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Property II: Final Examination (June 2, 1964)

William & Mary Law School

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1. (a) A conveyed Blackacre to B and in the deed covenanted, "that the said premises are free from incumbrances." At the time of the conveyance Blackacre was subject to a restrictive covenant which prevented the property from being used for other than residential purposes. B brought an action for damages against A for breach of the covenant against incumbrances. At the trial the evidence established the fact that Blackacre was worth \$1,000.00 less by virtue of the restriction, and that B had not been subjected to any action for breach of the restrictive covenant. What result should the court reach? Why?
(b) A conveyed Blackacre to B and in the deed made a covenant of seisin. In the deed from A to B, B expressly assumed a mortgage in the amount of \$3,500.00 in favor of M. which had been placed on the land by A. In view of the fact that B assumed the mortgage, he paid A only \$1,500.00 in cash. B failed to pay the mortgage when it was due, and M foreclosed. At the foreclosure sale, Blackacre brought an amount equal to the mortgage indebtedness. Thereafter, B learned for the first time that A did not own Blackacre, whereupon B brought an action for damages against A for breach of the covenant of seisin. What result should the court reach? Why?
2. In 1950 MR borrowed \$10,000.00 from ME(1) and gave a first mortgage on Blackacre to secure payment of the debt. The note evidencing the indebtedness provided for payment of monthly installments, but did not contain an acceleration clause in the event of default. In 1955 MR borrowed \$5,000.00 from ME(2) and gave a second mortgage on Blackacre to secure payment of the debt. The note evidencing the indebtedness provided for payment of monthly installments and for acceleration of the balance due, at the option of the holder, in the event of default in payment of monthly installments. In 1958 P obtained a judgment against MR in the sum of \$3,000.00 and caused the judgment to be docketed in the county where Blackacre was situated. In 1960 MR borrowed \$2,000.00 from ME(3) and gave a third mortgage on Blackacre to secure payment of the debt which was due 90 days after date. MR failed to pay the debt to ME(3) when it became due and also failed to pay the monthly installments on the prior mortgages. ME(3) commenced foreclosure proceedings. Discuss the rights of all the parties pointing out what each party could do to obtain the maximum protection possible.
3. A, who anticipated purchasing Blackacre from T(true owner) contracted to sell Blackacre to B for \$10,000.00, the contract to be closed on July 1, 1955. When the closing date arrived A had not consummated his transaction with T, but expected to do so shortly, so A conveyed Blackacre to B by general warranty deed and received the purchase money from B. Since B knew that A was wealthy B did not have the title examined but relied on A's covenants of title for protection. B caused the deed to be recorded on July 5, 1955. On December 1, 1955, A closed his transaction with T, and was on his way to the court house to record the general warranty deed by which T conveyed Blackacre to A, when A was killed in an automobile accident. S, A's only heir, found the deed in A's pocket and then caused it to be recorded. S, thinking that title to Blackacre had passed to him by intestate succession, conveyed Blackacre to C by general warranty deed dated January 1, 1956, in consideration of the payment of \$10,000.00 by C to S. Discuss the rights of the parties.
4. X, who is ten years of age, owns Whiteacre which adjoins Blackacre, in which A has a life estate and B owns the remainder. A, without justification or excuse, built a road across Whiteacre which he used in connection with Blackacre. This use by A continued from the time X was ten years of age until X became 40 years of age. X, however, became incompetent when he was 35 years of age and was committed to a mental institution. X's committee caused a suit for an injunction to be instituted against A when X became 40 years of age. Before the suit could be heard A died; therefore the committee caused the suit to be dismissed. B moved to Whiteacre and commenced using the road just as A had done. When X became 42 years of age, X's committee caused a suit for an injunction to be instituted against B. Should the injunction issue? Discuss the rights of the parties.
5. Three adjoining lots, each 50 feet wide and 150 feet long, abut Main Street on the south. A owns the west lot, B the center lot and C the east lot. The lots are vacant and the soil in each is sandy with some clay therein. As a fact, if C were to remove all of the soil on his lot to a depth of 100 feet, B's lot would laterally support A's lot in its natural condition. Many years ago mining operations had been conducted under the lots of B and C and minerals removed therefrom and timbers substituted for the support thereof. On July 1, 1948, C excavated on his lot preparatory to building a house thereon and dug down to a depth of 12 feet. Due to lack of funds, C stopped his project. On July 1, 1950, the surface of A's lot and B's lots subsided into the mine shaft and C's proposed basement. There was no negligence on the part of C, yet had C not dug his basement the subsidences would not have occurred. On August 1, 1954, A brought an action against C for damages to his lot based on alleged failure to render lateral support. Assuming the statute of limitations on this type of action to be six years, may A recover? Why?

