

GENERAL DIRECTIONS

You have three hours. 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 think that a question is ambiguous, make any necessary assumption and tell me what you have assumed. Do not assume what you should decide; a question is not ambiguous because the facts can be construed in more than one way; that goes into your analysis. It is usually safer to assume that something not stated is not a fact. Remember that a court can decide only on the record made by the parties.

When you are finished, put your bluebook on the table at the front of the room; if you use more than one, put additional books inside the first. You do not need to return the questions and it would be useful to keep them for review of your examinations.

QUESTION 1

Otto told his friend, Donna, that he had put a box in his safe deposit box for her. He signed and gave her a statement authorizing the bank to give her access. She did not go to the bank before he died, three weeks later. The administrator of Otto's estate found the box and gave it to her; it contained two necklaces. Otto's daughter objected and brought an action to recover it, claiming there was no completed gift.

Shortly after receiving the necklaces, Donna wore one of them when she went for physical therapy. She put the necklace, along with clothes, in a locker provided for them; however there was no key to lock it. The locker was in a small room between the waiting room and the therapy room. When she dressed to leave the necklace was not there. She brought an action against the therapist for negligence in failing to protect her belongings.

Decide the cases.

QUESTION 2

Rose Ray, in 1930, leased a lot in a mountain-top resort area and purchased the cabin on it. In 1952 the lease was extended for 25 years unless sooner terminated by the lessor. In 1960 what had been a thriving community had become almost deserted, and the lessor terminated all the leases and directed the cottage owners to remove their personal effects. Rose did so, along with the other remaining residents. She died in 1962. In 1963 the resort land was conveyed to a corporation. The contract provided that all structures were to be included. About one week after the sale, Robert Ray, Rose's son, and his wife Margaret entered the cottage. They occupied it for about one month per year between 1963 and 1988; they did not pay any rent, but they paid taxes

and maintained fire insurance, installed telephone and electric service, and claimed the site as their voting residence (Ray was a colonel in the army and frequently moved). They posted "no trespassing" signs and put bars, shutters, and padlocks on the doors and windows. Several times they caught vandals and had them prosecuted. Over the next few years, all the other cabins in the area were destroyed.

The Rays brought an action to quiet title in the lot, alleging adverse possession. The trial court held that the Rays were the owners. The court of appeals reversed, finding that one month a year was not sufficient possession. The plaintiffs appealed to the supreme court. Decide the case.

QUESTION 3

In 1940 Olsen deeded a tract of land to Allen County School District, its successors and assigns, "so long as it is used for school purposes. If the District ceases using the property for school purposes, it will go to my children or to the grandchildren born to any deceased child." Olsen died in 1968, survived by three children and two grandchildren, children of his eldest child. In 1993 the District stopped using the building on the land, but it continued to use the grounds for some athletic practices and occasionally for school picnics. Olsen's one surviving child and three grandchildren, children of the deceased child, brought an action seeking possession of the land.

1. Argue the case for the District.
2. Argue the case for the family.

QUESTION 4

Tom leased a third-floor apartment from Lisa. He had lived there for about two years when he began to have difficulty getting repairs of the heating system. One evening, a few minutes after he entered his apartment, Tom was assaulted and robbed. Later that evening he discovered that his key was missing, and thought he must have left it in the lock when he came in, so he had the lock changed. The assailant was arrested a few days later. The police found that he had a record of criminal acts as a juvenile, and that he was a former employee of Lisals, doing maintenance work in this building.

Tom has consulted you about a possible action against Lisa. He indicates that a friend suggested that he sue for breach of a warranty of habitability or negligence in hiring. Advise him what, if any, action he might bring and whether there is a better way to deal with the problem.