

1971

## Property II: Final Examination (May 28, 1971)

William & Mary Law School

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FINAL EXAMINATION

PROPERTY II

May 28, 1971

Mr. Scott  
Mr. Williamson

INSTRUCTIONS:

The examination consists of six problems of varying weight, totaling 100 points. Each problem states the weight to be given to such problem and a suggested time limit. The suggested time limits are based solely on a proportion of the total time for the entire examination equal to the percentage weight given to individual problems.

\* \* \* \* \*

I. (22 minutes - 13 points)

V enters into an agreement with P to sell a certain tract of land. The agreement provides, in full, as follows:

"April 10, 1971

V agrees to sell and P agrees to buy, the following described property for \$10,000 cash:

[adequate description]

Closing to take place May 1, 1971.

(s) V

(s) P "

P's attorney, upon examination of the record title to the property, discovers a deed in V's chain of title executed without any attesting witnesses and without any acknowledgement by the grantor. Prior to May 1, 1971, P notifies V that he will not perform the contract because of the above stated defect in the title. V consults you concerning possible remedies against P. V alleges that he has been in exclusive possession of the property since 1930 and that he is willing to indemnify P against any loss he might sustain. What advice would you give to V? Discuss all issues fairly presented.

II (30 minutes - 16 points)

A purported to convey a fee simple estate in Blackacre to B for \$10,000. A's deed to B contained a covenant of general warranty and a covenant of seisen.

- (a) Thereafter, B contracts to sell Blackacre to C. C discovers that A did not have title to a portion of Blackacre and refuses to perform the contract. What are B's rights against A? Discuss all issues fairly presented.
- (b) Without regard to (a) above, thereafter B conveys Blackacre to C for \$12,000. B's deed contains a covenant of general warranty. C contracts to sell Blackacre to D. D discovers that A did not have title to a portion of Blackacre and refuses to perform the contract. What are C's rights against B and/or A? Discuss all issues fairly presented.
- (c) Without regard to (a) and (b), above, thereafter B conveys Blackacre to C for \$12,000. B's deed contains a covenant of general warranty. C thereafter conveys Blackacre to D for \$8,000 by quitclaim deed. D is ousted from possession by O who has a paramount title to the whole of Blackacre which antedates A's deed to B. What are the respective rights and obligations of A, B, C and D? Discuss all issues fairly presented.



## III. (15 minutes - 9 points)

O executed a deed which, on its face, purported to unconditionally convey fee simple title in Blackacre to P. O physically delivered the deed to P on the express oral condition that the deed was not to be effective until P paid the \$10,000 purchase price to O within 90 days. P did not pay the \$10,000 purchase price within 90 days. What are O's rights against P? Discuss all issues fairly presented.

## IV. (1 hour - 33 points)

In the following problems none of the persons concerned has knowledge or reason to know of facts that would adversely affect his title, except as otherwise stated. All deeds are given for value and contain general warranty covenants. In each contest assume first that the jurisdiction has a Notice type recording statute and then assume the case arises in a Race-Notice jurisdiction. In each situation indicate who should prevail and why. If the authorities are in conflict, indicate that fact and give the answer which will provide the most efficient working of the recording system. (Limit each explanation to one sentence)

A) O, who owns Blackacre, actually and of record conveys to A on Jan. 1, 1971. A does not record his deed. On Feb. 1, 1971 O conveys Blackacre to B, who also does not record. On March 1, 1971 B conveys Blackacre to C who immediately records the deed. Two weeks later A records his deed and on May 1, 1971 he conveys Blackacre to D who records immediately.

1. Feb. 1, 1971: A v. B?
2. March 1, 1971: A v. C?
3. May 1, 1971: C v. D?

B) On Jan. 1, 1971 O, who has no present interest in Blackacre, conveys it to A, who records immediately. On Feb. 1, 1971 T.O., the holder of actual and record title in Blackacre conveys to O who immediately records the deed. O then conveys Blackacre to B on March 1, 1971, and B records his deed.

