KERN COUNTY COLLEGE OF LAW
REAL PROPERTY
Professor Jean M. Pledger
Final, Spring 2024

Instructions:

There are three (3) questions in this examination.

You will be given three (3) hours to complete the examination.

Your answer should demonstrate your ability to analyze the facts in the question, tell the difference between material facts and immaterial facts, and 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 with 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.

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Question 1

Owen owned a ranch. In 1995, Owen deeded an easement for a road along the north side of the ranch to his next-door neighbor, Ethan. Ethan immediately graded and paved a road on the easement but did not record the deed at that time. Owen and Ethan both used the road on a daily basis. The easement decreased the fair market value of the ranch by $5,000.

In 2014, Owen deeded the ranch to his daughter Destiny, and she recorded the deed. In 2016, Ethan recorded his deed to the easement. In 2017, Destiny executed a written contract to sell the ranch to Betsy for $100,000. The contract stated in part: "Seller shall covenant against encumbrances with no exceptions." During an inspection of the ranch, Betsy had observed Ethan traveling on the road along the north side of the ranch but said nothing.

In 2018, Destiny deeded an easement for gas lines along the south side of the ranch to Gas Co., the local municipal gas company. The gas lines provided gas service to local properties, including the ranch. Gas Co. then recorded the deed. The easement increased the fair market value of the ranch by $10,000.

In 2019, after long delay, Destiny executed and delivered to Betsy a warranty deed for the ranch and Betsy paid Destiny $100,000. The deed contains a covenant against all encumbrances except for the easement to Gas Co. and no other title covenants. Betsy recorded the deed.

In 2020, Betsy blocked Ethan's use of the road and objected to Gas Co.'s construction of the gas lines. Ethan has commenced an action against Betsy seeking declaratory relief that the ranch is burdened by his easement. Betsy in turn has commenced an action against Destiny seeking damages for breach of contract and breach of the covenant under the warranty deed.

1. What is the likely outcome of Ethan's action? Discuss.

2. What is the likely outcome of Betsy's claim for a) breach of contract? Discuss; and b) breach of the covenant under the warranty deed? Discuss.

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Question 2

Susan recently constructed and opened a group home for previously convicted drug offenders. The home is located in a residential area in Kalamazoo and is the only such home in Kalamazoo. In response to Susan's neighbors' objections, Kalamazoo passes a zoning ordinance prohibiting the operation of any group home for convicted drug offenders in any residential area of Kalamazoo, on the grounds that such houses tend to introduce crime into a neighborhood.

Kalamazoo makes the ordinance effective immediately without any grandfather clause, thus immediately requiring Susan to shut down her group home.

Susan seeks to enjoin the application of the ordinance against her, claiming it would be an unconstitutional taking of her property without due process.

(a) You are Kalamazoo's city attorney. How would you advise Kalamazoo regarding the zoning change?

In settlement of Susan's challenge seeking to enjoin the application of the ordinance, Kalamazoo rezones Susan's lot to multifamily use so that Susan can continue to operate the group home. Susan's lot is the only parcel in the area rezoned to multifamily use. Other residents near the parcel sue the zoning board and Susan, arguing that the rezoning is invalid because it constitutes spot zoning.

(b) How would you advise Kalamazoo regarding the other residents' suit?

In resolution of the other residents' lawsuit arising from Kalamazoo's rezoning of Susan's lot to multifamily use, Kalamazoo requires Susan to apply for a variance or a conditional use permit.

(c) How would you advise Kalamazoo regarding granting Susan a variance or a conditional use permit?

Finally, trying to put the matter to bed once and for all, Kalamazoo passed a zoning ordinance prohibiting more than three unrelated people from living together in a single-family dwelling.

(d) Susan challenges the zoning ordinance as unconstitutional. Is it?

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Question 3

Annabelle and Remi owned Blackacre in fee simple as joint tenants with a right of survivorship. Blackacre is located in a jurisdiction with a race-notice recording statute. Without Remi's knowledge, Annabelle gifted her interest in Blackacre to Eloise by deed. Annabelle and Remi then sold all of their interest in Blackacre by a quitclaim deed to Jerry, who recorded the deed.

Shortly thereafter, Eloise recorded her deed. Jerry entered into a valid 15-year lease of Blackacre with Addison. The lease included a promise by Addison, on behalf of herself, her assigns, and successors in interest, to (1) obtain hazard insurance that would cover any damage to the property and (2) use any payments for damage to the property only to repair such damage. Addison recorded the lease.

Five years later, Addison transferred all of her remaining interest in Blackacre to Jake. Neither Addison nor Jake ever obtained hazard insurance covering Blackacre. While Jake was in possession of Blackacre, a building on the property was destroyed by fire due to a lightning strike. Jerry has sued Addison and Jake for damages for breach of the covenant regarding hazard insurance for Blackacre.

1. What right, title, or interest in Blackacre, if any, is held by Eloise, Jerry, Addison and/or Jake? Discuss.

2. Is Jerry likely to prevail in his suit against Addison and Jake? Discuss.

End.

REAL PROPERTY
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Question 1

MODEL ANSWER:

QUESTION ONE: Ethan's ("E") action against Betsy ("B") for blocking the access to the road he received an easement to from Owen ("O").

Express Easement: An easement is the right to enter onto someone's land and use a portion of that land for a specific purpose. Easements may be granted expressly to an individual by deed. An express easement by deed must meet the deed formalities to be valid, including a valid writing, and other statute of frauds requirements. Moreover, easements are deemed to be perpetual in nature unless otherwise indicated. Here in 1995, O deeded an easement to E for a road along the north side of his ranch. There are no facts indicating whether or not the deed itself meets the formalities of a valid writing; however, it can be presumed here because there are no facts to the contrary. Therefore, given that O created an easement by deed, that expressly named the easement in the deed, an express easement was likely created for E's use. Thus in 1995, after O's valid deed, E obtained an express easement to use the road on the ranch.

Reasonable Use/Scope: An easement must usually be used reasonably within the scope of the granting instrument if an express easement. This typically allows the holder of the easement to improve the land where the easement lies and to enter on to it to repair it. Here after O granted E the easement, E immediately graded and paved the road for his use. These actions are likely valid given that E was entering onto the property to pave a road. It would be implied that the holder of this easement for use of a road could enter onto land to improve the land, grade it and maintain the road. Therefore, it would appear that E has been validly using the easement and comporting with its requirements.

