1969

Equity: Final Examination (January 16, 1969)

William & Mary Law School

EQUITY

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In 1958, the Apex Paper Mfg. Co. (a Virginia corporation, whose operations are confined wholly to this state) established a paper mill in a rural area of Gloster (sic) County, Va.. The mill, despite continuous use of the latest and best suppressive machinery, blanketed the country for miles around with offensive odors from the first moment of operation to date. Apex knew that it would do so before operations commenced, of course, and that this would violate the long-disused Gloster County ordinance of 1782 punishing with fines of $1-$10 per occasion the "making of foul stenches to the injury of the populace."

No one objected to this for several years, especially as about a thousand of nearby (1 mile-well within the range of mill emissions) Pleasantville's population of fifty-five hundred ultimately entered the mill's rather generous payroll, and both the families involved and the town merchants benefitted accordingly. By 1968, however, many of Pleasantville's families had been replaced by those from nearby military installations, who care little for either the mill's payroll or the town's prosperity. They do, however, care very much about the "foul stenches"-which are increasing daily despite the mill's seemingly good-faith efforts to suppress them. In July of 1968 these new families formed a Citizen's Improvement Committee to stop this great and increasing nuisance, that had hospitalized a number of people and made many others ill to a less degree. Proceedings under the 1782 ordinance proved ineffective, as the sympathetic local judiciary interpreted "occasion" as "day", and assessed fines at the lowest rate of $1, realizing that $275 per year or thereabouts is unlikely to be much of a deterrent to the mill. The Committee now seeks injunction by two routes: (a) The public one, through the local Commonwealth's Attorney (brother-in-law of a Fort Eustis colonel), and (b) The private one, by which each member of the Committee (membership: 550) is seeking individually to enjoin Apex and its mill immediately from emitting further stenches, and to recover damages from them for any injury claimed to have been caused thereby to him personally.

What issues-offensive and defensive-do you see in these two suits? How shall they be resolved, and why? Draft the injunction(s) that might be expected, assuming that any are granted, and explain your reasons for wording it/them as you do.

II.

A. B. See contracted in writing in 1967 to sell his farm, Grandview, to D. E. Eff. The contract stated that mutual performances of conveyance of the farm with its 180 acres, and payment therefor, would be due on January 1, 1969. The price was stated as either $10,000 or, should either party object thereto at or before the time for performance, such other sum as might be determined by an arbitral panel of three members, one each to be chosen by vendor and vendee and the third to be chosen by those two. Shortly thereafter, Eff made a partial payment of $2,000, which was accepted as such by See.

Eff, a stockbroker, wanted Grandview as a place of retirement, as he had lived in Chicago all his life and had become thoroughly sick of large cities. Prior to entering this contract, he became acquainted with Grandview through having visited See there once in 1950 to advise him on a proposed investment. See had taken him on a tour of Grandview then and, upon being asked about its size, said "Oh, I don't know. About 180 acres, I think." The farm had not been surveyed since See had bought it-under a deed not stipulating acreage. In fact, it contains 155 acres.

In 1966, See made a will whose sole dispositive provision is a devise of Grandview-then substantially all of his property-to his close friend and fiancee, Marjorie Daw. See's only living relative is Jock Smart, a playboy cousin with whom he has been on bad terms for many years. Eff's will stipulates that all of his property, real and personal, shall go to his wife, June.

On December 1, 1968, while driving out for a last look at Grandview together before performance of the contract, See and Eff were killed in a car crash. On the following January 1, Eff's administrator tendered $8,000 as the unpaid balance of the purchase price and requested a deed to Grandview. See's administrator refused the tender and deed, stating that he declined to perform the contract on behalf of the estate because the price was too low in the current market, and, in any event, he had received an offer of $20,000 (about the current market value of Grandview) from John Q. Developer.

Eff's administrator thereupon brought suit for specific performance of the contract. There is no relevant statute law in the jurisdiction. What result, and why?

III

What other course might be open to Eff's estate regarding this matter? What recovery, if any, might be expected thereunder? Why?

IV.

"Change one fact" in Question II by omitting from the contract both the word "either" and the contract term extending from the words "or, should either party object. . ." to the end of that sentence. I.e., omit the entire provision for alternative price determination by arbitration.

What are the rights (including defenses, if any) of the various persons involved in this matter, and why? What must the court do to determine and enforce them all in an action for specific performance?

V.

Nat E. Kall, having nearly drowned when his thirty foot ketch, Betsy, was capsized by a York River squall, decided to sell that boat-happily undamaged by the incident-but to keep his more stable and otherwise suitable thirty foot yawl, Sally, for sedate day cruises in Matoaka Lake. The Betsy, a new standard-built, specially-equipped vessel had been valued recently for insurance purposes at $40,000.

Shortly after the capsizing, Kall contracted to sell "his yawl, Betsy" to Brown Drown for $50,000. The contract was an oral one (valid in the jurisdiction). It was made shortly after Kall had given Drown a tour of the Betsy and stating that he wished to sell it following cocktails (several) together in the exclusive lounge of the Swank Marina. Drown, it should be

mentioned, had never been on a boat (or ship) of any sort before; the Sally and the Betsy were lying alongside one another at the same pier of the Marina during his inspection tour, and look about alike from the outside to the uninitiated, and Drown, while actually touring only the Betsy, admired each boat extravagantly in turn.

Drown had second thoughts on the matter upon being tendered a certificate of title to the Betsy on the following day, particularly when he learned that the Betsy had been valued recently at ten thousand less than the contract price (a fact that Kall had neither volunteered nor concealed), and declined both tender and payment. Kall then sued for specific performance. Will it be granted, and why? What defenses is Kall likely to encounter?