

## PROPERTY II

Professor Randolph

Art Carver was a reclusive myrtlewood sculptor living near the Oregon coast. Art owned five acres of property including both parcels A&B on the map below. Art sold three acres of the property, "Parcel A," to Bull, who was looking for a spot for a summer cabin. On Parcel A was a driveway that had formerly served as the main access to and through Art's property. Art now had better access to his property from another direction, but believed that the old driveway would be of some use to him. Art's recorded deed to Bull included the following language:

"Excepting therefrom a strip of land fifteen feet wide and 100 feet long described as follows: (here appeared the legal description of the old driveway) for purposes of access to Art's property.

Provided further that Art reserves the right to collect myrtle wood on the property hereby conveyed."

Bull built his cabin on the property, but the coastal climate bothered his rheumatism, and he moved to Palm Springs, giving his property to Belle, his niece, by a deed which described the entire three acres and did not contain the reservations set forth above.

Art owned a small shop up the road in which he sold his myrtlewood. Soon after Bull built his cabin, Art moved to the rear of his shop to Clive and sold his remaining two acres of the myrtlewood grove, "Parcel B," to Clive. Art again reserved the right to collect myrtlewood, but this time his reservation stated that:

"Grantor retains the exclusive right to gather myrtlewood on the property for ten years. This right is fully assignable and divisible."

Art's deed to Clive included "all appurtenances and hereditaments" but did not specifically mention the old driveway.

Five years later, Art sold his shop to Mel, who renamed it Myrtlewood Madness" ("tourist's delight – myrtlewood tonight") and retired to the Maldives Islands. Art's deed to Mel included "all my right, title and interest, of any kind, in (here appeared a description of the entire five acre parcel now owned by Clive and Belle). Belle had to walk through a myrtlewood thicket to get to the beach from her cabin, also she asked Clive if she could cross his property to get to the beach. He answered, "Go ahead, feel free." Soon thereafter Belle invested \$5,000 in building a quaint walkway and staircase across Clive's property to the beach. Clive observed the construction and said nothing.

Mel, at Myrtlewood Madness, is now selling myrtlewood gathering permits on Clive's and Belle's property. In addition, Mel is crossing Belle's property to get to Clive's property, using the old driveway, and telling the tourists to do the same.

Belle has decided to block the driveway and is keeping everyone out. Can she exclude Mel from the property? Can she exclude Mel from the driveway? Can she exclude Clive from the driveway?

In retaliation, Clive seeks to exclude Belle from the beach walkway. Can he do so?