Termination: The next issue is whether E's easement could be said to have terminated in any way after Destiny ("D") took title to the land it was on. Termination of an easement may occur where the easement is abandoned, where the granting instrument states a specific condition to occur, or where the properties that the easement lies on and the adjacent property holder are merged. Typically, easements are perpetual in nature unless stated otherwise. Here O granted the easement to E by deed. There was nothing in the deed that stated any kind of condition as to whether the easement could terminate. Therefore, no conditions have occurred. Moreover, there was no abandonment of the easement as E has used the road ever since he was granted it. Finally, no merger occurred under these facts as E still maintains his own property and the property that the easement lies on is separately owned by B now. Thus, the easement did not terminate.

Transfer of Land – Notice: *Generally, when land that is burdened by the easement, the servient estate, transfers title the easement runs with the land. Thus, even though O transferred the land to D and then D transferred the land to B, each time the transfer occurred the easement would automatically run with the land. However, a Bona Fide Purchaser ("BFP") may attempt to argue that they lacked notice of the easement. If a BFP can do so and state that they did not have notice of the easement then they can typically defeat an easement holder's title. The goal is to show that the BFP did not have notice of the easement on the land. Thus, B must show she did not have notice; this is done through a recording act.*

Recording Act: *Under the common law, title in land was measured by first in time, first in right. However, under modern recording acts, people who record their interest in land can preserve their title by putting the world on notice of that interest in the land. There are jurisdictional splits as to what type of recording statute is used and there are three main ones: race, race-notice, and notice. Race recording statutes are used only in a minority of jurisdictions. Therefore, notice and race-notice jurisdictions are typically the most commonly used. Here in order to use a recording statute, B would have to show that she was a BFP and that she met the requirements of each recording statute.*

Bona Fide Purchaser (BFP): *In order to actually argue that one did not have notice to the easement, they must be a BFP. Typically, a BFP is someone who took title to land subsequently to the current holder of the land and they did so for value. Here B paid for title to the ranch in which E's easement lies. Moreover, E's interest was received in 1995 and B's interest was received in 2019, so she was subsequent. Thus, B is a BFP who could seek to use a recording statute to take superior title in land and invalidate E's easement.*

Notice and Race-Notice Jurisdictions: *In a notice jurisdiction and a race-notice jurisdiction, the BFP must show that at the time that they took title to the land they did not have a notice of the competing interest. There are three kinds of notice: inquiry, actual and constructive. Inquiry notice occurs where the BFP is charged with looking at the property to examine it, and if they had examined it they may have found the competing interest. Actual notice occurs where the BFP is actually aware of the interest. Here B actually saw the road that E had built on the property, and she saw that E was using it. Therefore, B likely had actual notice since she physically saw someone driving on the land. Moreover, E recorded his deed in 2016 and B did not record until 2019. Thus, she would be on constructive notice as well. At a very minimum B should have asked D who E was and what he was doing on the ranch. Therefore, notice would most likely be charged to B. Thus, B as a BFP cannot argue that she took title to the land without notice of the competing interest.*

Race Jurisdiction: *In a race jurisdiction, the person who records first wins and that is why it is not used in many jurisdictions because it often results in unfair outcomes. Here E recorded in 2016 and B recorded in 2019. Thus, under a race jurisdiction E would win as well.*

Conclusion: *In total, B cannot use a recording act to argue that she as a BFP should take title without E's interest. She had notice of E's usage of the land and moreover she did not record first. Thus, the common law rule applies concerning first in time and first in right and E's*

interest is superior. B would lose to E's claim as E's easement would automatically run with the land.

Shelter Rule: Under the shelter rule, a BFP may be able to step into the shoes of a previous grantee and argue that the previous grantee could have validly used a recording in order to defeat a previous claim. The shelter rule may be used despite the fact that a BFP may have had actual knowledge. Here B could argue that D was a BFP under a recording act and therefore B could step into D's shoes to invalidate E's claim.

D as BFP: A BFP must typically pay value for title to the land and take subsequently to the competing interest. Here E got his easement in 1995 and D took title in 2014. Therefore, D was a subsequent title holder. But it is not clear that D paid for the land. Her father was O and the facts appear to state that O simply deeded D the ranch, without compensation. If she did not pay value for the land then she was a mere donee and not a valid BFP. Any value is enough; typically, only a "mere peppercorn" would suffice; but if someone did not actually give value then they are not a BFP. Thus, if D was not a BFP then she could not use a recording act. As such it is unlikely that the shelter rule could be used here.

Recording Claim: Under a race notice and a notice jurisdiction it is likely that D would be charged with inquiry notice. Since E built and paved a road on the ranch, that would have went from his ranch to D's ranch, any inspection of the ranch by D would charge with her inquiry notice. She would have seen the road and been charged with asking what it was. Moreover, given E's usage of the road, she likely would have seen him, especially if this was her father's ranch before it was hers. Thus, under a race and race-notice jurisdiction it is unlikely that D would prevail since she likely took title with notice. Under a race recording statute, however, D would probably prevail, since she did record before E did, as she recorded in 2016 and E recorded in 2019.

Conclusion - Shelter Rule: In total, B cannot likely able to use the shelter rule here to step into D's shoes because D was probably not a BFP. Moreover, under a notice and race-notice recording statute she would not win since she probably would be charged with notice of E's claim. However, she may win under a race recording statute if she was a BFP because she recorded first.

Overall Conclusion: In conclusion, E's claim against B would likely be valid. E can establish that he had a valid express easement and that it automatically ran with the land when it was transferred from O to D and then to B. Moreover, B cannot argue she did not have notice of the easement, nor can she use a recording statute. Moreover. she cannot use the shelter rule here either since D was not likely a BFP.

QUESTION TWO: At issue is the likely outcome of B's lawsuit against D.

Part A: At issue is B's claim for breach of contract. When parties convey land it is a two- step process: first the parties enter into a contract for the sale of land and then there is a period of

escrow. Following escrow, closing occurs. At closing is where the actual deed is delivered and at that point the deal is finished. B's first claim arises under the land sale contract.

