

Question MEE 1 – July 2024 – Selected Answer 1

1. Adam v. Connie for Crack in the House's Foundation

In a minority of jurisdictions, Adam would have a cause of action against Connie based on the crack in the house's foundation.

The issue is whether sales of land with house's on them carry any warranty of habitability.

The general rule is that a sale of a house does not carry with it any warranty of habitability, meaning that a seller of a house is not liable if the house is not fit for people to live on it. However, there is an exception to this general rule for builder-sellers. If a builder of a home sells it, that land sale contract has an implied warranty that it is fit for human habitability. In some jurisdictions, the court will extend this warranty to subsequent purchases of the house, rather than just the first person the builder-seller sells it to. A house is not habitable if it does not comply with the local housing code. Typical examples of non-habitability are no heat in the winter or excessive flooding.

The facts state that Connie is a professional homebuilder and that she purchased the tract of land and built a house on it. Connie then contracted to convey the house to Bert. Irregardless of the fact that the purchase agreement did not contain any express warranties about the quality of the house's construction, the contract carries with it an implied warranty that the house was fit for human habitability. Bert then conveyed the tract and the house to Adam. Nine months after living in the house a major crack appeared in the foundation due to Connie's faulty construction job, which resulted in frequent water intrusion and substantial water damage to the house. If this damage is so extensive that it makes the home inhabitable, then in the jurisdictions that imply this warranty even in subsequent sales of the house, Adam would have a claim against Connie because she is a builder-seller.

2. Adam v. Connie for Diane's Ownership of the Tract by Adverse Possession

Adam does not have a cause of action against Connie based on Diane's ownership of the tract by adverse possession.

The issue is whether a covenant in the deed was breached and if so whether Adam as a subsequent grantee can claim breach of that covenant.

The rule is that both a general and special warranty deeds contain six covenants, which includes the covenant of seisen ("I own the land I purport to convey"), the right to convey ("I have the power to convey this land"), the covenant of quiet enjoyment ("another title holder will not disturb you in your enjoyment of the land"), and the warranty of further assurances ("If someone does try to disturb you, I will defend you"). Some of these covenants run with the land can be enforced by subsequent grantees.

The facts state that when Connie conveyed the property to Bert, she conveyed by warranty deed. The deed contained the above warranties, but excepted from the warranties "all titles, covenants, and restrictions on record with the county recorder." On record with the county recorder was the judgment in Diane's favor, showing that she have acquired titled to that 12 foot wide strip by adverse possession. Adam is not able to claim Connie breached any covenant because she excepted all covenants on record with the county recorder and Adam could have done a search and found Diane's judgment.

3. Adam v. Bert for Diane's Ownership of the Tract by Adverse Possession

Adam does not have a cause of action against Bert based on Diane's ownership of a portion of the tract by adverse possession.

The issue is whether a quitclaim deed carries with it any implied warranties about encumbrances.

The rule is that a quitclaim deed does not contain any warranties. The quit claim only conveys as much interest as the grantor has in the property, if any.

The facts state that Bert conveyed the tract to Adam by a quitclaim deed that contained no warranties. Since Bert was not guaranteeing anything about the land by virtue of the deed, Adam cannot claim breach of warranty.

Therefore, Adam does not have a cause of action against Bert.

4. Adam v. Connie for Neighbor's Easement over the Tract

The issue is whether Connie breached her covenant against encumbrance in the warranty deed.

As described above, warranty deeds contain several covenants that can be enforced by the grantee against the grantor. Another one of these covenants is the covenant

against encumbrances, which states that there are no mortgages, easements, or other encumbrances on the property that have not already been disclosed. This covenant runs with the land and can be enforced against the grantor by subsequent grantees. However, many courts will not find a breach of a covenant against encumbrances even when an easement is not disclosed if the grantee had notice of the easement. A grantee has notice of an easement if the easement is recorded (record notice) or the easement is visible and an inspection of the property would have put the grantee on notice of the easement (inquiry notice).

The facts state Connie conveyed a warranty deed to Bert, which would contained the covenant against encumbrances. This covenant can be enforced by Adam as a subsequent grantee. However, Adam will not be successful in his cause of action because he had notice of the easement. Adam's tract has a gravel road runs from north to south through the middle of Adam's five-acre tract. After purchasing the tract and attempting to build a fence around it, Adam was informed by the northern neighbor that this gravel road is an implied easement of necessity in favor of the northern tract holder. Adam did not have actual notice of the easement because Bert did not tell him about him upon conveyance. Adam did not have record notice of the easement because easements by necessity are implied by law and are not required to be recorded. Adam however did have inquiry notice of the easement because it was an obvious gravel road across the middle of the property that he would have seen if he had inspected the tract before buying it and it would have put him on notice that there was an encumbrance on the property.

