

QUESTION 2

Al owned a farm.

In 1990, Al deeded an easement for a road along the north side of the farm to his neighbor Ben. Ben immediately graded and paved a road on the easement, but did not record the deed at that time. Al and Ben both used the road on a daily basis. The easement decreased the fair market value of the farm by \$5,000.

In 2009, Al deeded the farm to his daughter Carol and she recorded the deed.

In 2011, Ben recorded his deed to the easement.

In 2012, Carol executed a written contract to sell the farm to Polly for \$100,000. The contract stated in part: "Seller shall covenant against encumbrances with no exceptions." During an inspection of the farm, Polly had observed Ben traveling on the road along the north side of the farm, but said nothing.

In 2013, Carol deeded an easement for water lines along the south side of the farm to Water Co., the local municipal water company. The water lines provided water service to local properties, including the farm. Water Co. then recorded the deed. The easement increased the fair market value of the farm by \$10,000.

In 2014, after long delay, Carol executed and delivered to Polly a warranty deed for the farm and Polly paid Carol \$100,000. The deed contains a covenant against all encumbrances except for the easement to Water Co. and no other title covenants. Polly recorded the deed.

In 2015, Polly blocked Ben's use of the road and objected to Water Co.'s construction of the water lines.

Ben has commenced an action against Polly seeking declaratory relief that the farm is burdened by his easement. Polly in turn has commenced an action against Carol seeking damages for breach of contract and breach of the covenant under the warranty deed.

1. What is the likely outcome of Ben's action? Discuss.
2. What is the likely outcome of Polly's:
 - a. Claim of breach of contract? Discuss.
 - and
 - b. Claim of breach of the covenant under the warranty deed? Discuss.

2)

1. B v P

In seeking declaratory relief to enforce B's easement, the court will have to examine whether the easement is still -- or ever was -- legally valid. An easement can be granted by the neighboring title holder, can be covenanted to run with the land, or can be created by adverse possession. B is unlikely to succeed on any of these theories.

Applicable Law

The Uniform Commercial Code governs contracts for goods, whereas all other contracts are governed by common law. The contract at hand was for land. Common law, not the UCC, is the applicable law.

Statute of Frauds

The Statute of Frauds requires enforceable transactions of land to be committed to signed writing. It's unclear when A deeded the easement to B if he did so orally or in writing. Even if A did provide B a deed satisfying the Statute of Frauds, B did not record the deed for over 20 years. Given the circumstances, it also does not appear as if A expressly included the easement in the 2009 land deed to C.

A to C

B will likely argue that A intended the easement to run with the land when A deeded the farm to C. No apparent dispute has arisen between B and C over the easement. However, an oral easement grant lies between the grantor and the grantee, and does not automatically extend to subsequent title holders. Still, C did not object to B's continued use of the graded and paved road on the easement, overcoming any claims by P that the easement ceased to exist in 2009 or that B's recording of the easement deed in 2011 was unlawful.

Adverse Possession

B might try to establish that despite failing to record the deed until 2011, the easement is valid by adverse possession.

An individual can adversely possess land through open and notorious possession for 25 continuous years (or regular/seasonal periods within).

In this case, B is not trying to claim title over the land of the easement, and does not have to show he excluded others from its use. He can argue that his grading and paving of the road in 1990 initiated his adverse possession claim over the easement. While this act may have satisfied the "open" element of adverse possession, the fact that A deeded B the easement prevents B from claiming he did so notoriously or in a hostile fashion. At best, B can claim the adverse possession began in 2009 when C was deeded the farm, or in 2011 when he recorded the deed. In either instance he will not be able to meet the 25 year requirement for an adverse possession claim.

Encumbrances

2. P v C

a. Breach of Contract

At issue is whether P can succeed on a breach of contract claim against C because of B's easement. P can argue that the easement decreased the farm value by \$5,000 when it was established in 1990. C is likely to raise P's notice of mistake as a defense to any breach of contract claims.

Mutual Assent

In order to form a valid contract, one party must have accepted an offeror's offer. C unambiguously executed a contract with P to sell the farm for \$100,000 with "covenants against encumbrances with no exceptions."

Consideration

The acceptee must at the very least be surrendering some legal right to the offeree, but consideration is typically shown by some type of bargained-for exchange. Although the parties agreed to exchange a specific sum of money for the farm and a covenant against encumbrances, it's not clear whether C and P had communicated the precise metes and bounds of what constituted the farm, and thus whether the easement to W resulted in the breach of an actual contract.

Notice of Mistake

C is likely to raise the issue that P knew or should have known of B and Water Co. (W)'s claims to their respective easements.

A mistake in a contract may not entitle an award to a claimant if the claimant knew or should have known of the mistake. The contract was executed in 2012. B had recorded his deed to the easement the year before. A land purchaser is expected to exercise due diligence by conducting a title search of the land. P even inspected the land, saw the graded and paved road, and saw B travelling on the road, but entered into the contract nonetheless. P might argue that the contract expressly provided for the farm with no encumbrances, thereby promising to eliminate the easement by the time she took possession.

C can make an even stronger claim to P's knowledge of the subsequent easement deed to W. Although C executed the contract to P in 2012 without the warranty exception for W, they did not actually exchange the land and money until 2013, at which point the deed had an express exception for W's new easement.

Parol Evidence

For a fully integrated contract permitting "no exceptions," C will not be able to introduce extrinsic evidence that there was a latent ambiguity as to the contract

terms. In any case parol evidence cannot be introduced to contradict the terms of a contract.

Damages

P will have the burden of establishing she suffered some harm as a result of the alleged breach of contract. She might claim the costs of blocking the easement and filing this action, or even nominal damages. She might claim that the easement decreased the farm's fair market value in 1990 by \$5,000, but would still have a difficult time showing that this 25-year old road has resulted in calculable harm. P will probably not be able to show that the easement deed to W is causing her any harm, as it increased the fair market value of the farm by \$10,000.

b. Breach of Covenant

B Easement

Despite any suspicion or knowledge P should have had regarding the B's claim to the north easement, C's warranty deed to P expressly covenanted no encumbrances except for the easement to W. Accordingly, P may succeed on this claim, but she would still have to show damages arising from the breach.

W Easement

C did not actually deed the land to P until 2013. When she did so, the deed expressly excluded the easement to W in its warranty. P cannot claim breach of covenant on grounds on the basis of the easement to W.

Damages

Question #2 Final Word Count = 1071