

HYBRID JD PROGRAM
REAL PROPERTY – Section 2

Final Examination

Spring 2024

Prof. A. Blomquist

Instructions:

There are three (3) questions in this examination.

Total Time Allotted: Three (3) Hours.

Your answer should demonstrate your ability to analyze the facts in the question, to tell the difference between material facts and immaterial facts, and to discern the points of law and facts upon which the case turns. Your answer should show that you know and understand the pertinent principles and theories of law, their qualifications and limitations, and their relationships to each other. Your answer should evidence your ability to apply the law to the given facts and to reason in a logical, lawyer-like manner from the premises you adopt to a sound conclusion. Do not merely show that you remember legal principles; instead, try to demonstrate your proficiency in using and applying them. If your answer contains only a statement of your conclusions, you will receive little credit. State fully the reasons that support your conclusions and discuss all points thoroughly. Your answer should be complete, but you should not volunteer information or discuss legal doctrines that are not pertinent to the solution of the problem.

Question 1

Owen owned Blackacre and Greenacre, which are adjacent properties. Blackacre lies to the north of Greenacre. Along the north end of Blackacre is a major road that leads into town. Another road runs along the south of Greenacre, but it is a winding road that takes 30 extra minutes to get into town.

Power lines also run through Greenacre, and a line runs from Greenacre to Blackacre to supply power to Blackacre. A recorded plat shows these power lines running across Greenacre and up to Blackacre.

In 2000, Owen sold Blackacre to Bob and Greenacre to Glen.

In 2005, Bob and Glen made an oral agreement that Glen can use a portion on the east side of Blackacre to reach the main road.

In 2010, Bob decides he wants to build a chicken coop where Glen has been driving across the property, so he tells Glen that Glen cannot drive across the property any longer. Without Bob's permission, Glen begins using the west side of Blackacre to reach the major road into town and not the east side.

In 2015, Bob built a fence all around Blackacre, blocking Glen from driving through Blackacre. In retaliation, Glen cut down the power lines providing power to Blackacre. Bob got permission from another neighbor to run power lines to his property.

In 2018, Bob was declared incompetent. Glen took the opportunity to tear down part of Bob's fence and began driving across Blackacre again.

It is now 2024. Blackacre was properly sold to Sal.

The jurisdiction has a five-year statute of limitations applicable to claims to establish easements by prescription.

Sal files suit against Glen to stop Glen from driving across Blackacre and to reconnect the power lines. What result? Discuss.

Question 2

Sue owned a large plot that she subdivided into 40 lots. She built houses on each lot using the same style construction for each house. In front of each house she planted two pine trees and did no other landscaping. She then sold each lot.

Abe and Bill each bought separate lots from Sue next door to each other. With both of their recorded deeds was the following covenant:

Buyer promises, on behalf of their successors and assigns, that only pine trees will be planted in the front yard of each house.

Eventually, Abe sold his property to Cass and Bill sold his property to Dave. The Deed to Dave did not contain the above covenant, and nobody told Dave about the covenant.

Bill leased his property to Tom. Tom planted an apple tree in the front yard. This slightly devalued Dave's property.

Meanwhile, Dave cut down the pine trees in his yard.

The subdivision is in a traditional jurisdiction.

1. Will Dave be successful in a suit against Tom for damages? Discuss.
2. Will Tom be successful in a suit against Dave for damages? Discuss.
3. Will Tom be successful in a suit to force Dave to replace the trees in Dave's front yard? Discuss.

Question 3

Tom owned Whiteacre, a large rural undeveloped real property, when he died. His will said, “I leave Whiteacre to Hank and Jill in joint tenancy.”

Hank and Jill orally agreed to each use half of Whiteacre. Hank would use the west half, and Jill would use the east half.

Hank built a house on the west half, but the east half remained undeveloped. Jill would occasionally go camping on the east half of the property but otherwise did not use the property.

