

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). If you feel a question is ambiguous, make any necessary assumption and tell me what you have assumed, but 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 I

Olive owned two adjoining lots. She leased one lot to Tom for a restaurant and parking lot. Olive then built a storage facility for boats and recreational vehicles on the other lot. It was located about six feet from the property line, so users needed to use part of the restaurant parking lot to get into the storage bays. Olive testified that she discussed the construction of the storage units and use of the parking lot, with Tom before building the units, and that several times Tom had asked to purchase the restaurant property from her, but she refused because she needed the restaurant parking lot for access to the storage bays.

Olive and Henry, her husband, separated and he brought a divorce action. Part of the settlement awarded to Henry in the divorce decree was the lot on which the storage units were located. A few months after the divorce, Olive sold the restaurant property to Tom. Olive alleges that she did so with the oral stipulation that access to the storage units over the restaurant parking lot would continue, but there was no mention of it in the deed. Four years later, Tom made plans for construction of shops on the rear parking lot; this would prevent access to the storage units. Henry filed an action for a declaratory judgment, claiming an easement over the rear parking lot for ingress and egress to the storage facility. Decide the case.

QUESTION 2

Otto entered into a listing agreement with realtors for sale of a piece of property. Otto lived in another state and authorized a relative in the area to assist the realtor in determining the boundaries. Agnes, an agent with the realtor, represented to Paula, a prospective purchaser, that the boundary was ten feet north of an old fence. Paula signed a contract to purchase the land. When a survey was done, it revealed that the true boundary was 53 feet north of the fence. Paula offered to rescind the contract, but Otto refused. Paula brought actions against Otto for rescission and against Agnes for misrepresentation. Agnes cross-claimed against Otto for the commission. Otto notified his title insurer of the action and asked it to defend the action; the insurer refused and Otto filed a declaratory judgment action, asking for a finding that the policy covered the defect. The policy had the standard coverage and exceptions. Decide the cases.

QUESTION 3

Ann contracted on January 1, 1982, to buy property from Opal; the contract was not recorded. On January 12, 1982, Opal executed and delivered a deed conveying the property to Best Company, a Corporation owned by the family of Bill, to whom Ann was engaged, with the understanding that it belonged to Ann and that Best Company would convey it to her when she asked for it; the deed was recorded on January 20, 1982, and Ann took possession of the property. Ann and Bill were married on April 15, 1982, and made their home on the property. On January 5, 1984, Best Company conveyed the property to Bill, who recorded on September 9, 1984. In July of 1984, Charles obtained a judgment against Best Company, and recorded it on July 30, 1984. On March 19, 1985, Bill conveyed through a strawman, Lu, to himself and Ann as, joint tenants with right of survivorship; they recorded the deed on March 20, 1985. On March 6, 1985, Best Company filed a petition in bankruptcy. After receiving permission from the bankruptcy court, Charles foreclosed and placed a judgment lien on the property. The property was sold to Charles at a sheriff's sale on October 17, 1988. Ann filed an action to quiet title, alleging the property belonged to her; Charles counter-claimed to quiet his title.

The recording statute provides: A conveyance of real property is void as against a subsequent innocent purchaser for a valuable consideration of the property whose conveyance is first duly recorded." The trial court gave judgment for Charles. Ann appealed.

1. Argue the case for Ann.
2. Argue the case for Charles.

QUESTION 4

In 1950 most, but not all, of the individual owners of lots in what became the Sunny Acres Subdivision joined to form the Sunny Acres Protective Association. They executed an agreement that described the entire tract, restricted the lot sizes and setback lines, and provided that "no business area may be established in the territory without the approval of the applicable Zoning Board and the Board of Trustees of the Association." They recorded the agreement in County A, where part of the land was located, but did not record it in County B, where the rest of the land was located, until March 14, 1992.

In 1990 Dan's Development Company wanted to purchase several of the lots in B County for a shopping center. It applied to the City Planning Commission for rezoning of those lots from rural residential to commercial. The Planning Commission held several public hearings, with advance notice published in the local newspaper, and recommended approval of the zoning request. The Zoning Board held a public hearing where it also approved the request. None of the lot owners were present at any of the hearings or the Zoning Board meeting, nor was anyone representing the Association. Almost a year after the approval, some owners of lots near the proposed shopping center filed an action for declaratory judgment and an injunction to prevent the shopping center. Plaintiffs argued that Dan's had notice of the restrictions because 10 years earlier it had bought some of the Sunny Acres lots in A County and had seen the restriction recorded there. Dan's argued that it did not have notice, that Plaintiffs did not have standing to endorse the restrictions, and that Plaintiffs were estopped to assert the restrictions because they did not object to the rezoning request or otherwise object at an earlier time.

The applicable recording act provides: "All conveyances of real property are inoperative and void as to purchasers for a valuable consideration, mortgagees and judgment creditors without notice, until they are recorded."

Decide the case.