

## QUESTION 1

Patty and Dan were driving their cars when they collided at an intersection where the traffic was regulated by stoplights. Patty's car is black and Dan's car is blue.

Witness, who saw the collision occur, immediately phoned the 911 emergency line, reported the accident, and stated that he had seen the blue car run a red light and strike the black car. The 911 operator dispatched an Emergency Medical Services (EMS) ambulance to the scene and, immediately afterwards, wrote Witness's statement verbatim in a report the operator was required to make after every 911 call.

Patty told an EMS technician who was treating her at the scene of the accident that her back hurt, but that she wasn't sure whether the pain was a result of the accident or whether it was from a sprain she had suffered earlier in the day doing some yard work.

Dan, who did not appear to require treatment, told another of the EMS technicians at the scene that he, Dan, had preceded through the intersection while the light was green and that it was Patty who had run the red light.

The EMS technicians made written reports of the statements Patty and Dan had made to them, as required by their employer.

Patty sues Dan in Ohio state court for damages. At the trial, Patty seeks to introduce the 911 operator's report as evidence of Dan's liability and the *Blue Book* (a compilation of valuations of used motor vehicles published regularly by a commercial publisher and generally accepted in the industry) to establish the value of her car. Dan objects to both items of evidence on the ground that they are inadmissible hearsay.

At the trial, Dan seeks to introduce both of the EMS technicians' reports as evidence that he was not at fault either for the accident or for Patty's injury. Patty objects on the ground that the reports are inadmissible hearsay.

How should the court rule on the objections? Discuss fully.

## QUESTION 2

Owner operates a successful restaurant in Waterfront, Ohio, a popular summer resort town. He decided to add an outdoor terrace where customers could dine by the water during good weather. He intended to have the terrace ready for use on May 29, the beginning of the traditional Memorial Day weekend opening of the season. On March 1, Owner entered into the following written contracts with the following results:

Contract with Brick: Brick agreed to construct a brick terrace to Owner's specifications for \$5,000 and to complete the terrace no later than May 10. The contract recited that Brick would pay Owner \$100 for every day of delay beyond May 10 to cover damages that Owner might suffer on account of the delay. Through his own fault, Brick failed to complete the terrace until May 20.

Contract with Green: Green agreed to landscape the area around the terrace using plants and supplies furnished by Owner. Green agreed to complete the work by May 26 for \$2,000 to be paid at completion. Green satisfactorily completed one-half of the work and, without explanation, walked off the job on May 24.

Without soliciting new price bids for the remaining work and because of the shortness of time before opening day, Owner hired the first replacement landscaper who came along. Owner agreed to pay the replacement \$2,000 to do the remaining one-half of the work if the replacement would finish by May 27. The replacement finished on time, and Owner paid him \$2,000.

Owner claims he owes Green nothing because Green breached the contract and, in any event, it cost Owner \$2,000 to complete the job.

Contract with Furnco: Furnco, a local furniture company, agreed to deliver 20 tables and 80 chairs for the terrace on May 23. Owner told Furnco the delivery date was important because it would take about a week for Owner to prepare the terrace and experiment with different table placements before the Memorial Day weekend grand opening. Furnco failed to deliver the tables and chairs until late in the day on Friday, May 28. Consequently, Owner was unable to open the terrace until after the Memorial Day weekend.

Based on the revenue Owner typically earned on holiday weekends, the increased revenues generated by the terrace in the ensuing summer months, and the fact that the weather had been good throughout the Memorial Day weekend, Owner calculated that he had lost \$2,500 in profits because of Furnco's delay in delivery. Owner demands that Furnco pay him \$2,500. Furnco refuses.

1. In an action for breach of contract, what damages, if any, is Owner likely to recover against Brick? Discuss fully.
2. What rights, if any, does Green have against Owner? Discuss fully.
3. In an action for breach of contract, what damages, if any, can Owner recover against Furnco? Discuss fully.

