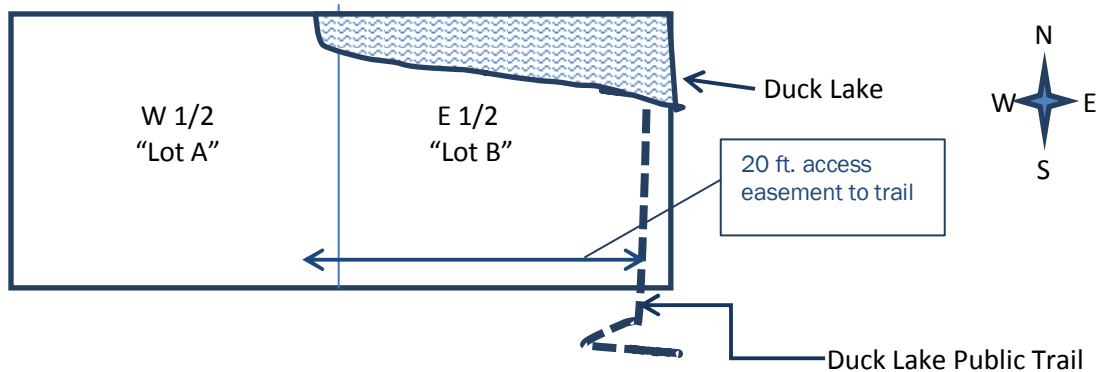


ESSAY QUESTION NO. 9

Answer the question in booklet No. 9

Sara Seller had good, unencumbered title to two validly platted lots of undeveloped land on Duck Lake, Alaska:



Sara offered to sell and Bob Beyer agreed to buy Lot A together with an access easement across Lot B to the Duck Lake trail for \$26,000 cash. Sara prepared a valid quitclaim deed conveying Lot A, together with a 20-foot access easement along the southern border of Lot B as far as the Duck Lake Public Trail, to Bob Beyer. Bob gave Sara \$26,000 cash; Sara signed and dated the quitclaim deed before a notary public, who certified that Sara had acknowledged the deed conveying Lot A to Bob Beyer. Sara gave the deed to Bob who duly recorded it on Aug. 3, 1978.

In 1983, Bob married Wren and they bought and lived in a house in Anchorage. Bob and Wren built a small cabin and barn on Lot A in 1991 using their joint savings. Bob lived in the cabin while Wren lived and worked in Anchorage. Wren sent Bob a share of her paychecks and brought him supplies every month. On weekends and holidays, Wren stayed with Bob at the Duck Lake cabin.

In 2005, Sara sold Lot B to Nancy Naybor by quitclaim deed. Nancy built a cabin on Lot B and soon began harassing Bob whenever he used his access easement.

On New Year's Day 2013, Wren and Bob celebrated Wren's retirement and planned her move to the Duck Lake Cabin. In March 2013, Wren and Bob sold their Anchorage house and Wren joined Bob, living full-time at the cabin. Wren soon noticed Nancy no longer harassed Bob for using the easement. Bob said that he solved the "Nancy problem" – by drafting a quitclaim deed conveying Lot A to Nancy effective only upon Bob's death. Bob told Wren that although he signed the quitclaim deed on February 1, 2013 and let Nancy read it, the deed was not acknowledged or witnessed. "I kept it and put it in the

cookie tin on the window shelf,” he said, “I’ll never record it. It’s just to get her to leave us alone! I wrote all about it in my diary.”

Bob Beyer died suddenly on June 10, leaving no heirs except Wren. At the reception following Bob’s funeral, Nancy told Wren she took the quitclaim deed from the tin during the funeral. “Move out Wren or I’ll throw you out!” she yelled. Back at the cabin, Wren opened the tin. The deed was gone but she found a valid will by Bob Beyer dated April 15, 2013, leaving “all I possess, including Lot A to my wife Wren.”

Assume Nancy has NOT recorded the quitclaim deed Bob signed February 1.

1. Did Bob’s quitclaim deed result in a valid transfer of Lot A to Nancy? Please include the family home (homestead) statute in your discussion.

2. What legal actions are available to Wren to enforce her ownership interest in Lot A? Do NOT address probate issue(s).

GRADERS' GUIDE
***** QUESTION NO. 9 *****
REAL PROPERTY

1. Did Bob's quitclaim deed result in a valid transfer of Lot A to Nancy? Please include the family home (homestead) statute in your discussion. (80 points)

This question tests examinee's understanding of basic property conveyance principles. The examinee should conclude that there was no valid transfer.

A. The quitclaim deed's legal description was accurate and did not exceed the scope of what Bob owned.

Under Alaska law, a quitclaim deed conveys only the interest the property grantor legally has. AS 34.15.050. Sara used a quitclaim deed to grant Bob title to Lot A, plus a 20 foot access easement along the southern boundary of Lot B as far as the Duck Lake Public Trail. Sara gave no warranty of title, but the facts state that Sara had "good, unencumbered title" to give. Therefore, the person should assume that Bob had a good, unencumbered title to Lot A to convey. Therefore, the description of the property in the quitclaim deed Bob used to purport to convey title of Lot A to Nancy was not legally flawed.

B. Formal requirements for a valid deed are not met.

Alaska Statutes 34.15 requires a conveyance to meet certain formal requirements, including:

1. Signature by the Grantor or agent or attorney of grantor,
2. Acknowledgement by Grantor before a person authorized by AS 09.63.010 (notary public, judge or court clerk, municipal clerk, US postmaster, etc.) (or, for deeds executed before 1953, 2 witnesses) and,
3. Recording (to make effective as against persons not parties to the deed).

Hence, "SIGNED, SEALED, DELIVERED and I'm yours" in the old Stevie Wonder song.