Subsequently, Hank entered into a valid agreement to sell his interest in Whiteacre to Sue for \$500,000. Before the agreement could be completed, Hank died. Hank’s will left all his property to his daughter, Debbie.

The State then takes the east half of Whiteacre for the purpose of expanding a nearby National Guard base. The State pays \$300,000 in exchange for the property.

1. What interests do the parties have in Whiteacre? Discuss.
2. Who is entitled to the \$500,000 from the sale to Sue? Discuss.
3. Is the taking by the State proper? Discuss.
4. Who is entitled to the \$300,000 from the State? Discuss.

Real Property – Sec 2
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ANSWER OUTLINE

Question 1

Road access easement

Creation (40%)

Express grant—oral is no good

Impliedly by necessity

Inconvenience is insufficient

Prescription

Open and notorious

Consent in 2005

Adverse in 2010

Use stopped in 2015, but already established

Termination (20%)

Prescription

Built fence

Not for statutory period

Reestablished by Prescription (10%)

Does not work because of tolling for incompetency

Power line easement

Creation (20%)

Preexisting use

From recorded documents

Termination (10%)

Prescription

Declared incompetent, so statute tolled

Question 2

1. (40%)

Covenant

Writing

Touch and Concern land

Intent to bind successors

Privity

Horizontal—yes

Vertical—no, defendant does not have the same estate

Damages--devaluation

2. (10%)

Covenant

Can see supra for writing, intent to bind successors, and touch and concern land

Privity

Horizontal—same

Vertical—party burdened by the covenant has same estate

OK that party enforcing covenant has lesser estate

No evidence of damages

3. (50%)

Equitable Servitude

Writing

Touch and Concern land

Intent to bind successors

Notice

No actual

Inquiry notice—character of the neighborhood

Constructive notice—will show up in title search

Injunction

Defenses

Acquiescence

Exam Question 3

1. (50%)

Joint tenancy—Definition

Right of survivorship

Effect of entering into agreement to sell property—severance

Effect of severance on both joint tenants' interests -> Tenancy in common

Effect of Death

2. (10%)

Hank's Will left his property to Debbie

Proceeds would have been Hank's, now Debbie's

3. (30%)

Eminent Domain

Public purpose

National Guard

Reasonable compensation

Is \$300,000 reasonable? Compare to \$500,000 sale

4. (10%)

Owner of the property inherits

Agreement to divide property is oral—not enforceable

Tenancy in common owners share equally

1)

Sal v. Glen

1. Glen's Ingress and Egress

Easements

An easement is a non-possessory right in land that allows the easement holder some use or rights to the property. Easements can be appurtenant, where there are adjacent tracts and the easement benefits one, the dominant estate (tenement) and burdens the other, servient estate (tenement), or in gross, where the easement is obtained independent of the holder's interest in other property. Easements can be created either expressly, through a grant or reservation, in order to satisfy the statute of frauds, or impliedly, through a prior existing use, prescription, a recorded document, or necessity.

Here, because Blackacre and Greenacre are adjacent to each other, if there is an easement for the road, it will be appurtenant. Greenacre will be the dominant estate, because the road is used by Glen, the owner of Greenacre, to its benefit, and Blackacre will be the servient estate because it is burdened by Glen's ingress and egress across it. Because there was not an express grant or reservation, Glenn will be arguing that the easement he uses for ingress and egress across Blackacre was created impliedly either through prescription, necessity, or prior existing use.

Great rules and
analysis

Prescription

Prescription is similar to adverse possession in that it is the acquisition of rights to property by a party who would otherwise have no claim to title. Prescription requires the adverse party to (1) use the property (2) in a hostile manner, (3) their use must be open and notorious, and (4) it must be continuous for the statutory time period.

Here, there are three periods of time where Glen may have obtained a prescription to

certain portions of the property, from 2010 to 2015, when he was using the west side of Blackacre, and from 2018 to 2024, when Glen took Bob's fence down and resumes ingress and egress across Blackacre.

2010 to 2015

Use

Prescription requires that the party actually use that portion of the property in a manner that would be similar to the rights that are being sought to be adversely possessed.

