

Question 1

In a claim against R, A will need to first show how title passed from R to B which the facts do not indicate. Assuming that there is a link in the chain of title from R to B (or that B was an adverse possessor who satisfied the statutory requirements) then A would be considered a bona fide purchaser without notice and would be protected despite the clerk's error in recording.

A could argue that the covenant is discriminatory and restricts the 1st amendment protection against freedom of religious expression and the Fair Housing Act (Shelley) because the covenant restricts anyone from using or occupying the property except those who believe in God and the Randiologists are atheistic.

In a claim against D (assuming D is the true owner of Whiteacre [WA]), A would not necessarily need to show a link between C and D because A could claim title via Adverse Possession (AP) if, after she enters the property, A uses the property openly for the continuous statutory period and adversely from D. A could also claim (and perhaps the better claim) title under Color of Title because she has an instrument that is defective (C did not own the property). Assuming C signed a deed but never delivered it, the delivery would be complete because C does not necessarily have to hand over the deed to A if C signed it with the intent to be bound. This would also provide A in some jurisdictions with a shorter statutory period for her to satisfy.

Regarding the medical covenant case against D in a 1st restatement jurisdiction the burden did not run with the land but by adopting the American rule, covenants now run against successors. D can show the medical covenant runs with the land and that C told A, so A intended to be bound by the covenant. However, D would have to show a connection between D and C to prove privity in order to show complete vertical privity which is lacking here. A can argue as above that the covenant is discriminatory against religious expression and FHA because the core of Randiology is to detox people through therapy and counseling sessions.

A could sue B for violation of the covenants in the GWD because B because did not own it. A could not sue C for this if C never signed a general warranty deed, or had signed only a Special Warranty or Quitclaim Deed.

A could sue Ellsworth on the grounds the first ordinance violates the 1st amendment protection of religious expression because there are other churches in the area (Guru) so he is targeting her specifically and that the 3rd ordinance is vague because it provides no guidelines for which to determine what a non residential building should look like. Like the Anderson case, A submitted plans that were denied and told to look at other buildings on the block which are not enough to be guidelines.

Question 2

A will be successful against B because she can show that while B did not perform a title search on Dryacre when he bought the burdened property, he is on record notice of the covenants if they were properly recorded and show up in the index to Dryacre. A has the benefit here even though she received only a life estate because a successor may have a lesser estate. Vertical privity is not a problem because there is a General Warranty Deed from C to B.

B would not prevail in suit against A who possesses the burdened Wetacre because she was not on notice of the covenant because the covenant was erroneously recorded and she acquired a lessor estate than D had when he left her the property. Also, even if the covenant were valid, the covenant only allowed access to the lake and did not mention the creek.

One foreseeable suit would be a CERCLA claim by A against M for dumping toxic waste onto the property. Even though M is not the current owner, M is a generator of hazardous waste and can be held strictly liable.

Another suit is one by A against B to enforce the covenant on Dryacre prohibiting agricultural use since B is farming chickens on the property. However, she will likely not prevail because D never enforced (and actually covenanted to allow the farming) which is a form of acquiescence. A could still have her way though if the zoning ordinance prohibiting farming activity is enforced against B (assuming neither a variance or special exception was granted regarding Dryacre).

B would likely prevail in a suit against C for violating the covenant against encumbrances because he led B to believe there were no encumbrances on the title when covenants did exist on Dryacre and C was a party who created the covenants and would be able to recover damages.