

### GENERAL DIRECTIONS

You have three hours and all questions are weighted equally, so divide your time accordingly. Put your answers in the same order as the questions (if you want to answer them in a different order, leave space for any you skip). Discuss all relevant issues. If you feel a question is ambiguous, make any necessary assumption and tell me what you have assumed, but please do not assume what you are to decide; a question is not ambiguous because the facts can be construed in more than one way. It is always safer to assume that something not stated is not a fact.

#### QUESTION 1

Tom rented an apartment from Laura in July 1986 for \$150 per month. On November 20, 1988, the basement of the apartment building flooded and the heating boiler stopped functioning. The next day it was found that heat could not be restored, pipes were freezing and bursting, and some ceilings had fallen. Laura orally notified Tom that there were emergency problems in the building and he would have to find another place to live. Laura closed the building on December 5, 1988. Plywood was placed over all of the lower windows and balconies, the back door was locked and nailed shut, and the front door closed with a chain and a lock. A sign was posted in front of the building stating in part that "all personal items remaining in this building after December 31, 1981, will be considered abandoned." The sign had a telephone number for inquiries. No other written notice was given, and the only attempt to contact Tom was the conversation on November 21.

When the building was closed, Tom had furniture, clothing and other personal property in his apartment. Tom went to Legal Aid for assistance in recovering his property, and an arrangement was made for him to remove his property, but Laura's agent failed to keep that appointment. In February 1982, a second appointment was made and the building was opened for Tom; he found the apartment unlocked, the interior a mess, and many items missing. Tom removed his property that was in the apartment. He claims that the missing property was worth \$3349.

Tom sued for loss of his property, alleging that Laura had the duties of a ballee. Laura counterclaimed for past due rent; Tom had paid rent only through August. Decide the case.

Tina leased a house from Larry. The electric hot water heater in the house went off several times and was repaired by Larry replacing a fuse or telling Tina do so. The last time it went off

Tina notified Larry on Wednesday. On Saturday it had not been repaired. Tina had been told by her doctor to take hot baths, and she did this by boiling water in the kitchen and taking it to the bathroom. While she was carrying the water on Saturday, her four-year-old son bumped into her and was seriously burned when the hot water spilled over him. He sued Larry, through his mother, alleging that Larry carelessly and negligently repaired the defective heater, leaving Tina without hot water and requiring that heated water be carried from the kitchen to the bathtub, with foreseeable risks of harm, and that Larry violated the housing code by failing to provide an adequate supply of hot water, which proximately led to his injuries.

An expert witness at trial diagnosed the problem as defective electrical wiring and indicated that Larry's previous repairs of the heater did not demonstrate ordinary care.

Decide the case.

Father wrote a letter to Son, an undergraduate student at Harvard, stating that he was giving Son, for his birthday, a valuable painting hanging in Father's home, but that he wished to retain possession for his lifetime. Two months later, Father wrote another letter saying: "Now my lawyer tells me that because of the existing tax laws it was wrong to mention in that letter that I want to use the painting as long as I live. Though I still want to use it, this should not appear in the letter. I am enclosing, therefore, a new letter and I ask you to send the old one back to me so that it can be destroyed." The new letter that was enclosed said: "The 21st birthday, being an important event in life, should be celebrated accordingly. I therefore wish to give you as a present the oil painting which now hangs in the New York living room." The painting continued to hang on the wall of Father's house, and went with him when he moved to California, then to Austria. After Father's death, Son requested possession of the painting and, when the executor refused to give it, sued for a declaration that he is the owner.

At trial the two letters were introduced; the first was not because it had been destroyed by Father. There was evidence that Father made several statements that he had given the painting to Son, that, when he prepared an export license application to take the painting out of Austria, he stated that he had bequeathed the painting to his heirs, and that he did not pay a gift tax at the time of the alleged gift. The court has asked for trial briefs.

1. Argue the case for Son.
2. Argue the case for Father.

Hal owned a farm. In 1975 he conveyed the farm "to Alan, reserving a life estate to Hal, and providing Alan survives Hal, and should Alan fail to survive Hal, then such is conveyed to Betty." Betty died in 1981. Alan died in 1985. Hal died in 1990. Betty's estate filed an action asserting title to the farm. The state has statutes eliminating the need for words of inheritance to transfer a fee simple, converting fees tail to fees simple, abolishing the Rule in Shelley's Case, and providing that contingent remainders are not destructible. Otherwise the common law is in force.

Hal and Wilma, his wife, owned their home (separate from the farm) as tenants in common. Wilma died, leaving her share of the home to their children, Sam and Donna. Hal married Wendy. When he died he left all his property to Sam and Donna. Wendy elected to take her intestate share rather than taking under his will, and received a one-sixth share of the home. She remained in possession and refused to pay rent. Sam and Donna sued to evict her and to recover the rental value of the property.

Decide the cases.