Here, after Bob revokes the license he gave to Glen, which allowed Glen to use the east side of Blackacre as a road to gain access to Greenacre, Glen continues his use of Blackacre for ingress and egress to Greenacre, but this time on the west side. Glen is using the west side of Blackacre as though he has an easement or license from Bob, which he does not. This will constitute use. Good

Hostile

The use must also be hostile, which means that it is not permitted by the party and is contrary to their rights.

Here, as mentioned above, Bob has revoked the access he gave to Glen, which allowed Glen the right to use the east side of Blackacre as an access road to Greenacre. After this, Bob revokes the license he gave to Glen and tells him to stop driving across Blackacre. At this point, Glen knows that he doesn't have the right to drive across Blackacre, and continues to do so anyway. This use of Blackacre will be considered hostile because it is in conflict with the rights that Glen has, and contrary to the Bob's rights, because Bob did not give Glen access to Blackacre. Great

Glen's use of Blackacre is hostile.

Open and Notorious

The use must also be open and notorious, which means that a reasonable landowner would notice the use ongoing through inquiry into the property. This is not measured subjectively, and is measured under the reasonable person standard.

Here, after Bob revokes Glen's access to Blackacre, Glen then begins using the west side of Blackacre, driving south across it to Greenacre. The facts don't expressly state what method of transportation Glen uses, but in any event, it is more likely than not that driving across undeveloped land at some point would gain attention. Even if Glen is using a bicycle to cross Blackacre, it will eventually leave tracks in and create a surface disturbance that a reasonable person would notice after inquiry. This is true despite the fact that Bob may never actually see Glen crossing the property. Even then, tracks on someone's property, going north and south across its entirety would be difficult to miss.

Great!

Glen's use of the west side of Blackacre will be open and notorious.

Continuous

The use will be continuous when there haven't been any gaps in the use for the statutory period. The exception is where there would be seasonal use for a particular property. The statutory period defined here is five years.

Here is where there is uncertainty as to whether the use was continuous for the statutory period. From 2010 to 2015, Glen uses Blackacre, seemingly continuously to gain access to his property. The facts don't suggest that Glen uses the winding road at the south of his property. Glen seems to be the kind of guy who would rather trespass across his neighbor's property than spend the extra time getting to town. Assuming that Glen does use the west side of Blackacre for ingress and egress to Greenacre, continuously, there is a question as to whether a full five years has tolled. If Glen did use the west side of Blackacre for a full five years, then the statutory period is met. If not, the statute would not have run and Glen would not have an argument for prescription.

OK

Conclusion

Because all the other elements of prescription are met, if Glen's use from 2010 to 2015 was continuous for the full statutory period, then Glen will have a strong argument that he obtained a prescription across Blackacre and now has an implied easement to continue using it.

2018 to 2024

Prescription

Prescription is similar to adverse possession in that it is the acquisition of rights to property by a party who would otherwise have no claim to title. Prescription requires the adverse party to (1) use the property (2) in a hostile manner, (3) their use must be open and notorious, and (4) it must be continuous for the statutory time period.

Here, for the second period of time that Glen attempts to obtain a prescription on Blackacre, beginning in 2018 when Glen tears down part of Bob's fence and continues ingress and egress across Blackacre, he does so after seemingly becoming aware of Bob's diminished condition. If prescription follows the same rules as adverse possession, the clock for the continuous requirement does not begin if the landowner whose property is being adversely possessed is deemed incompetent. A full discussion of the elements is below.

OK

Use

Supra.

See discussion above.

Hostile

Supra.

See discussion above. Glen's use will be hostile because Bob is still refusing to allow him access to the property.

Open and Notorious

Supra.

See discussion above. Glen's use will still be open and notorious because a reasonable person inquiring would notice it and Glen isn't hiding the use.

Continuous

Supra.

For this period of time, after Bob is deemed incompetent, the clock on the statutory period will not start until Bob's condition changes. This means that during the 2018-2024 period, Glen's use of the property will not be continuous for the statutory period.

