

GENERAL INSTRUCTIONS

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. Remember that the court can decide, and parties can argue, only on the record made by the parties.

QUESTION 1

Hal and Wanda entered into an installment land contract to sell a lot they owned to Wanda's sister, Sally. The contract was acknowledged before only one witness although a statute required two, and it was not recorded, but Sally took possession. Sally died. A certificate of transfer of her real property to her husband, Henry, was recorded; it referred to the land contract. Henry died and a certificate of transfer to Donna, his daughter, was recorded; it made no mention of the land contract. Donna was employed in another city and did not take possession. Hal and Wanda then sold the lot to David, who took possession. When Donna learned of this, she brought an ejectment action.

Decide the case on the basis of the following recording act: "No instrument affecting real estate is of any validity against subsequent purchasers for a valuable consideration, without notice, unless filed in the office of the recorder of the county in which the land is located."

QUESTION 2

Mike executed a warranty deed by which he granted property to himself and Sue, his sister, as joint tenants with right of survivorship. Shortly after this he married and moved to another state. He later sold the property and took a note and mortgage in payment; both were executed in favor of Mike and payments were made to Mike. Mike placed the payments into a savings account held jointly by Mike and Sue with right of survivorship. At the time of Mike's death the deed was found in Sue's safe, to which Mike had access. Mike's income tax returns reported all the interest paid on the note. Three days after Mike's death Sue withdrew all of the money in the savings account.

Mike's estate brought an action to recover the proceeds from the note and mortgage. Shortly after the suit was filed, Sue died and her estate was substituted as defendant. At trial a brother testified that Sue was instructed by Mike not to record the deed until after Mike died. Mike's estate asserted that the deed was not delivered and so did not become effective. The court held for the estate. Sue appealed.

1. Argue the case for Sue.

2. Argue the case for Mike's estate.

QUESTION 3

Alice and Bill have been adjacent landowners since the early 1950's. During that time Alice has used a gravel road across Bill's land to get to her land. During most of that time two other property owners used the road for access to their properties, but now they use a public highway. In 1990 Bill began building a house on his property and put construction materials across the road. Alice asked him to remove them, but he refused. Both parties suggested that the issue would have to be decided in court. Bill continued with construction and placed the house so it would be across the road.

Eight months later Alice sued to enjoin interference with his use of the road, alleging easement by prescription. She also asserted that his placing of the foundation had caused an increased flow of water across the road, making it impassable in heavy rains. Bill answered, alleging that there could be no easement by prescription because Alice's use was not hostile or exclusive and denied any liability for the change in flow of water. Bill argued, alternatively, that Alice could not require removal of the partially completed house because her delay in bringing the suit while Bill continued building estopped her. Decide the case.

QUESTION 4

Otto developed Snug Harbor subdivision in 1949. The plat used in advertising contained restrictions, including one requiring approval in writing by the grantor or his successors for the first structure on the lot. The plat also included a right in each owner to use, in common with others, a channel as a means of ingress and egress to Sandusky Bay, but without any right to moor vessels or place any obstruction in the channel. In addition, the deeds to boathouse lots, abutting the channel, contained a restriction that no exterior alteration or addition to the present existing buildings, nor any new structure not attached to an existing structure, shall be made or erected until the grantee has acquired approval from Otto. The plat was recorded, and was referred to in all of the deeds.

Don purchased a boathouse lot in 1986. At that time a straight line of the west walls of the boathouses (facing the channel) was plainly observable, although the east walls were not uniform. Don began renovating the boathouse. Pat, a neighbor, became aware that the alterations included a bay window and deck that would extend at least eight feet over the channel. No approval had been sought. Pat informed Don of the restriction and, when Don refused to alter the plans, sued to enjoin construction. At trial Don argued that the restrictions were not enforceable by other lot owners. He also produced evidence of earlier infractions, and argued that even if the restrictions were mutually enforceable, this one had been waived. One of the infractions was two angle irons projecting about three feet over the channel. A second was a T.V. antenna extending about four feet over the channel at a height of about twenty feet above the water. The third was a rain gutter and overhang extending one to two feet over the channel at a height of about 15 feet. Decide the case.