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**1) What property interest does Darla have in Lot B?**

Olivia's Conveyance to Barry

Fee simple is an absolute land interest. Fee simple subject to an executory limitation is a land interest that has a possibility of reverting back to a third party, upon the happening on some stated event.

Here, Olivia owned Lots A and B in fee simple. She transferred lot B to Barry as a gift. The conveyance had a clause that made Barry's interest in fee simple subject to an executory limitation. The clause stated that if Barry didn't use lot B for a personal residence, then the land would revert to Zach, a third party. Thus, Barry owned lot B in fee simple subject to an executory interest.

Rule Against Perpetuities

- applies to possibility of reverter
- Darla was unascertainable at time of conveyancing

CONCLUSION

Darla has no interest in Lot B since the rule against perpetuities barred her conveyance.

**2) What claims can Simon make to keep the right of way over Lot B to the public highway?**

Simon may claim that he has an easement that was not terminated.

Easement

An easement is a right to use land, it is not a possessory interest in land. There are two types of easements, an easement appurtenant or an easement in gross.

Easement by Necessity

An easement can be created by necessity if a parcel is landlocked and the landowner has no other way to access public utilities, such as a public highway, except by use of an easement over a neighbor's land.

Here, Lot B is located between Lot A and a public Highway. Simon must use the dirt path from his land, Lot A, across Lot B, to access the public highway because there is no other access. Simon has continuously used this dirt path across lot B through the past 30 years. Thus, an easement by necessity was created for Simon.

Easement by Prescription

Simon may also argue that he has an easement by prescription, which is created if four elements are met regarding use of the easement: 1) the use must be open and notorious, 2) hostile, 3) continuous for the statutory period, and 4) actual and exclusive possession.

Here, Simon used the dirt path often over the course of 30 years. His use was open and notorious since he used the path regularly, in a manner in which the landowner of Lot B would have used the path. Simon had no consent from Lot B to use the path, yet started and continued to use it, so it was hostile use. Simon physically used the dirt path to cross Lot B to the public highway and the facts do not indicate that anyone else used the path other than Simon. Further, the common law statutory period for adverse possession is 10 years. Assuming we are in a common law jurisdiction, Simon's use of the path was continuous for the statutory period of 10 years because he used the path regularly for 30 years. Thus, Simon may have an easement by prescription as well.

### Easement Appurtenant

An easement appurtenant is between two adjoining parcels and creates a dominant estate and a servient estate. The dominant parcel is the holder of the easement and is the benefitted parcel. An easement will automatically be transferred with the dominant parcel upon conveyance. The servient parcel is the burdened land because it provides the benefit to the dominant parcel. An easement will also be transferred with the servient parcel upon conveyance, unless the new grantee is a bona fide purchaser (BFP) who took for value and without notice of the easement.

Here, Simon inherited Lot A from his mom Olivia. He built a house on it and lived on Lot A one year later. Throughout the last 30 years, Simon has used a dirt path to gain access to the public highway from his Lot A since there is no other access. The dirt path runs across Lot B, which was owned by Barry when Simon started using the path. Lot A is the dominant parcel because it is benefitted by having use of the servient's land. Simon is the owner of Lot A and thus he is the holder of the easement. Lot B is the servient parcel because it is burdened by allowing use of an easement across its land, and because the servient parcel provides the benefit for the dominant parcel.

### Transfer of Serv Parcel

An easement will be transferred with the servient parcel upon conveyance, unless the new grantee is a bona fide purchaser (BFP) who took for value and without notice of the easement. Here, Barry originally owned Lot B and subsequently sold Lot B to Developer for \$1 million. Thus, the servient parcel was conveyed from Barry to Developer.

### BFP

A BFP is one who purchases land for value and takes the land without notice of encumbrances. Here, Developer is a BFP because he purchased the land from Barry for \$1 million. However, he may have had notice of Simon's easement. If Developer had notice of Simon's easement, the easement will have transferred when Barry sold Lot B to Developer, and thus, Developer would have taken Lot B subject to Simon's easement.

### Notice

There are three types of notice: actual, inquiry, or record notice. Actual notice is express. Inquiry

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notice is when a reasonable investigation would have led a buyer of land to be notified about a prior interest on the land. Record notice is when a buyer of land can view the chain of title in the county recorder's files to see all past interests in the land.

Here, Simon's easement was created by necessity so it was not granted to him in a deed. Thus, developer had no actual notice, nor any record notice. However, Developer likely had inquiry notice of Simon's easement since Simon use it so regularly and there is likely chance Developer would have seen Simon using the path to access the highway. Thus, Developer likely had inquiry notice.

Thus, since Develoepr likely had inquiry notice of Simon's easement, developer took Lot B from Barry subject to Simon's easement.

### CONCLUSION

Simon can claim that he has either an easement by necessity or by prescription, and that his easement transferred from Barry to the developer. Thus, Simon can claim he maintains his right of way over Lot B.

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**END OF EXAM**