What about the period of incompetence?

Necessity

Another method of easement creation occurs through necessity, when a single landowner divides or sells two different tracts and, as a result, one of the tracts is landlocked and without access to a main road or utility.

Glen could also argue that his use of Blackacre is out of necessity. That his property is landlocked and he doesn't have reasonable access to a main road. But, this is likely to fail for two reasons. First, Greenacre is not per se landlocked. Glen can still use the road to the south of Greenacre, although it takes more time to get to town, it is still an access route. And, second, the parcels were separate at the time of conveyance and were not the same tract of land that was divided. Good

Glen will not have a strong claim for necessity.

Prior Existing Use

When a single tract of land is divided, and there is an apparent use that is beneficial to one of the lots, an implied easement may be created.

Here, this is not applicable because Blackacre and Greenacre were separate tracts at the time of the sale. Good

License

A license is a lesser interest in land than an easement. A license allows for similar uses to an easement but is given orally and is revocable at any time, unless there has been substantial investment on reliance of the license.

Here, Bob gave Glen a license initially, but revoked it after he wanted to build a chicken coop. Because the facts do not show that Glen invested heavily in the license, it was revocable at Bob's will. Good

Termination

An easement can be terminated either through abandonment, merger, release, stated conditions, prescription, eminent domain, termination of necessity or estoppel.

Abandonment

Abandonment occurs when an easement holder takes action, more than mere words, and usually a physical act that manifests their intention to abandon the easement, it will terminate.

Here, Sal can argue that, if Glen did obtain an easement by prescription from 2010-2015, that he abandoned it when he stopped using the property from 2015 to 2018.

But is that enough?

Runs with the Land

Easements typically will run with the land, meaning that, regardless of whether the

easement is included in the granting deed, it will be attach to the owners and the property. This is the case with dominant estates, that hold an easement across a servient estate, but not necessarily so with servient estates. For servient estates, if the new owner is a bonafide purchaser, and did not have notice of the burden, then there is an argument that it will not run with the land.

Here, Sal can argue that he was a bonafide purchaser of Blackacre, evidenced by the fact that the property was properly sold to him, and that he didn't have notice. There are three types of notice (1) actual, where the party actually becomes aware of the condition through their own perception, (2) inquiry, where a reasonable person would become aware of the condition through inquiring into it, and (3) record/constructive, where, through a search of the recorder's office, they would become aware of the condition through a properly filed instrument.

As discussed above, a reasonable person inquiring into the property would likely have discovered Glen's traversing of Blackacre because of the surface disturbance that it caused and the trail that it made. If Blackacre is a heavily wooded area and Glen was using a bicycle, however, Sal would have a stronger argument that a reasonable person would not have noticed

This section regarding notice is not really relevant, but no points deducted.

Conclusion

Glen's strongest argument will be that he obtained a prescription during the time period of 2010 to 2015, when he was using the west side of Blackacre. Glen can also argue that he needs the easements through Blackacre by necessity. Sal will counter that Glen abandoned the easement from 2015 to 2018 when he chose not to continue using it, if he obtained it, and that even if there was an easement, it did not run with the land because Sal was a bonafide purchaser without notice. The most likely result, depending on whether the use from 2010 to 2015 was for the full statutory period, is that Glen has obtained a prescriptive easement over the west side of Blackacre.

Good, but termination by prescription would also be useful to analyze.

2. Demand to Reconnect Powerlines

Easements

Supra.

Here, because Blackacre and Greenacre are adjacent to each other, if there is an easement for the powerline, it will be appurtenant. Greenacre will be the servient estate and Blackacre will be the dominant estate.

Necessity

Supra.

Here, Sal can argue that the easement for the power lines is a necessity because he has no other access from his property to that utility. This will likely fail however, because, once Sal obtains the easement for the new electric lines, there is no longer a necessity and it will terminate.

