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Property II: Final Examination (Spring Semester)

William & Mary Law School

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FINAL EXAMINATION

Property II
Spring Semester

Mr. Williamson
Mr. Scott

Examination No. _____

Instructions:

The examination consists of three parts, the first two of which are multiple choice objective questions. Each part of the examination contains specific instructions with respect to such part, the weight given to each question therein, and a suggested time allocation. Since you are to answer the objective questions on this examination paper, be sure to put your examination number at the top hereof and return such with your blue book.

Part I (1 hour)

Part I of the examination contains sixteen multiple choice questions, each question being worth two points. Answer the questions by circling the letter beside the best answer. Caveat: The "best answer" may not necessarily be the best possible answer.

Questions 1-4 are based on the following fact situation.

Arthur owns a farm. He enters into a written agreement with Walter which reads in full as follows:

I, Arthur, agree to sell my farm to Walter for \$50,000.
Received \$1,000 on account.

Signed "Walter"
"Arthur"

Dated: June 1, 1971

1. Walter, having completed his title search found a mortgage on the farm executed by Jones, a previous owner, in favor of Smith. The mortgage has not been released of record. However, Smith is dead and his estate has been settled. No definite proof can be established, but all indications point to the fact that the mortgage has been satisfied. Walter refuses to go through with the contract and Arthur sues for specific performance. Judgment for:

- a. Arthur, because there were no covenants of title contained in the agreement.
- b. Arthur, if Arthur is willing to leave in Walter's hands a sufficient amount of money to indemnify him against any claim that might be made under the mortgage.
- c. Walter, because the title is not marketable due to the existence of a record defect.
- d. Walter, because the contract cannot be enforced by specific performance.

Disregarding Question 1

2. Assume the agreement called for settlement on August 1, 1971, and that on June 1, 1971, title to the farm was held by Ralph. At settlement on August 1, 1971 Arthur produces a deed from Ralph dated July 1, 1971. Walter refuses to settle. Arthur sues for specific performance. Judgment for:

- a. Arthur, because Walter failed to give written notice of his objection to Arthur.

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- b. Arthur, because he is not required to deliver marketable title until settlement.
- c. Walter, because Ralph was not a party to the agreement.
- d. Walter, because he was entitled to a marketable title on June 1, 1971, even though the agreement was silent as to title.

3. Walter, having completed his title searches and found the title acceptable to him, writes a letter to Arthur on July 1, 1971 advising Arthur that settlement under the agreement will be held at the offices of Walter's attorneys, in Arthur's town, on August 1, 1971 at 2:00 p.m., such time being of the essence. Walter's letter is:

- a. binding upon Arthur, because either party may establish the time and place of settlement by reasonable notice when the contract is silent.
- b. not binding upon Arthur, because he did not sign the letter.
- c. not binding upon Arthur, because the original contract did not make time of the essence.
- d. not binding upon Arthur, because it does not meet the requirements of the Statute of Frauds.

4. Assume that subsequent to the signing of the above contract, Walter moves onto the farm. One week later, Bluebeard enters at night and removes timber worth \$1,500. Walter brings an action for trespass against Bluebeard. Judgment for:

- a. Bluebeard, if the jurisdiction follows the doctrine of equitable conversion as applied to risk of loss.
- b. Bluebeard, if the risk of loss is apportioned under a theory of failure of consideration.
- c. Walter, if the jurisdiction has adopted the Uniform Vendor and Purchaser's Risk Act.
- d. Walter, regardless of what rule applies as to risk of loss.

Questions 5-13 are based on the following fact situation.

By way of gift, Pat executed a deed naming his son, Mike, as grantee. The deed contained descriptions as follows:

- 1. All of my land and dwelling known as 44 Main Street, Midtown, United States, being one acre.
- 2. That part of my forty acre farm, being a square with 200 foot sides, the southeast corner of which is on the north line of my neighbor, John Brown.

The deed contained covenants of general warranty, quiet enjoyment and right to convey.

