1. On December 1, a landlord rented an apartment to a tenant for one year, commencing January 1. The tenant paid the first and last months' rent. Both the landlord and the tenant were aware that, at the time of the making of the lease, the apartment in question was occupied by a student, who had a lease on the premises until December 31. The student refused to leave the apartment on December 31, and the landlord served the appropriate legal notices to vacate the premises.   
The student still did not vacate the apartment, and the landlord instituted an unlawful detainer action against the student. She succeeded in getting the marshal to enforce the judgment and take possession of the apartment, and the tenant received possession of the apartment on February 1.

The lease between the landlord and the tenant contained the following statement: "The tenant, on payment of the monthly rent and compliance with all of the covenants and conditions stated herein, shall have the quiet enjoyment of the premises."  
  
If the tenant now sues the landlord for damages resulting from the delay in the tenant's possession of the premises, what is the landlord's best defense?  
  
(A) The landlord did not breach any specific promise to deliver the premises on January 1.  
(B) The jurisdiction follows the majority rule regarding the landlord's duty to deliver  
possession, and the landlord did everything within her power to eject the student in a  
timely manner.   
(C) The landlord's obligation to the tenant ended with the signing of the lease  
(D) The jurisdiction follows the minority rule regarding the landlord's duty to deliver  
possession, and because the terms of the lease gave the tenant the right to possession rather than the landlord, it was up to the tenant to bring an action against the student.

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The landlord's best defense is that the jurisdiction follows the minority approach regarding the landlord's duty to deliver possession. In most states, statutes require the landlord to put the tenant in actual possession at the beginning of the lease term. In a minority of states, the landlord's obligation is merely to give the tenant the legal right to possession; it is up to the new tenant to bring eviction proceedings against a hold-over tenant. Here, if the jurisdiction follows the minority rule, the landlord will have a complete defense because she has no liability for the student's refusing to vacate the apartment when his lease ended.  
  
(A) is incorrect because there need not be a specific promise to deliver the premises at the start of the lease period; that duty will be implied in the lease.  
(B) is incorrect because, under the majority rule, it is not enough that the landlord did everything in her power to eject the student in a timely manner. She had a duty to deliver actual possession to the tenant, and she is liable under the majority rule for any damages the tenant suffered from the delay in delivering possession.  
(C) is incorrect because the scope  
of the landlord's obligation depends on whether the jurisdiction follows the majority rule or the minority rule.

2. A landlord leased an office building suite to an accounting firm for 10 years. The written lease contained a provision that utilities for the suite would be paid by "the lessee, his successors, and assigns." The accounting firm occupied the suite and paid the rent and utilities for four years. At that time, the accounting firm assigned the balance of the lease to a publishing company and vacated the premises. The assignment was  
in writing but contained no provision concerning the publishing company's assumption of the duties under the lease. The publishing company now occupies the suite and has paid the rent but not the utilities.   
If the landlord sues the publishing company for failure to pay the utilities, which of the  
following would be the publishing company's best defense?  
  
(A) The covenant to pay utilities does not run with the land.  
(B) The publishing company did not assume the covenant to pay utilities.  
(C) The accounting firm is solely liable for the utilities.  
(D) The publishing company and the landlord are not in privity of estate.

(A) The covenant to pay utilities does not run with the land.   
The publishing company's best defense would be that the covenant to pay utilities does not run with the land. The best way to get the correct answer is to use a process of elimination.  
  
(B) is incorrect because after an assignment, the assignee stands in the shoes of the original tenant in a direct relationship with the landlord. The assignee and the landlord are in privity of estate, and each is liable to the other on all covenants in the lease that run with the land, regardless of whether the assignee assumed the lease obligations. An assignment arises when a tenant makes a complete transfer of the entire remaining lease term, retaining no interest in the assigned premises. Here, the accounting firm transferred the remaining six years of the lease to the publishing company and retained no other interest. Accordingly, this was an assignment and the publishing company would be liable under privity of estate if the covenant to pay utilities runs with the land. Thus, not assuming the covenant is not a valid defense.  
  
(C) is incorrect because, although the original tenant is no longer in privity of estate with the landlord after an assignment, a tenant may still be held liable on its original contractual obligations to the landlord on privity of contract grounds. However, the publishing company also would be liable on privity of estate grounds, so the accounting firm is not solely liable.  
  
(D) is incorrect because, as explained above,the publishing company and the landlord are in privity of estate. Thus, the publishing company's best defense would be that the covenant to pay utilities does not run with the land, as choice (A) states. If it does not run with the land, the publishing company would not be bound to pay the utilities unless it assumed the covenant, which it did not.

10. A mall leased one of its retail units to a clothing store for a period of five years. The lease agreement provided that the clothing store would pay to the mall, as additional rent, $1,000 a month in maintenance fees for the upkeep of the common areas in the mall. The agreement also permitted assignments and subleases. For four years, the clothing store timely paid all rent and maintenance fees. At the end of the fourth year, the clothing store properly assigned the lease to a discount shoe outlet. At the time it assigned the lease, the clothing store owed $3,000 in maintenance fees for the last three months of its occupancy. The shoe outlet paid its rent but did not pay any maintenance fees to the mall for the first six months. The shoe outlet then abandoned the property. The mall made reasonable efforts during the last six months of the term to relet the unit but was unable to do so. After applying the security deposit to satisfy the balance of the rent, the mall wishes to collect the unpaid maintenance fees for the last 15 months of the lease, totaling $15,000.  
Who is liable for those fees and in what amount?  
  
A The clothing store and the shoe outlet are jointly and severally liable for the $15,000 in fees.  
B The clothing store is solely liable for $3,000 in fees, and the clothing store and the shoe outlet are jointly and severally liable for $12,000 in fees.  
C The clothing store is solely liable for $3,000 in fees, the shoe outlet is solely liable for $6,000 in fees, and the clothing store and the shoe outlet are jointly and severally liable for $6,000 in fees.  
D The clothing store is solely liable for $3,000 in fees, and the shoe outlet is solely liable for $12,000 in fees.

The clothing store is liable for the total amount on privity of contract grounds, and the shoe outlet is liable for $12,000 on privity of estate grounds. When a leasehold interest is assigned, the assignor and the landlord are no longer in privity of estate; the assignee is now in privity of estate with the landlord. Hence, each is liable to the other on all covenants in the lease that "run with the land." Here, the agreement to pay a maintenance fee for upkeep of the common areas of the mall is a covenant that runs with the land because it burdens the tenant and benefits the landlord with respect to their interests in the property (i.e., it "touches and concerns" the land). The shoe outlet is therefore liable for the maintenance fees for the 12-month term of its tenancy. However, because the shoe outlet was not in privity of estate prior to the assignment, it is not liable for the $3,000 in maintenance fees that the clothing store owed; thus, (A) is incorrect. (C) and (D) are incorrect because the clothing store continues to be liable for the maintenance fees after the assignment. While the original tenant is no longer in privity of estate with the landlord after assignment, the tenant can still be held liable on its original contractual obligation in the lease, i.e., on privity of contract. This allows the landlord to sue the original tenant where the assignee has disappeared, is judgment-proof, etc. Here, the clothing store is liable for the period the shoe outlet occupied the property as well as the period the property was abandoned. Thus, the mall has the choice of suing either the clothing store (under privity of contract) or the shoe outlet (under privity of estate) for the $12,000 in maintenance.