Land Sale contract - Marketable Title: A contract for the sale of land is required to be in a valid writing satisfying the statute of frauds. Here on 2017, D and B executed a written contract to sell the ranch to B for $100,000. The contract stated that the seller "shall covenant against encumbrances with no exceptions". This express provision essentially was stating that the land would not be sold with any encumbrances on it. An encumbrance is something that includes easements. In every contract for the sale of land there is the doctrine of marketable title however. This means that upon closing, the land would not have any defects of title in it, including easements. Therefore, even though the contract stated that the land would not be sold with any encumbrances on it, this would be implied in the contract. Here at closing the land had an easement on it with the gas company as well as B's easement as argued above. Thus, at closing two easements existed on the land. The problem, however, is that at closing, under the merger doctrine, the land contract merges into the deed and cannot be used to provide relief to a buyer.

Merger: Under the merger doctrine, the contract is said to merge into the deed and the buyer may not use the contract to recover for defects on the property. At closing, the land sale contract that D and B entered into would be said to merge into the deed. Thus, even though the contract was breached at closing, there could be no relief afforded under the terms of the contract. As such, B cannot make a breach of contract claim here.

Conclusion: B's breach of contact claim would fail because the merger doctrine merged the contract into the deed and it can no longer afford relief to B.

Part B The next issue then is the buyer's ability to recover under the warranty that was contained within the deed. Deeds contain covenants in them that allow for recovery to a buyer. Whether the buyer can recover depends on the type of deed and covenant contained in a deed. Type of Deed There are three kinds of deed: general warranty deeds, special warranty deeds, and quitclaim deeds. Quitclaim deeds do not provide any relief under a covenant. General warranty deeds provide relief under several different kinds of covenants. Here the deed that was given to B contained the covenant that stated there would be no encumbrances on the property, except the easement to Gas Co. ("G"). Thus, we must examine that covenant.

Covenant Against Encumbrances: The covenant against encumbrances states that at closing, there will be no encumbrances on property. This is breached immediately at closing and is considered a present covenant on the property. Here at the time of closing there were two easements contained within the property. Since both were on the property, they are both subject to the covenant against encumbrances.

E's Easement: As stated above E has a valid easement on the ranch that D bought. Thus this easement will exist on the property and therefore at closing the deed covenant against encumbrances was breached. As such D has a valid cause of action against C for breaching this covenant with respects to B's easement. It does not matter that D saw B's using the road at the time of contract formation; notice is not material for purposes of the covenants. C specifically included a covenant against encumbrances in her deed. Therefore the presence of this one

breached that covenant. W's Easement As explained above, an easement can be created by express deed. Here in 2013, C deeded an easement to W for gas lines along the property. This was during the escrow period. Given that an express easement was likely created via deed to W, W had an easement on the property at closing. The covenant however specifically disclaimed liability for W's easement. Given that C specifically disclaimed the easement in her covenant, and D accepted closing at that time, D likely waived any argument she has that C breached this covenant. Insofar as this was a present covenant the statute of limitations for it began to run at the time of closing. Therefore D should have raised any objection to this encumbrance at the time that it existed. However D went through with closing, specifically accepting the deed that contained a waiver with W's easement on it. Therefore D cannot likely recover for W's easement under the covenant in the deed. D can attempt to argue for fraud or some other kind of defense to C's actions here but it is unlikely that such an argument would prevail. It does seem unfair that C would include in the contract a provision stating that there would be no encumbrances in the title, yet during escrow she actually put another on her property. But C specifically included a waiver of this encumbrance in the warranty in her deed. Therefore D would be charged with reading the warranty and seeing such waiver. If D did not like the waiver she should have raised the issue during closing and not accepted the deed as is. Therefore D likely waived any argument against W's easement given her acceptance of the deed with the waiver on it. Remedies Typically the remedy for a defect in title to land such as occurred here with B's easement is the difference of the value of the land with the easement on it and the value of the land without the easement on it. Here the difference in value of the land would be $5,000 as the facts indicate that the ranch is worth $5,000 less with B's easement on it. Thus D can likely recover $5,000 from C for B's easement in violation of the covenant in her deed. However D cannot recover the $10,000 that W's encumbrance decreases the value of the land by since the covenant would not extend to that encumbrance as D likely waived it as stated above. Conclusion In total, D can recover under the covenant in the warranty deed for B's easement only and she would likely get only $5,000.

<u>Overall Conclusion</u>: B's cause of action against D for breach of contract would fail under the merger doctrine. Yet B can recover under her deed against D for E's easement on the property, but not G's easement.

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Q2 MODEL ANSWER

a) Zoning ordinance prohibiting the operation of any group home for convicted drug offenders in any residential area of Kalamazoo, effective immediately, even as to existing group homes. Susan's use of the property has become a non-conforming use under the new ordinance. As such, immediate elimination constitutes an unconstitutional taking without due process. Instead, the due process clause probably requires that Susan be allowed a period of time (typically multiple years) in which to close the home, so that she can recoup her investment in the property. Such

treatment is viewed as a compromise between the rights of the property owner and the needs of the community. Once that period of investment-recoupment is over, it's unlikely that Susan has a due process or other constitutional claim to continue her use-Kalamazoo must merely be "rational" in its zoning decisions, and requiring such group houses to be located in nonresidential areas is probably rational.

RELATED ISSUE: Say the home burns down. Susan could not reconstruct it as a non-conforming use; once the non-conforming use is destroyed, any new structure built must conform to the zoning regulations.

RELATED ISSUE: Say Susan wanted to expand the home to double its present size. She couldn't do so. A non-conforming use can continue only until the owner has recouped her investment in the property; she cannot expand or enhance the non-conforming use.

b) Only parcel in the area rezoned to multifamily use; spot zoning.

Although spot zoning is generally illegal (and this is clearly spot zoning, because it applies to a single parcel), such rezoning is valid where the general welfare of the community justifies it, and the rezoning is part of a comprehensive plan to alleviate a problem.

(c) Granting variance or a conditional use permit.

First, the variance must be necessary to avoid imposing undue hardship on the owner of the land in question. (Undue hardship "involves the underlying notion that no effective use can be made of the property in the event the variance is denied.") To show hardship, the owner must first have made reasonable efforts to comply with the zoning ordinance - say by trying, in the case of an undersized lot, to sell it to, or buy additional land from, a neighbor, in either case at a fair price. And the owner's hardship must not have been self-inflicted, such as by earlier disposing of part of his land with the result that what was left fell short of area requirements. Second, "the grant of the variance must not substantially impinge upon the public good and the intent and purpose of the zoning plan and ordinance." This requires paying attention to "the manner in and extent to which the variance will impact upon the character of the area."

d) Three unrelated people living together in a single-family dwelling

Zoning ordinances can prohibit more than a very small number of unrelated people from forming households together to further goals like preventing overcrowding (Village of Belle Terre v.

