

QUESTION ONE
(One Hour)

Part One:

O, who owns Blackacre in fee simple absolute, conveys Blackacre “to A and her heirs for life, then to B.” As a result of this conveyance, what interest does each party have?

Part Two:

Thereafter, consider each of the following alternatives independently:

- (1) B dies while A is still alive. What happens to B’s interest, and why? What interest does A have, and why?
- (2) While A is still alive, B executes a document stating in pertinent part: “I hereby convey Blackacre to C in fee simple absolute.” What interest does C acquire, and why? What interest, if any, does A have, and why?
- (3) A begins intentionally damaging the improvements. What is B’s remedy, if any?
- (4) While A is still alive, the state government exercises its eminent domain authority and condemns Blackacre for construction of a new freeway. In this situation, all owners of any interest in Blackacre will be entitled to receive compensation from the state. Who will receive compensation, and how will that compensation be determined?

(N.B.: No math is required for your answer.)

QUESTION TWO
(One Hour)

S and B enter into a written contract whereby S will sell Blackacre to B. Both parties sign the contract. At the same time, B gives a check to S, as an “earnest money” deposit. Neither party uses a real estate agent or an attorney for the transaction, and there are no witnesses with personal knowledge of the contract or the check, other than S and B. At S’s suggestion, and with B’s consent, S retains both the original, signed contract and the check for “safekeeping.” There is no copy of the contract or the check. During the escrow period, S changes his mind and refuses to complete the sale. S also refuses to return B’s check. B sues S for specific performance. During discovery, S refuses to produce the contract or the check, claiming that there was no written contract or check at all. Before trial, S files a motion for summary judgment, arguing that the action is barred by the Statute of Frauds (which is a “typical” Statute of Frauds).

- (1) Does the Statute of Frauds require B to introduce the contract itself? Why or why not? If B cannot produce the contract itself, can B introduce some other writing(s) sufficient to satisfy the Statute of Frauds? If so, what type of writing might suffice, and what must it include?
- (2) If B can produce a writing sufficient to satisfy the Statute of Frauds, would the existence of such a writing ensure that the contract will be enforceable? Why or why not?
- (3) If B cannot produce any writing sufficient to satisfy the Statute of Frauds, is the contract a nullity? Why or why not? If B cannot produce any writing, can B prove the existence and terms of the contract some other way?