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## Contracts

### 1. Which points will be relevant to the decision in favor of the best friend?

*The next week, the best friend secured a bank commitment to enable him to purchase Greenfield. The best friend immediately brought an appropriate action against the man to compel him to convey Greenfield to the best friend. The following points will be raised during the course of the trial: the construction of the contract as to the time of performance, the best friend's ability to perform, and the parol evidence rule. Three days later, the man received an offer of \$40,000 for Greenfield. He asked his best friend if he had raised the \$20,000. When the best friend answered, "Not yet," the man told him that their deal was off and that he was going to accept the \$40,000 offer. A man owned Greenfield, a tract of land. His best friend wanted to buy Greenfield and offered \$20,000 for it. The man knew that his best friend was insolvent, but replied, "As a favor to you as an old friend, I will sell Greenfield to you for \$20,000 even though it is worth much more, if you can raise the money within one month." The best friend wrote the following words, and no more, on a piece of paper: "I agree to sell Greenfield for \$20,000." The man then signed the piece of paper and gave it to his friend.*

- The parol evidence rule
- The parol evidence rule and the construction of the contract as to time of performance
- The best friend's ability to perform and the construction of the contract as to time of performance
- **Construction of the contract as to time of performance, the best friend's ability to perform, and the parol evidence rule**

Note:

*The Statute of Frauds is applicable in all states to any contract for the sale of land, or for the sale of any interest in land. Therefore, either the contract itself or a memorandum of it must be in writing. For a memorandum to satisfy the writing requirement, it must state with reasonable certainty the following: (i) the name of each party to the contract; (ii) the land to be conveyed; and (iii) the essential terms and conditions of the deal. The signature of the party to be charged (i.e., the party against whom enforcement is sought) must appear on the memorandum or contract.*

*D is correct. The call of this question asks a hypothetical: IF the best friend wins the lawsuit against the man, WHICH legal doctrine or concept is most relevant to this outcome? The best way to answer a question like this is to work backward and identify which legal doctrine or concept is the decisive issue for the best friend.*

*The Statute of Frauds requires that a contract for the sale of land consists of a writing signed by the party to be charged. In this case, such a writing exists, having been signed by the man. However, the contract merely states that the man agrees to sell the land for \$20,000. It does not indicate whether there are any additional provisions to the agreement (such as the time for performance, which was only verbally addressed by the parties). Further, despite the fact that the man has received a better offer, it appears that his best friend is now ready to perform. As such, all three aspects of this case: the parol evidence rule, the time for performance issue, and the friend's ability to perform are necessary to come to a decision in this case.*

*A is incorrect. During trial, it will be necessary to consider the parol evidence rule with regard to whether the written agreement represents the entire agreement between the parties. However, the decision would also concern the time for performance issues and the ability of the friend to pay.*

*B is incorrect. The time for performance issues must be addressed in the decision, in addition to whether the best friend has a month to raise \$20,000. However, the friend's ability to perform also will be dispositive in the decision.*

*C is incorrect. The best friend's ability to perform must be considered because he must raise \$20,000 to meet his own obligation. However, the decision would also hinge on the above-mentioned factors.*

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## 2. In that action, the purchaser should be awarded

The purchaser brought an appropriate action for specific performance against the man. After the contract was executed and before the scheduled closing date, the father died intestate, leaving the man as his sole heir. Shortly thereafter, the man received an offer for Blackacre that was substantially higher than the purchase price in the contract with the purchaser. The man refused to close with the purchaser even though she was ready, willing, and able to close pursuant to the contract. A man entered into a valid written contract to sell Blackacre, a large tract of land, to a purchaser. At that time, Blackacre was owned by the man's father; the man had no title to Blackacre and was not the agent of the father.

- Nothing, because the man had no authority to enter into the contract with the purchaser
- Nothing, because the doctrine of after-acquired title does not apply to executory contracts
- **Judgment for specific performance, because the man acquired title prior to the scheduled closing**
- Judgment for specific performance, to prevent unjust enrichment of the man

Note:

C is correct. Although the man had no authority to enter the contract at the time it was executed, he acquired good title to the property before the closing date. The remedies available to the purchaser upon the man's breach of the sale contract include damages and specific performance. This is the best choice because it is the man's acquisition of good title before the closing that provides a basis for the purchaser's claim against him for breach of contract, not the mere fact that he may be unjustly enriched.