### QUESTION 3

Company has a checking account with Bank A (its drawee bank). Under Company's agreement with Bank A, Company's treasurer, Tom, is authorized to write, sign and indorse all checks on behalf of Company. The following events have taken place:

Check No. 1: Tom embezzled \$5,000 by writing a Company check payable to himself and signing his name on the signatory line as follows: "Tom, Company Treasurer." He indorsed the check on the back by signing "Tom" and then presented the check to Bank A for payment. Bank A paid the check to Tom in cash and debited \$5,000 against Company's account.

Check No. 2: Late one evening, Hacker, an hourly employee in Company's computer department, noticed a check for \$10,000, payable to Company and written by a customer on the customer's account at Bank B. This check had been left lying on top of a desk in Company's executive office. Hacker took the check, wrote "Pay to Hacker" on the back of the check, and, directly below that directive, he forged Tom's indorsement. Hacker then indorsed his own name on the back and presented the check to Bank B for payment. Bank B paid Hacker in cash and debited \$10,000 against the customer's account.

Check No. 3: Tom, intending to work at home, put the company records, including the checkbook, in his car. Crook, who was not an employee or agent of Company, broke into the car and stole a blank Company check. Crook filled out the check for \$25,000 payable to XYZ, Inc. and forged Tom's signature on the signatory line.

A few days earlier, Crook had established a checking account at Bank B in the name of XYZ, Inc., a fictitious entity, showing himself as President. Crook indorsed the check in his name as President of XYZ and deposited it in the XYZ account at Bank B. After Bank B credited the XYZ account with \$25,000, Crook withdrew the entire amount. Without knowledge of the forgery, Bank B forwarded the check for collection to Bank A, which honored the check and debited \$25,000 against Company's account.

What recourse, if any, does Company have on each of the three checks from Bank A and/or Bank B? Discuss fully.

#### QUESTION 4

A State statute that prohibits the location of signs near highways provides as follows:

Prohibition On Signs: In order to protect the health, welfare, and safety of drivers in State, no sign of any shape or size shall be located within 600 feet of any interstate highway. Any person who owns, leases, or otherwise assists in the maintenance of such signs shall be guilty of a first-degree misdemeanor. Signs erected by a duly constituted government body are excepted from this prohibition.

City has an ordinance that limits tobacco advertising as follows:

Prohibition On Tobacco Advertising: In order to protect the health, welfare, and safety of City children, it shall be a misdemeanor for any person to erect, maintain, or display at any place within City limits any sign with dimensions larger than one foot by two feet that advertises, promotes, or otherwise supports cigarettes or other tobacco products.

Sam, a cigarette smoker, was upset about the fact that the smoking lounge in his office building had recently been closed. He erected a 15-foot by 20-foot billboard at a roadside location within City's limits and about 200 feet from the interstate highway roadway. He plastered the billboard with a sign that proclaimed in large red letters:

SMOKING IS A  
CONSTITUTIONAL RIGHT!  
BUY A PACK OF CIGARETTES TODAY!

Sam is charged with and being prosecuted for violations of the State statute and the City ordinance. He moves the court to dismiss the charges.

How should the court rule on Sam's motion? Discuss fully.

## QUESTION 5

Proprietor (“P”) owns a roadside store in Ohio where he sells apples. He has two employees, Senior and Junior. P had for several years bought all of his apples in bulk at prevailing market prices from Agent, an independent apple broker. Agent had no employees and had always done the purchasing himself.

P had arranged to take an extended vacation to a remote location where no one would be able to reach him. The day before he left, he told Senior, “While I’m gone, you’ll be in charge. I want you to manage my business. If any of our machines breaks down, you can either have it repaired or replaced as long as the expenditure is necessary for the direct operation of the business while I’m gone. I’ll arrange with Agent to keep supplying apples.”

P then met with Agent and told him, “While I’m gone, I’ll expect you to keep supplying apples of the usual quality and in the usual quantities, but I don’t want you to pay more than \$5.00 per bushel. Hold your billings, and I’ll settle up with you when I return.” Agent agreed.