Bob's quitclaim deed to Nancy was signed by Bob, but it was not acknowledged. However, the failure to meet formal requirement of acknowledgment does not automatically invalidate a deed as between the

parties, but it is a mandatory requirement barring the deed from recordation. Smalley v. Juneau Clinic Bldg. Corp., 493 P.2d 1296 (Alaska 1972).

C. Delivery of deed failed.

Alaska law requires that a deed be signed, sealed and delivered. Smalley. The critical element of delivery was not met in this case. Bob never delivered the deed to Nancy. He told Wren that he showed it to Nancy and allowed her to read it, but Bob maintained possession of the deed until his death.

Nor had the deed ever been recorded by Bob or Nancy. Pursuant to AS 40.17.090(b):

(b) An acknowledged and recorded signed document relating to title to real property creates presumptions with respect to title that :

...

(3) delivery of the document occurred notwithstanding a lapse of time between dates on the document and the date of recording;

Therefore, without recording, there is no presumption of delivery. Nancy must prove valid delivery.

Under the facts, there was clearly no physical delivery of the deed. That is, Bob never gave the deed to Nancy by manually transferring it to her. Nancy entered the house without permission, after Bob's death, and took the deed from the tin (a place of concealment). . There was no "conditional transfer" by giving the deed to a third party (i.e., an escrow agent) to be transferred to Nancy upon his death. By retaining the deed, Bob retained the power to destroy it and the right to revoke the deed and give Lot A to Wren.

Bob's diary entry describing his lack of intent to convey property to Nancy and his later will, would be evidence demonstrating an intent to retain the property and to leave it to Wren. See Rausch v. Devine, 80 P.3d 733 (Alaska 2003).

D. Failure to include non-titled spouse as signatory to the deed. [Family Home/Homestead Statute]

AS 34.15.010 requires that a husband and wife join in the conveyance of a family home. Bob's quitclaim deed to Nancy did not include Bob's wife, Wren, as a signatory to the conveyance. This failure is fatal if Lot A can be shown to be the "family home" and Wren takes actions to enforce her rights within one year of February 1, 2013.

Wren was Bob's spouse, but her name was not on the title. But the statute does not require that the spouse's name be on the legal title as a precondition to a property being considered the "family home." A candidate should be able to list some facts that make the property a "family home" notwithstanding that her name is not on the title and that Bob was not married to Wren when he purchased Lot A. Facts include Wren's support of Bob, her contribution of savings to building the cabin and barn, and her residence with Bob at the time of his death, the sale of the other house (making the cabin the "principal residence"), as well as the duration of marriage itself. However, the statute also states that a conveyance without the non-titled spouse's signature is valid unless the non-titled spouse takes action in one year of the conveyance. See *Gottstein v. Kraft*, 274 P.3d 469 (Alaska 2012).

Additional Information to Assist Graders:

Adverse Possession: If an examinee discusses adverse possession, the analysis would be: Sara granted the access easement across Lot B to Bob without reservation in 1978. In the later quitclaim deed of Lot B to Nancy, Sara could convey ONLY what she had at the time of the conveyance. Thus, Nancy took Lot B subject to a valid easement of access used by Bob. If an examinee states that, assuming Nancy's 5-year harassment was a possible effort to "hold adversely" against Bob's easement, Nancy's effort was not long enough to defeat the easement under Alaska law, AS 09.45.052.

Land Sale Fraud: Bob did not commit land sale fraud because he did not induce Nancy to do anything but perform her legal duty to allow him to pass unhindered on his easement. There was no money or other value that Bob received. An examinee might note this fact and state that no land sale fraud issue exists to support Nancy's claim to enforce the deed. This discussion is not necessary to answer the question, but up to 5 points may be given if an examinee points out and dismisses land sale fraud as a possible basis for a claim by Nancy that the deed should be enforced.

Lack of Consideration: Nancy provided no consideration for the deed. Nancy was not a purchaser for value, as all she gave was what she was legally obligated to do, allow Bob to pass unhindered on his easement. Therefore, the deed was no more than a promise of a gift. That issue would only be relevant to the question of whether Bob's promise to convey the property was enforceable as a legal contract. The call of the question does not present this contract issue.

2. What legal actions are available to Wren to enforce her ownership interest in Lot A? (20 points)

A. Action Under Family Home Statute.

AS 34.15.010(b) provides that if a titled spouse conveys the property without joining the non-titled spouse in the deed, the deed is nonetheless valid unless, in accordance with AS 34.15.010(d), the non-titled spouse files a lawsuit to have the deed or conveyance set aside or records a notice of her legal interest in the property. To protect her interest in the property, Wren should, within a year of the alleged conveyance of Lot A file suit in state court to have the February 1, 2013 deed or conveyance set aside, or at a minimum file a notice of interest in the property. The facts leave some ambiguity as to what the date of conveyance would be considered to be. Nancy might argue that it was February 1, 2013 when Bob signed and showed her the deed. Nancy might also argue that it was effectively conveyed once she took possession of the deed after Bob's death. To be safe, Wren should not assume that she has until one year of the date of Bob's death. Rather she should be conservative and take action before February 1, 2014.

B. Quiet Title Action.

Alternatively, Wren may sue to "quiet title" after recording a notice of interest in the property. Her quiet title action would take place either in the course of a probate action affirming her right to take title to the property under Bob's will, or it would take place as an independent action and be based upon the invalidity of the deed. In either case, Wren would request the court to enter an order directing entry of a clerk's deed in her name. Wren has 10 years from Bob's death to file an action to quiet title to or recover possession of the Duck Lake cabin and Lot A under AS 09.10.030(a). If Wren records a timely notice of interest, she may file under AS 09.10.030(b).