Watson
Property
Fall 1993

IMPORTANT INSTRUCTIONS

When appropriate, please identify present, future, and concurrent estates created or retained. Indicate which interests are subject to the common law Rule Against Perpetuities. If an interest is subject to the Rule, explain why it violates -- or does not violate -- the Rule. Finally, if an interest violates the Rule Against Perpetuities, discuss the effect that the violation has on the property interest at issue, and on other property interests in the conveyance or devise.

Please assume, for this exam, that:

1. the grantor/devisor has a fee simple absolute;

2. all recipients of interests are alive;

3. you do not have to raise a use in order to create an executory interest;

4. there are no "magic words" needed to create a fee simple;

5. the common law doctrine of destructibility of contingent remainders, the Rule in Shelley's Case, and dower and curtesy have been abolished;

6. the Doctrine of Worthier Title has not been abolished; and

7. the common-law Rule Against Perpetuities applies without statutory modification.

8. This jurisdiction permits only two forms of concurrent ownership: (1) common law joint tenancy and (2) common law tenancy in common. This jurisdiction, however, follows the modern view of presuming - - in the absence of clear evidence to the contrary -- that a grant or devise of property to multiple owners was intended to have created a tenancy in common.

9. Reversions, powers of termination, and possibilities of reverter are alienable, devisable, and descendible.

10. In this jurisdiction, an action to recover the title to or possession of real property must be brought within 10 years after the cause of action accrued. Some courts in this jurisdiction have held that the person asserting title by adverse possession must have known that the land belonged to another. However, an equal number of courts in this jurisdiction have held that the person asserting title by adverse possession must not have known that the land belonged to another.

QUESTION #1

In 1980, Pete bought the eastern 20 acres of Prudy's 50 acres for $100,000. The deed, which was immediately recorded, stated that:

> "Prudy, her heirs and assigns, hereby warrant to Pete, his heirs and assigns, that Prudy is seized of a fee simple interest in the deeded property, that the land is free from encumbrances, and that Prudy, her heirs and assigns, will guarantee quiet enjoyment thereof."

Pete had agreed to buy property on condition that Prudy provide a buffer zone of 75 feet between the two properties.

This condition, however, was not included in the deed. When Pete approached Prudy a week later on this point, Prudy agreed to sign the following agreement, which was immediately recorded:

> "I, Prudy, my heirs and assigns, promise to permanently provide Pete, his heirs and assigns, a buffer zone of 75 feet parallel to the boundary line of Pete's adjacent property. No structures will be placed in this buffer zone."

Four years later, in 1984, Pete quitclaimed his property to Susan for $110,000. Susan recorded the deed. A year later, in 1985, Prudy gave her property, by quitclaim deed to David. David thanked Prudy for her generosity, and immediately recorded.

In 1989, David built a tool shed 50 feet from Susan's property. Susan was away on a six-month trip at the time, but she saw the tool shed as soon as she returned. Since a tree blocked her view of it from her house, she did nothing. However, four years later, in 1993, the tree blew down in a storm and -- despite the fence Pete put up in 1980 when he first bought the place -- the tool shed was now quite visible from Susan's house.

Susan visited her lawyer after the storm, hoping to make David remove the shed. She said it hurt her home's resale value. Her lawyer did some research and discovered that their state has a race-notice recording statute, and that the applicable zoning regulations prohibit the placement of structures within 25 feet of neighboring property. Susan's lawyer also learned that Prudy actually owned only 18 of the 20 acres conveyed to Pete. The remaining 2 acres, located on the eastern side of Susan's land and on the opposite side from David -- belonged to a man named Owen.

Susan wishes to sue David, and seeks advice regarding the 2 acres.

Please answer the following questions:

a. Note and evaluate possible causes of action (and remedies) Susan has against David. Inform Susan as to the defenses David may raise, and whether such defenses might succeed.

b. What are Susan's legal rights with respect to the 2 acres?

QUESTION #2

Pam is a widow who owns Blakeacre Farm in fee simple absolute. Pam has three children: Anna, Ben, and Carl. Pam is in her lawyer's office:

PAM: I am getting old, and I want to dispose of my farm before I die. My daughter Anna is presently living at the farm. I want Anna to own the farm but if Anna ever moves off the farm, I want my son Ben to own the land.

LAWYER : What if Anna moves off the farm after Ben is dead?

PAM: Well, if Ben dies before Anna, and Anna thereafter moves off the farm, I want ownership to go to Ben's son, Hank.

LAWYER : Anything else?

PAM: Yes. I would like the land to always be used as a farm. I want to do everything in my power to make farming a condition of ownership of the land.

LAWYER : What should happen if the land is no longer farmed?