A is incorrect. Although the man had no authority to enter the contract at the time it was executed, he acquired good title to the property before the closing date. As stated above, the remedies available to the purchaser upon the man's breach of the sale contract include damages and specific performance.

B is incorrect. There is no executory contract present in the fact pattern.

D is incorrect. It is the man's acquisition of good title before the closing that provides a basis for the purchaser's claim against him for breach of contract, not the mere fact that he may be unjustly enriched.

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## 3. The court will hold for

The cousin brought an appropriate action to recover the \$2,000 earnest money promptly after the specified closing date. The owner counterclaimed for specific performance, tendering a deed from himself and the woman, who had by then returned. The title evidence showed that an undivided one-eighth interest in Blackacre was owned by a woman. The cousin immediately objected to title and said he would not close on the owner's title. The owner responded, accurately, that the woman was his daughter who would be trekking in Nepal until two weeks after the specified closing date. He said that she would gladly deed her interest upon her return, and that meanwhile his deed warranting title to all of Blackacre would fully protect the cousin. The owner duly tendered his deed but the cousin refused to close. An owner contracted to sell Blackacre to his cousin. The written contract required the owner to provide evidence of marketable title of record, specified a closing date, stated that "time is of the essence," and provided that at closing, the owner would convey by warranty deed. The cousin paid the owner \$2,000 earnest money toward the \$40,000 purchase price.

- The owner, because the woman's deed completing the transfer was given within a reasonable time
- The owner, because his warranty deed would have given his cousin adequate interim protection
- **The cousin, because the owner's title was not marketable and time was of the essence**
- The cousin, because under the circumstances the earnest money amount was excessive

Note:

C is correct. In general, a seller is required to provide marketable title on the closing date. Where the sale contract does not indicate that "time is of the essence," however, the seller's performance need only occur within a reasonable time after the scheduled closing date. As such, a buyer under that contract will not be able to rescind or seek damages until that reasonable time (sometimes as much as several months) has passed without the seller providing marketable title. In contrast, where the contract does indicate that time is of the essence, whichever party fails to perform by the scheduled closing date loses their right to enforce the contract. In this case, the contract indicated that time is of the essence, and the owner failed to perform by the scheduled closing date, so the cousin will prevail.

A is incorrect. Time was made of the essence for this contract, so delivering the title within a "reasonable time" after the due date constitutes a failure to perform.

B is incorrect. Time was made of the essence in this contract, which means the title needed to be delivered by the due date or the party who failed to perform will lose their rights to enforce the contract. The fact that the warranty deed could have provided "interim" protection is irrelevant when the contract had a specific closing date where the title must be delivered.

D is incorrect. The amount of earnest money paid is irrelevant here.

#### 4. In that action, the banker should

Prior to the closing, the employee learned that Whiteacre did not conform to the zoning ordinance and refused to close even though the banker was ready, willing, and able to perform his contract obligations. The banker brought an appropriate action for specific performance against the employee. The banker and an employee entered into a valid written contract for the purchase and sale of Whiteacre. The contract provided that the banker was to convey to the employee a marketable title. The contract was silent as to zoning. The employee had fully inspected Whiteacre. A banker owned Whiteacre, a dwelling house situated on a two-acre lot in an area zoned for single-family residential uses only. Although it was not discernible from the outside, Whiteacre had been converted by the banker from a single-family house to a structure that contained three separate apartments, in violation of the zoning ordinance. Further, the conversion was in violation of the building code.

- Win, because the banker was able to convey a marketable title
- Win, because the employee was charged with knowledge of the zoning ordinance prior to entering the contract
- **Lose, because the illegal conversion of Whiteacre creates the risk of litigation**
- Lose, because the illegal conversion of Whiteacre was done by the banker rather than by a predecessor

Note:

C is correct. In general, a seller is required to provide marketable title on the closing date. To be considered marketable, the title must be free of encumbrances, such as mortgages, restrictive covenants, and easements. In establishing whether an encumbrance exists with regard to local codes and ordinances, it is important to distinguish between building codes and zoning laws. A property in violation of a building code is not considered an encumbrance, and title to that building is still marketable. In contrast, where a property is in violation of zoning laws, the violation is considered an encumbrance, and the title is unmarketable. In this question, the banker's conversion violates the zoning laws, and the conversion cannot be amended. The conversion puts a buyer at risk of being sued for the violations. Therefore, the employee will prevail.

A is incorrect. The banker was not able to convey marketable title.

