

GENERAL INSTRUCTIONS

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 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 one of the parties will have the burden of proving all that is needed to make his or her case.

When you are finished, put your bluebook on the table at the front of the room; if you use more than one, put the second, and any more, inside the first. You do not need to return the questions.

QUESTION 1

The Thompson family owned property in a remote area of southwestern Colorado. In 1938 they conveyed a 194-acre parcel to Billings; their remaining property adjoined the Billings property on the north and east. Both parcels have been used primarily to graze animals, to grow hay, and for recreation. Elk Creek and its small, steep canyon divide the 194 acre tract with ten acres north of the creek. The southern portion has access to a public road, but access to the ten-acre tract is either by fording the creek or by a private dirt road on the Billings property north of the road. Billings has used the dirt road occasionally to get to the small tract, but he has not developed that tract at all.

Billings conveyed the entire tract to Parsons. She wants to develop it for sale in residential lots. The value of the 10-acre tract is between \$40,000 and \$50,000. The cost of constructing a proper road to bridge Elk Creek to connect with the remainder of Parsons's land would far exceed the value of the ten acres.

Parsons brought an action against the Thompsons seeking to establish an easement across the Thompson property, alleging easement by necessity or easement by prescription. Decide the case.

QUESTION 2

Bill and Betty Bradley purchased a home from Sam Smith. Friendly Mortgage provided financing and handled the closing. Its representative took possession of the warranty deed and the mortgage and distributed the proceeds to Smith on November 27, 1996. On November 23, 1996,

Smith's ex-wife filed a contempt hearing against him for failure to make support payments. The court gave her a lien on his property, which she recorded on December 1, 1996. The deed and mortgage were recorded on December 3, 1996. Several months later the Bradleys contracted to sell the property.

The buyer's title search disclosed, among other items, the support lien and a mortgage held by City Bank, dated March 8, 1988, with a release of that mortgage dated August 10, 1995. Her mortgagee's attorney advised against lending the money until the support lien was removed. The Bradleys negotiated with Ms. Smith and reached a \$3600 settlement. The closing then took place.

The Bradleys then sued Friendly Mortgage and its agent, alleging negligence in failing to record the deed promptly. Friendly responded, stating that it had no duty to the Bradleys and that they did not establish any damages because the lien did not attach to their property.

While this suit was pending City Bank filed a foreclosure action, asserting default on its mortgage. The court rejected the foreclosure because of the release. City Bank then sued the Bradleys and the debtor, seeking reinstatement of the mortgage and priority over subsequent interests. The bank showed that the signatures on both the release and promissory note marked "paid in full" were forged. Decide the cases.

QUESTION 3

A subdivision was platted in 1978 with agreement for protective covenants. One of these required wood shingles on the exterior roofs of all structures; another required approval of the Community Development Committee for all construction or alteration of homes. Sometime before 1985 the Committee received a copy of the agreement with a handwritten addition changing the roofing restriction to read "wood shingles or bar tile." The Committee began approving plans calling for tile roofs. In 1985 it learned that the covenant had not been approved by the Homeowners' Association. Meanwhile, six homes were built with fiberglass shingle roofs without Committee approval. By the end of 1985, 29 homes had been completed; eight had wood shingle roofs, while 21 had either tile or fiberglass shingle roofs. Since that time, the Committee has sought to enforce the covenant.

Miller, owner of a home in the subdivision, sought approval of an addition to the back of the house and for a roof with fiberglass shingles. The addition would extend the house five feet beyond the setback line, which required 25 feet from the adjoining lot. The Committee denied both changes, but Miller commenced both projects anyway. Fink, another owner, sought an injunction to prevent both changes. There were by this time 81 completed homes, 58 with wood shingle roofs and 23 with non-wood roofs. The Committee had approved three reductions in setback, one and a half feet being the largest reduction.

What arguments will Fink make to support an injunction?

What arguments will Miller make to challenge an injunction?

QUESTION 4

Barbara entered into a contract to purchase real property from Sheldon. The contract stated that Barbara would have an unconditional right to revoke the agreement without forfeiture of earnest money for structural defects, clouds on the title, unrecorded encroachments or easements, or unavailability of bank financing due to the conditions of the property. There had been three surveys, in 1981, 1992, and 1993; two of these indicated that the state owned some part of the lot. Barbara notified Sheldon that she wished to rescind the contract. The bank denied a loan application. Sheldon sued for specific performance. The trial court found for Barbara. Decide the case.