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Question 1.

Jackie Jones owned a large tract of land within the City of Serenity. Jones wanted to develop that land into two different retirement apartment complexes, one called Active Sunny Acres (on the western half of the tract) and the other Slow Down Acres (on the eastern half of the tract). The idea was to make Active Sunny Acres an attractive location for seniors who were more athletically inclined, featuring a 9-hole golf course, swimming pools, and exercise rooms. The attraction of the adjacent, but separate, development of Slow Down Acres would be its in-house nursing staff, wonderfully stocked library, and many assisted living features for folks who were finding it harder to get around.

After consulting with her architect, it appeared that one obstacle to going ahead with the development was a city zoning ordinance that limited structures in the area that included the proposed Active Sunny Acres and Slow Down Acres to three stories. Jones's plans called for both apartment complexes to be six stories. After talking with the Zoning Commission, it appeared that the City of Serenity was willing to approve a variance on Jones's tract and thus grant permission to build to a six story height upon one condition. The City is concerned about the lack of housing for elderly deaf people. In recent years Serenity had become a popular retirement location for deaf individuals and the City has become aware that many in that population seemed to be discriminated against when they sought housing. Therefore, the City will grant the variance provided that Jones gives the City "a covenant running with the land providing that 4% of the future apartments will be set aside for deaf persons who are otherwise financially acceptable tenants."

Jones is willing to oblige the City, but at about the same time she learns of the City's offer, she encounters financial setbacks that force her to sell part of the tract. As it turns out, Abel Adams, also in the property development business, knows of Jones's plans and would like to go forward with the Active Sunny Acre development. Adams buys the western half of Jones's tract and receives a deed from Jones that includes the following language.

"Title to this land is subject to a covenant to the City of Serenity, said covenant intended to run with the land and to provide that 4% of the future apartments on the land shall be set aside for deaf individuals who are otherwise financially acceptable tenants. This same restriction is to apply to the adjacent eastern portion of the land retained by Jackie Jones."

The deed to Abel Adams was duly recorded. Two months later, Abel Adams—experiencing his own financial set-backs--sells the western portion of the tract to Betty Bond, who goes forward and builds the six-story apartment complex Active Sunny Acres. During this same period Jones, experiencing further financial reverses, sells the eastern portion of the tract to Chris Craft who is also

interested in building an apartment complex. The deed to Craft is silent with respect to any restrictive covenant and Craft's plans only call for a three story apartment complex.

After the Active Sunny Acres complex and Craft's apartment complex are finished and residents have begun to occupy the various units, the City Attorney's Office for Serenity learns that neither Bond's complex nor Craft's complex is in compliance with the covenant requiring that 4% of those apartments be set aside for deaf people. The City Attorney's office has received numerous complaints from financially acceptable deaf tenants who have been turned down by both complexes. Neither apartment complex has any deaf tenant.

You have just been hired as an assistant City Attorney. The City Attorney herself has asked you to look into the possibility of enforcing the covenant. She knows that you have recently taken a property course in which you have sorted through a variety of rules and doctrines that pertain to such enforcement.

Write a memo setting out the law that might govern if the City Attorney seeks to enforce the covenant against Betty Bond and Chris Craft.

Question 2. (See diagram on next page)

Roy and Sarah Sandoval bought a large tract of land in Hatch, New Mexico. Roy had had been a fireman for the City of Albuquerque for thirty years and Sarah had worked for many years as an engineer at Sandia. When both of them retired they decided to move to Hatch and pursue a long-time dream: to grow perfect green chiles. The land they bought seemed ideal: the eastern half of the lot was perfect for growing chile and on the western half of the property was a nice house. Moreover, on the western half there was a small spring-fed pond (unusual for Hatch, but there you have it).

A gravel road connected the house to a public highway that ran next to the southeastern corner of the tract. The only other means of public access to the tract was a county road that dead-ended on the northern property line, in the middle of the eastern half of the tract. The prior owners of the property had not used the county road for access, but rather the gravel road that connected with the highway.

