

QUESTION NUMBER 1

Officer, a police officer in Akron, Ohio, was on routine patrol one afternoon when he saw Dealer walking down the sidewalk in an area known to the police for its drug trafficking. Officer knew that Dealer had recently finished serving a prison sentence for a drug trafficking conviction. Officer asked Dealer what he was doing and where he was going. Dealer, feeling that he had no right to refuse to answer, told Officer that he had just been to visit his sick aunt and was on his way home.

Officer did not believe Dealer's story and had a hunch that Dealer had come to the neighborhood to buy drugs. When Dealer got into his car and drove off, Officer, in his patrol car, followed Dealer for several miles. As Dealer drove down Main Street, he inadvertently swerved across the center double yellow lines, violating an Ohio traffic law.

Officer stopped Dealer, told him he was going to cite him for the traffic violation, and told him to wait while Officer ran a computer check of Dealer's license plate and driver's license numbers for warrants and stolen car reports. Because of technical difficulties, the computer check, which ordinarily would have taken about three minutes, took about 15 minutes. Officer decided to take advantage of the delay and the fact that he happened to have a trained, drug-sniffing police dog in his cruiser. Officer walked the dog around the entire exterior of Dealer's vehicle, but the dog did not respond to the scent of any drugs.

Officer handed Dealer his traffic citation for driving left of center and, still believing that Dealer was up to something nefarious, ordered Dealer to step out of the vehicle. Dealer reluctantly complied. When Dealer stood up, Officer saw a bulge in the ankle area of Dealer's left pant leg. Based on his twenty years of experience as a police officer, Officer believed that the bulge was a bag of cocaine.

Officer ordered Dealer up against the cruiser and frisked the exterior of Dealer's clothing. When he reached Dealer's left leg, he carefully squeezed the bulge and manipulated it in his hand to get a better sense of what it was. Because he believed that what he felt was a bag of cocaine, Officer reached up under the pant leg and removed the object. It was a bag that was later confirmed to contain cocaine. Dealer was eventually indicted on drug charges.

Dealer moved to suppress the evidence of the cocaine, contending that each of Officer's actions, starting with the initial sidewalk questioning, had violated Dealer's Fourth Amendment rights.

Which of Officer's actions, if any, violated Dealer's Fourth Amendment rights and which did not? Explain fully.

QUESTION NUMBER 2

Incorporator is in the process of incorporating a new for profit business in the State of Ohio. Having been told by an acquaintance that, as a starting point, he must file Articles of Incorporation in the office of the Ohio Secretary of State, Incorporator purchased the following form at a stationery store, filled out the blank spaces as indicated in the underscored text, properly signed the form, and is prepared to file it along with the necessary filing fee:

Articles of Incorporation

(Standard Form)

- 1. Name of the proposed corporation:** Ohio's Welfare Legal Network.
- 2. Business purpose of the corporation:** To provide legal advice and services to Ohio residents who qualify for financial assistance through state-funded agencies.
- 3. Name and address of incorporator:** Incorporator, 555 Oak Street, Small Town, Pennsylvania 55555.
- 4. Statutory agent for service of process:** Statutory Agent Company, P.O. Box 222, Big City, Ohio 22222.
- 5. Names and addresses of members of Board of Directors:** Not yet available.
- 6. Location of principal office of corporation:** Not yet available.
- 7. Copy of proposed bylaws of corporation:** Incorporator chooses not to furnish copy of bylaws to Secretary of State.

With respect to *each* of the enumerated items, is there anything about the underscored information Incorporator has furnished that could cause the Secretary of State to reject the proposed Articles of Incorporation? Discuss fully.

QUESTION NUMBER 3

John purchased from Mary what he believed to be a rare painting, for which he gave Mary a check in the amount of \$5,000 drawn upon his account at City Bank. Mary endorsed the check over to Store, a jewelry store. At Mary's request, Store posted a \$5,000 credit to her account. Mary didn't have any particular purchases in mind at the time, but she intended to use the credit to buy some gifts for friends in the future.

The next day, John learned that the painting was a fake and stopped payment on the check before it was presented by Store. Store had no knowledge that the painting was a fake. When Store presented the check, City Bank dishonored it. As of that time, Store had not yet made any sales to Mary that were to be charged against the \$5,000 credit.