Therefore, Adam does not have a cause of action against Connie based on the neighbor's easement over the tract.

Question MEE 1 – July 2024 – Selected Answer 2

I. Cause of Action Relating to Crack in House's Foundation

The first issue in this matter is whether Connie owed an implied warranty of habitability regarding the house because she built it.

Generally, an implied warranty of habitability is limited to the residential lease context. However, courts have extended this doctrine to the newly-constructed home context. In other words, the builder of a new home offers the future homeowner an implied warranty of habitability. Under this implied warranty, the landowner promises that the home will be fit for human habitation. Thus, a builder breaches this duty if there was a substantial defect created by their construction efforts.

Here, Adam would have a cause of action against Connie for breach of this implied warranty of habitability. Connie is a professional homebuilder and constructed the

home that sits on the tract sold to Adam. Thus, faulty construction by Connie breached this duty. The facts of this case show that a major crack in the house's foundation appeared three months ago, and this crack has resulted in frequent water intrusion and substantial water damage to the house. Although the outer boundaries of what constitutes inhabitable conditions are unclear, frequent flooding and water damage to a home should certainly qualify. Thus, the fact that Connie made no express warranties regarding the quality of construction is immaterial here. A warranty of habitability was implied by law, and subsequently breached by her faulty construction.

II. Cause of Action Against Connie for Diane's Adverse Possession

The next issue in this case is whether a remote grantee can enforce a warranty deed covenant against the grantor.

A warranty deed is a type of deed offered in a sale of real property, which makes six express covenants (three present and three future covenants) regarding the title. As relevant here, these covenants combine to state, in essence, that the grantor will take such action as needed, now or in the future, to resolve certain issues with the grantee's title. However, the enforceability of these covenants is limited to the original grantee. In other words, a future (or "remote") grantee cannot enforce the covenants from that original deed.

Here, Adam does not have a cause of action against Connie based on Diane's adverse possession of part of his tract. When Connie conveyed the property to Bert, she did so with a general warranty deed. Thus, during his time of possession, Bert could have enforced those covenants against Connie. However, when Bert transferred the land to Adam, Adam did not acquire those rights as well. In other words, Adam is a remote grantee of the Bert-Connie conveyance. Notably, if Bert were still in possession of the property, he could bring an action against Connie, for example, breach of the covenant of warranty, since there was someone with superior title to Bert on that portion of the property. However, since Adam did not receive such a deed from Connie directly, he cannot enforce those covenants.

III. Cause of Action Against Bert for Diane's Adverse Possession

The next issue in this matter is whether Adam's quitclaim deed gives him any recourse against Bert due to Diane's superior title to part of his tract.

It is generally understood in real property law that a quitclaim deed is the worst and least favorable deed for a grantee. In essence, a quitclaim deed only purports to transfer whatever interest the grantor has in the property, if any. Thus, unlike the general warranty deed, there are no express or implied covenants that accompany it. Even if it is later discovered that someone had superior title to the property, the grantee has no recourse against the grantor.

Here, Adam has no cause of action against Bert because he received the conveyance through a quitclaim deed. As noted, the quitclaim deed contains no warranties from the grantor regarding their title. Further, even if there were some other basis to establish liability, that would be made difficult by Adam's failure to inspect the property. Generally, a party will be charged with inquiry notice where they could have discovered a fact by inspecting the property. Here, Adam could have discovered the existence of Diane's possession, since she maintained a vegetable garden on the tract. Thus, Adam has no cause of action against Bert because of his quitclaim deed and inquiry notice of Diane's possession.

IV. Cause of Action Against Connie Based on Neighbor's Easement

The final issue is whether Adam is bound by the neighbor's easement by necessity, even though he had no actual knowledge of it at the time of the conveyance.

An easement by necessity is a special type of easement that arises when two properties were once a single whole, and the separation of the properties caused one tract to be landlocked. In such cases, a court will imply an easement by necessity, granting the landlocked landowner a right of way over the other property. Generally, an easement by necessity will remain in place until the necessity has ended. Here, the facts state an easement by necessity has been created and is valid. Adam's northern neighbor's property is landlocked and she has been granted a right-of-way over the gravel road on Adam's property.