Great

Recorded Document

When there is a recorded deed in the records, such as a plat map, or subdivision map, that depicts an easement, there will be an implied easement created from that record.

Here, there is a plat which was duly recorded of record showing the power lines in question running across Greenacre and up to Blackacre. Because this plat has been recorded and shows the easement in question, there will be an implied easement across Greenacre for the electrical lines supplying power to Blackacre.

Great!

Prior Existing Use

Supra.

This will fail for the same reasons stated above, that Blackacre and Greenacre have always been separate tracts and the powerline was there at that time.

Termination

An easement can be terminated either through abandonment, merger, release, stated conditions, prescription, eminent domain, termination of necessity or estoppel.

Abandonment

Abandonment occurs when an easement holder takes action, more than mere words, and usually a physical act that manifests their intention to abandon the easement, it will terminate.

Here, Glen can argue that Sal abandoned the easement for the powerline when he stopped using it and obtained another easement from another landowner to construct new power lines.

OK, is there an argument for termination by prescription, though?

Conclusion

Here, there was an implied easement that was created from the plat that was duly recorded. Sal will have a strong claim to bring against Glen to have him replace the powerlines that he took down.

Grade: 85

This is a really strong response. I can tell that you understand easements, the rules applicable to them, and how to analyze most of them. Minor misunderstandings and missed issues cost you some points, but those were not assigned very many points. Very nice job!

2)

1. Dave v. Tom (Covenant)

Covenant

A covenant is a promise to do something or to refrain from doing something on land. To be enforceable, a covenant requires (1) writing (2) notice, (3) intent to bind, (4) both horizontal and vertical privity, and (5) it must touch and concern the land. Covenants provide for legal relief in the form of damages.

Good intro

Writing

In order to satisfy the statute of frauds, a covenant must be contained in a writing.

Here, this is satisfied because Abe and Bill both receive their interest in the land through recorded deeds that contained the covenant.

Good

Notice

In order for the covenant to run with the land, the party must have either: (1) actual notice, where the party actually becomes aware of the condition through their own perception, (2) inquiry notice, where a reasonable person would become aware of the condition through inquiring into it, and (3) record/constructive notice, where, through a search of the recorder's office, they would become aware of the condition through a properly filed instrument.

Here, even if Tom was not actually aware of the covenant, it reasonable to believe that a reasonable person, upon inquiring into the neighborhood would have determined that the covenant existed. Each house was built using the same construction and each one has only two pine trees and no other landscaping. Simple driving through the neighborhood would provide adequate inquiry notice. And, Tom would have had record

notice too from the recorded deeds which were in his chain of title that included the covenant.

Intent to Bind

There must be an intent to be bound by the covenant, and an intent to bind future successors and assigns. This can be done either expressly, as here, with the language "on behalf of their successors and assigns", or impliedly through the conduct of the parties.

Here, this is met because the covenant itself includes express language that the parties intend to bind their future successors and assigns with the covenant.

Horizontal Privity

Horizontal privity occurs between the original promisor and promisee when the covenant is initially entered into. In order to have horizontal privity, the parties must have some mutual interest outside of the land itself. This can also be satisfied when there is a grantor and grantee relationship.

Here, there is horizontal privity between Sue, Abe, and Bill, because Sue is the grantor, and included the covenant in the granting document to both Abe and Bill, the grantees. This grantor grantee relationship creates horizontal privity between both Sue and Abe and Sue and Bill.

Vertical Privity

Vertical privity requires that the future successors and assigns to the original covenanting parties obtain the same full interest in the property that their predecessors had.

Here, this requirement is not met because Bill, who sold his interest to Dave, has leased the property to Tim. If the question meant to say that Dave leased the property to Tom, then this requirement would still not be met because Tom, who would be the defendant in either case, is a leasehold owner, and does not have the same interest that Bill or Dave

has/had. Bill and/or Dave owned the property, potentially in fee simple, and Tom simply owns a leasehold as a tenant.

Great! Obviously, there was a typo here, but you get bonus points for addressing both situations.

