

## ESSAY QUESTION NO. 8

### Answer this question in booklet No. 8

Sam advertised for sale a 10-year-old cabin without running water on five acres of remote property for which he had good and recorded title. Barb contacted Sam expressing her desire to buy the property for use as an eco-friendly camp. Sam wrote to Barb, giving her a handwritten description and directions to the property. Barb visited the property and walked the boundaries. She also met Tom, a tenant who rented the cabin from Sam for a \$400 deposit and \$400 due on the first of each month. Impressed with Barb's ideals, Sam handwrote and signed the following in the presence of Walt:

I, Sam, an unmarried man, for and in consideration of Barb's love of Alaska and her commitment to the conservation of Alaska wilderness areas, convey and quitclaim to Barb all interest which I have, if any, in my five acres on Big River, east of the mouth of Trickle Creek, located in the State of Alaska. May 12, 2012.

Walt signed as "Walt, of Anytown, Alaska – life-long friend of Sam." Sam sealed the document in an envelope he hand-addressed to Barb. Sam died. Walt mailed the envelope and then moved out of the state. Barb received and properly recorded the document. On June 15 Barb went to the property and told Tom that she was the new owner. In response Tom demanded running water. Incensed, Barb promptly wrote a notice to vacate the cabin in 24 hours, which she then handed to Tom. Tom left the next day.

1. Discuss whether Barb has title.
2. For the purpose of this question assume that Barb has title. Discuss Tom's potential claims against Barb under Alaska's Uniform Residential Landlord and Tenant Act.

**GRADERS' GUIDE**  
**\*\*\* QUESTION NO. 8 \*\*\***  
**REAL PROPERTY**

**1. Discuss whether Barb has title. (60 total points)**

The question of whether Barb has title depends on whether the document drafted by Sam and the process by which Barb obtained the document are legally sufficient to convey title from Sam to Barb. Applicants should first briefly identify the elements of the deed and process that are conforming and then identify these issues with regard to the following deed elements: (i) the property description; (ii) acknowledgment of the deed; and, (iii) delivery. Ultimately, applicants should reach the conclusion that Barb has title and their conclusion should turn upon their analysis these elements.

In Alaska, conveyance of land by deed is governed by statute. AS 34.15.010 provides in relevant part:

(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, or by the lawful agent or attorney of the person, and acknowledged or proved, and recorded as directed in this chapter, without any other act or ceremony whatever.

AS 34.15.040 describes 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.

In Estate of Smith v. Spinelli, the Alaska Supreme Court outlined the three-step analysis for deed interpretation:

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 a deed when taken as a whole is open to

only one reasonable interpretation, the interpreting court need go no further. Whether a deed is ambiguous is a question of law.

Once a court determines that a deed is ambiguous, the next step in determining the parties' intent is a consideration of the facts and circumstances surrounding the conveyance. We have noted that this inquiry can be broad, looking at all of the facts and circumstances of the transaction in which the deed was executed, in connection with the conduct of the parties after its execution. . . . Finally, only if the parties' intent cannot be discerned after an examination of the deed itself and the extrinsic evidence surrounding its creation should a court resort to rules of construction. The purpose of rules of construction is not to ascertain the intent of the parties to the transaction. Rather, it is to resolve a dispute when it is otherwise impossible to ascertain the parties' intent.

216 P.3d 524, 529 (Alaska 2009)(internal quotations and citations omitted).

#### **A. Identification of Conforming Elements**

Applicants should identify elements of the document and process that are facially unambiguous and that conform to the statutory conveyance requirements. First, the writing prepared by Sam meets the statute of frauds requirement of AS 09.25.010(a)(6) pertaining to the sale of real property. Second, applicants should identify the language “I, Sam . . . convey and quitclaim to Barb all interest which I have, if any” as being that of a quitclaim deed form. Further, applicants should observe that a quitclaim deed can only convey what title, if any, Sam holds. Here the facts state that Sam has good title, therefore is able to convey the same. Moreover, in compliance with the quitclaim deed form, the document unambiguously identifies the grantor and grantee and even identifies Sam as an unmarried man so as to eliminate any issues related to a spousal interest. Third, the stated consideration of “Barb’s love of Alaska and her commitment to the conservation of Alaska wilderness areas,” while gratuitous, is sufficient to pass title of real property by quitclaim deed. Rausch v. Devine, 80 P.3d 733 (Alaska 2003)(holding that a gratuitous transfer of real property by quitclaim deed is effective and gratuitous transfers do not raise an inference of intent to benefit someone other than the transferee such that a resulting trust is appropriate, and a freely gratuitous transfer is not unjust enrichment justifying the imposition of a constructive trust). Finally, the facts state that Barb properly recorded the deed thereby satisfying the recording requirement of AS 34.15.010.

