

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. It is usually safer to assume that something not stated is not a fact.

QUESTION 1

In June, 1991, Olive sold a tract of land to David and conveyed title by a general warranty deed. Both parties knew that there was a fence, constructed by Paul, an adjoining owner, along the south and west portions of the tract, but they did not know that the fence encroached about ten feet on the tract. After David accepted the deed and took possession, a survey revealed the encroachment. Paul then brought a quiet title action against David, claiming title by adverse possession to the ten feet. David counter-claimed against Paul, seeking ejectment. David also notified Olive of the action and asked that she defend it, claiming a right of indemnification if he lost.

Paul's evidence at trial was that he had bought his land in 1960 and had built a house on it and occupied it since 1962. He testified that he had landscaped around the house gradually, and had sodded the entire area in 1969. He put the fence up in 1973, and planted flowers along the fence in 1976; he has maintained the flowers ever since. The trial court ruled that Paul had failed to establish adverse possession for 21 years, the statutory period, and entered judgment quieting David's title. Paul appealed.

David amended his action against Olive to claim indemnification for the costs of defending the title, including attorney fees, and a judgment of liability for the value of the land if Paul succeeds on his appeal. The court granted judgement for David for his costs, and deferred the second issue until Paul's appeal is decided. Olive appealed.

Decide the appeals.

QUESTION 2

On July 6, 1976, Otto received a deed conveying to him property described as follows:

All of the NW 1/4 of the SE 1/4 of Section 15, Township 5 North, Range 3 East which lies South and East of the Choctaw Bluff Road, containing 30 acres more or less.

Otto recorded the deed on July 8, 1976. On July 9, 1976, Otto executed a mortgage to Allright Bank to secure a \$10,000 loan; it was recorded on July 13, 1976. On August 6, 1979, Otto executed a mortgage to Best Finance Company with a description referring to the property as "the NW

quarter of the SE 1/2 of Section 15." It was otherwise the same as the description in Otto's deed. This mortgage was recorded on August 15, 1979. On February 6, 1980, Otto executed and delivered a warranty deed to Carol; she paid \$30,000 and recorded the deed on March 25, 1980. Carol did not take possession; Otto remained in possession and continued to farm the land. On October 4, 1983, Otto executed a mortgage of the land to Commercial Credit Corporation to secure a loan of \$5000 for purchase of seed. That mortgage was recorded on October 9, 1983. Both the deed and the mortgage contained the same description as Otto's deed.

Best Finance brought a foreclosure action, describing the land as the "NE 1/4 of the SE 1/4 of Section 15," on September 24, 1990. Carol intervened, claiming title free of Best's mortgage on the ground she took without notice of it. Allright Bank intervened, claiming a prior claim to have its mortgage paid. Commercial Credit also intervened, claiming a share of the proceeds for its mortgage. The foreclosure was granted and the property sold for \$40,000. The amounts outstanding on the mortgages were \$5000 to Allright Bank, \$8000 to Best Finance, and \$2500 to Commercial Credit.

The applicable recording act provides that an instrument conveying an interest in land is ineffective until recorded against a subsequent purchaser for value without notice.

Decide the priorities of the parties.

QUESTION 3

Olga owned adjoining lots, lot one and lot two, each with a house. There was a driveway on lot two leading to a garage behind the house. About halfway between the street and the garage, a second driveway branched out to the left to serve a garage on lot one. In 1944 Olga sold lot one to Alan. In 1945 Olga sold lot two to Betty. Neither deed referred to the driveway; both deeds were recorded. Peg is the present owner of lot one and Dan is the present owner of lot two. All owners of lot one have used the driveway to reach the garage on lot one.

In 1987, Dan placed 4 X 4's and railroad ties along the property line, blocking Peg's access to her garage. Peg has consulted you to determine what her rights are. Advise her.

QUESTION 4

Oscar subdivided a tract of land into 26 lots and conveyed the first lot with restrictions. All subsequent deeds were made subject to the restrictions in the first deed. Among the restrictions were a limitation to one single-family residence, a prohibition of any garage exceeding two automobiles in capacity, and a requirement that any garage be of the same design and material as the residence.

Peter and Dorothy were neighbors in the subdivision. Dorothy began operating a beauty shop in her house. She also constructed a garage, located about 185 feet behind her house and 27 feet from Peter's house; it housed a camping trailer, a utility trailer, an all-terrain vehicle, a 3/4 ton truck, a

riding tractor, and other small items. The garage was constructed of aluminum siding; the house is brick with aluminum siding on the back.

Peter sued to enjoin operation of the beauty shop and to require removal of the garage. Dorothy answered, asserting that the covenants were too vague to enforce, that the residential use restriction should not be enforced because of changes in the neighborhood, that Peter was estopped to assert the residential restriction because he operated a car restoration business in his garage, and that he had waived the garage size restriction by failing to object to another large garage that was located about 150 feet from his residence; that garage is on a lower level and so is partially hidden. Peter testified that, while his son had been paid for some car painting in the garage in the past, Peter's activities are a hobby, not a business. There was evidence that a neighbor used his house to prepare tax returns. The trial court gave judgment for Dorothy. Peter appealed. Decide the case.