Touch and Concern the Land

Traditionally, whether the covenant touched and concerned the land looked at the benefit or burden to the land. As long as the land itself was bearing the burden or benefit, than the covenant was said to touch and concern it. Modernly, covenants are presumed to touch and concern the land, unless they are unconstitutional or otherwise unlawful.

Here, the covenant will be considered to touch and concern the land because the conditions require that each lot plant only pine trees in the front of each house. Each owner is restricted in their property by having these particular trees. This type of covenant is intended to create stability with a neighborhood that often brings benefits in the form of increased home values. It also sets standards for uniformity that bring sustainability for the owners who can rely on certain standards being met.

Great!

Termination

Covenants can terminate either through abandonment, merger, release, or changed neighborhood conditions.

Abandonment

Abandonment occurs when a substantial number of people in the neighborhood breach the covenant, such that a reasonable person would not be aware that a covenant existed.

This does not appear to be the case because Tom and Dave are the only parties breaching the covenant out of 40.

Good

Defenses

Defenses to covenants include acquiescence, unclean hands, laches or estoppel.

Acquiescence

As a defense to enforcement of a covenant, parties can show that other parties in the neighborhood have breached the covenant and there has been no enforcement for that breach.

Here, Tom could make the argument that he and Dave have both breached and there seems to be an acquiescence to the covenant. This argument is likely unpersuasive as Dave and Tom appear to be the only ones breaching the covenant and they are both seeking to enforce it against it other. Good

Unclean Hands

A defendant who has a claim of breach brought against them can argue that the plaintiff was breaching as well, and therefore should not be able to bring suit.

This rule is incomplete; there must also be prejudice.

Here, Dave is suing Tom for legal damages as a result of breaching the covenant. Tom will be able to argue that Dave breached the covenant when he cut down his trees, and therefore should not be able to bring a claim.

Conclusion

Because there is no vertical privity, and because Dave has breached the covenant as well, it is unlikely that Dave will be able to successfully bring a claim against Tom for breach of the covenant.

2. Tom v. Dave (Covenant)

Covenant

A covenant is a promise to do something or to refrain from doing something on land. To be enforceable, a covenant requires (1) writing (2) notice, (3) intent to bind, (4) both

horizontal and vertical privity, and (5) it must touch and concern the land.

Writing

Supra.

See discussion above.

Notice

Supra.

Here, even if Dave was not actually aware of the covenant, it reasonable to believe that a reasonable person, upon inquiring into the neighborhood would have determined that the covenant existed. Each house was built using the same construction and each one has only two pine trees and no other landscaping. Simple driving through the neighborhood would provide adequate inquiry notice. And, Dave would have had record notice too from the recorded deeds which were in his chain of title that included the covenant.

Good, especially
recognizing the
distinctions

Intent to Bind

Supra.

See discussion above.

Horizontal Privity

Supra.

See discussion above.

Vertical Privity

Supra.

Here, unlike Tom, Dave will have vertical privity because he has the same interest that his predecessor in title, Bill, had. Bill seemingly received a fee simple interest in the land and Dave purchased that exact same interest. This element will be met.

Termination

OK

Covenants can terminate either through abandonment, merger, release, or changed neighborhood conditions.

Abandonment

Supra.

Defenses

Defenses to covenants include acquiescence, unclean hands, laches or estoppel.

Unclean Hands

Supra.

Like Tom, Dave will be able to argue that Tom has breached the covenant and therefore should not be able to bring his claim. Tom breached the covenant when he planted the apple tree, which should estop him from being able to bring a case against Dave.

As above, this is incomplete.

Conclusion

Unlike Tom, the covenant against Dave will be enforceable, but Dave can use the unclean hands defense.

3. Tom v. Dave (Equitable Servitude)

Equitable Servitude

An equitable servitude is a type of covenant that allows for equitable relief, as opposed to legal relief. The requirements for an equitable servitude are similar, but do not require that there be privity between the parties. It does still require (1) a writing, (2) notice, (3) an intent to bind, and (4) it must touch and concern the land.

