

Watson
Property
Fall 1992

PART I -- QUESTION 1

Ann decided in 1990 that it was time to sell her home, and she accepted an offer from Bob for \$75,000. Ann gave Bob a deed which contained the following clause:

"Ann, her heirs, and assigns, hereby covenant with and warrant to Bob, his heirs and assigns, that Ann is seized of an indefeasible estate in and to the said property, that said property is free from all liens and encumbrances, and that Ann, her heirs and assigns, will guarantee quiet enjoyment thereof."

The deed was immediately recorded. In 1991, Bob sold the property to Carol for \$80,000. Bob gave Carol a quitclaim deed, which Carol also immediately recorded.

Shortly after moving in, Carol informed her neighbor Dirk that, due to her susceptibility to severe allergic reactions, she could not be around dogs. Carol asked Dirk if he would sign the following agreement that Carol had prepared:

"Dirk hereby agrees that he, his heirs and assigns, will never keep dogs on the premises. This promise is for the benefit of Carol, who is very allergic to dogs."

Since Dirk had no intention of ever owning dogs, he had no problem with the agreement and signed it. A copy of the signed agreement was given to Dirk the next day. Carol kept the original in her desk drawer.

A year later, in 1992, Dirk decided to sell his home and move to Holland. While standing in Dirk's fenced-in yard, prospective buyer Ed asked Dirk if dogs were allowed as pets in the neighborhood. Dirk responded as follows:

"As a former member of the city council, I know that our local ordinance expressly states that 'ownership of dogs within the city limits is permitted so long as the owner's yard is fenced.' I personally have never had time for a pet, but lots of people around here have dogs and cats. I should tell you, however, that my neighbor Carol is not fond of animals and prefers not to be near them. She suffers from allergies."

Dirk then went back into the house, and returned with the copy of his agreement with Carol, as well as a copy of the applicable local city zoning ordinance. Dirk handed both documents to Ed, who placed them in his coat pocket, shook hands, and left.

Ed never read either document, and never again discussed the issue of dogs with Dirk. Ed agreed to buy the property for \$90,000, and Dirk conveyed the land to Ed by a quitclaim deed which contained no mention of the written agreement between Dirk and Carol. Ed immediately recorded the deed.

Ed moved in a month ago, along with his four dogs. Although Ed situated the kennel as far away as possible from Carol, she nevertheless immediately developed a severe allergic reaction to the dogs, which caused Carol to incur \$1000 in medical expenses and forced her to cancel a \$4000 nonrefundable, prepaid, vacation trip to India. Carol confronted Ed last week and asked him to get rid of his pets. Ed refused, noting that he is in full compliance with the applicable city ordinance. Carol then asked Ed to at least keep his dogs inside so that Carol would not have to

listen to "their barking noises" at night. Ed, asserting that his dogs bark no more than other dogs, refused.

a. Carol comes to you seeking legal advice. She wants to make Ed get rid of the dogs. She also wants to recover damages for her monetary losses, which were directly attributable to the presence of the dogs. Advise Carol by noting, and evaluating, the possible causes of action (and remedies) she has against Ed. Inform Carol as to the defenses Ed will raise, and whether such defenses will likely succeed.

b. The day before Carol comes to see you, she did a title search of her property for the first time. To her dismay, she discovered that Ann had mortgaged the property in 1988 as security for a \$10,000 loan. The bank which lent Ann the money had immediately recorded the mortgage. Carol is extremely upset by the possibility that the bank might foreclose on her property if Ann ever defaults on the loan. Carol is also quite angry that her predecessor, Bob, did not inform her of the outstanding mortgage. Carol wants to sue both Ann and Bob. Advise Carol by noting, and evaluating, the possible causes of action (and remedies) she has against Ann and Bob. Inform her as to the defenses they will raise, and whether such defenses will likely succeed.

PART I -- QUESTION #2

Marty owns 40 acres of land. His home is located on the northern half of the property, and the land slopes very gradually southward to a scenic road that runs parallel to a river. In short, Marty has a beautiful estate with a

magnificent view. A beautiful view, however, will not pay for his son's impending college tuition, so Marty has decided to sell some of his land. Marty is not a rich man, and every extra dollar he can make from this venture will be one less dollar he will have to borrow from the bank in order to finance his son's college education.

