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PROPERTY II

May 26, 1969

I

A, B, and C owned five acres of land as tenants in common, which land consisted in part of a marsh area and some high ground on which a small cabin was situated. The property was used by A, B, and C for hunting purposes. They knew that Unfriendly wanted to purchase an interest in the property so that he could use it for hunting purposes also.

A, B, and C entered into an agreement which provided, "If any party hereto wishes to sell and convey his interest in said property, the party desiring to sell and convey must first offer to sell and convey said interest to the other parties hereto at the same price at which it would be offered to any other party, except that this provision shall not apply if any party hereto wishes to sell and convey his interest to D". The agreement was duly signed, sealed, acknowledged and recorded. Unfriendly knew that the agreement had been made to prevent him from ever acquiring an interest in the property. C sold and conveyed his interest in the property to D, who then sold and conveyed his interest to Unfriendly. A and B brought a suit against Unfriendly to have the deed declared null and void in which they alleged that the deed was in violation of the agreement. Discuss the rights of the parties. What should A and B have done?

II

X, the owner of property which was being developed as a residential subdivision, sold and conveyed lots to various persons and in each deed provided that the property was to be used for "only one residential building", and the land could be used for "residential purposes only." Each deed contained a further provision which gave X the right of reentry in the event of violation of the restrictions. The local unit of government thereafter adopted a zoning ordinance which prohibited the use of this area for commercial purposes.

Y, who purchased a lot from X prior to the enactment of the zoning ordinance, seeks your advice concerning the legality of erecting a one-story four family apartment house. What would you advise? Would your answer be the same if it were a two-story apartment house, three-story, etc. ?

III

Price, the owner of Blackacre, conveyed the coal rights under his property by warranty deed in 1904 to Coal Company. In 1933 Price conveyed by warranty deed a portion of Blackacre to plaintiff, who examined the records and knew that the coal rights had been conveyed to Coal Company. In 1934 plaintiff erected a house on his lot and obtained a water supply by digging a well. Plaintiff used the well until 1955 when the Coal Company in the course of mining operations severed the well casing (which extended through their coal) and contaminated the water supply.

Discuss the rights of the parties. Would your answer be the same if Coal Company had been the original owner of Blackacre and had sold Price the surface rights by warranty deed? Why?

IV

In 1930 Ancester died and in his will devised an undivided three-fourths interest in Blackacre to S and the remaining undivided one-fourth interest in Blackacre to F. In 1940 S conveyed by general warranty deed with English covenants of title his undivided three-fourths interest in Blackacre to Jones. In 1950, S knowing that F (his father) was going to devise the one-fourth interest in Blackacre to S upon F's death, conveyed by general warranty deed with English covenants of title the one-fourth interest to Smith. In 1952 F died and in his will devised his one-fourth interest to S. In 1955 S conveyed the one-fourth interest to Jones. All deeds were promptly recorded.

Discuss the rights of Jones and Smith in relation to the ownership of the property and their rights against S.

V

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 only 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.

Results? Why?

VI

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.

VII

D, who operates a boys school, owns a large tract of land upstream from P's land. D in 1950 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 during each academic session. P used the stream for power to operate his commercial flour mill which was situated 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.

VIII

Railroad condemned a right of way across the property of A, thus leaving A's property divided into two approximately equal parts. A died intestate leaving his two sons B and C as his sole heirs at law. B and C entered into a partition deed whereby the land east of the railroad was partitioned to B and the land west of the railroad was partitioned to C. Some years later the Railroad changed the course of its line and removed the tracks from the property condemned from A. B negotiated with the Railroad and purchased the old right of way which the Railroad conveyed to B by quit claim deed. B conveyed all of his property by warranty deed to P, a bona fide purchaser for value relying upon the records. P erected a dwelling house on the old right of way and resided thereon for twenty-five years without interruption. C then instituted a partition suit against P seeking partition of the old right of way. What arguments would C make? How can C overcome P's defenses of being a bona fide purchaser for value relying on the records and of adverse possession?

IX

- (a) Compare the operation of a recordation system with a registration system.
- (b) Compare the method of using a tract index with a grantor-grantee index.