Boraas, 416 U.S. 1 (1974)), whereas a zoning ordinance cannot prohibit family members (related by blood or marriage) from doing so.

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Q3ANSWER:

What right, title, or interest in Blackacre, if any, is held by Eloise, Jerry, Addison and/or Jake?

At common law, there were no recording statutes and the rule was that the first in time prevailed. Under this jurisdiction, there is a race-notice statute that will govern the facts of this case. If the statute does not apply, then the common law does. A race-notice statute provides that any subsequent purchaser of property will take if they are a bona fide purchaser (BFP) and recorded first. To be a BFP, a party must pay value and take without notice of any prior recordings that may affect their title to the property. Notice can be by: (1) actual notice; (2) constructive notice; or (3) inquiry notice. Actual notice is that the party knew there was another party with a claim on the property. Constructive notice is when a recording in the grantor-grantee index gives notice to a party that there are other parties claiming interest to the land. Lastly, inquiry notice is when the party is given facts that there may be other possessors to the property and that party has a duty to inquire further (i.e., if they see a house built on the land with occupants, that party has a duty to inquire why they are on the land).

A. Eloise: A joint tenancy is created with a right of survivorship when the four unities are met: time, title, instrument and possession. In other words, the parties must acquire their joint tenancy at the same time, with the same amount of title, in the same instrument and each have the right to possess the entire land. The right of survivorship allows that when one of the joint tenants die, the entire estate goes to the surviving joint party. However, if the joint tenancy is severed, the parties become tenants in common and the right of survivorship no longer exists. The joint tenancy can be severed by a unilateral conveyance of one of the joint tenants to another party. Here, Annabelle and Remi owned the land in fee simple as joint tenants with the right of survivorship. The facts do not give details as to if the four unities of time, title, instrument and possession were met. However, the facts assume that these elements were met. As such, Annabelle and Remi owned Blackacre as joint tenants with the right of survivorship to begin with. Annabelle thereafter gifted her interest to Eloise. This bequest severed the joint tenancy between Annabelle and Remi. At this point in time, Remi and Eloise were then owners to Blackacre as tenants in common. However, because Eloise failed to record her deed, Jerry will take Blackacre under the recording statute and Eloise has no interest in Blackacre.

B. Jerry: As mentioned, under the recording statute in this jurisdiction, a subsequent purchaser will take if they are a BFP and record their interest first. Annabelle and Remi sold all of Blackacre to Jerry. Although Annabelle no longer had any interest in Blackacre because she had conveyed her interest to Eloise, Jerry was unaware of that fact. Jerry was a BFP as required

under the statute. First, he paid value for the property. And secondly, based on the facts, he did not have knowledge about Eloise's conveyance. There are no facts to indicate that he had actual knowledge of the conveyance to Eloise. Additionally, Jerry did not have constructive notice of the conveyance to Eloise. A BFP only has a duty to check the grantor-grantee index when the conveyance is made to him. He does not have to subsequently check the index for good title. Therefore, when he checked the index before accepting the property, there was no notice of Eloise's deed. Lastly, Jerry did not have inquiry notice. It doesn't appear that Eloise lived on the land or made any assertions of title over the land. As such, Jerry qualified as BFP because he took without notice and paid value for the land. Also, to prevail under a race-notice statute, the subsequent purchaser must record. Here, Jerry recorded his deed promptly. As a result, Jerry's interest in the land is superior to Eloise's.

C. Addison: Jerry had good title to the property as discussed above and therefore, was free to do what he wanted with the land. He subsequently leased the property to Addison. Addison is a BFP under the recording statutes as well. She is paying value for the lease through rent payments and took without notice of Eloise's interest. Similar to Jerry, there is no actual or inquiry notice for the same reasons as stated above. Additionally, she had no constructive notice. Although Eloise has now recorded the deed, it is not within the chain of title that Addison would have to search. Even if Addison did have notice of Eloise's interest, she would be protected by the Shelter Doctrine, which allows subsequent parties to assume BFP status from the prior conveyance, even if that purchaser did not have BFP status. Here, Jerry was a BFP and recorded his deed; thus, Addison is a BFP under Jerry anyway. However, Jerry's conveyance to Addison was not a fee simple, but rather, a lease for a term of 15 years. Thus, by the terms of the lease, Addison has a possessory interest in the property for the next 15 years. At the time of the lease, she was in privity of contract with Jerry (through the lease) and privity of estate with Jerry (by occupying the land).

D. Jake: Parties are generally free to assign their interests under a contract or lease to another party. An assignment is where a party gives the remaining interest under the lease to a subsequent party. Alternatively, a sublease is where a party gives less than the full interest left on the lease. Thus, the courts are to look at the actual interest conveyed and not what the parties might have labeled it. The lease between Jerry and Addison did not contain an anti-assignment clause. Rather, the lease applied to Addison, her assigns, and successors in land. Thus, an assignment of Addison's interest was valid under the lease. (Even if it wasn't, Jerry would have likely waived the anti-assignment provision because he continued to accept rent from Jake). Additionally, the facts state that Addison transferred "all her remaining interest in Blackacre to Jake." Therefore, it was an assignment, since all her interest, the remaining 10 years on the lease, was transferred to Jake. As such, Jake assumed Addison's interest in the land. As such, Jake is lawful tenant with possessory interest in Blackacre for the next ten years.

E. Conclusion: Because this is a race-notice jurisdiction and the statute applies under the facts of this case, Jerry has superior title to the land. Eloise does not have any interest in the land because she failed to record her interest. Jerry conveyed his possessory interest to Addison, who assigned her interest to Jake. As such, Jerry holds title in fee simple to Blackacre and Jake has

possessory interest in Blackacre for the next ten years under the terms of the lease between Jerry and Addison.

2. Jerry v. Addison & Jake: As mentioned above, there was a valid assignment of Addison's interest to Jake under the lease. Addison, as the assignor, remains in privity of contract with Jerry. Jake, as the assignee, remains in privity of estate with Jerry. The terms of the lease between Jerry and Addison contained two covenants: Addison, on behalf of herself, assigns, and successors was to: (1) obtain hazard insurance that would cover any damage to the property and (2) use any payments for damage to the property only to repair such damage. Neither Addison nor Jake ever obtained hazard insurance covering Blackacre. Unfortunately, lightning struck the property and destroyed a building on the property. Thus, the issue is whether Jerry can prevail on a damages claim based on these covenants against Addison and Jake?