Marty comes to you for legal advice. The plan is to divide the southern 20 acres into ten lots. The northern border of each lot will touch Marty's retained land, and the southern border of each lot will abut, and access, the scenic road. He informs you that he does not want any of the 20 lots to be fenced because he wants to ensure that at least some of his view of the river will remain after subdividing the southern half of his land. While it is true that Marty feels strongly about this for personal reasons, it is also undisputed that the market value of the retained land will decrease if a view of the river is not preserved. Because of this fact, Marty wants to make sure that he and his successors can prevent the grantees and their successors from fencing the lots.

Please identify the different ways that Marty can structure the conveyances to accomplish his objectives of maximizing his return from the sale of the lots while preventing the lots from being fenced. In particular, you should assist Marty in the following manner:

- (1) identify a particular approach to Marty's problem;
- (2) briefly describe the property interest(s) created by the approach under consideration;
- (3) briefly describe the requirements, if any, that must be met (or actions taken) in order to ensure that the particular approach at issue will be enforceable by Marty and his successors and will bind the grantees and their

successors.

(4) repeat steps (1)-(3) for any other possible ways to structure the conveyances that would enable Marty to achieve his objectives.

After providing Marty with this information, please think about and note any advantages or disadvantages to the approaches identified, so that Marty can select the best means by which to structure the conveyances in order to accomplish his objectives.

PART II -- SHORT ANSWER QUESTIONS

For Questions 1 through 3:

Please identify the present, future, and concurrent estates created or retained.

Indicate the interests that are subject to the common law Rule Against Perpetuities. If a property 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 the violation has on the property interest and other property interests in the conveyance.

In each problem, the grantor/devisor has a fee simple absolute, the year is 1992, and all recipients of interests are alive. You do not have to raise a use in order to create an executory interest. The common law doctrines of destructibility of contingent remainders, the Doctrine of Worthier Title, and dower and curtesy have been abolished. The Rule in Shelley's Case has not been abolished. The common-law Rule Against Perpetuities applies without statutory modification.

QUESTION #1:

Katherine conveys Blackacre "to Evelyn for life, remainder to Andy for life if Andy has reached age 30 when Evelyn dies, remainder to the children of Billy and their heirs." At the time of the conveyance, Andy is 28 and Billy has one child, named Eben.

QUESTION #2:

Jack devises Greenacre "to my grandchildren who reach age 25." Jack is survived by two children (Chris and Linda), and two grandchildren (Peter and Kate). At the time of Jack's death, Peter is 28 and Kate is 27.

QUESTION #3:

Ellen conveys Brownacre "to Al's first grandchild to reach 18." At the time of the conveyance, Al has one son, Jeff, and no grandchildren.

QUESTION #4:

Ned conveyed Blackacre "to Vicki, John, and Delores as joint tenants, not tenants in common, with right of survivorship." Delores moved onto the property, made some repairs, and also put an addition on the house. John deeded "my interest in Blackacre" to David. Vicki died, devising "everything I own to my son Julius." At this point, a decision was made to sell the property. A partition suit was filed to determine (1) the present state of ownership; and (2) whether the court should make an allowance, when allocating the proceeds of the sale, for the repairs and/or the improvements made by Delores. What result, and why?

QUESTION #5:

By written agreement, Anne granted Peter the right to drive his tractor across a particular part of her land. Although Peter did not immediately record the agreement, he began to drive his tractor across the specified portion of Anne's land, and tire track "ruts" started to form in the pasture land. A year later, Anne sold her property to Alice for \$100,000. The deed contained no mention of the right-of-way agreement, and Alice never actually witnessed Peter driving his tractor across the land. Three weeks later, Peter recorded the right-of-way agreement. A month later, Alice recorded her deed from Anne. When Peter then drove his tractor across the land, Alice objected and sued for trespass. In response, Peter claimed that Alice's ownership was subject to his right-of-way easement.

Give the result, in Alice v. Peter, under each of the three recording acts (notice, race-notice, and race).