B is incorrect. The knowledge of the illegal work is also not enough to render the title unmarketable. Instead, the non-compliance with zoning laws makes the title unmarketable.

D is incorrect. The non-compliance with the zoning laws, not the responsibility for performing the illegal work, is determinative in rendering title unmarketable.

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**5. In an appropriate action brought by the landowner against the friend for specific performance, if the landowner loses, the most likely reason will be that**

*Before the closing, the friend inherited another home and asked the landowner to return his \$5,000. The landowner refused, and, at the time set for the closing, the landowner tendered a good deed to the friend and declared his intention to vacate Blackacre the next day. The landowner demanded that the friend complete the purchase. The friend refused. The fair market value of Blackacre has remained \$50,000. A landowner owned and occupied Blackacre, which was a tract of land improved with a one-family house. His friend orally offered him \$50,000 for Blackacre, the fair market value, and he accepted. Because they were friends, they saw no need for attorneys or written contracts and shook hands on the deal. The friend paid the landowner \$5,000 down in cash and agreed to pay the balance of \$45,000 at an agreed closing time and place.*

- **The agreement was oral**
- Keeping the \$5,000 is the landowner's exclusive remedy
- The friend had a valid reason for not closing
- The landowner remained in possession on the day set for the closing

Note:

*A is correct. The question asks you to analyze why the court would rule against the landowner. This is essentially a hypothetical, asking you IF the court did something, WHY did they do it. To tackle a question like this, you have to look at all the answer choices and decide which scenario would make the hypothetical situation stated in the call occur. The Statute of Frauds mandates that any contract for the sale of land must be in writing and signed by the party to be charged. In this case, the friend's reasons for refusing to close and the landowner's justifications for mandating performance are irrelevant because the sale contract was never memorialized in a writing. A land sale contract may never be oral, so this would be the reason the landowner loses.*

*Part performance that unequivocally indicates that the parties have contracted for the sale of land may remove the contract out of the Statute of Frauds. What constitutes sufficient part performance varies among jurisdictions. The majority requires at least two of the following: (i) payment (in whole or in part); (ii) possession; and/or (iii) valuable improvements. In this case, there was a partial payment, but not possession or valuable improvements. Therefore, the Statute of Frauds still applies to this case.*

*B is incorrect. The friend could sue for the entire value of the contract, or specific performance.*

*C is incorrect. Having a valid reason for closing would not be enough to overcome the breach of contract.*

*D is incorrect. The landowner remaining in possession of the property would not be enough to compel specific performance.*

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## 6. The most probable result will be that the owner

Three months ago, a buyer agreed in writing to buy a property owner's single-family residence, Liveacre, for \$110,000. The buyer paid the owner a \$5,000 deposit to be applied to the purchase price. The contract stated that the owner had the right at his option to retain the deposit as liquidated damages in the event of the buyer's default. The closing was to have taken place last week. Six weeks ago, the buyer was notified by his employer that he was to be transferred to another job 1,000 miles away. The buyer immediately notified the owner that he could not close, and therefore he demanded the return of his \$5,000. The owner refused, waited until after the contract closing date, listed with a broker, and then conveyed Liveacre for \$108,000 to a subsequent purchaser found by the real estate broker. The subsequent purchaser paid the full purchase price and immediately recorded his deed. The subsequent purchaser knew of the prior contract with the original buyer. In an appropriate action, the original buyer seeks to recover the \$5,000 deposit from the owner.

- Must return the \$5,000 to the original buyer, because the owner can no longer carry out his contract with the original buyer
- Must return the \$5,000 to the original buyer, because he was legally justified in not completing the contract
- Must return \$3,000 to the original buyer, because the owner's damages were only \$2,000
- **May keep the \$5,000 deposit, because the original buyer breached the contract**

Note:

*A party to a land sale contract may seek either damages or specific performance in the event of a breach by the other party.*

*A liquidated damages clause in a real estate contract is a reasonable and agreed upon amount that would be awarded to the seller, should the buyer breach the contract. Liquidated damages typically do not exceed 3% of the purchase price, although most courts uphold the retention of a deposit of up to 10% of the sale price without inquiring into its reasonableness.*

*Liquidated damages clauses are common in real estate contracts. For buyers, liquidated damage clauses limit their loss if they default. For sellers, they provide a pre-set amount, usually the buyer's deposit money, in a timely manner if the buyer defaults. To be enforceable in a real estate sales contract, the liquidated damages clause must be a good-faith attempt by both parties to reasonably approximate a fair amount for compensation to the non-breaching party. If there is a valid and enforceable liquidated damages clause contained within a real estate sales contract, it is controlling in the litigation.*