John's son was arrested for shoplifting. Because John knew Prosecutor, the prosecuting attorney, John requested "leniency" for his son. Prosecutor told John that, unless John "contributed" a check for \$1,000 to Prosecutor's Campaign for Re-Election Committee ("Committee"), he would prosecute John's son. The next day, John delivered his check for \$1,000 to Committee, and his son was, consequently, not charged.

Several days later, Committee endorsed the check over to Acme, a stationery company, in payment for campaign posters Acme had delivered to Committee. Acme knew nothing of the circumstances under which John had given the check to Committee. When Acme attempted to cash the check, City Bank dishonored it and told Acme that John had "second thoughts" and had stopped payment on the check after Committee had endorsed it to Acme.

On February 1, 2003, John purchased a cashier's check (dated February 1, 2003) in the amount of \$10,000 from City Bank. On June 1, 2003, John gave the cashier's check to Lumber Company ("Lumber") for lumber that had been delivered to John's home. Before Lumber could present the check, however, City Bank learned that John, in order to finance the amount of the check, had given City Bank a security interest in equipment that John didn't actually own. City Bank notified John that it rescinded the check.

On June 5, 2003, Lumber presented the check to City Bank, and City Bank dishonored it.

1. Is John liable to Store on the \$5,000 check he had given Mary for the painting? Discuss fully.
2. Is John liable to Acme on the \$1,000 check he had given to Committee? Discuss fully.
3. Is City Bank liable to Lumber on the \$10,000 cashier's check? Discuss fully.

QUESTION NUMBER 4

The following two cases were on Judge Smith's docket for hearing on the same day in Town, Ohio:

People v. James: After being indicted for possession of cocaine with intent to sell, James negotiated a plea bargain, which obligated James to cooperate with the State in the prosecution of other narcotics cases. James signed the plea agreement and agreed to cooperate. However, when he was called as a witness in the trial of another drug dealer, James refused to answer questions asked by the prosecutor, became defiant, and vilified the judge in that case.

The prosecutor filed a motion seeking to have James held in contempt. Before the contempt hearing was held, the parties signed stipulations to obtain continuances of the hearing. The contempt hearing was eventually held before Judge Smith. The prosecution introduced the signed plea agreement and a transcript of James's refusal to testify in the trial of the drug dealer and then rested its case. James's attorney moved to dismiss on the ground that the prosecution presented no proof that James was the same person who had signed the plea agreement.

Judge Smith allowed the prosecutor to reopen his case, whereupon the prosecutor said, "Your Honor, I request that you take judicial notice that the defendant James is the same James who signed the plea agreement. He is also the same James who signed the continuance forms that are in the court's file. You have my word as an officer of the court."

Over defense counsel's objection, Judge Smith took judicial notice as requested and found James guilty of contempt.

People v. Deft: After the State had rested its case in Deft's trial for a 2003 murder, Deft took the stand to testify on his own behalf. On cross-examination, the prosecutor asked Deft, "Isn't it true that in 1983 you pleaded no contest to a charge of procurement?" Deft's attorney objected, but the trial court overruled the objection.

Deft's attorney then called Abel as a witness. Abel testified on direct examination that he had known Deft for 30 years and that Deft had the reputation in the community as a truthful and law-abiding citizen. On cross-examination, the prosecutor asked Abel the following questions:

"Have you heard rumors that 20 years ago Deft was arrested as a pimp?"

"Have you heard any rumors that Deft sold drugs on the streets?"

"Have you heard that Deft was charged with perjury yesterday when he testified in this case?"

Deft's attorney made appropriate objections, which were overruled by Judge Smith. Abel answered "Yes" to each question.

1. Was Judge Smith correct in taking judicial notice of James's identity and signature in the People v. James case? Discuss fully.

2. Did Judge Smith rule correctly on the question the prosecutor asked Deft about the 1983 no contest plea? Discuss fully.
3. Did Judge Smith rule correctly on each of the three questions the prosecutor asked Abel? Discuss fully.

QUESTION NUMBER 5

The City of Hope, Ohio (“Hope”) wants to buy the following five adjacent tracts of land. All documents referred to below are properly recorded.

