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1. Likely outcome of Ben's action:

Ben v. Polly

Easements Running with the Land

An easement is a right to use another's land. An validly executed deed for an easement will run with the burdened land, or the servient land, automatically, unless the subsequent owner of the burdened land is a bonafide purchaser (BFP). As long as it was executed and delivered properly, which may be shown by grantor's intent, then it is a valid easement and need not be recorded in order for its validity.

Here, in 1990, Al deeded an easement for a road along the north side of the farm her owned to his neighbor Ben to use. B immediately graded and paved a road on the easement, which both Al and B used on a daily basis. B did not record the deed at that time, however, B need not record the deed, as Al's intent to deed the easement to B is shown by the fact that they both used the road on a daily basis and Al has never blocked B from using the road, or constructing the road in the first place.

Thus, B had a right to use Al's north side of the farm, pursuant to the validly deeded easement.

Bona-Fide Purchaser (BFP)

A BFP is a someone who (1) pays substantial value for the land and (2) does not have notice of the easement. Also, a subsequent owner who purchases from a BFP may receive the same protections that the original BFP would have received. The ultimate issue is whether Polly (P) was a BFP of the farm, which would suggest that the easement would not automatically run with the land. However, first, we must begin our analysis with Carol, and whether she was a

BFP. If Carol is a BFP, then Polly would also receive the same protections.

Carol - BFP? Here, Carol (C) was deeded the farm by her father, Al in 2009, long after Al had deeded the easement to B. This indicates that C did not pay substantial value for the farm because her A deeded the farm to her, which means she was given the farm as a gift and with no detriment to her. Thus, C is not a BFP as she does not meet the first element.

Polly - BFP•Further, since C was not a BFP, we look to see if P was a BFP instead.

Substantial Value: Here, P paid C \$100K for the farm, which is a substantial value of payment for the farm. Thus, the first element is met.

Notice: Second, P must have not have had notice in order to qualify as a BFP. Notice may be established if the purchaser did or could have had notice by one of three ways: actual notice, constructive notice, or inquiry notice. Actual notice is found by actually receiving notice to the existance of the easement in use. Constructive notice is notice found by investigating the title and all that has been recorded. Inquiry notice is found when the easement is actually and physically seen to be in use.

Here, C recorded the deed she received from A, which did not include the easement to B, since he had not yet recorded it at that time. However, B recorded his deed to the easement in 2011, which was prior to the K entered into by C and P. By B recording the deed, P would have constructive notice if she searched if the title was valid and free of easements. Thereafter, when C executed a written contract (K) to sell the farm to P in 2012 for \$100K, P observed B traveling on the road where the easement was located and said nothing, which indicates P had inquiry notice.

Thus, P had inquiry notice and could have had constructive notice had she searched the title.

Therefore, P is not a BFP and thus, B's easement will automatically run with the burdened farm.

In conclusion, B's action against P is likely to be successful in that he will prevail in the declaratory relief that the farm is burdened by the easement.

2. Likely outcome of Polly's actions - Polly v. Carol:

a. Breach of Contract:

Land Sale Contracts (LSK)

When a LSK is executed and entered into by a buyer and seller, the buyer may bring a suit for breach of contract against the buyer for any damages incurred based on the LSK. At this time until the closing date, the buyer has an equitable interest in the land, and thus, may not yet sue on the basis of breach of warranties. In other words, the buyer may bring a breach of contract claim against the seller from the time they enter into the LSK until the date of closing.

Here, P has brought an action against Carol seeking damages for breach of K sometime in 2015 and after, which is after the period where C executed and delivered the warranty deed for the farm and P paid C \$100K in exchange in 2014. This shows when the closing and delivery of the land has already occurred, which shows that the period for bringing a breach of K suit has long since passed. The written K to sell the farm was executed between P and C in 2012, which is when P could have brought a valid breach of K claim and

throughout the long delay of approximately a two year period, prior to the closing date in 2014, where C and P exchanged title warranties and the purchase price.

Thus, P will not prevail on her breach of K claim against C as she may no longer bring suit on such grounds.

b. Breach of the Covenant - Warranty Deed:

Warranty Deed

A warranty deed provides that the seller promises the buyer that the title is free of all encumbrances of easements and covenants, unless explicitly stated. The warranty deed protects the seller from any such encumbrances, and if later discovered, the buyer may bring a claim against the seller on the grounds of the warranty deed.

Water Co's easement: Here, C deeded a warranty deed to P for the farm containing a covenant against all encumbrances except for the easement to Water Co (WC), which was explicitly stated and P did not challenge the matter. In fact, P paid the purchase price and recorded the deed. C's deed gave P actual notice by explicitly excluding WC's easement in the warranty deed. Further, P does not have any damages to claim on this issue because Water Co's easement increased the FMV of the farm by \$10,000. Thus, P does not have a successful claim here.

Moreover, as discussed above, even though the LSK promised against *all* encumbrances with no exceptions, P's time to sue on breach of K has already passed. Thus, that covenant is no longer a valid ground to bring a suit under.

Thus, P will not be successful as to the WC easement on the grounds of breach of the covenant under the warranty deed.

Ben's easement: Here, P has a stronger case since the warranty deed only explicitly included WC's easement, but not any others. The warranty deed protects against any defects in the title that C has promised, which did not include B's easement. Moreover, P will argue that B's easement decreased the FMV of the farm by \$5,000. On the otherhand, C would prove that P had inquiry notice of B's easement as she had observed him traveling on the north side of the farm where the easement is located, and did not say anything. Moreover, P could have done a title search and have had constructive notice, too. At that time, P could have challenged C in a breach of K suit, but that is not applicable at this time.

Thus, it is not likely for P to prevail in regards to Ben's easement, either.

Thus, both easements are likely to be found to run with the farm.

Restitution Damages: no indication that C has been unjustly enriched

A plaintiff may seek damages under restitutionary damages if the defendant has been unjustly enriched at the detriment of the plaintiff.

Here, P may argue that C has been unjustly enriched by the purchase price since B's easement decreased the FMV, however, this will not be a valid argument. We can presume the \$100K P paid was FMV for the land; B's easement decreased the FMV by \$5K in 1990, and in 2013 WC's easement increased the FMV by \$10K. Putting aside inflation, P has actually benefitted as the FMV has increased by \$5K in total by both easements, which is a benefit to the farm. This also shows that P has no damages nor was C unjustly enriched by P's purchase price of the land she paid for the farm.

Additionally, WC's easement which provides water service to local properties, also provides water service to the farm itself, which shows another benefit that

P's farm land has incurred from the easement, rather than an unjust enrichment by C.

Thus, P has incurred no damages to claim against C.

In conclusion, P is not likely to prevail in her breach of covenant claim under the warranty deed C provided her.

Defenses to both claims against C:

Laches

Laches is a defense that argues an unreasonable amount of time has past, and such a claim at this time would be unduly prejudicial against the defendant.

Here, P had over two years to bring any sort of action against C and the title of the farm. Further, P had notice of both easements at various times and multiple opportunities to challenge either easement.

Thus, even if P had a viable claim, C would have a successful laches defense, and therefore, P would still be unsuccessful in her claims against C.

Question #2 Final Word Count = 1642