*Conversely, a liquidated damages clause will not be enforced if it is deemed to be a penalty or unconscionable. A liquidated damages clause is also invalid if it gives one party a choice of possible remedies while not providing any pre-determined remedy for the other party.*

*D is correct. When the original buyer entered into the real estate contract with the owner and paid \$5,000 as a deposit towards the purchase price, they explicitly agreed that the owner had the right to retain the deposit if the buyer breached. By backing out of the deal, the original buyer was in breach of the real estate contract, with no applicable defense. The parties' liquidated damages clause will be enforced by the court and the owner will be able to keep the deposit as damages because it is less than 10% of the purchase price.*

*A is incorrect. This choice implicates that the buyer's performance is impossible now that his job is being transferred. Impossibility as a defense is typically invoked when unforeseen circumstances render performance impossible or impracticable, in a way the parties could not anticipate. Here, the fact that the buyer's employer transferred him 1,000 miles away does not qualify as a defense given that the buyer could have foreseen the possibility of being transferred and he could have also chosen to remain, execute the contract. This was a risk he took on when he entered into the contract.*

*B is incorrect. This answer choice is incorrect because it uses the word "must." Per the parties' agreement, the owner may choose to retain the security deposit, which is a reasonable amount under the liquidated damages clause. Whether the buyer was justified in backing out of the contract is irrelevant to whether the court will enforce the liquidated damages clause.*

*C is incorrect. Even though the owner lost \$2,000 in the actual sale to the other buyer, this is not dispositive in the action between the buyer and the owner. Their liquidated damages clause, which a court would find reasonable, will govern the outcome here, as stated above.*

## 7. If the man wins, it will be because

*The neighbor had been told that contracts for the purchase and sale of real property require consideration and concluded that because he had made no earnest money down payment, he could refuse to close and not be liable. The neighbor notified the man of his intention not to close and, in fact, did refuse to close on the date set for the closing. The man brought an appropriate action to compel specific performance by the neighbor. Another property came on the market that the neighbor wanted more than Blackacre. The neighbor decided to try to escape any obligation to the man. The man orally gave the neighbor permission to park his car on Blackacre without charge prior to the closing. Thereafter, the neighbor frequently parked his car on Blackacre. A man was the owner of Blackacre, an undeveloped city lot. The man and a neighbor executed a written document in which the man agreed to sell Blackacre to the neighbor and the neighbor agreed to buy Blackacre from the man for \$100,000; the document did not provide for an earnest money down payment. The man recorded the document, as authorized by statute.*

- The neighbor's use of Blackacre for parking constitutes part performance
- **General contract rules regarding consideration apply to real estate contracts**
- The doctrine of equitable conversion applies
- The document was recorded

Note:

*When buying and selling property, parties can, theoretically, complete the transfer in a single step. The seller could tender the deed, and the buyer could simultaneously hand over the purchase price. If the buyer and seller did this process all at once, there would be no need for land sale contracts.*

*However, nearly every land transfer will be preceded by a land sale contract. Parties to these conveyances will sign the land sale contract, which is followed by a gap in time before the actual conveyance of the title to the property. During this gap, parties usually arrange financing and check title. Land sale contracts normally provide a settlement date for the "closing" (passage of title from the owner to the buyer) to occur.*

*B is correct. The call of this question asks a hypothetical: IF the man wins the lawsuit against the neighbor, WHICH legal doctrine or concept ensures this outcome? The best way to answer a question like this is to work backward and identify which legal doctrine or concept is the decisive issue for the man.*

*If the man wins, it will be because the court found that there was an enforceable agreement between the two parties during the closing period. To find an enforceable agreement, the court would have to rely on principles of contract construction. Here, the exchange of promises by the neighbor and the man constitutes consideration even though no earnest money or deposit was paid by the neighbor.*

*A is incorrect. There is one major exception to the Statute of Frauds for land sale contracts. Under the doctrine of part performance, a party who has taken action in reliance on the contract may be able to gain at least limited enforcement of it at equity. However, courts are in sharp disagreement as to what specific acts by the purchaser constitute part performance entitling the purchaser to specific performance.*

*Here, however, it is obvious that the neighbor has not partially performed "enough" for the man to be entitled to specific performance. The performance the neighbor was obligated to make was paying the man \$100,000 - use of the lot in no way constitutes a part performance of that payment.*

