

Module Twenty Three – Restrictive Covenants

Question 38. Fred and Barney own land that abuts along a common boundary. They each acquired their parcels from separate third parties. They sign an agreement, each promising on behalf of himself, his heirs and assigns, to use their land for single-family residential purposes. They record their agreement, giving notice to all future owners of both parcels. They each build lovely, stone, single-family houses on their land; although each has plenty of open land leftover. Considering the additional facts in the answer selections independently of other answer selections, choose the most correct answer selection.

- a.* Barney sells his land to McBicker, who promptly builds a four-story apartment building on his newly acquired land. Under the modern trend for application of the horizontal privity requirement, Fred has a successful cause of action against McBicker for violating the covenant.
- b.* Fred sells his land to Gruestone, who promptly builds a water park on his newly acquired land. Under the common law approach, Barney has a successful cause of action against Gruestone for violating the covenant.
- c.* Barney sells his land to Frankelstone, and then Frankelstone builds a building for a public model train museum on his land and begins operating the museum. Barney, meanwhile, sets up a model train set in his living room and lets the train run around the living room in a circle several hours each day as a personal hobby and for his amusement. Frankelstone has a successful cause of action against Barney.
- d.* Two and only two of selections *a* through *c* are accurate characterizations.
- e.* All of selections *a* through *c* are accurate characterizations.

Question 39. Paul owns KrostAcre and BatesAcre, both of which are large farming estates that abut each other. Paul conveys BatesAcre to David. In the conveyance David promises to donate ten thousand dollars each year to the March of Dimes charity. The promise is part of the deed restrictions for BatesAcre when Paul conveys it to David, expressing that the obligation runs to “heirs, assigns, and successors.” David declares: “this is an important cause and I’m okay with the obligation to pay as a part of owning BatesAcre.” Paul and David each record the conveyance in relation to BatesAcre. The jurisdiction where the properties are located follows the common law approach to restrictive/real covenants. David then sells BatesAcre to Danny. Danny later sells BatesAcre to Darren. Choose the most correct answer selection.

- a.* Paul is unable to enforce the restrictive covenant against Darren because it does not touch and concern the land.
- b.* Paul is unable to enforce the restrictive covenant against Darren because horizontal privity is lacking.
- c.* Paul is unable to enforce the restrictive covenant against Darren because vertical privity is lacking.
- d.* Paul is unable to enforce the restrictive covenant against Darren because notice to Darren is lacking.
- e.* Paul is unable to enforce the restrictive covenant against Darren because intent is lacking for the covenant to run with the land.

Module Twenty Three – Restrictive Covenants – Answer Key

Question Number	Correct Answer
38	a
39	a