A. Addison: As mentioned, Addison remains in privity of contract with Jerry under the terms of the lease. A novation occurs when two parties agree that one party will no longer be held liable under the terms of the contract. Under the facts, Addison and Jerry entered into a 15-year lease agreement. Five years into the lease, Addison assigned her interest to Jake. There does not appear to be any agreement between Jerry and Jake relieving Addison of her liability under the lease. As such, no novation has occurred. Because Jerry and Addison are still in privity of contract, Jerry can bring claims against Addison for damages for breach of the covenant regarding hazard insurance for Blackacre.

B. Jake: For a covenant to run with the land and bind successors in interests, certain requirements must be met depending on whether the interest in the burdened (servient) or benefited (dominant) estate is being transferred. The servient estate is the estate that incurs the burden of the covenant, while the dominant estate is the one that benefits from the covenant. If the covenant is on the servient estate, the covenant will run with the land if: (1) the parties intended the covenant to run with the land; (2) the covenant touches and concerns the land; (3) the servient estate has notice of the covenant; (4) there exists horizontal privity; and (5) vertical privity. Here, the covenant burdens the lessee estate since Addison and her successors/assigns are required to maintain hazard insurance and use that insurance to repair the damages. Thus, Jerry will have to show the above five elements in order to be able to collect damages from Jake.

i. Intent: The parties to the original agreement must have intended that the covenant be perpetual and continue to bind successors in interest of the land. Here, the parties specifically included in the written lease agreement that "Addison, on behalf of herself, assigns, and successors in interest" will maintain hazard insurance and use the proceeds of such insurance to fix any damage caused by any hazards. Therefore, the express language of the parties in the lease provide that they intended the covenant to bind all successors in interest.

ii. Touch and Concern the Land: To bind successors in interest, the covenants must also touch and concern the land. Courts have held that a covenant touches and concerns the land if it conveys a benefit onto the land. For example, the payment of rent is a sufficient covenant that touches and concerns the land. Here, the covenant is to provide insurance to protect the land in case of damage and to repair the land in the event that such hazardous damage does occur. This

is for the benefit of the land to maintain the premises and therefore, it touches and concerns the land.

iii. Notice: The successor in interest must have notice of the covenant in order to be bound by the terms of it. As mentioned above, there are three types of notice. Here, Jake had constructive notice because Addison recorded the deed in the grantor-grantee index. Therefore, Jake would be able to know the terms of the lease because it was within the chain of title and will be deemed to have constructive notice of the covenants.

iv. Horizontal Privity: Horizontal privity must exist between the original parties to the covenant, such as grantor-grantee or lessor-lessee. A covenant agreement alone is insufficient to establish horizontal privity. Here, Jerry and Addison have horizontal privity as their relationship was that of lessor-lessee. Thus, horizontal privity exists.

v. Vertical Privity: Lastly, vertical privity must exist between the successor in interest and the previous owner of the servient estate. Here, Addison conveyed the remainder of her interest on the lease to Jake. Therefore, there is a vertical privity between Addison and Jake. Thus, all five elements are met for a covenant to run with the land and Jerry may hold Jake liable for damages for the breach of the covenants.

C. Conclusion: Jerry may hold Addison liable for damages for breach of the two covenants because she is in privity of estate with Jerry. Additionally, Jerry will be able to hold Jake liable for damages because the two covenants run with the land and Jake had notice of such covenants.

82 VERY GOOD TO OUTSTANDING VERY THOROUGH.

1)

Ethan's Claim for Declaratory Relief

Ethan's Easement Deeded by Owen was an Express Easement

An easement is a physical interest in the land of another, typically for a specific purpose such as ingress and egress or for utilities. An easement may be implied, prescriptive, necessity, or express.

Implied Easements

When one parcel of land is divided and one of the new parcels is transferred, an implied easement may be created. An implied easement exists when there is a pre-existing use on the land, which benefits one of the new parcels. An easement will not exist until the parcel is divided and one of the parcels is transferred, since the owner cannot have an easement on an undivided parcel. But when one parcel now benefits from the use of part of the other parcel, the benefitting parcel becomes the dominant tenement and the burdened parcel is the servient tenement. There is now an implied easement on the servient tenement, because the parcels have been divided and the two parcels are owned by different people. Because Ethan and Owen were next door neighors, and Owen did not own both parcels when the road was built, there is no implied easement. ✓

Prescriptive Easement

A prescriptive easement exists when there is open, notorious, and continuous use which is hostile to the owner of the servient tenement. As long as the open, notorious, and continuous use continues for longer than the statute of limitations for an action for ejectment (5 years, in many jurisdictions) then a prescriptive easement is created. Here, Ethan and Owen were mutually using the road on a daily basis. The use of the road was not hostile to Owen, so Ethan could not establish the hostility necessary to obtain a prescriptive easement. ✓

Easement by Necessity

An easement by necessity exists when it is necessary for the possessor of the dominant parcel to enter the servient parcel out of necessity. This generally occurs when one parcel is landlocked, and the only way to access it is by crossing the parcel which belongs to another. This easement only exists as long as the necessity does. If and when the landlocked parcel is accessible through a different route, the necessity ends and so does the easement. The facts of this case do not state whether Ethan was able to access his land via another route. It is impossible, therefore, to state whether Ethan has an easement by necessity. ✓ Good.

Express Easement

An express easement is one created by a grantor expressly granting an easement to a grantee, typically in a deed. This is the case here: Owen has granted an easement to Ethan via deed. Even though Ethan did not immediately record the deed, the easement is an express easement.

Ethan's easement was never terminated. Good!

An easement can be terminated by several means: the easement can be relinquished, abandoned, merged, or the necessity which created it can end. Relinquishment of an easement is the most straightforward: the grantee can simply give back his interest to the grantor and the easement will end. In this situation, Ethan would have to record a deed terminating his easement. This, obviously, did not happen since Ethan is now suing to keep the easement in place.

Ethan's easement can also be terminated if he abandons it. A complete physical abandonment would be necessary, and it would have to manifest an intention never to resume using the easement. This would involve Ethan not using the road and allowing it to fall into disrepair. Ethan clearly did not abandon his easement.

