ESSAY QUESTION NO. 4

Answer this question in booklet No. 4

Marie had two college-aged sons, Ron and Bill. When they graduated from high school Marie had promised them she would give them each a piece of land when they finished college. Bill struggled in college and dropped out almost immediately. After several years of working minimum wage jobs, Bill begged his mother for financial help. Marie felt obliged to help Bill and gave him the piece of land, Lot 57, she had intended to give him when he graduated from college. Bill promptly sold Lot 57 to pay off some debts he had.

When Ron was about to graduate from college Marie drafted a quit claim deed for another piece of property that said:

> I, Marie, for and in consideration of my son Bill's accomplishments in college, convey and quitclaim to my son all interest which I have, if any, in the following described real estate Lot 1, Block 3, Yukon Subdivision, located in the State of Alaska. Dated this 3rd day of January 2006.

Alone in her house, she signed the deed and left it in a pile of papers on her desk.

When Bill visited his mother later that week, he looked through papers on her desk searching for his mail that was sometimes delivered to her house. He found the deed in the pile of papers and took it. He later called his mother and thanked her for the deed. When Marie realized what had transpired she consulted a lawyer about the situation.

- Analyze and explain whether the deed that Marie drafted, and whether the process by which Bill obtained the deed, was legally sufficient to convey title from Marie to Bill.

GRADER'S GUIDE

***** QUESTION NO. 4 *****

SUBJECT: REAL PROPERTY

Analyze and explain the arguments that the deed Marie drafted and the process by which Bill obtained the deed was, or was not, legally sufficient to convey title from Marie to Bill. [100 points]

Alaska statutes govern the construction and effect of deeds transferring interests in real property. AS 34.15.010 governs the legal requirements of a deed for conveyance of real property interests in Alaska. It provides:

(a) A conveyance of land, or of an estate or interest in land, may be made by deed, signed and sealed by the person from whom the estate or interest is intended to pass, who is of lawful age . . . and acknowledged or proved, and recorded as directed in this chapter, without any other act or ceremony whatever.

AS 34.15.040 provides the form of a quitclaim deed:

(a) A quitclaim deed may be substantially in the following form:

"The grantor (here insert the name or names and place of residence), for and in consideration of (here insert consideration) conveys and quitclaims to (here insert grantee's name or names) all interest which I (we) have, if any, in the following described real estate (here insert description), located in the State of Alaska.

"Dated this . . . . . day of . . . . . ., 2. . . . . ."

(b) A deed substantially in the form set out in (a) of this section, when otherwise duly executed, is considered a sufficient conveyance, release and quitclaim to the grantee and the heirs and assigns of the grantee, in fee of all the existing legal and equitable rights of the grantor in the premises described in the deed.

AS 34.15.050 describes the effect of a deed in the prescribed quitclaim form: "A deed of quitclaim and release for the form in common use is sufficient to pass all the real estate which the grantor can convey by a deed of bargain and sale."

In Alaska, a valid deed must: (1) identify the real property interest to be conveyed; (2) identify the grantor and grantee; (3) be executed by the grantee and properly acknowledged; and (4) be properly delivered.[1] In interpreting deeds, the Alaska Supreme Court has stated:

[1] *See also* Am.Jur.2d Deeds § 12 (2006) (footnotes omitted) ("If a grantor and a grantee can be determined from the whole of the instrument, and the document is signed and acknowledged by the grantor, then the document accomplishes a legally effective "conveyance". A deed must be drawn in such language as to indicate who is granting the property, to whom it is granted, and what the property is, and it is usual for the conveyancer to set forth what the deed is intended to express in some formal manner.").

The proper first step in deed construction is to look to the four corners of the document to see if it unambiguously presents the parties' intent . . . .

If the deed is ambiguous, the next step in determining the parties' intent is a consideration of the facts and circumstances surrounding the conveyance. *Norken Corp. v. McGahan*, 823 P.2d 622, 626 (1991).

In reviewing Marie's deed three issues arise: whether the deed identifies the grantee; whether the deed was properly acknowledged; and whether the deed was properly delivered.

a. Identity of the grantee. [40 points]

A deed must identify a grantee. AS 34.15.010, 34.15.040; *Roeckl v. Federal Deposit Ins. Co.*, 885 P.2d 1067, 1071 (1994). However, the Alaska Supreme Court has stated that:

The particular manner in which the deed names the grantee is not critical . . . : the grantee need only be "so designated and described as to distinguish him [or her] from the rest of the world."

Roeckl, 885 P.2d at 1071 (*quoting* 6 George W. Thompson, Commentaries on the Modern Law of Real Property § 3006, at 349 (John S. Grimes repl. ed. 1962)). In the event that a deed names a grantee but there is ambiguity as to the particular identity of the grantee: "[p]arol evidence is admissible to identify the grantee, and a deed is sufficient if the grantee can be identified by extrinsic evidence." *Id.* (*quoting* 6 Thompson at 342).

Here, Marie's deed provides:

> I, Marie, for and in consideration of my son Bill's accomplishments in college, **convey and quitclaim to my son all interest which I have**, if any, in the following described real estate Lot 1, Block 3, Yukon Subdivision, located in the State of Alaska. Dated this 3rd day of January 2006.

(emphasis added) The highlighted language is the conveyance language which identifies the grantee: "my son". Of course, Marie had two sons, Bill and Ron.