6. City B owns a 40 acre tract of land, Blackacre, abutting Clear Creek, on which tract it has built a waterworks plant for supplying its inhabitants and industrial units with water from Clear Creek. For this service and water City B makes a regular monthly charge which is paid by the water users. City B since the construction of the water works has grown so that it requires nearly all of the creek water to supply its needs. A is the owner of a lower riparian tract of land on which he operates a mill by the use of water power from Clear Creek. He has been so using the water for more than 50 years. Within the past four years City B's use of the water from Clear Creek has been so enormous in quantity that it has caused too little water to flow to A's mill to enable A to continue his operation. A therefore seeks an injunction against City B. Result? Why?

7. P owned Blackacre in fee simple which consisted of a tract 160 feet square and bounded on the north by the line AB, on the east by the line DA, on the south by the line CD and on the west by the line BC. A was at the northeast corner, B at the northwest corner, C at the southwest corner and D at the southeast corner. P executed his deed to a portion of Blackacre to D and therein used the following language to describe the tract conveyed, to-wit: "...that certain portion of Blackacre bounded as follows, on the east by the line AD, on the north by the line AM which is easterly 100 feet of the line AB, on the south by the line DN which is easterly 100 feet of the line DC and on the west by the line joining the two points M and N. which enclosed tract is the easterly one-half of Blackacre." D fenced in the easterly 100 feet of Blackacre which left the westerly 80 feet thereof in the possession of P. P sued D to eject him from the westerly 10 feet within D's fence. Result? Why?

8. P obtained title to a tract of land on June 25, 1953, which tract of land was situated in an area designated "industrial" under the zoning ordinance of the City. The zoning ordinance was a cumulative restrictive type. P therefore applied to the appropriate officer for a building permit to erect a shopping center of retail stores on his land. The officer advised P that he would not issue the permit until the governing body disposed of a proposed ordinance which would change the zoning ordinance to a non-cumulative restrictive type. One month later the following ordinance was adopted. "No lands or structures shall be used, nor shall any structures be erected, altered or used within the Industrial Zone delineated by the ordinance for any residential, or retail commercial purpose, and only industrial uses which are not detrimental to health, safety or property shall be permitted and in no event shall any other use or purpose which in the opinion of the governing body is detrimental to health, safety, or property be permitted." After the adoption of the ordinance, the administrative officer refused to issue the building permit to P. Advise P concerning his rights and the procedures he should follow.

9. (a) If you are representing the purchase in a notice jurisdiction, what should you do before paying the purchase price to the grantor to assure that your client will prevail over prior deeds or other instruments executed by the grantor and which have not been recorded? What should you do in a race-notice jurisdiction? In a period-of-grace jurisdiction? In a race jurisdiction?

(b) On January 1, 1945, A owns a tract of land valued at \$20,000.00. On April 1, 1945, A borrows \$5,000.00 from B and executes and delivers to B a mortgage on his land to secure the loan. B does not record this mortgage. On July 1, 1945, A borrows \$7,000.00 from C and executes and delivers to C a mortgage on his land to secure the loan. C had actual knowledge of the prior unrecorded mortgage in favor of B. C records his mortgage on the day it is delivered to him. On August 1, 1945, A borrows \$3,000.00 from D and executes and delivers to D a mortgage on his land to secure the loan. D had no knowledge of B's prior unrecorded mortgage but was aware of C's prior recorded mortgage. D recorded his mortgage on the day it was delivered to him. In 1947, A's land was sold pursuant to foreclosure proceedings, and the sum of \$10,000 was realized from the sale. How should the \$10,000 be distributed among B, C, and D? Give reasons for your conclusions.