Merger occurs when the dominant and servient parcels are granted to the same grantee. The owner of two neighborhing parcels cannot have an easement across his own land, so the easement would terminate if the parcels were unified under common ownership. Ethan remains the owner of his parcel, so there was no merger.

Finally, the easement can be terminated by the end of the necessity which created it. This would be the case if Ethan's easement were one of necessity and was not an express easement AND if Ethan gained another route to access his land. Since the easement was an express easement, this method of termination does not apply. Ethan's easement is therefore still in existence and has not been terminated.

Ethan Recorded the Deed in 2016, so subsequent purchasors had record notice of the easement.

In 2014, Owen deeded the ranch to Destiny. It is unknown whether Destiny knew about Ethan's easement when Owen deeded her the ranch, since Ethan did not record until 2016. The facts do not state whether Destiny ever observed Ethan on the road, whether Owen told her about Ethan's easement, or whether Destiny became aware of Ethan's easement after he recorded his deed in 2016. As to Ethan's claim, whether or not Destiny knew about his easement is unimportant.

Ethan recorded his deed in 2016 - which is before Destiny and Betsy executed their written contract for the purchase of the ranch in 2017, and before the transaction was consummated with the delivery of a deed in 2019. A title search of the ranch conducted in 2016 would have revealed that Owen received the ranch from whoever he purchased it from, that Owen granted the ranch to Destiny, and that Owen granted an easement to Ethan. Because Owen was the grantee in the original transaction, and his identity was known, a dilligent search of a grantor index would have revealed that Owen granted the ranch to Destiny, and that he had granted an easement to Ethan. Despite its (very late) recording, the deed containing the easement from Owen to Ethan was not a wild deed. Therefore, any title search in 2017 would have captured the grant of the easement to Ethan in 2016.

Even if Betsy did not have record notice of Ethan's easement, she had Inquiry Notice

If the title search performed in 2017 failed to reveal Ethan's easement (unlikely - unless no search was actually performed) then Betsy's inspection of the ranch the same year would have put her on inquiry notice that there may have been an easement. She witnessed Ethan traveling the road on the north side of the ranch, presumably to or from his property. Even though she may not have had *actual* notice of Ethan's easement - since she never asked about it - she had enough information that she should have followed up and either asked Destiny about the road, or done a more careful search of the title history of the property to determine whether Ethan was passing by permission, or if he had the right through an easement.

Ethan is likely to prevail in his action for declaratory relief.

Because Ethan recorded the deed granting him an express easement across the north side of the ranch, and Betsy had both record and inquiry notice of the easement, Ethan will prevail and the court will find that the ranch is encumbered by Ethan's easement. Betsy will be ordered to allow Ethan access to the road on the parcel.

2a. Betsy's claim for Breach of Contract

A contract exists when there is an offer, acceptance, and consideration. Here, the offer was for Destiny to sell Betsy the ranch, with no encumbrances, for $100,000. Betsy accepted, and the consideration was $100,000. The contract was in writing, satisfying the statute of frauds requirement (a contract for the sale of land must be in writing.) A valid contract was formed in 2017 between Betsy and Destiny for the sale of the ranch.

Betsy now claims that Destiny breached the contract. A material term of the contract would be that the ranch would be unencumbered at the time of the sale. In 2019, when Destiny deeded the ranch to Betsy, the ranch was encumbered in two ways: the first is Ethan's easement discussed above, and the second is Gas Co.'s utility easement. This is a material breach of the contract.

Betsy could have repudiated the contract at the time she became aware of the breach and refused to tender payment. The contract would then be unenforceable by Destiny. When the deed was tendered in 2019, Betsy knew of Gas Co.'s easement, and should have known about Ethan's easement (discussed above.) But because Betsy accepted the deed, she waived any defects in performance of the contract. Upon payment of the $100,000, Betsy excused Destiny's performance of that part of the contract. Betsy has waived the defect in title as it relates to their contract.

Even if she had not waived that provision of the contract, Betsy would be without remedy. To recover for a breach of contract, Betsy would have to suffer damages. She did not. The fair market value of the ranch, without either encumberance, was $100,000 (the contract price that the parties agreed to in 2017.) The facts state that Ethan's easement decreased the fair market value by $5,000, but that Gas Co.'s easement increased its value by $10,000. The fair market value of the ranch, taking both easements into account, is now $105,000. Betsy has not been harmed, and in fact has benefitted from the presence of the easements since the property is now worth $5,000 more than she paid. Betsy would be unable to prove damages at trial, so even if she could prove a breach, the lack of damages mean she would not recover. GOOD!

2b. Betsy's Claim for Breach of the Covenant

A warranty deed is a guarantee from the seller that the title is marketable. A marketable title is one that is free from encumbrances - like easements, mortgages, liens, and clouds on title (such as ongoing litigation or an unclear chain of title.) The warranty deed conveyed from Destiny to Betsy guaranteed that Destiny: 1) had the interest she purported to convey to Betsy by the deed, and 2) there were no clouds on the title, other claims, liens, mortgages, or easements *except* the one belonging to Gas Co. for the utility lines. The covenant guaranteed that Destiny would defend Betsy against any and all other claims to the title, and would pay her damages if the title turned out not to be marketable.

Betsy has a valid claim for breach of the covenant under the warranty deed. The warranty deed contained a covenant against all encumbrances *except* for Gas Co.'s easement. Because the warranty deed expressly covenanted against all other encumbrances (the only other encumbrance being Ethan's easement) Destiny has breached the covenant in the warranty deed. Destiny will be liable to Betsy for damages - which will be the costs of suit to defend against Ethan's action, and the damages she suffers because she now has an unmarketable title to the ranch.

KIND OF A JUMP TO THIS CONCLUSION. WHY? BOTH EASEMENTS DON'T CREATE AN ISSUE AS TO MARKETABILITY.

87 Excellent!

2)

a. The Zoning Ordinance Prohibiting Drug Offender Group Homes is a Taking

The government is prohibited by the 5th amendment from taking private property for public use without just compensation. The defintion of "taking" has evolved over the last two centuries, and now encompasses far more than taking someone's farm to build a post office.

Takings come in two basic forms: a per se taking, which is a physical seizure of land (or a part of it), and regulatory takings, which are government restrictions on the private use of land. Because Kalamazoo is not phyiscally seizing Susan's property, the potential taking at issue here is a regulatory taking. Regulatory takings can occur through restrictions on land use (typically, zoning ordinances and nuisance statutes.)