## **B. Property Description**

In Shilts v. Young, the Alaska Supreme Court set forth the standard applicable to the property description within a deed:

A valid deed must designate the land intended to be conveyed with reasonable certainty. However, the purpose of a deed description is not to identify the land, but to furnish the means of identification. Thus, a description is sufficient if it contains information permitting identification of the property to the exclusion of all others.

567 P.2d 769, 773-74 (Alaska 1977)(internal quotations and citations omitted).

Here the deed describes the property as “my five acres on Big River, east of the mouth of Trickle Creek, located in the State of Alaska.” To the extent that this description is ambiguous or insufficient to distinguish Sam’s five acres on Big River east of the mouth of Trickle Creek from all other land on Big River, Barb may introduce extrinsic evidence of the property description. In Shiltz, the court found that “a deed is not void for uncertainty of description if the quantity, identity or boundaries of the property can be determined by reference to extrinsic evidence. Such evidence may include parol and subsequent conduct of the parties as well as other documents.” Id. Here the facts state that Sam provided to Barb a written description and directions to the property. Importantly, based upon this description and directions Barb was not only able to locate the property but also walk its boundaries. Further, the facts state that Sam held good title which was recorded but are silent as to the description contained in that recording. However, the prior recording is available to Barb as extrinsic evidence. Thus, the deed description combined with Sam’s written description, directions and prior recording is probably sufficient to permit identification of the property to the exclusion of all others and is not facially void for an uncertain description.

## **C. Acknowledgment**

AS 34.15.010 requires that the deed be “acknowledged or proved.” Further, AS 34.15.150, which addresses the execution of a conveyance, prescribes that the acknowledgment shall be “before a person authorized to take acknowledgments in AS 09.63.010 . . . .” AS 09.63.010 defines who can take an acknowledgment:

The following persons may take an oath, affirmation, or acknowledgment in the state:

(1) a justice, judge, or magistrate of a court of the State of Alaska or of the United States;

- (2) a clerk or deputy clerk of a court of the State of Alaska or of the United States;
- (3) a notary public;
- (4) a United States postmaster;
- (5) a commissioned officer under AS 09.63.050(4);
- (6) a municipal clerk carrying out the clerk's duties under AS 29.20.380;
- (7) the lieutenant governor when carrying out the lieutenant governor's duties under AS 24.05.160;
- (8) the presiding officer of each legislative house when carrying out the officer's duties under AS 24.05.170.

AS 09.63.070 prescribes the certificate of acknowledgment process:

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 state that Sam prepared the document in the presence of his friend Walt, but there are no facts to suggest that Walt is person authorized under AS 09.63.010 to take an acknowledgment or that the certificate of acknowledgment process was completed. Therefore, under the facts and circumstances the deed was not acknowledged in accordance with AS 34.15.010 and .150.

In Smalley v. Juneau Clinic Bldg. Corp., the Alaska Supreme Court held that an unacknowledged lease was binding as between the grantor and grantee but not as to third parties. 493 P.2d 1296, 1301 (Alaska 1972). Barb may argue that an unacknowledged quitclaim deed should be treated similarly and thus the deed binds Sam to the conveyance. However, this argument gains Barb nothing with regard to third parties. Further, the facts state that Sam died after drafting the document, thus eliminating the need to enforce the conveyance with regard to Sam.

Under the facts Barb may attempt an alternative to the acknowledgment requirement. AS 34.15.010 provides that the conveyance may be acknowledged *or* proved. Proof may be by a subscribing witness:

(a) Proof of the execution of a conveyance may be made before an officer authorized to take acknowledgment of conveyances, and

shall be made by a subscribing witness, who shall state the witness' own place of residence and that the witness knows the person described in and executing the conveyance.

(b) This proof may not be taken unless the officer is personally acquainted with the subscribing witness or has satisfactory evidence that the person is the subscribing witness to the instrument.

