

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 a court can decide only on the record made by the parties.

QUESTION 1

Harold and Wilma owned property in fee simple. In 1928 they executed two deeds. The first deed conveyed one half of the property to their daughter, Donna, and provided that "the property will remain Donna's during her natural life, then will go to her children if she have any at her death, but if she die without children, then to her estate to Joe distributed as provided by law at the time of her death." The second deed conveyed the other one half to their son, Sam, and provided that "in case Sam should die before his wife dies, and any children survive him, the surviving children and his wife shall have the use of the land during the lifetime of his wife, when it shall go to his children, if any are living, but, if at the death of the grantee no children survive him, the title shall be in the grantors." At the time of delivery of the deeds Donna was unmarried and had no children; Sam was married and had two children. In 1931, the parents gave another deed to each child conveying the same land to the grantee absolutely, and stating that it was made for the purpose of removing the restrictions in the first deed and was meant to give the grantee an absolute title. Donna married in 1932 and had a child in 1935. Sam had another child in 1934. In 1940, both Donna and Sam executed deeds granting the land to Alan. In 1990, after the death of both Donna and Sam, their children brought an action to recover the land, asserting that their parents could convey only a life estate and that they had the remainders. The trial court found for Alan. The children appealed.

The state has statutes, that were in effect in 1928, making words of inheritance unnecessary to transfer a fee simple, abolishing the Rule in Shelley's case, and converting a fee tail to a fee simple; otherwise the common law was in force. Decide the case.

QUESTION 2

Larry executed a lease of an apartment to Teresa for a one year term, beginning May 21, 1992. The unit was described as a luxury apartment; the rent was \$900 per month. Teresa moved out on December 2, 1992. Larry sued in June 1993 for the unpaid rent. Teresa answered, claiming that she was forced to leave because of constantly running toilets, an imbalance in the heating system between the two floors of the apartment, and failure of Larry to provide shutters or traverse rods for the first floor windows. The windows were floor to ceiling facing a terrace on which many people sat or walked. The only coverings were shades that she could not control. She could not regulate the heat and repeated complaints to Larry failed to resolve the problem. She also complained about the running toilets to no avail. She argued breach of a warranty of habitability and failure to mitigate damages.

Larry did not challenge her testimony about the problems, but did assert that he had tried to correct them. Teresa testified that, while she had leased the apartment in response to an advertisement, Larry did not advertise it after she left. He testified that he contacted two or three real estate firms, and showed the apartment to three prospective tenants, quoting a rent of \$1000 per month. Teresa produced a witness who said that she had looked at the apartment in February and wanted to rent it, but was turned down. She thought that Larry rejected her because she was black, but she had not done anything about it because she found another apartment. In May, the apartment was rented to a white tenant. The trial court gave Larry a judgment for the rent through the end of the term. Teresa appealed.

1. Argue the case for Teresa.
2. Argue the case for Larry.

QUESTION 3

Olive owned Blackacre, a five-acre tract with a house; there was a fence around the entire tract. Olive lived in another state and the property was unoccupied in May of 1971 Arthur entered Blackacre and occupied the house. He kept the lawn mowed and maintained gardens near the house, but he did nothing with a wooded area that covered two acres of the tract. Arthur remained in possession until his death in June of 1976. Helen was Arthur's sole heir. She took possession of Blackacre, and remained for the next three years; during that time she took out most of the trees and expanded the gardens. She conveyed Blackacre to Martin. Martin remained in possession of Blackacre until his death in January of 1983. Under Martin's will Blackacre was bequeathed to Phyllis, who took possession in March, 1983. She orally conveyed the premises to Jane in February, 1986. Jane occupied the premises until April, 1988, then leased it to Lance for one year. When the lease ended Jane repossessed Blackacre. Two weeks later she joined the United States Army. Before leaving for military service, she called David and advised him to take over Blackacre and make the most of it and said that she would make no further claim to it.

David took possession at Jane's suggestion and remained for two months, then he was called to another state because of his father's serious illness. He stayed with his father for three months, and then returned to Blackacre and remained in possession until December, 1992. David then

called Olive and said to her: "Olive, I have decided to abandon Blackacre. It is yours if you want it." David then moved from Blackacre with no intent to return. The statute of limitations for actions to recover possession of real property is 21 years.

Olive has consulted you to determine her rights in Blackacre. Advise her.

QUESTION 4

Sage owned a building that he advertised for rent at \$575 per month. Rogers answered the ad and Sage orally rented the space to him for a commercial warehouse, with rent payable on the first of every month. Both parties agreed that Rogers was to put the utility bill in his name and that he was to keep the premises clean. Rogers failed to pay the rent on time, did not have the utility bill put into his name, and left garbage all over the property.

Sage sent a notice to Rogers on July 24 stating that the lease would terminate and Rogers should leave on or before August 24. Sage extended the termination date to October 1 on the condition that Rogers agree to pay the next month's rent on time and to pay a \$250 deposit for the utility bill and \$500 for cleaning. Rogers paid the \$250 for utilities, but did not pay the \$500 and did not pay the rent on time. At the end of September Sage went on a fishing trip, expecting Rogers to be gone when he returned, but when he returned on October 1 Rogers was still there. Rogers gave Sage a rent check, which he cashed. He then sent another notice to vacate by November 1; the notice was received by Rogers on October 3. On November 2 Sage placed a padlock on the front door. On November 3 Rogers attempted to pay rent for November, but Sage refused to take it. Rogers returned to the building and, seeing the padlock, headed for his forklift. Sage's son, realizing that Rogers intended to force entry, got his rifle and shot several "warning" shots. Rogers continued toward the door and forced it open, damaging the door.

Sage filed an eviction action on December 1. What defenses will Rogers assert? How will the court decide the case?