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Property II Exam (Spring 2001)

1. Oliver owns four lots of property near the Snowy Mountains and next to Lake Pleasant. Lots 2 and 4 are bounded on the east by Public Highway 101 with the Snowy Mountains further to the east in the distance. Lots 1 and 3 are bounded on the west by Lake Pleasant, a large regional lake around which people have build both permanent and recreational homes. See the following diagram for the configuration of Oliver's four lots:

Oliver properly executes a deed conveying Lot 2 to Able. The deed expressly provides that "Oliver retains a right of way across Lot 2 to access Lots 1 and 3." The deed is not recorded. Thereafter, Able properly executes a deed conveying Lot 2 to Barker for valuable consideration. There is no mention of Oliver's right of way in the deed between Able and Barker. Moreover, there is no evidence on Lot 2 of Oliver's right to cross Lot 2 because Oliver has always used and continues to use the gravel road across Lot 4 to gain access between Lots 1 and 3 and the public highway despite Oliver's right to cross Lot 2.

Subsequently, Oliver properly and validly conveys Lot 4 to Charlene. The deed expressly provides that "the following provisions run with the land conveyed: no structure taller than 20 feet may be erected on the property, so as to maintain, to the extent reasonably possible, the beautiful views of the Snowy Mountains." The deed is recorded.

Thereafter, Charlene properly and validly contracts to sell Lot 4 of Denise. The contract provides that Charlene "will provide good merchantable title, free and clear of

all encumbrances except special taxes subject, however, to all restrictions of record applying to the property.”

Assume the jurisdiction has a grantor-grantee recording index and a notice recording act. Also assume that Denise has not yet closed on the contract with Charlene to sell Lot 4 and that the reason Denise wants to buy Lot 4 is to build a four story apartment complex on Lot 4. Unknown to Denise, the four lots are part of an area zoned with density limitations that will preclude her plans for constructing an apartment complex.

Independently, both Oliver and Denise come to visit you.

- 1. Oliver wants to know what right, if any, he has to cross Lots 2 and/or 4 to access Lots 1 and 3?**
- 2. Denise wants to know what her rights and obligations are under the contract with Charlene.**

Please advise them.

2. Professor Black is a property law teacher wrestling with “the Swamp” and who is trying to help a good friend, Professor French, suggest changes to the current state of the common law dealing with easements, real covenants and equitable servitudes. Recently, Professor French has asked Black to help her prepare for an upcoming meeting of property law teachers at the American Law Institute where this subject will be the topic of discussion.

As the research assistant to Professor Black, **you have been asked to write a short memo (no more than two double-spaced typed pages) addressing the following question: “Why should easements, real covenants, and equitable servitudes be unified into a single servitude and what reasons in opposition to this idea might be anticipated?”**

The reason Professor Black only wants a short memo on the general question of servitudes is that she also wants you to prepare a memo on some pressing personal matters dealing with issues of property law. Professor Black’s spouse has sought over the years to supplement the family income by making investments in local real estate. Professor Black’s husband, an archeologist, has left for an extended dig in southern Mexico, leaving the management and investment of those real estate concerns to his wife during his absence. Unfortunately, the lure of servitudes has been more appealing to Professor Black than the money grubbing details of overseeing the property holdings.

Professor Black wants **you to write a second memo advising her about the current state of affairs of her and her husband’s real estate holdings.**

The situation is as follows. Black and her husband have a primary residence but also own two houses that they bought as rental properties.

Three months ago Professor Black and her husband rented one of the houses (four rooms plus a detached garage) located near the university area to Dan Dotcom. The lease was for a one year term at \$12,000, payable at \$1,000 per month. Dan hopes to develop a company that will make him rich, he’s employed four graduates students from the university to help him develop the software and a marketing strategy for his business. The idea is to develop an on-line, interactive web site called “Property U” where customers can log-on and get a lot of information about property law issues, how to buy a house, finance land investments etc. One of the reasons Black leased the house to Dan was her curiosity about the property web-site idea.

The house’s proximity to the university is useful to Dan because he plans to rely on some of the university faculty as consultants and the space of the house is sufficient for the present needs of the nascent business, namely computer stations for five people. Neither Dan nor his employees live in the house, though they use the kitchen to fix snacks and on occasion suppers when they work late.

All was going well until about a month ago, when Dan and his staff experienced intermittent power outages which turned out not to be the result of the power company or the failure to pay the electrical bill, but rather the result of old wiring. The loss of electricity was creating real problems for Dan and he notified Black's husband. Black's husband said he'd "look into it," in fact, he did send an electrician out to the house, but no repairs were made. A week after reporting the problem to Black's husband, Dan called him again to complain about the situation and was told that repairing the wiring would pretty expensive and that he wasn't sure when he'd be able to arrange for re-wiring. Soon thereafter, Black's husband left for his "dig" in Mexico and Dan is still dealing with on-again, off-again electricity.

About the same time as the electrical problems surfaced, Professor Black—faced with a mounting collection of xeroxes and other research materials on servitudes and needing more space to store that stuff—drove over to the house Dan was renting, entered the locked garage, stored the material, and replaced the lock with a new one for which Dan does not have a key. When Dan discovered this he was annoyed, but as he wasn't really using the garage he didn't really want to make a big fuss; besides, he was more concerned about the electrical situation.

Dan has stopped paying rent and he's threatening to sue Professor Black under the lease.

With respect to the second rental property, it had long been vacant, but just after Black's husband took off for Mexico (about 2 weeks ago), Professor Black was contacted by Sarah Superstar, recently hired by the University. Sarah wanted to buy a house fast. The second rental property, a 3-bedroom house with attached garage, was also conveniently located in the University area. Sarah wanted to see the house, and Professor Black tore herself away from her beloved servitudes to give Sarah a tour of the house.

Sarah decided the house was just what she wanted, "a nice quiet place near the University" as she expressed it to Black. Sarah and Black signed a printed contract for the sale of the house, with closing to occur in two weeks. Since signing the contract, Sarah went back to the house one weekend and discovered to her horror that she was surrounded by "frat houses" and that the racket (from what she learned were regular parties at the frat houses) undermined her objective of a quiet home for a book-minded academic.

Just a few days ago, activities from one of the frat houses led to a competition to see how far "bottle-rockets" (a type of firecracker) could travel. One of them, by accident, landed on the roof of the garage of the house Sarah is buying and ignited a fire that destroyed much of the garage before the fire department was able to extinguish the fire.

As if this were not enough, it turns out that her home was directly in the guide path of commercial planes landing at the local airport. Anticipating the roar of the jets and the beer busts, Sarah wants out of her contract.

Professor Black, whose single-minded interest in property revolves around the theory of servitudes, **wants you to prepare a memo assessing where she stands legally with respect to the lease to Dan and the sale to Sarah.**