Soon after acquiring their property the Sandovals got busy. Roy oversaw the planting of chiles north and south of the gravel road on the eastern half of the tract and Sarah supervised the creation of a system of irrigation ditches from the pond to supply water to irrigate the chiles. For several years all went well; the Sandovals tended their chiles and produced fine specimens of that noble pepper. Unfortunately, the cost of their farming was more than they expected and their retirement income was less than they had anticipated. To avoid losing everything, they decided to sell the eastern portion of their property to Bill Banks, a chile grower himself who owned a number of other properties in the area.

Soon after buying the eastern half of the Sandoval's property, Banks leased the property he just bought to his nephew Paul Gruen—an aspiring chile farmer himself—for a ten year term. After two years, Gruen grew tired of the chile business and transferred his interest in the property to Joe Franaszek, a retired lawyer from California who had also harbored a life-long dream to grow the famous Hatch chiles. The writing from Gruen to Franaszek provided that "Gruen hereby transfers, assigns and subleases said property" for a period of five years.

About the time of the transfer to Joe Franaszek, Roy and Sarah began to really miss not being involved in the chile growing business. Their financial situation had somewhat improved and they felt they would be able to grow and market their chiles more economically based on what they had learned during their first try. They began cultivating chiles on the southern portion of their lot, but in order to really turn a profit they needed to put more land under cultivation. They end up buying a substantial piece of land south of their existing lot and planted it with chiles. The much larger tract of new land required a substantial work force

and the increased traffic on the gravel road really begins to annoy Joe. He claims the added traffic is interfering with his cultivation of chiles (he, after all, must cross back and forth between the gravel road to tend the northern and southern portions of his field).

The situation between Joe and the Sandovals begins to deteriorate and matters come to a head when Joe claims the Sandovals can no longer use the gravel road. In reaction to Joe's threats and declared intent to put up a chain fence across the gravel road, the Sandovals damm up the irrigation ditch that supplies the chiles Joe is cultivating.

Joe sues the Sandovals and the Sandovals counter-claim. The matter is now before Judge Fritzer. You have just been hired as the judge's law clerk. **Outline the merits and legal issues of the Sandovals claim for a right to use the gravel road and the merits and legal issues in Joe's claim to water from the pond.** (The following diagram illustrates the land in question.)

Question 3.

Bill and Janet McCabe had been searching for their dream house for sometime. They wanted something with a rural “feel” and with sufficient land for their three children, Jack, aged four, Jane, aged 11, and Bill, Jr., age 16 and their three Labrador dogs to roam and play. Moreover, they wanted to be near good schools for the children and within a reasonable commute to their work.

The McCabe’s thought they found the perfect place: a comfortable cottage on two acres with a large pottery shed. The only problem was the price that the owner, Tom Clark, wanted for the property—it was slightly more than the McCabe’s could afford. Although Clark wanted to sell the property, the McCabe’s eagerness led him to agree to a three year rental at \$800/month. Not only did the lease specify the rental terms, but it provided that at the end of the lease, the McCabe’s would have a first option to buy the property at Clark’s original purchase price plus 3%. The lease also provided that in the event the McCabe’s exercised their option to buy, Clark agreed to apply the amount of rent paid to the purchase price. The McCabe’s believed that during the rental period they would be able to save sufficient money to qualify for a loan that would allow them to meet Clark’s price.

Clark had gotten the two acres with the cottage from his recently deceased sister, who willed him the property. Clark’s sister had been in the process of putting in a swimming pool at one corner of the lot. A twelve foot pit had been excavated and pool floor laid, but the project had been abandoned with Clark’s sister’s death. Although Clark was close to his sister, he hadn’t spent much time at her place, especially during the past several years. Clark lived in a home across town.

