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Question One

Part One

A has a life estate.

An estate is a possessory interest in land for a specified time or duration. It can be a present interest, which gives the holder a right to present possession, or it can be a future interest, which gives the holder a present right to possess it in the future. An estate can be a freehold estate which gives the holder some right to title or ownership, or it can be a non-freehold, which gives the holder only a possessory right.

A life estate is a present, freehold estate, which is for the duration of the lifetime of the measuring life. Generally the measuring life is the holder of the estate, but a life estate can also be measured per autre vie, which is by the life of another. In this case, A is the measuring life, which means A has a present possessory interest in Blackacre for the duration of A's lifetime. A life estate ends when the measuring life dies, therefore A's heirs will not have any interest, and a court would strike that language from the conveyance.

B has an indefeasibly vested remainder in fee simple absolute.

A remainder is a future interest held by a third party, who is not the original grantor. A remainder must meet four requirements: 1) it is conveyed at the same time and by the same document as the preceding estate, 2) it follows a freehold estate, but not a fee simple, therefore it follows a life estate, 3) it does not cut short any preceding interest, and 4) there is no built in time gap between the termination of the preceding estate and the beginning of the remainderman's estate.

In this case, B's interest follows a life estate, and therefore it does not cut short the preceding estate because A's estate will end when A dies, which is the natural duration of a life estate. O has conveyed B's VR in the same document and at the same time as the preceding estate, A's Life estate, and it begins immediately upon A's death, so there is no time gap. Thus, B has a remainder.

B's remainder is vested because there is no condition precedent and he is an ascertainable person and he is born. There is no subsequent conveyance, which means nothing can divest B of his interest, therefore it is an indefeasible vested remainder.

Fee simple absolute is an estate of infinite duration, and because the estate is not conveyed to anyone after B, B will hold it in FSA upon A's death.

Thus, B has a vested remainder in fee simple absolute.

B's interest will not be subject to the Rule Against Perpetuities, even though it's an interest in a third party, because it is a vested interest that is not subject to open.

O has ultimately conveyed a fee simple absolute to B, therefore O retains no estate or interest in Blackacre.

Part Two

1) If B dies while A is still alive, then his interest will pass to his ~~heirs~~ ^{successor}. Because O conveyed the VR in FSA to B, the conveyance does not need to say 'and his heirs.' A will still have a life estate, because the conveyance still only gave A a life estate.

It is also possible that the court would interpret B's interest as a Vested Remainder subject to total divestment.

This is when a condition subsequent, distinguished from a condition precedent, can divest the entire interest from the holder. Even though it does not state that B must survive A, it can be implied that B must outlive A in order for the interest to vest. If this is a VR subject to total divestment, then when B dies, his interest would disappear. This would leave a reversion with O, and the estate would return to O in fee simple absolute upon the death of A.

2) If B conveys his interest in Blackacre to C, then C now has the VR in FSA. C holds this interest because estate holder's generally have the right to convey their interests to other parties. this would be an inter vivos conveyance of a future interest. It would be valid because the B has the intent to transfer it presently and not revoke it. Courts frown on any restraints on alienability, thus B should be able to convey his remainder to C.

A still has a life estate, because that is what the original conveyance gave him, and nothing subsequent in the conveyance, affects his life estate.

3) A as a life estate holder has a duty not to commit waste on the property. There are three kinds of waste: voluntary, ameliorative, and permissive waste. voluntary waste is the use of natural resources, and a life estate holder may not commit voluntary waste unless he has been expressly given permission, it is for repair/maintenance of the property, the resources were being exploited before the conveyance, or that is the only suitable use for the property. Ameliorative waste is making improvements to the property. Permissive waste, is a failure to protect the property from weather damage and paying the carrying fees. Life estate holders also have a duty not to damage the property in a way that will reduce the value to the remaindermen. Because A has a duty not to damage the property, if he intentionally does so, the remainderman, which in this case is B, has the right to sue for damages up to the amount that is their interest in the property. B can also sue to enjoin A from causing further damage to the property.

However, the fact pattern states A is damaging improvements. A has no duty to make any improvements to the property, and in fact cannot make improvements without permission of the remaindermen, or due to a change in neighborhood conditions that are decreasing the value of the property without improvements being made. So if A went ahead and made improvements that did not further the value of the property, and then decided to destroy them, B would have no remedy, since A had no duty to make improvements in the first place.

4) In this case, A will be entitled to compensation because A still has a life estate interest in Blackacre. B will also be entitled to compensation because B has a future interest in Blackacre in the form of a Vested remainder in fee simple absolute. Each party will get a percentage of the compensation that is equal to their interest in the property.

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Question 2.

1) The Statute of Frauds does not require B to introduce the actual contract itself, fore S in this case has fraudulently asserted that there was no written contract or check. Because documents may be destroyed, misplaced, or (as in this case) intentionally withheld, B may provide supporting documentation and testimony of the written contract & check - B may include the carbon copy of the check written out to S, which may hold writing on the memo line indicating "earnest money" for Blackacre. B may also introduce any correspondence S & B had leading up to the contract being formed, or any specific performance that was conducted by S or B toward the sale of Blackacre. B may use any supporting evidence accompanied by his sworn testimony that S intended to, and executed a written contract with B that was supported by "earnest money." Any supporting documentation should include distinguishing features of the title or intent to receive title that was sought by B, which may include address of the property, date of conveyance, or any indicating feature that supports the writing that validates the execution of the contract.

2) Although B may produce evidence that satisfies the Statute of Frauds, the existence of such a writing may not ensure that the contract will be enforceable. This is because there are defenses to contracts that may deem them voidable or void even if the Statute of Frauds has been met. Affirmative defenses that deem a contract void are an illegal contract, impossible, impracticable, unconscionable, against the covenant of fair dealing - if there is a finding of a contract that is void, it will not be enforceable. A voidable contract may be deemed if entered into by one under the age of majority (amongst other reasons) - if there is a finding of a contract that is voidable, an option is bestowed to the party that was at a disadvantage; this party then holds the option to enforce the contract, or void the contract. There may be

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issues to the formation of the contract as well, however, based on the facts, it is assumed there was a valid contract entered into by both S & B. For these reasons, although a contract may satisfy the Statute of Frauds, it may not necessarily be deemed enforceable. *or other writing (S)*

3) If B can not produce any writing sufficient to satisfy the Statute of Frauds, the contract is not deemed null - fore the contract was actually executed, and evidence may be introduced to support the contract - here, S offered to sell B Blackacre, B accepted S's offer, and the contract was supported by "earnest money" consideration - this was memorialized by a written contract signed by both parties. The Statute of Frauds requires the transfer or sale of real property to be in writing, however, a writing may be destroyed or withheld, as it was here by S. The failure of B to produce the writing does not deem the contract null, because the Statute of Frauds may be overcome by additional evidence which supports the original writing which satisfies the Statute of Frauds. As stated above, additional evidence may be produced to support the Statute of Frauds requirements (i.e. S may produce the contract, admit to the contract, a showing of specific performance, additional witness testimony confirming the contract). If there is a finding that the contract was entered into by S & B by a preponderance of evidence, B will be granted specific performance, and a judgment will be made for the sale of Blackacre to B.

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