

Exam Number

INSTRUCTIONS

1. This is an open outline exam. You may refer to the outline you prepared yourself.
2. Please write your exam number on each page of your copy of the exam. Write your answers in the spaces provided here in the exam. I will not read anything you write on other than the designated answer sheets. Therefore, be sure to outline what you intend to write before you commit pen to these pages. **WRITE LEGIBLY**
3. You have three hours to complete this exam. If you finish the exam before the end of three hours, please put your exam in the box at the front of the room.

Exam Number

ESSAY QUESTION (50 points)

In 1940 Lena, a widow with five children, married Joseph, a widower with five children. Before the marriage Lena and Joseph entered into an antenuptial agreement in which they agreed to release each other from claims in the estate of the other and that Joseph would acquire or build a house costing not less than \$30,000 and convey an undivided one-half interest therein to Lena. This was done and they lived together with some of her children in the house, which was on Carplin Place in Columbia, Iowa.

In 1959 Joseph died leaving a will in which he devised his undivided one-half interest in the Carplin Place property to his children, share and share alike. After her husband's death, Lena continued to live in the Carplin Place house, and for about four years one of her sons lived there with her. After Joseph's death a dispute arose between Lena and Joseph's children as to the validity of the antenuptial agreement. After protracted litigation, the validity of the agreement was upheld by the Columbia County court on December 15, 1960. Thereafter Lena instituted an action to partition the Carplin Place property but then dismissed the action.

Lena continued to occupy the house in the same manner in which she and Joseph had occupied it during his lifetime. No part of the dwelling house was rented to outsiders and she received no other income from the property except \$10 per month as rent for a garage. None of Joseph's children ever occupied any part of the premises either before or after their father's death.

They never made any demand upon her to allow them to occupy the house or any part of it and at no time did Lena ever deny them access to the premises.

Joseph's children filed an action to partition the property in November of 1990. As part of their complaint they are asking for an accounting and claiming that Lena owes them for the rental value of her more than thirty years of exclusive occupancy, for taxes and insurance which one of them has paid since his father's death, and for waste. Their claim of waste is based on the fact that, although Lena has kept the house in good repair, she has not remodeled the kitchen or bathrooms, nor updated the electrical wiring and hence the fair market value of the property is not as high as homes of comparable size in the same neighborhood.

Lena has come to you for advice and representation. Advise her of the arguments she can anticipate in support of Joseph's children's complaint. What would you offer to counter such arguments? Are there any claims you would assert on her behalf? How likely are those claims to succeed? Discuss fully.

Write your answer on the pages that follow. Do not write in the margins or on the reverse of any of the pages and do not write more than one line of your text between the lines provided.