AS 34.12.210 (emphasis added). Here Walt's statement "Walt, Anytown, Alaska – life-long friend of Sam" may meet the requirement of AS 34.12.210(a) that the subscribing witness shall "state the witness' own place of residence and that the witness knows the person described in and executing the conveyance" but it still fails to serve as sufficient proof because the statement was not "made before an officer authorized to take acknowledgment of conveyances." If Barb could locate Walt he could again make the statement before an officer authorized to take acknowledgment of conveyances and thereby meet the proof requirement. But without additional facts Barb is unable to prove the deed using Walt as a subscribing witness under AS 34.12.210.

However, Barb may be able to prove the deed under AS 34.15.220 which provides:

When a grantor is dead, out of the state, or refuses to acknowledge the conveyance, and all the subscribing witnesses to the conveyance are also dead or reside out of the state, the conveyance may be proved before the superior court, by proving the handwriting of the grantor and of a subscribing witness to it.

Here the facts state that Sam is dead and that Walt moved out of state, therefore the proof procedure under AS 34.15.220 is available to Barb. The statute is silent with regard to evidence necessary for Barb to prove the handwriting in superior court. However, Barb may be able to do so through the introduction of the deed, Sam's handwritten directions to the property, the hand addressed envelope and expert analysis. Therefore, if Barb can meet the evidentiary burden under AS 34.12.220 she can prove the deed through handwriting.

#### **D. Delivery**

While AS 34.15.010 does not specifically state that in order to be effective a deed must be delivered to the grantee, the Alaska Supreme Court has recognized the common law requirement. In Rausch v. Devine, the Alaska Supreme Court reasoned:

Alaska case law has implied that delivery of a deed is part of its valid execution, relying on POWELL ON REAL PROPERTY. Although there appears to be no Alaska case specifically holding that the recording of a deed gives rise to a presumption of valid delivery that is rebuttable by clear and convincing evidence, Chief Justice Rabinowitz has noted that this is hornbook law, and we have previously held that the "clear and convincing" standard is often applicable to factual questions surrounding land actions. We now adopt the rule that a recorded deed gives rise to a presumption of valid delivery that may be rebutted by the party challenging delivery by clear and convincing evidence.

80 P.3d 733, 738-39 (Alaska 2003)(footnotes and internal citations omitted). Here Barb properly recorded the deed and therefore under Rouch her recording gives rise to a presumption of valid delivery that can be overcome only by clear and convincing evidence. Moreover, the fact that Barb, the grantee, recorded the deed does not preclude the presumption. Id. at 740 (quoting Powell on Real Property at § 81A.04[2][a][iv] "Upon a demonstration that the deed has been recorded by the grantor or grantee, or by their agents, a rebuttable presumption of delivery arises.").

Facts in further support of delivery include Sam sealing the signed deed in an envelope and hand addressing it to Barb. Further, there is an absence of any facts to suggest that Sam intended to retain an interest in the property. On the other hand, Sam did not mail the deed, Walt did. Barb may argue that Walt did so as an agent of Sam, but without additional facts supporting agency, this argument would probably fail. However, physical delivery is no longer required as Justice Rabinowitz noted in his dissenting opinion in Lown v. Nichols Plumbing & Heating, Inc.:

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 Ore. 281, 493 P.2d 728 (Or. 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.

634 P.2d 554, 557 (Alaska 1981)(Rabinowitz C. J. dissenting).

Therefore, the fact that Sam himself did not mail the deed does not necessarily constitute a failure of conceptual delivery. Other facts against conceptual delivery are that Sam initially advertised the property for sale, but the deed to

Barb is gratuitous and therefore inconsistent with Sam's advertisement to transfer the property for payment. However, under the totality of the facts and circumstances, it is probable that there is insufficient evidence to overcome the strong presumption of delivery created by Barb recording the deed.

**2. For the purpose of this question assume that Barb has title. Discuss Tom's potential claims against Barb under Alaska's Uniform Residential Landlord and Tenant Act. (40 total points)**

**A. Demand for Running Water**

AS 34.03.010 states that a purpose of URLTA is to "simplify, clarify, modernize, and revise the law governing the rental of dwelling units and the rights and obligations of landlord and tenant." AS 34.03.100 outlines the landlord's duties to maintain fit premises and provides in relevant part:

(a) The landlord shall

...

