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1. Darla's interest in Lot B

Fee simple with condition subsequent:

An owner of the fee simple absolute can convey the property to another and put the condition on the use of the property. It is called fee simple with condition subsequent. If the condition is not satisfied, then it will pass to future interests mentioned in the deed.

Here, Olivia is the absolute owner of the Greenacre, which consists lot A and Lot B. Both lots are unimproved and adjoining. Sixty years ago she conveyed the lot B to Barry as a gift on the condition that if the lot B is not used for the purpose other than a personal residence, it will pass Zach or his surviving descendants.

In the beginning, Barry used to use the Lot B as a residential purpose by building a cottage on it. However, four months ago, Barry sold the Lot B to the Developer for \$1,000,000. The Developer demolished the cottage and constructed the office building. The condition of non use of non residential purpose is breached and as mentioned in the registered deed of gift, interest should vest in Zach or his surviving descendants.

Zach had no children at the time of conveyance, but later when he died he has his grand daughter Darla. She is the surviving descendant of Zach.

The Lot B should be vested in Darla as fee simple.

Bonafide purchaser for a value without notice:

Bonafide purchaser for a value without notice can be protected if he has no actual, record or inquiry notice.

Here, Barry sold the Lot B to Developer for a value however, the facts said that all conveyances were properly recorded. Here, sixty years ago when Olivia conveyed lot B to Barry with a condition subsequent, the deed was recorded and the developer had record notice that the land cannot be used for the purpose other than residential and in the case of breach, the land goes to Zach and his surviving descendants.

The Developer is not a BFP without notice and therefore, the Lot B will be vested in Darla in fee simple.

2. Simon's claim to maintain a right of way over Lot B to the public highway

Simon's has an easement in Lot B as discussed below.

Easement:

Easement is a right to use another's property. if there are two lots and one has to use the land of another to access public highway etc. that is called easement. There are two types of easements , appurtenant and gross. The land burdened is called servient land and the land benefited is called Dominant.

Easement can be created by express authorization, prescription, necessity etc.

Here, There is a dirt road led from Lot A across Lot B to a public highway. The facts indicates that the dirt road may be visible.

30 years ago, when Olivia dies, her son Simon inherited lot A and built house on it after one year of inheritance. He has been using the dirt road for thirty years.

Easement by express grant:

Easement can be expressly granted and can be registered. The facts does not indicate that there is any document pertaining to the express grant of the easement for access to the public highway from Lot A across Lot B and therefore, there is no express easement.

Easement by prescription:

Easement by prescription must be actual, continuous, hostile and open.

Here, the facts states that Simon has been using the dirt road from Lot A across Lot B to go to the public highway for more than 30 years and therefore the use is actual use.

He has been using it for 30 years and therefore it is continuous. The use can be said open too. The facts did not mention anything about if Bary, Zach or Darla did object to the use of dirt road to access the public highway from Lot B so it is not hostile because it was not used without the consent of Bary, Zach or Darla.

Easement by Necessity:

The facts suggests that there is no access to the public highway other than a dirt road led from Lot A across Lot B. In landlock kind of situation, easement is created by necessity if the owner of one land cannot access the public way without entering the adjacent land.

Here, the facts states that there is a dirt road led from Lot A across Lot B to public highway. The facts also suggests that there is no other access from Lot A to public highway and therefore, Simon has an easement right over Lot B to access the public highway.

Bonafide purchaser for valuable consideration:

A bonafide purchaser for a considerable value without notice will prevail over the person who has easement right. Bary sold the Lot B to the Developer for \$1000,000 and therefore Builder is a bonafide purchaser of the Lot B and he is demolishing a cottage and constructing office building. He is trying to close the access of dirt road from Simon's house. Builder cannot prevail against Simon as discussed below.

There are three types of notices. Actual, record and inquiry notice.

The actual notice is literal notice of knowledge. The facts did not mention that if the Developer had an actual notice.

The facts suggests that all conveyances were properly recorded, however there is nothing in the facts indicates that there was any deed or conveyance for Simon's easement right so Developer may not get record notice.

However, the builder can have inquiry notice because the facts indicates that there is a dirt road from A across B to public Highway. Also the facts suggests that Simon has been using is for more than 30 years, regularly across Barry's adjacent Lot B to get to and from his house and the public highway. If the Developer would inspect , then he would have noticed the dirt road and use of it by Simon.

Simon can claim by way of easement to have his right of way over lot B because the Developer is not a bonafide purchahser for a value without notice. Simon's claim will be successful.

Question #2 Final Word Count = 1023

END OF EXAM