Property II (b): Final Examination (May 1973)

William & Mary Law School
Instructions: The examination consists of three problems of varying weight totaling 100 points. Each problem states the weight and suggested time to be given to such problem. In answering the questions, you may find that additional facts are needed in order to reach even a tentative conclusion. In any such case, you should specify what additional information is needed and indicate how it would be relevant to your reasoning or argument. Note that in answering Problem II— it would be helpful, if not necessary, to outline or "diagram" the facts on some scratchpaper before analyzing them.

Problem I (50 minutes—30 points)

This problem consists of 10 questions each worth 3 points.

1. A sound reform of the Torrens System of registering title would be to: (a) require subsequent registrants to share in the high cost of initial registration; (b) require the Registrar to issue a duplicate certificate of title to the registrant; or (c) try to decrease the typical length of time between the signing of the contract of sale and closing.

2. True or False. In a jurisdiction having a race-notice type recording statute, a subsequent purchaser will always prevail if his predecessor-in-title won his race with grantee from the same grantor; and provided the purchaser had no actual or inquiry notice of any outstanding claim by such other grantees.

3. Explain very briefly how—in a jurisdiction following the Buffalo Academy case—a prior grantee who seeks to enforce a restrictive covenant against subsequent grantees from the same grantor—can protect himself by insisting that the grantor first deed the lands retained by him to a "straw" or "dummy" grantee.

4. Which of the following are disadvantages to a purchaser in using an installment land contract, and not a mortgage, to finance the purchase of land: (1) the seller may become insolvent during the pay-out period; (2) the purchaser waives his right to redeem under a redemption statute; (3) purchaser automatically waives his right to have the contract recorded before the closing date.

5. Both Meeks v. Bickford and Johnson v. Williams held that the taker of a quit-claim deed cannot be a bona fide purchaser without notice. Which makes more sense—the reasoning by the court in the Bickford case or the reasoning by the court in the Williams case? Explain very briefly. Maximum length of answer: one page.

6. True or False. "Euclidian" zoning is being currently praised by virtually all urban and community planners.

7. True or False. Privity of estate is required to enforce a restrictive covenant both at law, and at equity.

8. On January 1, 1973, O conveys Blackacre by quit-claim deed to G1, who gives value and who immediately records his deed.

On February 1, 1973, Y conveys Blackacre by general warranty deed to O who gives value and who does not record his deed.

On March 1, 1973, O conveys Blackacre by general warranty deed to G2 who gives value.
In a jurisdiction which has a notice-type recording statute and which follows Ayer v. Philadelphia & Boston Brick Face Co. (recognized doctrine of estoppel by deed) - who would prevail in a contest over Blackacre - G1 or G2? Why? Limit explanation to one or two sentences.

9. O, owner of Blackacre, prepares a deed which on its face transfers Blackacre to A in fee simple, and he signs, seals, and acknowledges this deed and has it attested by the proper number of witnesses. He then hands the deed to A's attorney with oral instructions to record it on his, O's, death. A's attorney records the deed immediately and A brings an action of ejectment against O. As O's attorney, how would you argue in support of your client? Briefly discuss all relevant issues and limit your discussion to one-half page.

10. In a jurisdiction which has a notice type of recording statute and which holds that a covenant of seisin runs with the land ("American rule") O conveys Blackacre to X who immediately records his deed. O then conveys Blackacre by general warranty deed to G1 who immediately records. G1 then conveys Blackacre by general warranty deed to G2 who immediately records. G2 then conveys Blackacre by quit-claim deed to G3. X then brings an action to eject G3. At all times Blackacre was worth $10,000 and all grantees paid full value except G3 who paid $9,000.

Who would prevail in a contest over Blackacre as between X and G3?

If G3 should lose the contest - what remedies do both G2 and G3 separately have, against them, and for what amount? Explain briefly.

Problem II (80 minutes-40 points)

"1" and "2" are adjacent parcels of land in a large subdivision located in a common-law jurisdiction which stringently follows the Statute of Frauds and has the following statute:

"Any conveyance of an interest in land which is not recorded as provided herein shall be good as against the grantor or grantee, and their devisees or heirs, but not good as against any subsequent purchaser or creditor in good faith whose conveyance is first duly recorded."

The Registry of Deeds Office contains Grantor and Grantee Indexes (but not a Tract Index). Each day documents received for record are stamped with the date and the hour and minute they are received, and entered next on a "Daily Sheet" which lists, but not in the order of reception, each document, giving its number, the name of the grantor, the name of the grantee, and the nature of the document (deed, mortgage, etc.). The following day the documents are copied in full in both the Grantor and Grantee Indexes.

