

Essay Question No. 8

Answer this question in booklet #8

Al and Betsy owned adjoining lots, 2 and 3 respectively, in a remote part of the state that is road-accessible. Al decided to build a cabin on his lot. Al realized that because of the terrain, access to his cabin would be easier if he could build the driveway over a part of Betsy's lot. Al asked Betsy if she would give him an easement for his driveway. Betsy agreed that Al could have an easement for \$5000. Al drafted a deed for recording the easement. In it he described the easement, but mistakenly listed lot 1 as the burdened lot. Betsy did not own lot 1, Charlie did. Charlie's lot 1 was undeveloped. Betsy, as grantor of the easement, executed the deed and Al recorded it at the local recorder's office. Betsy did not notice the mistake when she was executing the deed. Al paid Betsy the \$5000, and Al built the paved driveway on her lot.

Four years later, Betsy decided to sell her lot to Paul. Paul visited the lot with Betsy and walked around it before purchasing the lot. Paul and Betsy walked the property lines and, necessarily, walked across a portion of Al's driveway that crossed lot 3. Paul did not ask Betsy about Al's driveway.

Shortly after purchasing lot 3, Paul called Al and told him that he needed to remove the driveway from lot 3. Al told Paul about the easement Betsy had granted him. Paul responded that because the easement was not recorded lot 3 was not burdened by the easement. Al researched the deed and realized his and Betsy's error in the deed. Al informed Charlie about the problem. Paul filed a quiet title action against Al and Betsy to remove Al's claim of an easement from lot 3.

1. What legal arguments should Al raise to enforce his driveway easement (and in defense of Paul's quiet title action)? Explain.
2. Is Charlie's lot burdened by the easement recorded against it? Explain.