1. Feb. 1, 1971: O v. A?
2. March 1, 1971: A v. B?

C) On Jan. 1, 1971 O, who owns Blackacre actually and of record conveys to A who does not record. On March 1, 1971 A conveys Blackacre to B who immediately records his deed. O then conveys Blackacre to C on April 1, 1971, C immediately records. C had actual notice of the deed from O to A. On May 1, 1971 C conveys Blackacre to D who fails to record his deed. Two weeks later A records his deed and the next day, May 15, 1971 D records.

1. April 1, 1971: C v. B?
2. May 1, 1971: D v. B?
3. May 15, 1971: D v. B?

D) O, who owns Blackacre actually and of record conveys it to A on Jan. 1, 1971. A does not record. O then conveys Blackacre to B on Feb. 1, 1971 and B records immediately. B had actual notice of the deed from O to A. On March 1, 1971 A records his deed. On April 1, 1971, B conveys Blackacre to C who fails to record. On May 1, 1971 A conveys Blackacre to D who records immediately.

1. Feb. 1, 1971: A v. B?
2. April 1, 1971: A v. C?
3. May 1, 1971: D v. C?



## V. (30 minutes - 16 points)

Frank Jones was the owner of a fifteen acre tract of land in James City County, Virginia. Hoping to take advantage of the increasing population growth in the Williamsburg area, Frank recorded a plat on which he subdivided the tract into 30 lots and blocks. On the plat, Frank declared that all of the lots should be subject to certain uniform use and building restrictions, namely: The lots should be used and occupied for residential purposes only; that not more than one single family dwelling should be erected on any one lot; that every dwelling erected in the subdivision must cost at least \$40,000, and that none should be erected within 20 feet of the nearer line of the street on which the lot abutted. The plat was recorded before any of the lots were sold. Thereafter, Frank sold the first lot to Mrs. Peel. The deed stated that it was made subject to the restrictions set forth in the plat, and Mrs. Peel covenanted for herself her heirs and assigns, that they would observe and abide by all these restrictions. Frank then sold 25 more lots with similar provisions in the deeds. Due to an oversight the last 4 lots contained no reference to the restrictions contained in the plat. One of these four lots was sold to John Steed. Steed commenced building a multi-dwelling apartment house on his lot whereupon Mrs. Peel instituted an action in Equity seeking to enjoin Steed from violating the building restrictions.

At the trial of the case, Steed offered the following defenses to Mrs. Peel's claim:

1. The restrictions did not affect his property since no mention of them was made in the deed from Jones to Steed, and in any event Mrs. Peel is not entitled to enforce any restrictions against Steed.
2. That Mrs. Peel was in violation of the restrictions herself in that her house was only 15 feet from the street line.
3. That Steed's lot which was on the north west corner of the subdivision was bordered on two sides by several apartment buildings and other commercial property located on the surrounding unrestricted property making it valueless as residential property.

How should the Court rule on each of Steed's defenses? Discuss all issues fairly presented.

## VI. (23 minutes - 13 points)

A owned a substantial tract of land used for farming purposes. In 1935, he conveyed absolute fee simple title to one-half of the tract to B. On the portion of the tract conveyed, there was a natural spring from which A and his family, for the 20-year period immediately preceding the conveyance, had drawn their entire water supply. The spring was, and is today, the only source of water available on either tract of land. B farmed the tract until 1970, when he conveyed the tract to C Homes, Inc. During the entire period the tract was owned by B, A or members of his family, two or three times a week, without objection from B, entered the tract to draw water for their use. C Homes, Inc. proposed to subdivide the tract and build residential homes. Part of their plans include closing off of the spring. A consults you as to his rights to prohibit C Homes, Inc. from closing off the spring and his right to continue to secure water therefrom. What advice would you give A? Discuss all issues fairly presented.