before the tenancy terminated if the tenant's lease was for an uncertain duration and terminated through no fault of the tenant.

References

Restatement (Second) of Prop.: Landlord & Tenant § 12.3 cmt. h (Am. Law Inst. 1977) (harvesting agricultural crops from leased property).

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