

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 usually safer to assume that something not stated is not a fact, and remember that the court can decide only on the record made by the parties.

QUESTION 1

Alice had an heirloom garnet necklace that needed repair. She took it to Bob's Jewelry Shop; Bob sold and repaired jewelry. He promised to have the necklace repaired in three days. Three days later Alice returned to get it, but Bob could not find it. He asked one of his sales clerks about it; the clerk said, "I sold it to a woman who saw it and asked about it. Bob was able to identify the woman as Carol from the credit card slip she signed. He called her, told her that the necklace was sold by mistake and asked her to return it. She refused. Alice also called her and told her the necklace was a family heirloom, but Carol still refused to return it.

Alice sued Bob and Carol, seeking return of the necklace from Carol and damages from Bob. At trial the sales clerk testified that the necklace had inadvertently been placed in a display case. It was very different from anything else in the case, and also from anything else in the store, as Bob sold only new jewelry and Alice's necklace was an antique design. The trial court ordered Carol to return the necklace and dismissed the case against Bob. Carol appealed, and Alice appealed the dismissal of Bob to save her action if Carol's appeal was successful. Decide the appeals; decide Alice's appeal regardless of how you decide Carol's.

QUESTION 2

Tanya had leased an apartment in Lisa's 20-unit building for five years. She originally had a one-year lease, but at the end of the year she became a month-to-month tenant. She was happy with her apartment, which was well maintained. She always paid her rent on time and Lisa had never had any complaints about her.

Alan, a friend of Tanya's, applied for an apartment in the building. Lisa asked for a credit check, which was her usual practice. The report showed, based on an interview of Alan, that he had been employed at the same place for the last three years, and his salary was \$20,000 per year, but the checker was unable to contact his employer to verify the information; he had no past due bills reported, but one creditor had a policy of refusing to give any information; and he had never

previously owned or rented a home. After the interview, Alan called Lisa to inquire about his application. She told him she would have to wait until she received the report. A few days later, he called again. She said she would let him know when she made a decision. He called again a few days after that and told her he thought she was stalling because he was black. She said that was not true, but she rejected his application, saying it was because of an inadequate credit report and because she had a policy of not renting to single males. She had problems with some single males being disruptive shortly after she bought the building.

Alan filed a complaint with the state Civil Rights Commission, alleging that he had been denied an apartment because of race. He included with his complaint a statement from Tanya saying that, while she knew Lisa did have a policy against renting to single males, she had made exceptions; however, she never had rented to a black male, single or married, nor had she rented to any black. The complaint, along with Tanya's statement, was forwarded to Lisa.

Two weeks later, Lisa gave Tanya a notice that her lease would terminate at the end of the next month.

Tanya filed a suit against Lisa, alleging retaliatory eviction. The court dismissed the complaint. Tanya appealed.

1. Argue the case for Tanya.
2. Argue the case for Lisa.

QUESTION 3

Dan, a 65-year-old man, was estranged from his only child, Sam. He had a close relationship with a cousin, Cathy. Dan developed cancer and his condition was slowly deteriorating. Cathy was helpful to him during his illness. Dan added Cathy's name to an existing money market account. The bank employee who handled the transaction explained the characteristics of a joint account, including the right of survivorship, and Dan put the account in that form. Dan later executed a power of attorney to Cathy so she could pay his bills and handle his affairs. He also executed a will giving his home to Cathy.

Several months after these transactions, Dan was reconciled with Sam. He made a new will, naming Sam as executor and primary beneficiary. He also executed a deed transferring his home to himself and Cathy as joint tenants with right of survivorship.

Shortly before Dan's death, Cathy transferred \$2000 from the money market fund to Dan's checking account and paid his bills. A few days later, she closed the money market account.

After Dan died, Sam, acting as executor, filed an action against Cathy to recover the balance of the money market account for the estate. Cathy answered that the joint account was a gift to her; she cross-claimed, alleging that she was a half-owner of the house.

At trial, in addition to the above facts, there was evidence that Dan consulted with his lawyer shortly before his death about revoking the power of attorney and asked Cathy to take her

name off of the money market account; neither of these actions was completed before Dan's death. A friend of Dan's testified that, about the time he had Cathy's name added to the account, Dan told the friend that he wanted Cathy's name added so that Cathy would have access to the money in case of some major medical or other emergency. The trial court ordered Cathy to return the balance of the account and held that Dan owned the house. Cathy appealed. Decided the appeal.

QUESTION 4

Olga executed and delivered a deed conveying property to "my sons Alvis and Boris for their lives, and on their death to their heirs." The deed also stated that Alvis is to have full control of the land. Alvis had been farming the land under lease from his mother, while Boris was employed by an insurance company and was satisfied with his work. Alvis continued farming the land after the conveyance. When Boris died, Calvin and Dora, his son and daughter, claimed their share of the land. Alvis argued that their share would not become possessory until the death of both life tenants.

About a year after Boris died, Alvis became ill and unable to farm the land so he leased it for farming. Shortly before that, the state had taken part of the land for a freeway interchange. The value of the remainder increased because of the commercial use that would develop with the interchange, and the value would increase more when the interchange was completed. The state had problems, and construction of the interchange was stalled. In the meantime, the rental value for agriculture had not increased, and the rental income was not enough to support Alvis. He wanted to sell the land and invest the proceeds so he could have the interest. Calvin and Dora refused to consent because of the future increased value of the land.

Alvis sued to require sale of the land. Calvin and Dora objected and cross-claimed for distribution of their share to them. A statute authorizes a court to order the sale of all or part of land held in a life estate and remainder if the court is satisfied that the sale is in the best interest of the life tenant and will not do substantial harm to the remainder interests. The state also has statutes eliminating the need for words of inheritance to convey a fee simple, abolishing the Rule in Shelley's Case, and eliminating destructibility of contingent remainders.

Decide who owns the present possessory interest, whether the land should be sold, and how the proceeds should be distributed if it is sold.