The following events occurred while P was on vacation:

1. Senior fired Junior over a dispute with a customer. In the past, P had made all the hiring and firing decisions, but had on occasion done so pursuant to Senior’s recommendations. Junior threatened that, unless Senior immediately paid him \$1,000 in severance pay, he would file a complaint of discrimination with a government agency because of his firing. Although Senior knew P had never paid severance pay to any terminated employee, he believed it was important to avoid the threat of litigation and resolve the matter before P’s return. Accordingly, he paid Junior \$1,000 from company funds in return for Junior’s promise not to file the complaint.

2. The cash register in the store broke and was not fixable. Senior purchased a new register and, at the same time, paid for a very expensive, extended 20-year warranty on the machine, all with company funds.

3. A long-time, valued customer of P slipped and fell on a squashed apple in the store, sustaining a severely sprained ankle. Senior called an ambulance and accompanied the customer to the hospital emergency room. Using company funds, Senior paid the cost of the ambulance and the emergency room treatment, which turned out to be very expensive. Senior did this believing that P would have wanted him to do so to preserve the customer’s good will and to avoid litigation.

4. Agent was unable to procure apples of the customary quality supplied to P’s store at \$5.00 per bushel because the market price had shot up to \$6.00 per bushel. Believing that P would not be satisfied with cheaper apples of inferior quality, Agent bought for P’s account at \$6.00 per bushel.

5. Agent, himself, decided to go on vacation. He was unable to contact Senior before leaving to discuss arrangements for supplying apples during his absence. Agent delegated to Friend, another apple broker, the responsibility for supplying apples to P during Agent’s absence. Agent told Friend of P’s instruction not to pay more than \$5.00 per bushel for quality apples. Friend, unable to find quality apples at \$5.00 or less, purchased for P’s account inferior apples known as culls at \$3.00 per bushel.

Under applicable principles of agency law, would P be justified in asserting that Senior and Agent had exceeded their authority in carrying out the acts described at each of the enumerated points? Discuss fully.

Do not discuss apparent authority.

## QUESTION 6

Husband and Wife, residents of Ohio, had three children: Ann, Bart, and Cal. Ann and Bart were born before January 1, 1970, and Cal was born in 1975.

On January 1, 1970, Husband executed a valid will, the dispositive provisions of which stated: "I leave to Wife 25% of my estate. The balance of my estate is to be divided equally between my children, Ann and Bart."

Husband died in an automobile accident in which Ann, who was driving the car, was found at fault and subsequently convicted of the vehicular manslaughter of Husband. Husband is survived only by Wife, Ann, Bart, Cal, and Grandchild, who is Bart's child.

At the time of Husband's death, his estate was valued at more than \$750,000 and consisted of the following property:

- a. A residence;
- b. An automobile;
- c. A watercraft;
- d. Household goods; and
- e. Cash and marketable securities having a net value of over \$500,000.

After Husband's will was admitted to probate, Bart executed and filed a valid disclaimer relinquishing any interest in the estate.

Wife, who is not satisfied with the 25% left her in the will, wishes to exercise whatever rights she may have to maximize the amount she can receive from Husband's estate.

1. What rights does Wife have if she elects to take against the will? Discuss fully.
2. Assuming Wife elects to take against the will, to whom and in what proportions shall the remainder of Husband's estate be distributed? Discuss fully.

## QUESTION 7

Father, Brother, and Sister each owned 20% of the shares of Corp, a corporation for profit under the laws of Ohio. Father proposed that, in order to keep control of Corp, they enter into a voting trust authorizing Brother to vote their shares as he sees fit for 10 years. Sister refused to sign or transfer her shares. Father and Brother signed the written agreement proposed by Father and transferred their shares, totaling 40% of Corp's shares, to the F & B Voting Trust. They delivered a copy of the trust agreement to Corp's Secretary. Corp made the notation in its books that legal title to Father's and Brother's shares was held by the F & B Voting Trust.

Two weeks later, Brother told Father that he intended to vote the trust shares for a particular slate of directors (Slate A) in the forthcoming Board of Directors election. Father objected but was unable to dissuade Brother. Consequently, Father tore up the trust agreement, declared that he no longer considered it binding, and notified Corp of his actions.

