

EXAMINERS' ANALYSIS OF QUESTION NO. 7

1. The first question implicates the law of fixtures, and a court would likely hold that David could recover the chandelier and possibly the loom as well.

A fixture is an item of personal property (chattel) that becomes so affixed to real estate that the law treats it as part of the real property. Michigan utilizes a three-part test to determine whether an item has become a fixture: First, a court will examine the degree to which the item has been annexed to the realty. Second, a court will look to the extent to which the item has become adapted to use of the real estate. Third, a court will consider whether the parties intended to make the goods an accession to the real property. *Wayne Co v Britton Trust*, 454 Mich 608 (1997); *Morris v Alexander*, 208 Mich 387 (1919). If an item is a fixture, title to it passes with the conveyance of the real estate unless the seller reserves ownership of the fixture in the contract of sale. *Atlantic Die Casting Co v Whiting Tubular Products, Inc*, 337 Mich 414 (1953).

Because the contract and deed in this case only described the real property to be conveyed, David is entitled only to that which may be considered "real property," including the fixtures. David's claim is strongest with regard to the chandelier. The chandelier was affixed to the ceiling, connected to a house's electrical system, and serves both a necessary and decorative purpose in the home. The facts specifically note that the chandelier was chosen because it befit the house's character and style, thus indicating a more permanent intent for it to remain in the home once installed. These facts strongly suggest that the chandelier should be considered a fixture. If that is the case, Janet improperly removed the chandelier and David can recover it.

With regard to the loom, David will argue that the loom should be considered part of the realty, especially when considering the fact that the house is part of a llama farm. A loom that processes llama fleece is a unique machine clearly installed to be operated in conjunction with the adjoining farm. The loom was "assembled and installed" in the house, suggesting that it was affixed in some manner to the house. The facts also indicate that David specifically bought the farm to take over the llama business--an intent that Janet knew. While certain facts not disclosed (such as the extent to which it was attached to the house) leave some room for

debate, the stronger position is that the loom is a fixture connected to the realty, and accordingly, Janet wrongfully took it.

Note: The loom may be considered by some to be a "trade fixture," which is an item that is used in a trade or business, and these items are not considered part of the realty and thus may almost always be removed by the owner. However, in Michigan, the trade fixture doctrine only applies to leasehold estates, allowing a tenant, at the termination of his lease, to remove fixtures that he installed for his trade. Thus, while the loom may colloquially be considered a "trade fixture," because this case does not involve a landlord-tenant relationship, the traditional fixture test applies rather than any other rule regarding "trade fixtures." See *Britton Trust*, 454 Mich at 612, n2; see also *Wentworth v Process Installations, Inc*, 122 Mich App 452 (1983).

2. The second question relates to priorities among multiple claims on a single property and implicates Michigan's notice statute. A court would hold that National Bank has a superior interest in David's home because National Bank recorded first and in good faith without notice of Local Bank's interest.

The priorities among multiple interest in a single property are governed by Michigan's notice act. Michigan is a race-notice state, as set forth by statute:

"Every conveyance of real estate within the state hereafter made, which shall not be recorded as provided in this chapter, shall be void as against any subsequent purchaser in good faith and for valuable consideration, of the same real estate or any portion thereof, whose conveyance shall be first duly recorded." MCL 565.29.

Generally, a person acquiring rights in realty with notice of the existence of a prior mortgage takes subject to the rights of the mortgagee. See *Boraks v Siegel*, 366 Mich 308 (1962). However, where the person does not have notice, if the subsequent mortgage is supported by actual present consideration and given in good faith, the mortgagee is regarded as a bona fide purchaser for value and as such, is protected against adverse claims of which the mortgagee lacked notice. MCL 565.29; see also *Piech v Beaty*, 298 Mich 535 (1941). Notice may be actual or constructive, and important here, constructive notice includes notice of all interests that are properly recorded. See *Lines v Weaver*, 220 Mich 244 (1922).

In this case, although Local Bank was granted a mortgage on

the home first, Local Bank did not immediately record its interest. When National Bank was subsequently granted a mortgage, it acted in due diligence and performed a title search, which revealed no prior mortgages or other encumbrances on the property. The facts further do not indicate that National Bank was apprised of any other circumstances from which it knew or should have known that a prior interest existed in the home, or that would have required it to inquire into the possible existence of another interest. National Bank acted in good faith, did not have notice, and gave consideration for a mortgage on the property. Accordingly, because National Bank recorded its mortgage first, National Bank's interest is superior to that of Local Bank.