*C is incorrect. Under the doctrine of equitable conversion, once a contract is signed and each party is entitled to specific performance, equity regards the purchaser as the owner of the real property. This doctrine addresses who bears the risk for damage or destruction of a property after the sale contract is executed or in the event that a party to a contract dies before the contract has been completed. In general, it holds that a deceased seller's interest passes as personal property and a deceased buyer's interest as real property. However, the doctrine of equitable conversion is irrelevant to the facts presented.*

*D is incorrect. In the contracting phase of a real estate transaction, "recording" is only relevant to the determination of whether title to the property is marketable. The validity of title must be apparent "from the record," meaning the validity of the title is clear without resorting to unrecorded documents or other external evidence. Here, the recording of the contract is irrelevant to the man's right to seek specific performance, because the marketability of the property is not at stake.*

**8. Which of the following is the most appropriate comment concerning the outcome of this action?**

*The neighbor brought an appropriate action against the farmer to recover damages for the injuries he sustained. The buyer was not a party. The farmer had known that the wall was dangerously weakened by rot and needed immediate repairs, but had not told the neighbor or the buyer. There is no applicable statute. One year later, the farmer conveyed the barn and its associated land to a buyer "subject to the lease to [the neighbor]." The neighbor paid the next month's rent to the buyer. The next day a portion of an exterior wall of the barn collapsed because of rot in the interior structure of the wall. The wall had appeared to be sound, but a competent engineer, on inspection, would have discovered its condition. Neither the buyer nor the neighbor had the barn inspected by an engineer. The neighbor was injured as a result of the collapse of the wall. A farmer leased a barn to his neighbor for a term of three years. The neighbor took possession of the barn and used it for his farming purposes. The lease made the farmer responsible for structural repairs to the barn, unless they were made necessary by actions of the neighbor.*

- The neighbor should lose, because the buyer assumed all of the farmer's obligations by reason of the neighbor's assignment to her
- The neighbor should recover, because there is privity between lessor and lessee and it cannot be broken unilaterally
- **The neighbor should recover, because the farmer knew of the danger but did not warn the neighbor**
- The neighbor should lose, because he failed to inspect the barn

Note:

*C is correct. The farmer was responsible for disclosing the danger to his neighbor. A lessor must warn the lessee of existing defects in the premises of which the lessor is aware, and which he knows that the lessee is not likely to discover on a reasonable inspection. Failure to disclose the danger will make the lessor liable for any injury resulting from the condition. Since the farmer knew about the rot in the wall, and knew that wall appeared to be sound, he was obligated to warn the neighbor at the time the lease was entered into. Therefore he will be held liable for the neighbor's injury.*

*A is incorrect. Even though the buyer assumed all of the farmer's obligations related to the lease, the farmer is still liable for his failure to disclose the dangerous condition at the start of the original lease.*

*B is incorrect. While there is privity of contract between the neighbor and the farmer, it is irrelevant to determining the farmer's liability for the damages arising from his failure to warn about the dangerous wall.*

*D is incorrect. The defect would only have been apparent upon inspection by a competent engineer, a layperson's inspection would not have been sufficient.*

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## 9. Which of the following are relevant in advising the seller of his legal position?

A seller entered into a written contract with a purchaser to sell Greenacre. The contract was dated June 19 and called for a closing date on the following August 19. There was no other provision in the contract concerning the closing date. The contract contained the following clause: "subject to the purchaser obtaining a satisfactory mortgage at the current rate." On the date provided for closing, the purchaser advised the seller that he was unable to close because his mortgage application was still being processed by a bank. The seller desired to declare the contract at an end and consulted his attorney in regard to his legal position.

- Only the Statute of Frauds and whether time is of the essence
- Only the parol evidence rule and specific performance
- Only the parol evidence rule, the Statute of Frauds, and specific performance
- **The parol evidence rule, the Statute of Frauds, specific performance, and whether time is of the essence**

Note:

The Statute of Frauds is applicable in all states to any contract for the sale of land, or for the sale of any interest in land. Therefore, either the contract itself, or a memorandum of it, must be in writing. For a memorandum to satisfy the writing requirement, it must state with reasonable certainty the following: (i) the name of each party to the contract; (ii) the land to be conveyed; and (iii) the essential terms and conditions of the deal. The signature of the party to be charged (i.e., the party against whom enforcement is sought) must appear on the memorandum or contract.