PAM: If Anna, Ben, or any other owner of the land stops farming, I want the land to go to my youngest son Carl.

LAWYER : OK. I think I know what you want. How does this sound:

> "I, Pam, convey Blakeacre Farm to Anna and her heirs, but if Anna moves off the farm during her lifetime, the farm shall go either to Ben and his heirs or, if Ben is not alive when Anna moves off the farm, to Ben's son Hank and his heirs. If at any time the land ceases to be used as a farm, it shall go to Carl and his heirs."

PAM: Yes, that is what I want.

LAWYER : Let me think about whether the words I just used will truly accomplish what you desire. If not, I will try to come up with something else that does the trick.

Please answer the following questions:

a. If the lawyer uses the words of conveyance set forth above, what property interests will be created?

b. Do the words of conveyance accomplish what Pam desires? If so, explain why. If not, what should the lawyer do in order to better effectuate Pam's wishes regarding future ownership of the land?

QUESTION #3

Sam lived in the State of Ohio, where he owned Greenacre. In 1981, Sam executed the following will:

> "I, Sam, being of sound mind, devise Greenacre to my friend Jack for life, remainder to my heir. My second cousin, Rachel, is my only living relative and hence will be my sole heir at law."

Sam, who died in 1990, never altered the wording of the 1981 will. However, the Ohio General Assembly in 1985 amended the laws of Ohio relating to intestate succession as follows:

> WHEREAS, given that the lack of affordable housing for citizens of this State is causing widespread social unrest, financial hardship, and is otherwise detrimental to the public welfare; and
>
> WHEREAS, the Ohio Affordable Housing Commission, recently formed to assist citizens in securing housing, is without sufficient resources to remedy this important problem;
>
> BE IT RESOLVED, that the Ohio laws of intestate succession are hereby amended as follows:
>
> "With respect to the death of any Ohio citizen occurring after January 1, 1988, the laws of descent and distribution are hereby amended to provide that only the following persons shall qualify as 'heirs at law' eligible to receive property by intestate succession: spouses, children, grandchildren, parents, and siblings. Following such persons, the next qualifying 'heir at law' shall be the Ohio Affordable Housing Commission, which shall use all properties acquired by intestate succession to provide housing to Ohio

citizens."

It is now 1993, and you are Rachel's lawyer. She informs you that the Commission has filed a quiet title action against her, claiming ownership of a vested remainder in fee simple in Greenacre. [The Commission concedes that Jack presently holds a life estate in Greenacre.]

Please answer the following questions:

a. What is the basis for the Commission's claim to a vested remainder in fee simple in Greenacre?

b. What arguments can Rachel raise in response to the Commission's claim that it owns the vested remainder in fee simple in Greenacre?

QUESTION #4

Barbara, who died in 1993, devised Locust Acres as follows:

> "to John for life, remainder to the children of John for life, and upon the death of the last surviving child of John, to such of John's grandchildren as may then be living."

At the time of Barbara's death, John had one child, named Sandra, and no grandchildren.

Please answer the following question:

What interests in Locust Acres did Barbara devise in her will?

QUESTION #5

In 1988, Jack conveyed Blueacre by a deed which read as follows:

> "to my brother Ted for his use and enjoyment until our dear mother Rosy dies, then to Ted's grandchildren and their heirs who reach age 20."

At the time of the conveyance in 1988, Ted had a daughter, Vicki, and three grandchildren, Phil (age 23), Fred (age 21), and Joe (age 13).

Rosy died in 1990. Ted's fourth grandchild, Judy, was born in 1991. Joe died in 1992, leaving "all my property to my friend Mary."

Please answer the following questions:

a. What interests in Blueacre did Jack convey in 1988?

b. What is the status of ownership of Blueacre today?

QUESTION #6

Marlene is given some good news in 1991. She is told that she has inherited property from her uncle in California, which is a race notice jurisdiction. Marlene has no use for the property, and wants to sell it immediately. Because Marlene lives on the east coast and knows nothing about the property, she wants to minimize her potential liability by using a quitclaim deed. Her purchaser, Evan, agrees to accept a quitclaim in return for only paying $60,000, which is 60% of the 1991 fair market value ($100,000) for the property. Evan recorded the deed.

Marlene is given some bad news and good news in 1993.

The "bad" news is that her uncle did not die in 1991 after all. The "good" news, however, is that he did die in 1992, and that he left all his property to her in his will.

The property is now worth $120,000. After Evan refused Marlene's offer of $70,000 to renounce his claim to the property, Marlene filed suit to quiet title in her name and to eject Evan.

Please answer the following question:

You are the judge in Marlene v. Evan. The parties have filed cross-motions for summary judgment on a single issue: ownership.

You must decide who currently owns the property. Please provide a brief explanation for your decision.