

2)

1. The issue is what property interest does Darla have on lot B?

Fee Simple Absolute

When a grantor has complete ownership over a property.

Here, Olivia owns Greenacre in fee simple absolute. Greenacre consists of Lots A and B. Initially the lot is only hers until she gives Lot B to Barry as a gift.

Thus, Olivia owns Greenacre in fee simple absolute.

Barry's gift with Clause

Fee Simple with condition subsequent

Fee Simple with condition subsequent is when a grantor conveys a property interest, but there is a condition, once the condition is fulfilled, the title normally goes to a third party, but the grantor has a possibility of reverter.

Here, Olivia gifted Barry Lot B. The conveyance says that if "at any time Barry or his heirs, or successors or assigns shall use the premises for any other purpose than as a personal residence, said Lot B shall automatically vest in fee simple in Zach or his surviving descendants." When Olivia did this she created a fee simple with a condition, the condition being that Barry does not use Lot B "for any other purpose than as a personal residence."

Darla is going to argue that when Barry sold to the developer, he fulfilled the condition of "using lot B for any other purpose than as personal residence" and as such his interest in Lot B automatically vested and went to Zach. However Darla will emphasize that since her grandfather Zach is dead, she is his heir, and she should have Lot B in fee simple absolute given the conveyance originally made by Olivia.

Thus, the court would likely conclude that Darla does have an interest in Lot B of Greenacre. The court would find for Darla because the restriction on Lot B is only on Barry to not use the lot for other uses other than personal residence. When Barry decided to sell, he breached the condition set upon Lot B and his interest vested.

Barry's argument

On the other hand, Barry is going to argue that the conveyance is not valid since it puts a restraint on alienation (see below).

Restraint on alienation

Restraint on alienation is when the grantor limits the use of the property or the future use of the property by restricting the uses of the property. Normally this is frowned upon by the courts.

Barry is going to argue that Olivia's conveyance consists of a restraint on alienation, and that the court should find it invalid. Barry will emphasize the fact that Lot A, when inherited by Simon had a house built on it, and there was no restriction on that conveyance. However, this argument would likely fail given the fact that Olivia wanted Lot B to be used for residential purposes, and Barry was allowed to use it for any residential purposes.

Thus, Barry's argument of restraint on alienation would not work, since it is reasonable that the land was to be used for residential purposes only and the restriction was only to keep Lot B for residential purposes. The restriction did not restrict Barry's ability to transfer his interest to others as long as they conformed to the residential use.

Rules Against Perpetuities

The rules against perpetuities states that no interest shall vest more than one life time, and 21 years later. It is meant to not have property upon one individual forever.

Here, Olivia conveyed lot B to Bary as a gift for his lifetime, his heirs, successors, or assigns, Barry can argue this violated the rules against perpetuities. However, it is unlikely that this argument would prevail given the interest does vest.

Thus, there is no violation of RAP.

2. What claims may Simon make to maintain the right of way over Lot B to the public highway?

Easement by prior use

An Easement by prior use is created when the easement has been used for a period of time, and the other party knows of their continuous use.

Here, Simon can argue he has an easement by necessity. Simon obtained Lot A from his mom 30 years ago, and he regularly used the dirt road across Lot B to go from his house to the public highway. Given Barry has also been living here for 60 years he has to have been able to see Simon using the dirt road to get to the highway. As such, Simon is going to argue he has an easement by prior use and the new developer should not be allowed to close off access to the dirt road. The developer can argue that there is no easmeent by prior use since they never have seen Simon use the road in Lot B. However this argument would fail given the easement was already created since it was being used for 30 years by Simon.

Thus Simon has an easement over Lot B road to the highway by prior use.

Easement by Necessity

An easement by necessity is created when there are no other ways for the owner of the Servient or dominant estate to access the roadway.

Here, Simon can also make the argument that he has an easement by necessity in this case, he has the servient estate since Barry's lot is the one who has the dirt road to access the public highway. Barry's estate would be considered the dominant estate, since it has the dirt road to access, the public highway. The dominant estate cannot deny the servient estate access to the roadways, especially if there is no other way to get to the public roadway. Simon has a necessity to get to the public highway because "there is no public access."

Thus, the court would find that Simon also has an easement by necessity.

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