

2)

1. What property interest does Darla have in Lot B?

A. Olivia's Interest in Lot A & B

Present Interest - Fee Simple Absolute

Fee simple absolute is a *present interest*, whereby the land is *immediately possessory* and the landowner may have possession for potentially *infinite duration*. Fee simple absolute interests are *devisable, descendable, and alienable*.

Olivia owned Greenacre, in fee simple, meaning O had a present interest in both Lot A and Lot B, for potentially infinite duration. In addition, the dirt road across Lot A and B are apart of O's fee simple interest.

Therefore, O may convey here interest in either Lot A or Lot B (Greenacre) by devise, descendants, or alienation

B. Olivia's Gift to Barry

Present Interest - Fee Simple Absolute

Defined Supra.

Sixty years ago, O conveyed Lot B to Barry as a **gift**, meaning B did not provide *consideration*. The facts state that all conveyances were properly recorded, immediately after execution and delivery. B has a *present interest* in Lot B, and the dirt road on Lot B. B's interest is devisable, descendable, and alienable. Further, the language of the deed states that Barry, his heirs, successors or assigns shall use the premises" meaning that B's present interest could be for infinite duration.

Defeasible Fee - Subject to Condition Precedent

A present interest may be defeasible, meaning it will *automatically terminate* under controlling language in the deed.

The conveyance to B of Lot B as a gift stated that the "use of the premises for any purpose other than as personal residence, said Lot B shall immediately vest in fee simple in Zach or his surviving descendants. At the time of the conveyance (60) years ago, Zach had not yet had children. However, Zach was alive, and thus a *life in being*.

Therefore, when breach of that promise, will result in B interest *automatically terminating* to Zach.

Improvements to Property

Improvements upon the land, taken into possession is a clear sign of ownership. Where a gift is given to another, and the receiving party makes improvements on the land, they have a clear sign of ownership.

When B built the cottage on Lot B, B improved the land, which was a clear sign of ownership to all others.

Future Interest - Executory Interest

An executory interest is a *future interest* that is *not immediately possessory*, but may become possessory in a *third party* upon the happening of an event. A future interest is *descendable, devisable, and alienable*.

The deed to B states that his fee simple interest is subject to condition subsequent, the happening of which will automatically creates a *future interest* in Zach, a *third party*. Zach's possession of the land *is not immediately possessory*. When B sold the lot to Developer for \$1,000,000, for the purpose of constructing a office building, this was in violation of the deed conveyed by O to B. When this occurred, B's interest automatically terminated, and transferred to Z, the third party

Therefore, Zach's executory interests is *descendable, devisable, and alienable*.

C. Zach's Death

Future Interest - Shifting Executory Interest

Where the executory interest dies, the language of the will controls. If there is a new executory interest, *shifting* from one third party to the next, the interest is valid subject to the rules against perpetuity

Here, the facts state Z did not die with a will. However, the language of the deed states that the fee simple interest will vest in Z's "surviving descendants." Since, D is the only surviving descendant, D should get the fee simple interest. Since, B violated the deed by D attempting to develop the office, building, the land will transfer to D

Therefore, D has an fee simple absolute, shifting executory interest in Lot B.

What claim may Simon make to maintain right of way over Lot B to Public highway?

A. Inheritance of Lot A

Fee Simple Absolute

Defined Supa.

When O died, Simon inherited Lot A. This was O devising her fee simple interest in Lot A to Simon.

Therefore, Simon has fee simple interest in lot A.

Improvements to Land

Defined Supra.

When S built a house on Lot A, this was an improvement of the land. The lot is no longer unimproved. For purpose of habitation, the court should consider S's use of lot A, as maintaining a right of way to the public highway.

Easement - Creation

An easement is an *express* or *implied* grant of a property owner, allowing an adjacent property owner to use their land (servient tenement) for a *special purpose*.

Here, S built a house on Lot A,, one year after the land was conveyed to him. S regularly used the dirt road, which was on Lot B. B did *not* give S an express grant of permission, based on the facts. However, S may have through implication given S (dominant tenement), the right to use the dirt road for the *special purpose* of use to the public highway, because there was no other access.

Necessity

An easement that is created by necessity is *implied*, where the dominant tenement is "landlocked" having no viable alternative route to leave their property.

Here, the access to the public highway is only by the dirt road. Since S must cross Lot B, therefore, the easement is created by necessity, and implies that S may use the easement until the necessity stops.

Here, D is attempting to demolish the cottage, and begin closing off access to the dirt road which is a violation of the easement.

Appurtenant/In Gross

An easement appurtenant is given to the estate, while an easement in gross is given to the individual of the dominant tenement. An easement in gross is not alienable.

Here, the easement is appurtenant, meaning, that S has the right to the dirt road, and subsequent purchasers will have the same right on transfer.

Scope

The scope of the easement is determined based on the circumstances. An easement by necessity will continue until the necessity stops.

Here, four months ago, B sold the lot to Developer for a \$1,000,000 dollars. D will argue that his investment backed expectations in the office building on Lot B are superior. However, the necessity for S to use the dirt road to get to Lot A has *not ceased*.

Therefore, the scope of the easement may continue.

Termination

An easement may be terminated by, estoppel, necessity, destruction, condemnation, or merger.

None of these circumstances have given rise under these facts. D has demolished a cottage on Lot B, however this would not consist of any of the following termination excuses above.

Deed - Notice

A deed that is has proper contents, is delivered, and recorded, will give notice to subsequent bonafide purchasers as to whether an easement exists on the property.

S may argue that when purchasing the Lot for \$1,000,000 the county recorder would have disclosed *constructive notice* to the developer on the limitation of the use of Lot B for only residence purposes. Since, all conveyances were properly recorded, immediately after execution and delivery, this is true.

Furthermore, upon purchasing Lot B, D was on *inquiry or actual notice*, as there was clearly a home on Lot B, and a dirt road.

Therefore, D was on notice and not a subsequent bona fide purchaser.

Therefore, S may make the claim of easement by necessity against the developer.

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