Pat handed the deed to Mike who immediately returned it to his father for safekeeping. His father kept it in a safe deposit box. The deed was not recorded.

The property at 44 Main Street covered seven-eighths of an acre of land, had a dwelling and a garage situated thereon, and was

subject to a right of way, described in prior deeds, in favor of Jack, a neighbor. Pat owned no other land on Main Street. Jack had not used the right of way for twenty-two years and it was not visible on inspection of the property.

5. The description of 44 Main Street was:

- a. sufficient, because the discrepancy in area is not fatal.
- b. not sufficient, because it contained no metes and bounds.
- c. not sufficient, because the acreage given was not correct.
- d. not sufficient, because a deed purporting to convey more than a grantor owns is void ab initio.

6. The description of part of Pat's farm

- a. is sufficient if consideration has been paid.
- b. is sufficient because no ambiguity therein appears on the face of the deed.
- c. could be enforced if the deed contained a covenant of seizen.
- d. is insufficient because of vagueness.

7. Ignoring any question of the adequacy of description,
the deed

- a. transferred a property interest to Mike which he could enforce against Pat.
- b. transferred nothing to Mike because it was not recorded.
- c. transferred nothing to Mike because it was never accepted by him.
- d. was not delivered to Mike because Pat maintained custody of the deed.

8. Assume instead of retaining the deed in his safe deposit box, Pat had handed it to Mike, telling Mike to keep the deed, and that the land was his if Mike enrolled in Law School. The deed

- a. was not effective until Mike enrolled in Law School, but then transferred interest in the property to Mike.
- b. was ineffective to pass title to Mike because the necessary intent to part with legal control was missing.
- c. passed title to the property to Mike immediately because the condition was void.
- d. would be effective or not depending on whether Mike could be considered an escrow.

9. Mike made a title search a few months after Pat showed him the deed and discovered the existence of Jack's right of way.

Mike could recover substantial damages from Pat for breach of the covenant of

- a. right to convey.
- b. right to convey if Jack has commenced using the right of way.
- c. quiet enjoyment.
- d. quiet enjoyment if Jack has commenced using the right of way and Mike had given consideration for the deed.
- e. Mike could not recover any damages since no covenant was breached.

10. Assume that Jack continues not to use his right of way as such but erects a tool shed within the boundaries of the right of way on Mike's lot. Which of the following statements is most accurate?

- a. Mike can recover from Pat for breach of the covenant of quiet enjoyment.
- b. Mike can obtain an injunction requiring Jack to remove the shed.
- c. Jack is entitled to maintain the shed on the right of way so long as it does not become a fixture.
- d. The existence of the shed will not inhibit a conveyance of marketable title by Mike.

11. Assume that subsequent to the conveyance above, Mike conveyed 44 Main Street to Joe for \$10,000. Mike's deed contained a covenant of general warranty. Three months later by covenant of seisen, Joe conveyed to Frank for \$13,000. Finally, six months later, Frank conveyed by quit claim deed to Henry for \$8,000. Which of the following statements with respect to the covenants in Pat's deed is most accurate?

- a. The covenant of right to convey in Pat's deed could be enforced by Joe because of its repetition in Mike's deed.
- b. The covenant of quiet enjoyment ran with the land as far as Frank but not as far as Henry.
- c. The covenant of quiet enjoyment may be enforced by anyone having a privity of estate.
- d. The covenant of quiet enjoyment is implied in every conveyance and need not be recited therein.

12. Assume the same facts as in question 10. Jack has now commenced using his right of way. How much, if any, can Henry recover from Joe for breach of covenant?

- a. 0
- b. \$13,000
- c. \$10,000
- d. \$ 8,000
- e. none of the above.

13. Assume the same facts as in question 10, except that Henry is ousted from possession by Owens who has a paramount title which he acquired prior to the conveyance from Joe to Frank. How

much, if any, can Frank recover from Joe for breach of covenant?

- a. 0
- b. \$13,000
- c. \$ 8,000
- d. none of the above.

Questions 14-16 are based on the following fact situation.