When buying and selling property, parties can, theoretically, complete the transfer in a single step. The seller could tender the deed, and the buyer could simultaneously hand over the purchase price. If the buyer and seller did this process all at once, there would be no need for land sale contracts.

However, nearly every land transfer will be preceded by a land sale contract. Parties to these conveyances will sign the land sale contract, which is followed by a gap in time before the actual conveyance of the title to the property. During this gap, parties usually arrange financing and check the title. Land sale contracts normally provide a settlement date for the "closing" (passage of title from the owner to the buyer) to occur. If a party wants to enforce specific performance for a failure to close on the exact date specified, there must be an express provision in the contract making time of the essence, or such a provision can be inferred. The party that wished to enforce specific performance (the transfer of land on the exact date stated in the contract) will only be able to sue for monetary damages because specific performance is no longer possible, due to the temporal nature of the contract.

D is correct. To answer this kind of question, it's helpful to use a process of elimination. Here, the seller is faced with the purchaser's inability to close due to a third-party's actions (the bank). The call of the question is asking which legal concepts or doctrines would be relevant to the seller's goal, which is to rescind the contract. The parol evidence rule, the Statute of Frauds, specific performance, and whether time is of the essence are all relevant concepts in determining whether the seller can do that.

A is incorrect. As explained above, this question is asking which legal concepts or doctrines are relevant to the seller's goal to not go through with the real estate contract due to the purchaser's failure to secure financing from the bank before the transaction closed. Whether "time is of the essence" is relevant because where a sale contract indicates that time is of the essence, failure to perform on the scheduled closing date negates the failing party's right to enforce the contract at a later date. The Statute of Frauds is always relevant to land sale contracts, as it requires that all such contracts must be in writing. However, this is not enough to determine the seller's legal position.

B is incorrect. Like the previous answer, this choice also does not discuss all the relevant legal concepts or doctrines to the seller's position. It may be relevant for the seller to introduce parol evidence relating to the purchaser's mortgage application in order to show that the seller's duty of performance is excused by the failure of a condition precedent (this, however, depends upon whether or not the contract stated that "time is of the essence"). Further, specific performance is relevant as it is one of the two remedies (the other being damages) available to the purchaser if the seller attempts to get out of the contract. However, this answer does not include every legal concept relevant to determining the seller's legal position.

C is incorrect. As explained above, whether time is of the essence is critical to the seller's position. This answer choice does not include everything the seller needs to know to support his position, so it is incorrect.



# 10. If the court holds for the owner in this action, it will most likely be because

Shortly after entering into the contract, the buyer found another property that much better suited her needs and decided to try to avoid her contract with the owner. When the buyer discovered the existence of the mortgage, she asserted that the title was encumbered and that she would not close. The owner responded by offering to provide for payment and discharge of the mortgage at the closing from the proceeds of the closing. The buyer refused to go forward, and the owner brought an appropriate action against her for specific performance. The owner of Greenacre, a tract of land, mortgaged Greenacre to a bank to secure his preexisting obligation to the bank. The mortgage was promptly and properly recorded. The owner and a buyer then entered into a valid written contract for the purchase and sale of Greenacre, which provided for the transfer of "a marketable title, free of encumbrances." The contract did not expressly refer to the mortgage.

- The mortgage is not entitled to priority because it was granted for preexisting obligations
- The doctrine of equitable conversion supports the result
- **The owner's arrangements for the payment of the mortgage fully satisfied the owner's obligation to deliver marketable title**
- The existence of the mortgage was not the buyer's real reason for refusing to close

Note:

C is correct. In general, a seller is required to provide marketable title on the closing date. To be considered marketable, the title must be free of encumbrances, such as mortgages, restrictive covenants, and easements. Where the contract does not state that "time is of the essence," then the seller is required to provide marketable title within a reasonable time after the scheduled closing date. If the seller is able to do so, the buyer has no grounds for refusing to perform and the seller may sue for damages or specific performance. In this case, the owner has made arrangements that will render the title free of all encumbrances (the mortgage) at the closing. Therefore, the owner was entitled to bring an action for specific performance, and will succeed in that action because he can provide marketable title.

A is incorrect. Priority is irrelevant to the marketability issue at hand.

B is incorrect. The doctrine of equitable conversion is irrelevant to the facts presented - it addresses who bears the risk for damage or destruction of a property after the sale contract is executed.

D is incorrect. A buyer's "real reason" for refusing to close, whatever it may be, does not affect the parties' respective rights and responsibilities at law.

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