Father delivered a letter to Corp's Secretary stating, "I wish to examine Corp's shareholder list 30 days from now on October 10, 2001, during normal business hours. The purpose of my request is to get names and addresses so I can send a notice to all shareholders to attend a meeting to discuss the forthcoming election of directors." Corp refused his request.

Sister, who favored the election of Slate B, sent an e-mail to Corp's Secretary stating, "I want you to fax a list of the names and addresses of all Corp shareholders to my home," and she gave the fax number. Corp refused her request.

Father persevered, and eventually he gathered a group of shareholders ("Coalition") who represented 80% of the total Corp shares and who entered into a pooling agreement to vote their shares uniformly for Slate B. The shares represented by Coalition consisted of Father's 20%, Sister's 20%, and a remaining random group holding 40% of the shares. The shareholders in Coalition gave Sister their proxies to vote all shares for Slate B.

In the meantime, as a result of lobbying by Brother, a group holding 20% of the shares broke away from Coalition and joined forces with Brother. The shareholders in this group retracted the proxies they had given to Sister and gave Brother their proxies directing him to vote the entire 20% for Slate A.

The following occurred at the ensuing properly convened shareholders' meeting:

(i) Brother voted his own and Father's shares in the F & B Voting Trust (40%) and the shares represented by the shareholders who had broken away from Coalition (20%), for a total of 60%, in favor of Slate A;

(ii) Sister voted the shares represented by all shareholders in the original Coalition (80%) in favor of Slate B.

Corp adopted Sister's vote, rejected Brother's vote, and declared that Slate B was the duly elected Board.

1. Which slate of directors, if either, was duly elected? Discuss fully.
2. Did Corp act properly in refusing to allow Father and Sister to examine the shareholder records? Discuss fully.

## QUESTION 8

Defendant was arrested and initially charged with one count of misdemeanor possession of marijuana for violation of an Ohio statute that prohibits:

Knowingly obtaining, possessing or using marijuana.

After prosecutors analyzed all of the items confiscated by the police in their lawful search, which included 56 grams of marijuana in individual plastic packets, a pager, some rolling papers, and \$1,150 in cash, Defendant was also charged with a felony under an Ohio statute that prohibits:

Knowingly preparing for shipment, shipping, transporting, delivering, preparing for distribution or distributing marijuana when the person intended to sell or resell the marijuana or when the person knows or has reasonable cause to believe that another person intends to sell or resell the marijuana.

At the municipal court hearing of both charges, Defendant pled guilty to the misdemeanor charge for possession of marijuana. She was bound over to the county grand jury on the felony charge and subsequently indicted for the felony.

A jury was sworn, and the trial on the felony indictment commenced in an Ohio court. The prosecutor produced evidence necessary to support a conviction and then rested. Defendant then moved the court to dismiss the felony charge, asserting that Defendant's prior conviction on the misdemeanor possession of marijuana charge bars prosecution of the felony charge of trafficking. The prosecutor opposes the motion.

How should the court rule on Defendant's motion? Discuss fully.

## QUESTION 9

Client obtained a car loan for \$10,000 from Bank and signed Bank's standard form promissory note bearing interest at 9% per annum. Under the terms of the standard form note, interest was to be calculated by figuring the daily interest factor on the basis of a 360-day year. Because of a computer programming error, the daily interest factor was actually calculated on the basis of a 365-day year. Consequently, Client paid more interest than the 9% stated in the note. Client still has one year of monthly payments remaining on the note.

Client filed suit in Ohio state court for breach of contract on his own behalf and on behalf of all other Bank customers similarly situated. The suit sought a declaratory judgment, an injunction enjoining Bank from charging excessive interest, and money damages.

The class of persons Client seeks to represent consists of (1) all current Bank customers who are still paying on obligations based on Bank's standard form promissory notes, and as to whom Bank is currently miscalculating the interest rates based on a 365-day year rather than the contractual 360-day year, and (2) all past Bank customers who have paid off obligations based on Bank's standard form promissory notes, and as to whom Bank in the past miscalculated the interest rates based on a 365-day year rather than contractual 360-day year. There are approximately 500 Bank customers in the first category and approximately 1,500 in the second category. Over the period covered by the lawsuit, the face amounts of the various promissory notes have ranged from \$1,000 to \$15,000 and the contractual interest rates have ranged from 7% to 11% per annum.