Good

Writing

Supra.

See discussion above.

Notice

Supra.

See discussion above.

Intent to Bind

Supra.

See discussion above.

Touch and Concern the Land

Supra.

See discussion above.

Termination

Covenants can terminate either through abandonment, merger, release, or changed neighborhood conditions.

Abandonment

Supra.

Defenses

Defenses to covenants include acquiescence, unclean hands, laches or estoppel.

Unclean Hands

A defendant who has a claim of breach brought against them can argue that the plaintiff was breaching as well, and therefore should not be able to bring suit.

Here, Tom is suing Dave seeking equitable relief in the form of having Dave replace his trees. Dave can argue that Tom has breached the covenant, by planting an apple tree in the front yard, and therefore should not be able to bring his suit because he has unclean hands.

Conclusion

Tom will likely be successful in seeking his equitable relief to have Dave re-plant the trees that he removed.

Grade: 85

An excellent response. You demonstrated mastery of covenants and equitable servitudes, and above-average understanding of the defenses. To improve, I recommend working on tying the facts to the rule statements a little better with some "because" statements because it is not always clear what facts you are applying to which rules. Obviously, this is not a huge roadblock, though. Nice job!

3)

1. Interests

Fee Simple

Tom owned Whiteacre in Fee Simple and his will conveyed his interest to Hank and Jill in Joint Tenancy.

Co-Ownership Estates

1. Joint Tenancy contains the four unities of Time, Title, Interest, and Possession.

Time means that the parties acquired their interest at the same time. Here, Hank and Jill obtained ownership in Whiteacre through Tom's will. They inherited at the same time.

Good

Title means that their interest was acquired under the same instrument. Here Hank and Jill obtained ownership through the same instrument: Tom's will. This element is met.

Good

Interest means that the parties have the same kind of interest. Under common law, because this will does not specify that Whiteacre would go to "Hank and Jill and their heirs," this would be considered a life estate. Under Modern Law, this transfer would pass as a fee simple. Either way, both parties have the same kind of interest and this element is met.

Good

Possession means that the parties have held possession for the same length of time. Here, the parties have held possession for the same length of time and this element is met.

Good

Rights and Responsibilities

a. Joint Tenancies have the right to survivorship, they are alienable by either party, but

they are not descendible, and the parties have an separate but undivided right to use the entire property. Here, the parties have an agreement to "split" the property in half. This would not qualify as an Ouster because the parties are in agreement to use the property in this fashion; both parties could still use the entire property, even with this agreement.

Great

b. Carrying costs - Parties are responsible to divide necessary carrying costs equally so long as there is notice. This includes things like taxes.

c. Adverse Possession

d. Improvements - unless in an agreement, a party who improves the property is technically committing ameliorative waste and will not be reimbursed. However, the improving party will bear the fruits or the burden of their "improvements" upon sale of the property.

e. Waste - responsibility not to commit waste.

f. Possession - parties have an equal right to possess the whole property.

b. - f. above are not really relevant to anything here.

2. Tenancy in Common

If a transfer is vague, courts will presume that a tenancy in common has been created. This is fully alienable by any party. However, the conveyance specified a joint tenancy so Hank and Jill do not have a tenancy in common.

OK

3. Tenancy by the Entirety

A tenancy by the entirety has the same four elements of a Joint Tenancy with the addition of marriage. It is not alienable, it has the right to survivorship, and unless both parties agree to sell (or die) under the same instrument or the parties get divorced, a tenancy by the entirety will not be severed. No facts suggest the parties are married so this does not apply.

A tenancy by the entirety is not really relevant, but no points deducted.

Transfer from Hank to Sue

When Hank attempted to convey his interest to Sue, this would have been allowed because a joint tenancy is alienable. The new party creates a tenancy in common, however Jill would keep her tenancy by the entirety. The facts are lacking on exactly how far the transaction went other than "before the agreement could be completed, Hank died." This assumes that title had not transferred and death of a party to an agreement, prior to completion of a contract, can render a contract void (but that is a contracts question). Hank's will left

Under the doctrine of equitable conversion, the sale must be completed so a severance is enacted when the agreement is entered into.