The McCabe’s moved into the cottage and one of their first projects was putting up a fence around the uncompleted swimming pool. For the first two and a half years things were fine. About that time, however, the McCabe’s discovered that the cottage roof began to leak. They told Clark about the problem, who grumbled “This is what I get for renting the place instead of selling it.” Nonetheless, after the leak got worse and the McCabe’s called again, Clark sent a handyman over to fix the problem. The patch job, however, did not fix the leak; indeed, it seemed to make it worse. What had been a bad leak in the living room area spread to include one of the children’s bedrooms. For the last three months of the lease, the McCabe’s were unable to use the living room and one of the bedrooms due to the rainy season. When Clark called to see if the McCabe’s wanted to buy the cottage under their option, Bill McCabe mentioned the worsening condition with respect to the roof. Clark didn’t respond to hints that a better roofing job would be appreciated and the McCabe’s didn’t press the issue because they didn’t want to jeopardize their chance to buy the place which they

still loved despite the roof problem. They continued paying rent until the end of the lease term.

One month before the end of the lease something even more unfortunate occurred. Janet McCabe, an accomplished pottery-maker, had begun to hold pottery classes in the pottery shed a year after the McCabe's moved in. The tuition from two classes of ten students on the weekends yielded a nice supplement to Janet's regular job. On one Saturday, four weeks before the end of the lease, little Jack McCabe (now almost seven years old) wandered off unnoticed from the pottery shed with the son of one of Janet's pottery students. The two boys climbed through a hole in the fence around the pit, fell in and each broke an arm and a leg. The boys are fine and will make a full recovery, but it was a traumatic event just at the time the McCabe's were making their decision about whether to exercise their purchase option.

The McCabe's want to buy the cottage, but want a new roof on the cottage. Clark tried to persuade them to let him get a better repair job on the roof, but the McCabe's were adamant. On the last day of the lease, the McCabe's and Clark sign a contract for the sale of the property, stipulating that Clark will pay for the installation of a new roof. Closing was to occur in one week and work on the roof to begin immediately thereafter. One week later, the McCabe's receive title to the property from Clark and decided to take a three week vacation to get away from the smell and noise of the roofers. Before they leave, Bill McCabe puts the deed in a safe deposit box, intending to file it with the Recorder's Office when they return home.

A week after the McCabe's have left on their vacation, Clark goes to the property to see how the roofers are doing. They've encountered some unexpected "problems" in doing the job and Clark is thoroughly annoyed that the McCabe's have brought this headache his way. As he converses with the roofers, Dan Quick stops his car and asks if Clark is the owner of the property. Clark replies he is and he's having a new roof put on his place. When Dan confesses that he buys property on instinct, Clark gives him a tour of the property. True to his name, Dan makes Clark an offer for the property (above the amount the McCabe's have agreed to pay) and Clark accepts. Although he works fast, Dan is no fool; he agrees to accept Clark's deed for the property only after checking the Recorder's Office to make sure title is in Clark's name.

Two days later, having verified Clark as the record owner, Dan gives Clark his promissory note for the purchase price and Clark gives Dan a deed for the property. Soon thereafter Dan is called unexpectedly out of town on business and when he returns he goes to check on his property. He's somewhat surprised to see the McCabe's in the front yard (they've just come back from their vacation) and to learn that they've bought the house from Clark. Dan congratulates them on their

taste in property, gets back into his car and quickly drives to the Recorder's Office and records his deed. The jurisdiction in which all this happens has a Race/Notice Recording Statute.

Two days later, Bill McCabe gets his deed out of the safe deposit box and records his deed. Thereafter, Dan calls the McCabe's and claims to be entitled to the property. The McCabe's are flabbergasted and incensed at Clark. On top of everything else they have learned that the roofing problems stemmed from a structural defect in the cottage and not simply the result of normal wear and tear.

They come to your law office and explain the forgoing. **They want your advice about what legal rights they have in suing Clark, what claim the parents of Janet's student who was injured has against Clark, and who is entitled to the property? Advise them.**