Owner holds in fee simple absolute a twenty acre tract of land in a large city which he plans to develop by constructing housing units. His development scheme contains the following essentials:

1. High rise apartment houses, owned respectively by separate cooperative housing corporations. The occupants of each house will own the stock of its corporate owner and will have assured rights to continue to occupy their respective units and to transfer their rights subject to established limitations.

2. No occupant will be permitted to transfer his interest in the housing unit without the prior consent of the corporation.

3. If any housing unit is transferred to anyone other than a member of the white race, the property shall revert in fee simple to the grantor.

14. Consistent with the scheme as a whole, the property interest that each individual occupant will have in his particular unit can best be defined as

- a. a covenant
- b. an easement
- c. a long-term lease hold
- d. a determinable fee simple.

15. The provision for prior approval before transfer of any unit would be

- a. invalid, because a direct restraint on alienation is generally void.
- b. invalid, unless reasonable standards for approval of transfer were established.
- c. valid, because the interest created is not subject to the general rule against restraints on alienation.
- d. valid because such preemptory rights are generally sustained.

16. The provision for restricting ownership to members of the white race is

- a. valid because there is no "state action" here, since the automatic termination of the reverter clause is racially neutral.
- b. valid because in a cooperative housing unit the law permits restrictions on the selection of neighbors.
- c. invalid because the provision prevents purchase of the property by non-whites contrary to applicable federal law.
- d. invalid because the provision violates the equal protection clause of the 14th amendment.

Part II (1 hour)

Part II of the examination contains eight (8) multiple choice questions, some of which have two parts. Each question or separate part thereof is worth three and one-half (3 1/2) points each. Answer such questions by circling the number beside the best answer. Caveat: The "best answer" may not necessarily be the best possible answer. Also, the "best answer" to the questions of the four choices for each question may be "none of the above".

1. O executes and delivers a deed conveying to A certain land O owns. A does not record. O then executes and delivers a deed to B of the same land and B purchases with knowledge of A's prior unrecorded deed. B then records. A then records. B then executes and delivers to C a deed of the same land and C purchases in good faith and for valuable consideration. C records immediately. The applicable recording statute provides as follows:

"No conveyance shall be valid as against any person, except the grantor, his heirs and devisees and persons have actual notice of it unless it is recorded in the registry of deeds."

Who wins as between A and C?

1. A prevails because as between A and B, A would win.
2. The answer cannot be determined because it depends on this jurisdiction's definition of those deeds within C's "chain of title."
3. C wins because he is a subsequent purchaser without actual knowledge of A's prior deed who recorded.
4. None of the above.

2. O executes and delivers to A a deed conveying to A certain land O owns. A does not record. O then executes and delivers to B a deed of the same land, and B purchases in good faith and for valuable consideration. A then records. B then records. A then executes and delivers to C a deed of the same land, and C purchases in good faith and for valuable consideration.

A. In a jurisdiction having a recording statute that provides "no conveyance shall be valid as against any person, except the grantor, his heirs and devisees and persons having actual notice of it, unless it is recorded in the registry of deeds," who wins as between B and C?

1. B wins because as between A and B, B was a subsequent purchaser for value without notice of a prior unrecorded conveyance.
2. C wins because as between A and B, A would prevail, A being the first to record.
3. B wins because in this jurisdiction, the rule is that one must search title of each grantor in his "chain-of-title" from the date of deed-in to the present, and this rule gives C record notice of B's claim against the property.
4. None of the above.

B. If in the aforesaid problem B had not recorded, who would prevail as between B and C in a jurisdiction having the same type of recording statute?

1. C would win because as between A and B, A would prevail, A being the first to record.

2. C would win because it would further the purpose of the recording statute, i.e., to enhance the reliability of the record.
3. B would win because as between A and B, B was a subsequent purchaser for value without notice of a prior unrecorded conveyance.
4. None of the above.