Owen Omer ("O") originally owned all the parcels in the subdivision including Parcels 1 and 2 and started selling them in 1960. Parcel 1 at that time (as now) was improved with an apartment building. Parcel 2 has never contained any building but since 1960 has been blacktopped for use as a commercial parking lot whose spaces were rented by the month to, among others, the tenants of the building on Parcel 1 - who must park in a special parking zone marked in red and containing a sign reading in big letters: "Parking for Tenants Only."

Starting in January 1963, the following events occurred:

In January, 1963, O conveyed Parcel 1 to X who immediately recorded his deed. The conveyance contained a proviso whereby O ("grantor") covenanted,
for himself and his successors (by future purchase, inheritance or devise under a will) that as long as Parcel 2 remains a parking lot sufficient spaces would be reserved for monthly rental by tenants of the building in Parcel 1 at a rate not to exceed one-half of the current commercial monthly rate paid by other customers, and that the Grantor and/or his successors to the ownership of Parcel 2 will promptly pay "on demand" (when demanded) a note for $10,000 due M1(X)'s father-in-law.

In July, 1971, O executed and delivered to M1 a mortgage on Parcel 2 to secure the $10,000 note. M1, without O's knowledge or consent, altered the amount in the note and mortgage from $10,000 to $20,000 and recorded the mortgage in November, 1971. M1 assigned for value to M2 the note and mortgage on September 1, 1971, and M2 immediately recorded the assignment.

In August, 1971, O executed and delivered a general warranty deed to his nephew Gerald (G1) in respect to Parcel 2 (then worth $20,000) in consideration for services rendered to O - worth at the time $5,000 - by G1 back in 1961. On September 10, 1971, G1 filled in his and his wife's names as grantees, had O's previous signature acknowledged and recorded the deed. G1 had been to the parking lot a few times but asked no questions, and had no actual knowledge of the parking lot covering Parcel 2 to M1 and assigned to M2 or of the parking agreement between 0 and X.

On September 15, 1971, G1 executed and delivered a general warranty deed covering Parcel 2 to Glen Grantee (G2) the erstwhile manager of the parking lot who promptly changed the sign on the lot from "Acme Parking" to "Glen's Parking Lot". G2 recorded his deed on December 10, 1971 at 2:00 P.M.

In October, 1971, G1 died - devising all his property (including the contents of a safety deposit box rented at the XYZ Bank - including some cash and an executed and acknowledged deed made out to H covering Parcel 2) to H. Once the will was admitted to probate and assets distributed, H - who had actual knowledge of G1's deed to G2 and heard that G2 was about to record - raced to the Registry of Deeds' Office one hour after it opened (10:00 A.M.) on December 10, 1971, and immediately recorded his deed. By 3:00 P.M. he had found a purchaser (G3) - who had no actual knowledge of G2's deed but who had been to the parking lot in August and late September - and executed and delivered to him a general warranty deed which was immediately recorded at 3:30 P.M. that same day.

Part (a) - If on September 11, 1971, M2 had brought an action to foreclose the mortgage (in the amount of $20,000) and G1 had come to your law firm for advice as to what liabilities - including the amounts - and risks he was exposed to, and what rights he had - what advice would you have given him? Discuss all issues fairly presented.

Part (b) - If on September 11, 1971, G1 learned about the parking agreement between O and X, and G1 had come to you for advice as to whether the agreement is binding on him, as owner of Parcel 2, what advice would you have given him? Discuss all issues fairly presented.

Part (c) - Who would prevail in a contest for Parcel 2 as between G2 and G3? Discuss all issues fairly presented.

Suppose N had recorded his deed on December 9, 1971, and on the same day conveyed a quit-claim deed to G3 who recorded his deed on December 12, 1971 - would the above result in a contest between G2 and G3 be the same? Discuss all issues fairly presented.
Part (d) - Either answer subpart 1 or 2, but not both!

Subpart 1: Would the results in parts (a), (b), or (c) above be different if the jurisdiction had adopted a Tract Index in addition to the Grantor and Grantee Indexes? Explain briefly.

Subpart 2: As a tax attorney, what advice would you have given to both X (as owner of Parcel 1) and Y (as owner of Parcel 2) as to what form of legal ownership entity they should use (i.e., corporation, sole proprietorship, limited partnership, general partnership) in the event that each had decided to raise additional working capital by forming and selling shares in a syndicate to the public. Briefly list the major tax and non-tax considerations.

Note: After finishing your answer to Problem II - take a 5 minute breathing spell - you deserve it!