After three years of complex and expensive discovery, Client filed a motion for class certification pursuant to the Ohio Civil Rules and established the facts described above. In opposition, Bank argued (1) that Client failed to establish any of the Civil Rule 23 requirements for a class action and (2) that, in any event, the differences in the face amounts of the notes, the interest rates, and the damages accruing to each of the putative class members makes class certification inappropriate. The trial court agreed with Bank's arguments and denied Client's motion. Client properly appealed.

What are the requirements for certification of a class action under Civil Rule 23, and did the trial court rule correctly as to each of Bank's arguments in opposition? Discuss fully.

## QUESTION 10

Lawyer, an attorney whose practice focuses on business matters, agreed to represent Client in a case involving an area of the law with which Lawyer has no familiarity. The last time Lawyer even read anything dealing with this area of the law was in law school 20 years ago. Lawyer turned the file over to Associate, a recent law school graduate who had been admitted to the bar last year, and told her to prepare the necessary pleadings for filing with the court. Lawyer knew that Associate also had no familiarity with the area of the law involved in Client's matter.

Associate explained to Lawyer that she was so busy with other matters that she would be unable to devote the time to educate herself adequately on the law in Client's case. She suggested to Lawyer that they associate with or refer the matter to outside counsel experienced in this type of litigation. Lawyer said: "Sending a paying client into the hands of another attorney is a last resort. Give the file to Paula, our paralegal, and tell her to get up to speed on the law and draft the pleadings."

Because of the press of other business, neither Lawyer nor Associate paid any attention to Client's matter, expecting that Paula would call their attention to it when she had the pleadings ready. None of them realized that Client was required to file a complaint with the appropriate administrative agency and obtain a right-to-sue letter before Client could file suit in court. Six months later, and after the deadline for filing with the administrative agency passed, Paula presented Lawyer and Associate with the pleadings she intended to file in court. Both Lawyer and Associate were too busy to review them, so they instructed Paula to file and serve them, saying, "We can amend the pleadings later if we have to."

The court properly dismissed Client's complaint with prejudice on the ground that Client's failure to file first with the administrative agency deprived the court of jurisdiction. Client now threatens to sue Lawyer and Associate for malpractice.

Faced with an obvious malpractice claim, Lawyer prepares a waiver and release form setting forth all the details of the malpractice, agreeing to refund to Client all the fees he paid, and agreeing to pay Client an additional sum of money in return for Client's agreement to waive the malpractice claim and forego suit. Lawyer gives the form to Client to review and advises him to consult independent counsel before signing the waiver and release.

1. What Disciplinary Rules, if any, did Lawyer and Associate violate in the handling of Client's case? Discuss fully.
2. May Lawyer enter into the waiver and release agreement with Client to exonerate himself and Associate? Discuss fully.

## QUESTION 11

Farmer, a widower, owned two farms, Wheatland and Orchard. He also owned a duplex (“Duplex”) in town. Farmer had two sons, Art and Bob, and a daughter, Carla. Farmer’s wish was that his two sons would take up farming and that Wheatland and Orchard would stay in the family.

Art, who expressed an interest in farming Wheatland, planned to marry Marcia, a woman Farmer detested. Farmer feared Marcia would convince Art to sell Wheatland off for residential subdivision. Accordingly, Farmer conveyed Wheatland to Art by a deed containing the following limitation: “To Art, an unmarried adult, his heirs and assigns, unless Art marries Marcia.” Art took possession of Wheatland and began farming it.

Farmer conveyed Orchard to Bob by a deed containing the following limitation: “To Bob and the heirs of his body and assigns forever.” At the time of the conveyance, Bob was a widower and had one child, Sonny. As soon as Bob took possession of Orchard, he sold it to Purchaser over the objections of Farmer and Sonny and gave Purchaser a deed reciting that the conveyance was in fee simple.