Generally, a subsequent owner of the estate burdened by an easement will not be bound by it unless they had notice of the easement at the time of the conveyance. However, this is not the case for an easement by necessity. In any case, if Adam had ever inspected the property before the conveyance, he would have discovered the neighbor's landlocked property, and thus would be charged with inquiry notice of the existence of their easement by necessity.

Thus, Adam has no cause of action against Connie based on this easement, since the necessity remains and he would be charged with inquiry notice.

Question MEE 1 – July 2024 – Selected Answer 3

1. Adam's claim for crack in the house's foundation

Adam does not have a cause of action against Connie based on the crack in the house's foundation. Generally, the warranty of habitability does not apply in land sale contracts unless the seller of the home was the builder. However, the warranty of habitability under this rule does not apply to subsequent purchasers.

Here, Connie built the house and is the seller, so she must give a warranty of habitability to the home. Thus, Bert would have a valid cause of action against Connie based on the crack in the foundation because Bert was the purchaser from Connie. The fact that the purchase agreement contained no express warranties regarding the house's construction would not matter if Bert were to bring a claim against Connie. However, Adam purchased the home from Bert. Adam did not purchase the home from Connie. Thus, the warranty of habitability does not apply.

Therefore, Adam does not have a cause of action against Connie based on the crack in the house's foundation.

2. Adam's claim against Connie based on Diane's ownership of the adverse possession tract.

A person who is in privity of contract with a seller will have a claim against encumbrances on the property. A party is on notice of any encumbrances of property that are recorded in the county recorder's office. This is record notice. A quitclaim deed is a deed in which the party is only contracting land that they may have an interest in. There are no covenants or warranties in a quitclaim deed.

Here, Adam and Connie were not in privity of contract. Adam did not receive the deed from Connie, nor was he warranted any promises regarding the property. Importantly, Diane had validly received a judgment which issued the land in Diane's favor. It was recorded in the county's recorder's office. Thus, Adam was on record notice of the possession by Diane because he could have found the record through a chain of title search with the county. Additionally, the deed from Connie to Bert included an exception from warranties for all titles, covenants, and restrictions on record with the county recorder. This title was on record with the county recorder.

Therefore, Adam does not have a cause of action against Connie based on Diane's ownership of a portion of the tract through adverse possession.

3. Adam's cause of action against Bert based on Diane's ownership by adverse possession.

Adam does not have a cause of action against Bert based on Diane's adverse possession. A quitclaim deed is a deed in which the party makes no present or future promises or covenants, and only conveys whatever interest they may have in the land.

Here, Bert conveyed to Adam a quitclaim deed. This deed did not contain any promises or covenants regarding encumbrances on the land. Thus, Bert only could

convey to Adam whatever interest Bert had in the land. So, because Bert did not have an interest in the tract owned by Diane, Bert could not convey that to Adam. Because the quitclaim deed contained no warranties or covenants, Adam does not have a valid claim against Bert.

Therefore, Adam does not have a cause of action against Bert based on Diane's ownership by adverse possession.

4. Adam's cause of action based on the neighbor's easement over the tract

Adam does have a cause of action against Connie based on the neighbor's easement by necessity. An easement is an interest in land in which a person can use or enjoy another's land for a limited purpose. Easements are encumbrances on the land that make title to the land unmarketable. An easement generally remains on the land through different conveyances even if they are not recorded in deeds on record. An easement by necessity is an easement that generally arises when a tract of land is landlocked and the only reasonable access to a public road is through the land of another.

A general warranty deed contains three present covenants and three future covenants. The three present covenants are the covenants of seisen, title and encumbrances. The three future covenants are the warranty of quiet enjoyment, further assurances, and warrantability.

Here, the neighbor's easement is an easement by necessity because the neighbor's land is landlocked. The easement that runs through the tract is the only reasonable access to the highway that abuts the land on the south. Here, Adam would not have a way of knowing of this easement because it was not on any deed of record and Adam had never inspected the land before acquiring it. Adam would have a cause of action against Connie because she conveyed property which was not free from encumbrances. The neighbor's easement was an encumbrance on the land that made the title unmarketable.

Here, Connie's general warranty deed to Bert attempted to exempt all warranties from title and covenants. However, a general warranty deed cannot convey title that is unmarketable due to encumbrances. Here, there was an encumbrance on the land that breached the present covenant against encumbrances.

Therefore, Adam does have a cause of action against Connie based on the neighbor's easement by necessity over the tract because it made the title to the land unmarketable.