Problem III (50 minutes-30 points)

Sam Seller ("S") who needs money to pay his debts enters into an agreement with Pat Purchaser ("P") an attorney turned entrepreneur, to sell a certain tract of land ("Blackacre") containing an office building located in State Y. The agreement, in full provides as follows:

"April 19, 1973

S agrees to sell and P agrees to buy, the following described property for $100,000 cash (the then fair market value) - $50,000 payable on this date and the balance payable in two installments of $25,000 each, the first due April 19, 1974, and the final one due April 19, 1975 - which shall be the date of closing.

[adequate description of property]

On date of closing S agrees to deliver a General Warranty Deed covering the aforesaid premises (including the standard "present" covenants of title: i.e., covenant of seisin, covenant against incumbrances, and the standard "future" covenants: i.e., covenant of quiet enjoyment). S covenants and agrees to pay all taxes properly due and payable, and to make repairs on the premises until P goes into possession or until the date of closing - whichever first occurs."

(s) S
(s) P

S told P that he planned to continue to carry fire insurance until the date of closing. P, himself, did not take out any fire insurance on the premises. Both S and P are residents of State X. P went into possession and started to collect rentals on September 4, 1974.

Part (e) - Subpart (1): S discovers on September 2, 1974 that State Y is seeking to obtain a judgment in a (State Y) lower court against him for unpaid real property taxes on Blackacre for fiscal year June 30, 1973 - July 1, 1974. What argument could you advance on behalf of S against the claim of State Y?
Subpart (2): P learns that State Y has a lien on Blackacre for the unpaid taxes on September 5, 1974, and brings an action in (State X) lower court to rescind the contract and obtain a return of the $75,000 paid to date. P claims that the present lien for the disputed taxes is an encumbrance which renders S's title unmarketable. S argues that the lien is invalid inasmuch as the method used by local officials to assess the property for tax purposes is in violation of the "uniformity and equality" provision in the State Y Constitution. Apparently, the (State X) court is of the opinion that S is correct. Will P be successful in his action to rescind the contract? Briefly discuss the relevant issues.

Subpart (3): Suppose P were to receive a quit-claim deed rather than a general warranty deed, would the result in Subpart (2) above be different? Why?

Subpart (4): Suppose the court was about to decide in favor of P [In Subpart (2)] and S suddenly offers to indemnify P - in the event P is forced to litigate in the State Y court, and pay the taxes to save his interest in Blackacre. Would this offer of indemnity change the decision of the State X court? Why?

Subpart (5): Suppose State Y successfully forecloses its lien for unpaid taxes on May 1, 1975. X, the purchaser at the foreclosure sale brings an action to eject P, and P is ousted from possession of Blackacre on September 1, 1975 - when the property is worth $125,000. What recourse, if any, does P have, against whom, and for what amount? Explain. Would the result be different had P received a quit-claim deed instead of a general warranty deed? Why?

Part (b) - Disregard the facts in Part (a) and assume instead the following facts: On September 5, 1974, the office building - then worth $150,000 - is totally destroyed by fire through no fault of either P or S. State briefly the arguments in support of P bearing the loss and in support of S bearing the loss.
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TRACT INDEX: If M2 outside chain of G1's title - result would change.

PART (c): As between G2 and G3 who would win contest over Parcel 27?

(a) Did G3 have valid title to pass to G2? G2 would argue that if H received inter-vivos conveyance from G1 there was no valid delivery, or if H received deed by devise from G1 then H (and H's successor G3) is bound under Language of R/S by deed from G1 to G2 (see MILL v. MACH; contra - KARLE v. MILL)

(b) Did G3 have constructive notice of deed to G2? G3 would argue that literal reading of NOVE v. CURTIS (CANTRE - MEADE v. GOMAT) means that G2's deed was out of G3's chain of title since G3's predecessor won race with G2. Counter: PRUDENT TITLE SEARCHER FOR G3 WOULD CHECK DAILY SHEET AT END OF DAY - DEC. 10 - SINCE, FOR EXAMPLE, DEED CONING IN BEFORE 10 A.M. COULD BE LISTED ON DAILY SHEET AS LATE AS 5 P.M. SO G3 SHOULD HAVE HAD NOTICE OF DEED TO G2. Note: JONES v. KELL NOT DISCUSSED IN CLASS AND NOT ON POINT.

(c) Did G3 have inquiry notice of G2's rights? See GALEY v. WARD and other cases.

TRACT INDEX: If deed to G2 outside G3's chain of title - result would not change.

[2] Suppose H recorded on December 9, 1971 and had conveyed quit-claim deed to G3. NOVE v. CURTIS would definitely apply so that G2's deed out of G3's chain of title. However, G3 would argue that G3 is not a DEE - see MEADE v. NICHOLSON, JOHNSON v. WILLIAMS; contra - GALEY v. SHARROCK.