Farmer conveyed Duplex to Carla by a deed containing the following limitation: “To Carla for her life and, after Carla’s death, to Sonny, his heirs and assigns.” Carla lives in one of the units in Duplex and rents the other unit to tenants.

At the time of the conveyance from Farmer to Carla, Duplex was somewhat run down and required general repairs that would cost about \$1,000 but was otherwise habitable. A few months later, however, the roof began to leak in several places. The best price Carla could get from roofers for the replacement of the roof was \$7,500. She could get roofers to fix the roof with temporary patches for \$2,500, but it was probable that, unless the roof was completely replaced, it would spring leaks in other places over time and would require almost constant patching.

After payment of property taxes, Carla’s net annual rental income from Duplex was \$4,200. She has other substantial income but does not wish to devote any of that income to keeping Duplex in repair.

Farmer and Bob died intestate and are survived only by Art, Sonny, and Carla. After Farmer’s death, Art married Marcia. Sonny is insisting that Carla carry out and pay for the necessary \$1,000 in general repairs and that she also replace the roof on Duplex.

1. What ownership interest, if any, does Art have in Wheatland? Discuss fully.
2. What ownership interest, if any, does Sonny have in Orchard? Discuss fully.
3. What obligations, if any, does Carla have to carry out and pay for the \$1,000 in general repairs and replacement of the roof on Duplex, and what alternatives are available to her? Discuss fully.

## QUESTION 12

Doctor applied for a position on the staff of Hospital, a privately owned hospital. During a pre-employment interview, he told the interviewer truthfully that: (1) while he was working for another institution, a patient had been murdered with a lethal injection, (2) after an investigation, he had been cleared and the murderer caught and convicted, and (3) he had left that job on good terms. The patient murder incident had received some newspaper notoriety, but Doctor's name and possible involvement had never been mentioned. Hospital hired Doctor.

Bob, Hospital's chief administrator, had heard about the prior incident. He decided to conduct his own investigation, in the course of which he secretly entered the office Hospital had assigned to Doctor and searched Doctor's briefcase. He found in the briefcase, among other things, two syringes, a pornographic magazine, and Doctor's diary. Bob photocopied and read the last few pages of the diary, which contained some writing about Doctor's mother.

Bob did not know that Doctor was a diabetic (thus, the syringes), that Doctor was conducting a scientific study on pornography (thus, the magazine), or that Doctor's mother had recently died and that Doctor had written his innermost thoughts about the event in his diary.

Bob did no further investigation. Bob reported to Hospital's Board of Directors that Doctor was the staff physician who had been implicated in the patient murder and had been fired for his involvement. He also said he had personal knowledge that Doctor carried syringes and pornographic materials around in his briefcase, and he told the directors about the "weird" stuff Doctor had written in the diary about his mother. As the result of Bob's disclosures, the Board voted to, and did, terminate Doctor's employment immediately.

When Doctor learned what Bob had done, he suffered such humiliation that he had to undergo intensive psychiatric counseling. After an extended job search, Doctor was finally able to find work as a staff physician at Clinic. He was hired under a one-year written contract terminable only for "good cause" or "lack of work." Bob and Clinic's administrator happened to be very close friends. When Bob learned that Clinic had hired Doctor under a one-year contract, he sent an e-mail to Clinic's administrator stating: "Good luck. I guess you didn't know Doctor was fired by Hospital because he was a suspected killer and into pornography. Too bad you're stuck with him for a year." As a result, Clinic fired Doctor on the pretext that there was "lack of work." Doctor again suffered pain and humiliation as a result of his firing and has not been able to obtain new employment as a physician.

1. What claims, if any, does Doctor have against Bob for the tort of defamation, what defenses might Bob assert, and what is the probable outcome on each claim? Discuss fully.
2. What tort claim, if any, can Doctor assert against Bob relating to the termination of Doctor's employment by Clinic, what defenses might Bob assert, and what is the probable outcome on Doctor's claim? Discuss fully.

**DO NOT DISCUSS INVASION OF PRIVACY.**