Good

Kalamazoo must have the authority of the state to pass any type of zoning ordinance.

An enabling statute must be passed at the state level to allow Kalamazoo to pass local zoning rules that would impose the types of restrictions this particular ordinance imposes. There are no facts one way or the other in the fact pattern to indicate whether there is an enabling statute in effect or not. If there is no enabling statute, then Kalamazoo cannot enforce the ordinance and Susan wins. But the rest of this answer will assume there is a proper enabling statute that allows Kalamazoo to pass this type of ordinance.

A regulation which deprives the landowner of *all* economic benefit is always a taking.

Under the Lucas test, if an ordinance is passed which prevents *all* economic activity on the land, then there is a taking and the government must pay the landowner just compensation. Susan will argue that the ordinance deprives her of the entire economic activity of her land, so the ordinance is a taking and she is entitled to just compensation. However, the ordinance does not prohibit all activity - it simply prohibits Susan from running a group home *for drug addicts.* She would be permitted to run any other kind of group home she likes - perhaps one for sex offenders (since this would not be banned by this particular ordinance.) Or Susan could run a group home for foster children. The point is, Susan is not prohibited from all economic activity at this location, she is simply prohibited from one specific use of her land.

Good

These types of prohibitions are valid, so long as they are implemented to protect the public health, safety, and morals. The ordinance does not touch on any protected class - so as long as the government can demonstrate a rational basis for the ordinance, the ordinance will be upheld. And because the ordinance does not deprive Susan of *all* economic benefit, it is not a taking under the Lucas test and the government does not need to pay Susan just compensation.

A regulation which deprives the landowner of *some* economic benefit might be a taking.

Under the Penn test, a regulation can be a taking if the weighing of several factors favors a taking. The court will need to evaluate this particular regulation, and this particular use case, to determine whether a taking has occurred or not. This is an ad hoc balancing, and is performed on a case by case basis. The court will evaluate the expected economic benefit derived from the planned activity of the landowner, the reduction in economic benefit the landowner will actually realize if the planned activity on the parcel is curtailed, the amount of investment actually made in developing the land for the planned activity, and the competing public benefits. If, after weighing these factors, the court determines that it is just to award compensation, then the court will decide that the regulatory action constitutes a taking and compensation will be owed. Here, the court must weigh Susan's expenditures to construct the group home, how much it will cost her to renovate the group home for other, permissible purposes, the public benefit to curtailing her use of the land in the way she wanted, and the economic value Susan can still reap from the property.

Because there was no grandfather clause, and no amortization period in the ordinance, the Court will find that the factors listed above weigh in Susan's favor. The lack of a grandfather clause severely harms Susan - she will not be allowed to operate the home at all, and her entire investment in the group home will be lost. She will have no opportunity to amortize its costs and the economic impact to Susan would most likely cause the court to rule in her favor, and the city would have to compensate Susan for the group home.

Good

The zoning ordinance would be a taking, but if the City were to declare group homes a nuisance, then there would be no taking.

A nuisance is an unreasonable interference with the use and enjoyment of another's land. If a city declares a certain activity to be a nuisance and prohibits it through an ordinance, then there is no taking. If Kalamazoo were to declare Susan's group home a public nuisance, injurious to public health, safety, and morals, the city could prohibit Susan's group home without it being considered a taking. But it is likely that Susan would fight this ordinance even more aggressively than the new zoning rules - and Susan would likely prevail, since it is unlikely a court would find the simple operation of a group home to be a sufficiently unreasonable interference with the property rights of the public.

The city should be advised to settle with Susan, and not enforce the ordinance against her.

b. Rezoning Only Susan's Lot is impermissible spot zoning and the rezoning is invalid.

Enabling statutes are designed to allow cities and counties to plan their development via general plans. General plans allow predictable development, which benefits everyone. Developers can plan housing developments, shopping centers, industrial parks, and heavy manufacturing areas without worry that each of these zones will encroach upon another. Spot zoning is disallowed, because it defeats the purpose of a general plan. If individual lots are zoned and rezoned at the whim of the zoning board, there is no predictability in development and the general plans are discarded. The rezoning of Susan's lot is the purest form of spot zoning, and the City should reverse its decision to re-zone Susan's lot. If the city feels strongly enough to rezone for multi-family housing, then they should amend the general plan and rezone an entire street or neighborhood.

c. Requiring Susan to apply for a variance or conditional use permit could be an exaction, a type of taking.

A variance is specific permission to deviate from an area's zoning regulations. A variance will generally be required if the landowner intends to use their property in a way that the area is not zoned for, or wishes to build something that does not conform to existing regulations. If an area is zoned for single-family homes, a landowner may apply for a variance to split a large house into a duplex, a type of multi-family housing. Or if the zoning ordinance prohibits buildings more than 1 story high, a variance would be required to construct a new, two story building.

Variances are not meant to bring nonconforming uses back into compliance with zoning regulations. Here, when Susan built her group home, group homes were not prohibited by zoning ordinances. A new ordinance was passed, making Susan's group home nonconforming with the ordinance. If the city required Susan to now apply for a variance to operate her group home, it could constitute an exaction, especially if the city demanded anything more than a nominal fee. If the city requires additional payment or a land grant from Susan to approve her planned use of her property, there must be a nexus between what the city is demanding from her and what the impact of Susan's planned activity is. For example, if Susan's operation of a group home would result in more traffic on the street, then the City may fairly require Susan to pay for additional street repairs. If the City is concerned about crime, then Susan might be required to pay for increased police patrols in the area.

The City could not, however, demand something well in excess of what the anticipated impact of her project would be. The city could not, for example, require Susan to build a new high school or city jail - because those would far exceed any rational relationship with the anticipated impact of her group home. Any grossly disproportionate exaction would be considered a taking.

d. The zoning ordinance prohibiting more than three unrelated people from living together in a single-family dwelling is not unconstitutional.

The government may impose regulations such as the one contemplated by Kalazmazoo if the regulation is designed to promote public health, safety, morals, and general welfare. Government regulations must meet varying levels of justification, depending on the type of activity they prohibit. If the type of activity is protected, like exercise of speech, religion, or assembly, then the government's regulation must pass a strict scrutiny evaluation. The government need to restrict certain activity must be compelling, and the restriction must be tailored as narrowly as possible to achieve the stated goal. If, on the other hand, the regulation does not restrict constitutionally protected activity, then the government need only a rational basis for the restriction.