3. A conveys Blackacre to B by warranty deed and B records immediately. At the time of A's deed to B Blackacre was owned by O. Thereafter, O conveys Blackacre to A and A records immediately. A then conveys Blackacre to C and C purchases in good faith and for valuable consideration and records immediately. In a jurisdiction having a notice statute, who prevails as between B and C?

1. B prevails because as between conflicting equitable claims to land, the first in time prevails.
2. C prevails because as between conflicting equitable claims to land, the first in time prevails unless the claimant who is prior in time is estopped, by virtue of his actions, to assert his claim.
3. B prevails because in this jurisdiction the grantor index must be searched under A's name from the date of record deed in to A.
4. None of the above.

4. O executes and delivers a deed conveying to A certain land O owns. A does not record. O then executes and delivers a deed to B of the same land and B purchases with knowledge of A's prior unrecorded deed. B records his deed and then executes and delivers to C a deed of the same land and C purchases in good faith and for valuable consideration. A then records. C then records.

A. As between A and C who prevails in a jurisdiction having a notice statute?

1. A prevails because he recorded before C's deed was of record.
2. A prevails - B's claim is subordinate to A's claim since B purchased with actual notice and C can claim no greater rights than his grantor.
3. A prevails because the rule in this jurisdiction requires a grantee to search the grantor index from date of deed-in to the present. Since A recorded before C recorded, A's deed was in C's chain of title.
4. None of the above.

B. As between A and C, who prevails in a jurisdiction having a race-notice statute?

1. C prevails because B would prevail between A and B and C is entitled to at least as much protection as his grantor.
2. C prevails because he is entitled to assume that the only risk he runs is that somebody may put a deed on record from his grantor, B, before he places his deed on record.
3. A prevails because as between A and C, he recorded first.
4. None of the above.

5. O executes and delivers a deed conveying to A certain land O owns. A does not record. O then executes and delivers to B a deed of the same land, and B purchases in good faith and for valuable consideration. B does not record. A then records, and thereafter, executes and delivers a deed to C of the same land, and C purchases in good faith and for valuable consideration.

In a jurisdiction having a recording statute that provides "No conveyance shall be valid as against any person, except the grantor, his heirs and devisees and persons having actual notice of it, unless it is recorded in the registry of deeds," who wins as between B and C?

1. B wins because as between A and B, B would prevail.
2. C wins because the above-quoted statute, being a "race-notice" type statute, requires that a subsequent purchaser record first.
3. B wins because C has not yet recorded.
4. None of the above.

6. O executes and delivers a deed conveying to A certain land O owns. A does not record. O then executes and delivers a deed to B of the same land and B purchases in good faith and for valuable consideration. B then executes and delivers a deed of the same land to C who purchases in good faith and for valuable consideration and who records immediately. A then records. B then records.

As between A and C, who prevails in a jurisdiction having a race-notice statute?

1. C wins because he is the first to record, and in this case the failure of B to record does not improve A's position.
2. A wins because as between A and B, A wins, and a grantee from B can achieve no greater rights.
3. A wins because if C had examined the record chain of title, he would have seen the absence of record of a conveyance to his grantor and this should put him on notice of a possible claim against the land.
4. None of the above.

7. O executes and delivers a deed conveying to A certain land O owns. A does not record. O then executes and delivers a deed to B of the same land, and B purchases in good faith and for valuable consideration. B does not record. A then executes and delivers a deed of the same land to C who purchases in good faith and for valuable consideration. C then records. B then records.

As between B and C, who prevails in a jurisdiction having a race-notice statute?

1. C prevails because he was the first to record as between B and C.
2. C prevails because B's failure to record has mislead him.
3. B wins because he was a "subsequent purchaser" who first recorded within the meaning of the statute. Record of a deed from an apparent stranger to the title is not notice of a prior unrecorded conveyance by his grantor, O.
4. None of the above.

