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ID:

Exam Name:

SP\_Property\_LSN\_Chuang\_FINAL\_SP09

Instructor:

Chuang

Grade:

40

1)

**1. What interest does Baker (B) have in Whiteacre (WA)?****DEED**

A deed is the means, by which title to land is conveyed to another. In order to be valid, certain formalities must be followed: the deed must be in writing, signed by the grantor, identify the parties, and properly describe the property being conveyed. Here, Able (A) gave B "a written deed granting B a life estate in WA." Since the deed "identified A as grantor and B as grantee, described WA, and was signed by A," the formalities are met and the deed is valid. +1

Therefore, the deed is valid and B has a LE in WA.

However, Mary (M) will argue that although the deed is valid, she was a bona fide purchaser without notice of the previous conveyance. Since B didn't record his LE, M had no notice of the conveyance and should prevail against B in a claim of title action.

**RECORDATION**

Recording a deed is not necessary for the the deed to be valid, but is a means by which to put subsequent grantees on notice of the conveyance. Specifically, recording puts subsequent grantees on constructive notice of the previous conveyance. Recording is often required by statute in order to prevail against subsequent claims of title. There are three types of recording statutes: race, notice, and race/notice. A race statutes allows +1  
+2

the first person to record the deed to prevail in a claim for title action. A notice statute requires that the subsequent grantee be a bona fide purchaser (BFP). A BFP is one that pays valuable consideration for the property. In order to prevail under a notice statute, the BFP must not have had notice of the previous conveyance. Similarly, a race/notice statute also requires the subsequent grantee be a BFP. In addition, in order to prevail under a race/notice statute, the BFP must not have had notice of the previous conveyance and must record the deed first.

There are three types of notice: actual, inquiry, and constructive. Actual notice occurs, when the BFP actually knew of the previous conveyance. Inquiry notice occur, when the situation should have caused the BFP to wonder if there was a previous conveyance. And constructive notice occur primarily when the previous conveyance was recorded, thus putting the BFP on notice of the previous conveyance, even if the BFP didn't check the records.

Here, the statute is a race/notice statute. Therefore, in order for M to prevail against B, M must be a BFP without notice of the previous conveyance.

M will probably be considered a BFP, because she paid A \$150,000 for WA. Since there are no facts to suggest that this amount was anything less than valuable consideration for WA, M is a BFP. The question, is whether she was on notice of the previous conveyance to B.

M will argue that she didn't actually know of B's LE. In addition, since B didn't record the

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deed, she was not on constructive notice. However, B will argue that M was on inquiry notice of B's LE, because B "built a house on WA and resided on it." In addition, B "farmed the property and sold begetables to the public from a barn on WA every Wednesday." B will argue that M should have wondered who B was, why he lived on and farmed the property, and why he was allowed to sell his produce. Therefore, M was on inquiry notice. x3

Therefore, since M was on notice, she will not prevail against B, even though she recorded first.

## CONCLUSION

B has a LE in WA. x1

## 2. What interest does Bank have in WA?

There are generally two types of statutes that govern a mortgagee's interest in the property mortgages: lien or title theory. In a lien theory state, the Bank would have a lien against the property in the amount loaned. However, title remains with the owner. In a title theory state, the Bank takes title until the mortgage has been repaid. If the mortgagor fails to pay as required, the Bank can foreclose on the property, or rather that person's interest in the property.

Here, since B has a LE in WA, M has a remainder in fee simple. Thus, when B dies, M takes WA in fee simple. M mortgaged her interest to Bank in the amount of \$100,000.

Therefore, M's interest is subject to the Bank's mortgage, regardless of whether the state is a lien or title theory. M's interest in WA is a remainder in FS. However, if the title theory governs, then the Bank took title to WA when it loaned M \$100,000. As such, the Bank's interest could prevail over B's interest, if the Bank is a BFP without notice of the previous conveyance. x1

Since the Bank paid \$100,000 for its interest, it is likely a BFP. The question, is whether Bank had notice of the previous conveyance. Much like the argument above, Bank did not have actual knowledge and was not on constructive knowledge. However, the Bank would probably have been on inquiry notice, even though it "did not physically inspect WA." x2

However, if the jurisdiction follows a lien theory will be assumed, the Bank's interest merely has a lien against the property in the amount of \$100,000. Therefore, once it forecloses, Bank will take the proceeds of the sale and hold M liable for the rest.

### CONCLUSION

Bank has the same interest that M does in WA, namely a vested remainder in FS. x1

### 3. What claims may M assert against A?

#### TITLE COVENANTS

There are six title covenants included in a general warranty deed: three present and x3

three future. The three present include seisin, right to convey, and free from encumbrances. Seisin means that the grantor owned what he conveyed. Right to convey means that the grantor had the legal right to convey, and free from encumbrances means that the grantor has guaranteed that there are not undisclosed encumbrances against the property. The present covenants are breached at the time of conveyance. Since they do not run with the land, only the original grantee can enforce them.

x3

x1

The three future covenants include quiet enjoyment (QE), warranty, and further assurances. QE requires the grantor to protect the grantee from a third party's lawful claim to title. Warranty requires the grantor to defend the grantee from a third party's lawful claim to title. And further assurances requires the grantor to do everything reasonably necessary to perfect title on behalf of the grantee. The future covenants are breached with the third party seeks to "evict" the grantee, or rather seeks to enforce a lawful claim to title. Future covenants run with the land and can therefore be enforced by subsequent grantees.

x3

x1

Here, A conveyed to M a FS in WA, when he only owned a reversion in FS. In addition, A was legally precluded from conveying a FS in WA, and thus did not have the right to convey. Lastly, A conveyed WA with an undisclosed encumbrance, namely the LE to B. Therefore, A breached the present covenants at the time of the conveyance in 2007. M has three years (statute of limitations) to bring her claim. Since the year is 2009, the statute of limitation has not run and M could still sue A for breach of the present covenants. Her remedy will likely be the difference in the value of WA with the LE and without (= \$150,000-\$60,000).

x2

x1

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In addition, A has breached the future covenants, because B seeks to enforce his LE in WA, thus "evicting" M from her FS in WA. As such, A will be required to protect and defend M against B's lawful claim. A will also have to do whatever is reasonably necessary to perfect title. Since A cannot perfect title, he will be liable for any foreseeable damages resulting from his breach. Basically, A will have to pay M the difference in the value of WA with and without the LE to B, or \$90,000, plus any other foreseeable costs.

#### CONCLUSION

A breached all six covenants and therefore will be liable to M for monetary damages in the amount of \$90,000, plus any other foreseeable costs.

**END OF EXAM**