Here, the zoning ordinance does not discriminate against a protected class of people (it does not discriminate based on age, sex, or race) nor does it regulate a protected activity. The regulation would not be subject to a strict scrutiny test, and the city must only provide a

rational basis for the restrictive zoning. Here, Kalamazoo can give several reasons for the regulation: the regulation was designed to keep crime in the city low. This is a compelling government interest - protection of the public is one of the mandates of local government. A zoning ordinance with this goal in mind, that does not discriminate against protected classes or activities, will always pass constitutional muster. The city may implement this regulation.

3)

1. What tright, title, or interest in Blackacre, if any is held by Eloise, Jerry, Addison, and/or Jake?

JOINT TENANCY:

A joint tenancy is a form of concurrent interest that requires there to be the following 4 unities present: 1) the tenants took at the same time, 2) the tenants took by the same title, 3) the tenants possess identical interests in the property, and 4) each tenant enjoys the right possess the whole.

Further the joint tenancy boasts the right to survivorship, which allows any surviving joint tenants to acquire the interests of any joint tenant that may pass away.

The right to survivorship means that the joint tenancy is not devisable or descendible, however, a joint tenant may unilaterally transfer her interest

Here the facts provide that Annabelle and Remi owned black acre as in fee simple as joint tenant with a right of survivorship.

RACE-NOTICE RECORDING STATUTE-

In a race-notice recording jurisdiction, the party who will take is the first bona-fide purchaser to record. RACE/NOTICE MEANS CAN ONLY TAKE AS BFP IF NO NOTICE AND RECORDER 1ST. NOT QUITE.

BONA FIDE PURCHASER

A Bona Fide Purchaser is a potential purchaser who will offer a viable amount of money for a parcel of land. – NEEDS TO PAY CONSIDERATION AND IN RACE/NOTICE - HAVE NO NOTICE OF OTHERS' INTEREST

A party who receives interest in land by way of gift cannot be considered to be a bonafide purchaser--thus, Eloise will not hold any interest in black acre because she received her interest by gift from Annabelle. & DID NOT RECORD UNTIL AFTER JERRY GOT QC. WHY? (SEE ABOVE BFP DEF.)

Jerry's interest in black acre is that he is the owner of blackacre in fee simple because he purchased blackacre from Annabelle and Remi and even though it was the worse type of

WHY? DESCRIBE DIFF BT GRANT DEED (WARRANTY OF TITLE) & QC W/O WARRANTY

deed for the buyer in the quitclaim deed, he was a bonafide purchaser(it is assumed he payed a viable amount of money for blackacre) that recorded first.

Here Addison, was initally a lessee of Jerry, however she assigned the remaining 10 years of her interest to Jake so she now has become an assignor as it pertains to the shifting of her interest in black acre to Jake. And because Addison transferred all of her interest as opposed to only subleasing to Jake for a period less than her remaining interest, she is no longer in privity of estate with Jerry.

Here, Jake's interest in black acre is that of an assignee that received the remainder of Addison's interest and thus is now a lessee of Jerry. Because Jake, was assigned the remainder of Addison's interest, Jake now takes on all the contractual obligations that Addison had possessed as a lessee of Jerry such as paying rent.

2. Is Jerry likely to prevail in his suit against Addison and Jake?

REAL COVENANT

A real covenant is a promise to do or not do something relating to land.

A covenant must be created by writing.

Here, Addison signed a lease agreement in writing that indicated that her and all her successors and, assigns would obtain hazard insurance and use any payments for damage to teh property only to repair such damage.

DOES THE BURDEN OF THE COVENANT RUN WITH THE LAND?

GOOD!

In order for the burden of the covenant to "run with the land" to successors or assigns the following must be satisfied: 1) the covenant must be in writing, 2) the originally covenanting parties must have had the intent for the promise to be binding on all future successors(or assigns), 3) the promise must touch and concern the land, 4) there must be horizontal and vertical privity, and 5) the successor must have had actual or constructive notice of the covenant.

Here, we know that the covenant was in writing as discussed supra. Second, the language in the covenant itself, indicated the desire and intent for the promise regarding hazard insurance and payments to be binding on all successors and assigns. Third the subject promise is one that

touches and concerns the land because it has to do with the covenanting parties' legal status as it relates to the land, in this case insuring blackacre.

In order for Horizontal privity to exist between the originally covenanting parties, those parties must be in "succession of estate." Succession of estate entails that the parties were in a grantor-grantee relationship, landlord-tenant relationship, among others; and/or that they shared another servitude other than the subject promise. Here, Jerry and Addison were in a landlord-tenant relationship and thus there is horizontal privity.

For there to be vertical privity there must be a non-hostile nexus between Addison and her assign, Jake. The only way there could be a hostile nexus between Jake and Addison would be if Jake had taken over Addison's interest by way of adverse possession. The facts should that Addison voluntarily assigned all of her interest in blackacre to Jake. Thus, there is vertical privity between Addison and Jake.

Finally, there are 3 forms of notice that may inform a successor and they are: 1)actual notice, 2) inquiry notice, and 3) record notice.

"Actual notice" entails that Addison would have directly disclosed the existence of the burden of the covenant to Jake. There is no mention in the facts that Addison disclosed information on the burden to Jake.

However, there are two other forms of constructive notice that may have tipped off Jake of the covenant known as Inquiry notice and Record notice.

Inquiry notice is related to the "lay of the land" and contends that upon reasonable inspection of the land(whether they choose to do so or not), the purchaser should be able to figure out of the existence of the easement.

Here, if Jake "inspected" the property he wouldn't necessarily have found out about the covenant because it is not a tangible thing that one can see or inspect.

Thus, Jake did not have inquiry notice.

Record notice is where the deed of covenant has been properly recorded with the county recorder and is information that is available via basic title search.. Here, Addison promptly recorded her lease of Blackacre with Jerry 5 years before Jake took. Jake could have simply conducted a title search and discovered that the lease was encumbered with a covenant.

Thus, the record notice is enough to satisfy the requirement for notice.

Since all requirements were satisfied, the burden of the covenant to obtain hazard insurance and make payments runs with the land to Jake as Addison's assign.

As discussed supra, because Addison transferred all her interests to Jake and all that entails--she is no longer in privity of estate with Jerry.

Thus, Jerry will be able to prevail in his suit against Jake but will not be able to prevail against Addison.

NOVATION?

END OF EXAM