(5) supply running water and reasonable amounts of hot water and heat at all times, insofar as energy conditions permit, except where the building that includes the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct public utility connection;

...

(b) A landlord of a single family residence located in an undeveloped rural area or located where public sewer or water service has never been connected is not liable for a breach of (a)(3) or (5) of this section if the dwelling unit at the beginning of the rental agreement did not have running water, hot water, sewage, or sanitary facilities from a private system.

Here there are no facts to support Tom's demand for running water at the cabin. The facts state that the cabin is 10 years old and located in a remote area. Further, the facts suggest that the cabin was without running water at the beginning of the rental period because Tom is described as a new tenant. Therefore, pursuant to AS 34.03.100(b) Barb is not liable to Tom for the alleged failure to provide running water.

**B. Retaliatory Eviction**

URLTA imposes an obligation of good faith on the landlord and in all actions taken under the act. AS 34.03.320. The Alaska Supreme Court in McCall v. Fickes held that the obligation of good faith under URLTA prohibits certain retaliatory conduct:

The retaliatory conduct with which the statute is concerned is clearly conduct which is undertaken in retaliation for actions by the tenant. As a defense, 'retaliatory eviction' is addressed to conduct which deters the assertion of tenant rights. We think it logically untenable to assert that an act which benefits the landlord is one which will result in retaliation.

556 P.2d 535, 540 (Alaska 1976). AS 34.03.310(a) prohibits a landlord from retaliating against a tenant "by increasing rent or decreasing services or by bringing or threatening to bring an action for possession after the tenant has . . . sought to enforce rights and remedies granted the tenant under this chapter." Tom would argue that Barb had a duty to provide running water per AS 34.03.100(a)(5) and that AS 34.01.160(b) provides a remedy to Tom for Barb's alleged failure to do so. However, as discussed above, under the facts and circumstances Barb was not under a duty to provide running water, thus Tom's demand does not constitute an assertion of a right under URLTA and therefore Barb's termination in response to Tom's demand for running water is lawful if Barb met the notice requirement under URLTA.

### **C. Sufficiency of Notice**

AS 09.45.100(c)(2) allows written notice to be left at the premises. The facts indicate that Tom received actual notice of termination by way of Barb's visit; thus, receipt is not at issue. Here the question is whether Barb provided sufficient notice to terminate Tom's tenancy. The notice requirement is dependent upon the tenancy period. Here the facts support a periodic tenancy because there is an absence of a definite term. AS 34.03.100(d) provides "[u]nless the rental agreement fixes a definite term, the tenancy shall be week to week in the case of a tenant who pays weekly rent, and in all other cases month to month." The facts state that the rent was due on the first of each month and thereby created a month-to-month tenancy per AS 34.03.100(d).

AS 34.03.290(b) provides that "[t]he landlord or the tenant may terminate a month to month tenancy by a written notice given to the other at least 30 days before the rental due date specified in the notice." Barb's written notice dated June 15 demanded that Tom vacate the premises in 24 hours – which he did. However, AS 34.03.290(b) requires that the landlord provide written notice of termination at least 30 days before the rental due date – here the first of each month. If Barb had not demanded that Tom vacate in 24 hours, her June 15 notice would have been sufficient notice to terminate tenancy at the end of the July period.

The exception to the notice requirement of AS 34.03.290(b) is AS 34.03.220(a)(1) which provides landlord may terminate a rental agreement with 24 hours notice for intentional and substantial damage to the premises. There

are no facts to support the application of this exception. Thus, Barb's notice was not sufficient and her ouster of Tom was unlawful.

Tom may either recover possession or terminate the rental agreement. AS 34.03.210. In either case Tom may recover up to one and one-half times his actual damages. Id. One measure of Tom's actual damages is any difference in rent that he is forced to pay. Here there are no facts regarding alternative rent. If Tom elects to terminate, Barb may not retain the \$400 balance of his security deposit. Per AS 34.03.2010 Tom may recover this amount due to him under AS 34.03.070(b). Should Barb fail to return this amount she can be held liable to Tom for two times the balance due. AS 34.03.070(d). Further, Tom may recover full, reasonable attorney fees. AS 34.03.350 and Dawson v. Temanson, 107 P.3d 892 (Alaska 2005).