

1964

## Property II: Final Examination (August 10, 1964)

William & Mary Law School

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1. V, the owner of a farm which was divided approximately in half by a railroad right of way but had a private crossing connecting the two parts, contracted in writing to sell the farm to P for the sum of \$100,000. When the time for performance of the contract arrived, a dispute arose between P and V concerning the width of the private crossing, whereupon P refused to perform the contract and brought an action against V for \$10,000. damages for breach of contract, in X County where P resided. V filed a responsive pleading denying liability, and then instituted a declaratory judgment proceeding in Y County where the land was situated against P and A (the real estate agent who had procured the contract and who was claiming a commission of 10% of the sales price) seeking a declaration of the rights of all parties concerned. P recorded a lis pendens in Y County in connection with the action for damages, but no lis pendens was recorded in connection with the suit for a declaratory judgment. V now seeks to borrow \$25,000. from Bank and use the land as security for the loan. Assuming that you are the attorney for the Bank which is quite anxious to make the loan, discuss the legal status of the title and the scope of the certification which you are willing to make to the Bank.

2. Smith, the owner of a valuable tract of land, resided thereon with a child named Agnes whom Smith represented to be his daughter. Smith, who claimed to be a widower, raised and educated Agnes. After many years Smith died, but Agnes continued to live on the land for ten years thereafter. Agnes finally decided to sell the property to BFP who retained Attorney to examine the title to the property. Attorney advised BFP that there were no objections to the title and then prepared a deed from Agnes to BFP, which deed after describing the property and reciting the source of title into Smith, provided, "and being the same property of which Smith died intestate on August 10, 1954, leaving his daughter Agnes, the grantor herein, as his sole heir at law." BFP took possession of the property and made valuable improvements thereon. Agnes died. Some four years later, one Crook appeared and brought an ejectment action against BFP. At the trial Crook testified that he was the son of Smith and produced his birth certificate to corroborate his testimony. Crook testified further that Agnes was an illegitimate daughter of Smith. BFP presented his deed in evidence, testified that Agnes had occupied the land under a claim of right for ten years and that he, BFP, had occupied the land under a claim of right for four years, and had made valuable improvements thereon. Result? Why?

3. T in 1945 offered to make a will in which he would leave all of his property to Mary if she would come live in his home and look after him for the balance of his life. Mary believed that T owned Blackacre on which his home was situated, but nevertheless retained attorney to examine the title thereto. Attorney examined the title and advised Mary that T owned Blackacre in fee simple and that there were no liens, encumbrances, or objections of any kind thereto, whereupon Mary accepted T's offer and moved into T's home. In 1950 T prepared a deed to Blackacre in which the name of the grantee was left blank. T signed, sealed, and acknowledged the deed. In 1953 T handed the deed to S, his son, and told S to fill in his name as grantee in the deed, which S did. When T died in 1955, his will, dated 1945, was found, in which he devised all of his property to Mary. Mary and S agreed that they would probate the will and record the deed at the same time, which they did. Mary and S orally agreed that they would both live in the home and would not litigate, which they did until 1964 when Mary died. Mary's will in which she left all of her property to her sister Maud was duly probated whereupon Maud brought an action of ejectment against S. Discuss the rights of the parties.



4. In 1940 MR gives to ME-1 a note for \$5,000. payable in 1945, secured by mortgage on Blackacre. In 1941, MR gives to ME-2 a demand note for \$3,000. secured by a mortgage on Blackacre. Both mortgages are duly recorded when given. In 1942, ME-2 demands payment. MR does not pay, ME-2 forecloses by sale. How much of the proceeds of the sale go to ME-1? Explain.
5. O, who held record title in fee simple to Blackacre, made a conveyance thereof to X, followed two months later by a conveyance of the same land to Y. Both X and Y paid value for the land and neither party had notice of the conveyance to the other. Both deeds were recorded within ninety days after execution but Y's deed was recorded first. Which grantee would be preferred at common law and under the various types of recording statutes? Explain.
6. O, who owned a large tract of land through which an abandoned highway ran from the east to the west connecting with a public highway at each end, conveyed the western half of the tract of land to Jones. Although the deed did not mention any right of way along the abandoned highway, O assured Jones that he could use the abandoned highway across O's remaining land, and stated that he, O, intended to use the abandoned highway across Jones' land. As a matter of fact the abandoned highway was in such poor condition that Jones cut a new road equal in width to the old abandoned highway and along side of and parallel to the old road. Jones used the new road for twenty three years and then repaired the old abandoned highway and used it exclusively for the next ten years. O died and his heirs, who resided in a distant city, sold and conveyed the eastern half of the tract to Smith, who had never seen the property. Smith planned to put a fence around the property and to build a manufacturing plant thereon; therefore, prior to purchasing the land, Smith had the title thereto examined. The title examiner advised Smith that there were no easements of record across the property or any part thereof. Jones seeks to enjoin Smith from closing off the two roads across the property. Discuss the rights of the parties.
7. D, who operates a boys school, owns a large tract of land upstream from P's land. D installed a pumping apparatus whereby he pumped water from the stream to his school which was about one mile from the stream and in a different watershed. The water was used for drinking, cleaning, laundry, canning, power plant, and swimming pool for the resident students and faculty. P used the stream for power to operate his commercial flour mill which was located within the watershed of the stream. All funds which P received from operation of his mill were used to support P and his family. As the enrollment of D's school increased, D used more and more water thus diminishing the supply available for the operation of P's mill. Discuss the rights of the parties.
8. A, who owned an undivided three-fourths interest in Blackacre, conveyed his interest to P by a quitclaim deed which conveyed "all the following described property," etc., to have and to hold "all the said premises." Later A inherited the remaining one-fourth interest. When A offered to sell the one-fourth interest to D, D hired Attorney to examine and certify the title. Attorney searched in the grantor's index from the date A inherited the one-fourth interest, under A's name, and found no adverse conveyances. A conveyed the one-fourth interest by quit claim deed to D. P brings a suit to quiet title to Blackacre, against D. Discuss the rights of the parties, including D's rights against Attorney.
9. In 1893, landowner A executed a document reciting that for twenty dollars consideration "I hereby grant unto the Power Company its successors and assigns, the right to construct, operate and maintain its lines over and along the property described as follows: . . . ." This document was not sealed and was not acknowledged, but due to the inexperience of the recording officer, it was nevertheless recorded and properly indexed. In 1900 the Power Co. erected its power line along the described route. In 1923, B, a purchaser of the land who had notice that the poles and wires were on the land with A's permission, notified the company to remove its equipment. Removal would cost over \$5,000. Discuss the rights of the parties.