Conclusion

Jill owns Whiteacre in fee simple through the right of survivorship prior to the Eminent Domain action. In fact, Jill still owns the West half of Whiteacre in Fee Simple. Unless the transfer from Hank was far enough to remain enforceable. Debbie, because of the right of survivorship, has no interest in Whiteacre

2. \$500,000 from Sue

Because the agreement and transfer was not completed, Sue gets to keep her \$500,000. If the contract was far enough to remain enforceable, then the \$500,000 would pass to Debbie, Hank's daughter as part of Hank's estate.

OK, but see my comment above

3. Takings Clause

The 5th Amendment's Takings Clause allows the government to take personal property and use it for public use, provided the pay just compensation.

There are three types of Eminent domain: Traditional Condemnation, Inverse

Condemnation, and Exactions. Traditional cond. occurs where the government begins condemnation actions and formal proceedings to take the land. Inverse condemnation occurs where the government simply occupies private land, in which case the landowner must assert that their right to exclude is being violated and that their interest is harmed. An exaction is a government over-reach, usually through permits or other regulatory actions like ordinances, that strip the property of its value. Here, the facts are lacking on which type of taking has occurred, but because the purpose is to expand a nearby National Guard base, it appears to be a traditional condemnation.

OK. The facts said they were "taking" it, so you can assume it is a direct taking.

Public Use Doctrine

Public Purpose is a very broad term and is almost always upheld. So long as the state can show that the land will benefit the "public" in some way, it will likely be constitutional. Here, the state is expanding the local National Guard base, which would easily be classified as a public use because the National Guard is designed to help protect the safety of the country. Therefore, the public use element is met.

Good

Just Compensation

Just compensation, sometimes referred to as reasonable compensation, occurs at the time of condemnation. When the government enacts eminent domain, they are required to pay the fair market value of the property seized, at the time of seizure (or condemnation.) Here, more facts are needed to determine if the East half of Whiteacre is worth \$300,000 to determine if this is, in fact, just compensation. Assuming that is the appraised value, then the just compensation element is met.

What do the facts you have indicate because half was worth \$500,000 recently?

Additionally, from Penn Station, Nollan, and Dolan, for an eminent domain actions should be analyzed under the following context:

This is a direct taking, so we don't need to analyze exactions or regulatory takings.

1. There is a legitimate state interest

Here, the state interest is the National Guard base and this will likely be upheld as constitutional.

2. The action is rationally related to that interest

Here, the land will be used to expand the National Guard base. This is rationally related to that interest.

3. Treatment of the land

Here, the treatment of the land prior to condemnation was for camping and was primarily left alone. Additionally, no facts suggest that the state intruded on the land as an inverse taking or that there was some other regulatory issue at hand. Therefore, the treatment of the land during this process will likely be held constitutional.

4. The state action shares an essential nexus to the property

Here, the state has begun condemnation proceedings to use the property as part of the National Guard base. This will likely be held as constitutional.

5. The action's impact on the landowners investment-backed expectations

Here, Jill had no investment backed expectations. She did not develop that section of the property and only used it for camping. No additional buildings were in operation or under construction. Therefore, this element will not conflict with the eminent domain proceedings.

Conclusion

Yes, because the state took land for a public purpose and provided just compensation, it was constitutional.

4. \$300,000 from State

The 5th Amendment's Takings Clause allows the government to take personal property and use it for public use, provided the pay just compensation. Here, the government took the East half of the property, which Jill occupied and held title to, and therefore Jill would be entitled to the \$300,000.

END OF EXAM

Grade: 75

This essay demonstrates good understanding of the issues, but many of the minor nuances were missed or inaccurately applied. You are a really good writer, so I think just reviewing some of these issues in model answers would be the best use of your time to find ways to improve, particularly related to equitable conversion.