8. O executes and delivers a deed conveying to A certain land O owns. A does not record. O then executes and delivers a deed conveying to B the same land. B purchases with knowledge of A's prior unrecorded deed. B does not record. O then executes and delivers a deed conveying to C the same land. C purchases in good faith and for valuable consideration. C does not record. Thereafter, B records and executes and delivers a deed conveying to X the same land. X purchases in good faith and for valuable consideration. X does not record. Thereafter, C executes and delivers a deed conveying to Y the same land. Y purchases in good faith and for valuable consideration. Y does not record. Thereafter A executes and delivers a deed conveying to Z the same land. Z purchases in good faith and for valuable consideration. Z records immediately. In a jurisdiction having a notice statute who wins as between X, Y and Z?

1. Y wins because his grantor was the last subsequent purchaser without knowledge taking a deed from the common grantor. The fact that B was the first to record as between A, B and C is irrelevant since B purchased with actual knowledge of A's prior unrecorded deed.
2. X wins because as between A and X A would prevail; as between C and X, X would prevail; and Y and Z would both purchase with B's deed in their chain of title from the common grantor.
3. Z wins because as between Z and B, Z would prevail (B having purchased with knowledge); as between Z and C, Z would prevail (C having recorded after B's deed was of record; and as between X, Y and Z, Z would prevail because as between purchasers on the same level, he was the first to record.
4. None of the above.

PART III (1 hour)

Part III consists of two essay questions worth sixteen and one-half (16 1/2) points each. You should divide your time equally between the two questions.

1. A large farm in Rickingham County was partitioned into two tracts, designated as Lots Nos. 1 and 2, by the heirs in 1895. Lot No. 1, which abutted on a public road, was conveyed to Heir A. Lot No. 2 was conveyed to Heir B "together with a right of way by the present road through Lot No. 1 to the County road." The deed conveying Lot 1 to Heir A also provided for the right of way. The private road was not shown on the partition plat and it was described in the deeds only as the "present road." This road, in fact, consisted of a single track not exceeding ten feet and the outside width, including cuts, fills, ditches and improvements, at no point exceeding fifteen feet.

In 1943 Heir B conveyed 126 acres of Lot No. 2 to Realty Corporation, the deed being silent as to the right of way. In 1947 Smith decided to purchase Lot No. 1 from Heir A. After a title search, Smith's attorney advised him of the right of way. Being somewhat concerned, Smith went to Jones, President of Realty Corporation. During their conversation Jones assured Smith that the right of way had not been used for twenty-five years and Realty Corporation had no intention of using it in the future. Being fully satisfied Smith accepted the deed from Heir A, the deed making no reference to the right of way.

In 1970 Realty Corporation decided to subdivide its tract into 250 single family residential lots and to use the road across Smith's land as the principal means of access to the subdivision. In order to accomplish their intention, Realty proposes to resurface the road and expand it to a width of twenty-five feet in order to permit two way traffic.

Smith, who purchased his property in order to retire from his hectic life in the city and become a "country squire" is alarmed by this entire plan for development. He consults you as to whether or not there is any way he can prevent the development from materializing. What do you advise? Discuss all issues fairly presented.

2. O was the owner of a large tract of land which he subdivided into six smaller lots to be used for residential purposes. On May 1, 1968, he sold the first lot in the subdivision to A. O's deed to A contained a provision which provided in relevant part as follows:

"The said grantee (A) for himself and his heirs and assigns covenants that the property described herein shall not be used except for single-family residential purposes."

At the time O conveyed the lot to A he orally promised A that the remaining lots in the subdivision would contain similar restrictions.

Questions:

(1) In July, 1968, O conveyed the last of the lots in the subdivision to B. B's deed, as well as the deeds to the four intervening grantees, contained a covenant identical to that made by A. B now plans to use his lot for industrial purposes. A seeks your advice concerning what rights, if any, he has against B to enjoin B's proposed use. What advice would you give? Explain fully.

(2) If instead, O had conveyed such lot to B without inserting the aforesaid covenant (but the four intervening grantees between A and B had made such covenants), what advice would you give to A concerning his rights to enjoin B's proposed industrial use? Explain fully.

BE SURE TO RETURN THE EXAMINATION QUESTIONS AND
TO PUT YOUR EXAMINATION NUMBER AT THE TOP HEREOF.