The deed also provides more information as to the identity of which son she intended to grant the interest to, but that information is contradictory. On the one hand, the deed identifies her son Bill by name. On the other, it provides that she is conveying her interest in consideration of her son's accomplishments in college. But the facts provide that only Ron was successful and graduated college; the facts state that Bill started college but dropped out almost immediately. Further, the facts provide that Marie had made a promise to give each of her sons a piece of property upon their

respective graduations from college. Only Ron graduated from college; moreover, Marie had already given Bill the piece of property, Lot 57, she had intended to give him for his graduation.

Here, a court would likely conclude that the deed was ambiguous in its granting language, turn to parol evidence and conclude that Marie intended to convey her interest to Ron (and not Bill). Because the court would be able to identify the intended grantee from the available parol evidence, it would not hold the deed to be defective for lack of an identifiable grantee. It would not however conclude that the grantee was Bill.

b. The deed was not acknowledged. [20 points]

AS 34.15.010 governs the legal requirements of a deed for conveyance of real property interests in Alaska and requires that a deed be "acknowledged or proved."

Alaska's Code of Civil Procedure defines the process of an acknowledgement. AS 09.63.010 defines who can take an acknowledgement: "The following persons may take an oath, affirmation, or acknowledgment in the state," and lists a number of public officials who can take the acknowledgment.

AS 09.63.070 provides the required process for a proper acknowledgement:

The person taking an acknowledgment shall certify that

(1) the person acknowledging appeared before the person taking the acknowledgment and acknowledged that the person executed the instrument; and

(2) the person acknowledging was known to the person taking the acknowledgment or the person taking the acknowledgment had satisfactory evidence that the person acknowledging was the person described in and who executed the instrument.

Here, the facts indicate that Marie did not have the deed acknowledged and that no one witnessed the execution of the deed. In general, a deed that is not acknowledged or proved is defective. *See*1997 Alaska Op. Atty. Gen. 157 at 6 ("If a document purports to transfer an interest in real property from the grantor to the grantee . . . an acknowledgement is required."); AS 34.15.210 (regarding requirements for proving deeds).

There is an exception to this rule established by Alaska case law in Smalley v. Juneau Clinic Bldg. Corp., 493 P.2d 1296 (Alaska 1972). There, the Supreme Court held that an unacknowledged lease was binding between the grantor and grantee but not as to third parties: "[W]e think it is a reasonable premise that the parties to agreements such as the [unacknowledged] lease in this case

consider themselves bound by such agreements." *Id.* at 1301. The Court reviewed the legislative intent of the statute and concluded it was possible that the legislature "intended that no instrument that was unacknowledged could be recorded, although if signed by the parties it would be valid as between them." *Id.*

Here, it is a close call as to whether a court would consider the deed defective on its face for lack of acknowledgement or proof. On the one hand, the statute requires acknowledgment and Bill could not produce any evidence as to the validity of the deed other than possibly Marie's own testimony. On the other hand, the *Smalley* case can be read to support an argument that as between Bill and Marie the acknowledgement requirement is not applicable. It is enough for applicants to identify the issue that deeds generally require acknowledgment.

c. Was the deed properly delivered? [40 points]

In order to be effective a deed must be delivered to the grantee. *See Rausch v. Devine*, 80 P.3d 733, (Alaska 2003). Justice Rabinowitz in a dissent explained the concept of delivery:

Under the common law a deed had to be "delivered" from grantor to grantee before it became effective. See 6A R. Powell, The Law of Real Property P 891, at 81-95 (Rohan rev. ed. 1980). Although there is no statute or decision in Alaska specifically adopting the delivery requirement, common law would likely apply in this case.

However, it is hornbook law that a deed need not be physically transferred to the grantee for there to be a valid delivery. Rather, delivery is a term of art for an intent by the grantor that ownership of the property be transferred to the grantee. 6A R. Powell, supra, at 81-96; Reed v. Reed, 261 Or. 281, 493 P.2d 728 (1972). In this case there are two rebuttable presumptions about delivery that conflict: that delivery presumptively occurs when a deed is recorded, and that delivery presumptively has not occurred when the deed remains in the grantor's possession. 6A R. Powell, supra, at 81-104, 81- 106.

Lown v. Nichols Plumbing & Heating, Inc., 634 P.2d 554, 557 (1981) (Rabinowitz J. dissenting) (internal footnote omitted). The Alaska Supreme Court in *Rausch*, 80 P.3d at 738, also explained the concept of delivery:

The proper transfer of title under a deed must include an actual or symbolic delivery of the deed *accompanied by the intention of the grantor to transfer title without any reservation of control*. . . A duly executed and recorded deed ordinarily raises a rebuttable presumption of delivery with present intent of passing title and possession, although the recording of the deed does not

necessarily constitute delivery if the facts and circumstances indicate that the grantor's intention was otherwise.

(emphasis added). Normally, physical possession of a deed by the grantee or the recording of the deed is sufficient to prove delivery. *See Bennis v. Alexander*, 574 P.2d 450, 452 (1978).

Here, Bill would likely argue that he acquired the deed because his mother left it in a place he was likely to find it – in the same place she would keep mail delivered to him at her address – and that his physical possession of the deed is sufficient to prove delivery. However, the facts indicate that Marie had no intent to actually or symbolically deliver the deed (or title) to Bill. The facts indicate that she mistakenly wrote Bill's name in the deed instead of his brother Ron's name. As with the question of the identity of the grantee, the facts indicate an intent to transfer title to Ron. This conclusion would likely rebut any intent of "delivery" to Bill.