Tract 1: Thirty years ago, Dave conveyed Tract 1 by a deed reciting, “I convey Tract 1 to my son, Richard, for life, and, upon his death, to Richard’s son, Earl.” Last year, Earl conveyed his interest by a deed reciting, “I convey all my right, title, and interest in Tract 1 to George.” Richard is still living.

George has offered to sell Tract 1 to Hope.

Tract 2: Ten years ago, Adam transferred Tract 2 by a deed reciting, “I convey Tract 2 to Brown and his heirs as long as Tract 2 is used solely as a public park.” Five years ago, Brown built and has been continuously operating a commercial car wash on Tract 2. Adam died last year, and, in his will, he left his entire estate to his son, John.

John has offered to sell Tract 2 to Hope.

Tract 3: Ten years ago, Owen conveyed Tract 3 by a deed reciting, “I convey Tract 3 to James for life, then to Ken for life, then to Larry.” Five years ago, Larry obtained a loan from Friend and gave Friend a mortgage reciting, “I pledge all my right, title, and interest in Tract 3 as security for a loan made to me by Friend.” Last year, James and Ken died, and Larry defaulted on the loan. Friend commenced a foreclosure action. The final foreclosure hearing has not yet taken place.

Larry has offered to sell Tract 3 to Hope.

Tract 4: Eric conveyed Tract 4 by a deed reciting, “I convey Tract 4 to Newcomb for life and then to Randy and his heirs if Randy marries Maria.” Newcomb is 75 years old, and Randy has never married.

Randy has offered to sell Tract 4 to Hope.

Tract 5: Sally conveyed Tract 5 by a deed reciting, “I convey Tract 5 to Una for life and then to my heirs at law.” Una is deceased. Sally is 79 years old. Her only living relative is her daughter, Victoria.

Victoria has offered to sell Tract 5 to Hope.

Can Hope acquire title to each of the tracts free of any other interests by purchasing the tracts at the present time from the persons offering to sell them? Discuss fully.

Do not discuss acquisition by eminent domain.

QUESTION NUMBER 6

Husband and Wife were returning from a shopping trip when their car was rear-ended by a vehicle operated by Defendant. The accident occurred in Town, Ohio. Husband suffered a broken leg and a whiplash injury. Wife suffered no physical injury.

In the ensuing litigation, the following events occurred, with all proceedings taking place before the same judge in the court of common pleas.

Complaint No. 1: Husband and Wife retained Attorney, who filed and served a complaint on behalf of both Husband and Wife seeking relief for Husband's injuries and Wife's loss of consortium. After the trial had started, a key witness Attorney had subpoenaed for Husband and Wife failed to appear. After a reasonable continuance granted by the judge to allow time to locate the missing witness, the witness could not be found. Attorney appeared in open court and informed the judge that he wanted to dismiss the case. Defendant's lawyer objected, but the judge, satisfied that Attorney had diligently tried to find the missing witness, overruled the objection and dismissed the case.

Complaint No. 2: The missing witness was eventually found. By that time, Wife had lost interest, but Husband wanted to pursue the case. Within the applicable statute of limitations, Attorney filed and served a new complaint seeking to recover for Husband's injuries but omitting any claim for Wife's loss of consortium. A week after the complaint was filed, and before filing an answer, Defendant's lawyer filed motions to dismiss on the following grounds: (i) lack of jurisdiction and (ii) failure to join a party. The judge overruled each of the two motions and ordered that Wife be joined as a party.

For 12 months, the case remained pending on the court's docket, with neither party taking any steps to prosecute it or to join Wife. The judge, after reviewing the file, ordered that the case would be dismissed if Attorney took no further action to advance the case within the next 30 days. Despite having received notice of the judge's order, Attorney failed to take any steps within the 30-day period. The judge therefore issued an order stating simply, "Case dismissed."

Complaint No. 3: Within the applicable statute of limitations, Attorney filed and served a third complaint identical to Complaint No. 1, seeking to recover for Husband's injuries and Wife's loss of consortium. Upon receipt and review of this complaint, the judge gave notice to Attorney and, *sua sponte*, dismissed the case.

Were the judge's rulings as to each of the three complaints correct? Discuss fully.

QUESTION NUMBER 7

The Franklin State Department of Animal Resources (“Department”) recognizes two types of organizations that enforce laws prohibiting cruelty to animals: public agencies funded by tax dollars and private not-for-profit “humane societies” funded by private donations.

Animal Protection Front (“APF”) was founded by a group of private citizens in the early 1900’s. It is a not-for-profit corporation funded by dues paying members. The Department has officially designated APF as the entity authorized “to regulate the training of persons hired by animal control agencies and humane societies to enforce animal control laws.”

Although the Department does not require public animal control agencies to be members of APF, about 80% of APF’s members are State of Franklin public animal control agencies. The remaining 20% of the members are private humane societies. Each member entity pays the same amount in monthly dues.

The 10-member APF Board of Directors (“Board”) is elected by the members and is ordinarily made up of eight representatives of public agencies and two representatives of private humane societies. In addition, the Director of the Department sits *ex officio* (i.e., by virtue of her office) as a non-voting member of the Board.

The executive director and administrative staff of APF are not state employees but are eligible to participate in the State’s public employees retirement system.

The APF bylaws provide that only elected Board members representing the State of Franklin public agencies have the right to vote on matters before the Board. Board meetings are usually held during normal working hours of the public agency members.

APF has adopted a set of rules, among which is Rule 4.1, which requires that all persons employed as animal control officers by APF member organizations must undergo training by APF-approved providers before any such officer can commence performance of animal control duties and that the member organizations must pay for the training. Another rule, Rule 4.2, prohibits member organizations from using photos depicting animal cruelty in any literature soliciting private donations for the cost of training.

Although the Department has long recognized APF’s role in regulating such training, the Department has never formally adopted the APF rules. APF’s bylaws, however, allow APF to penalize member organizations for violation of the rules.

Critter is a private humane society in Franklin and a member of APF. Critter hired Officer as an animal control officer but lacked funds to send him to an APF- approved training program. Critter sent a mass mailing soliciting funds to pay for Officer’s training. The mailing included photos of dead puppies mutilated by a serial killer.

The APF Board voted to fine Critter \$1,000 for violation of Rule 4.2 and to prohibit Critter from using any of the funds collected during the solicitation to pay for Officer’s training.

Critter sued APF, claiming that APF's rule-enforcement against Critter violates Critter's rights under the First and Fourteenth Amendment to the United States Constitution. APF moved to dismiss the suit on the sole ground that its actions did not constitute state action.

Will the court be likely to find that the APF Board's vote constituted state action? Discuss fully.

QUESTION NUMBER 8

Lawyer, an attorney who was the chairman of a local political party, was representing a plaintiff in a divorce case pending before Judge, a judge in an Ohio court. In a conversation with Judge at a recent political gathering, Lawyer told Judge that he was not pleased with her rulings on certain motions and that, if such rulings continued, Judge would experience “problems” in her impending run for re-election. On the other hand, Lawyer said he would make a sizeable contribution to Judge’s campaign if Judge would promise to begin ruling favorably for his client.

Lawyer, knowing that his law associate, Associate, was Judge’s friend, asked Associate to suggest to Judge that she should begin ruling in Lawyer’s favor if Judge wanted to avoid “problems” in the forthcoming election. Associate refused to intervene but did tell Judge confidentially that Lawyer had asked Associate to intervene and what Lawyer had said.

Judge reported the foregoing facts to the bar association disciplinary committee, which undertook an investigation into the charges pursuant to its authority. The investigation confirmed the facts. In addition, it revealed two previously undisclosed facts: that Lawyer had been convicted of failing to file tax returns in the past and that, in response to a question on his application for admission to the bar regarding whether he had been suspended or disciplined as a member of any profession, Lawyer had failed to disclose that a real estate license he once held had been suspended for disciplinary reasons.

Associate, although requested to do so, has refused to meet with the disciplinary committee and to cooperate in the investigation.

1. What ethical violations has Lawyer committed? Discuss fully.
2. What ethical obligations does Associate have in light of his knowledge about Lawyer’s conduct? Discuss fully.

QUESTION NUMBER 9

Testator, a widower and lifelong resident of Ohio, executed a valid will on January 10, 1997. In the will, Testator made the following specific bequests:

1. He left Friend a 1989 Chrysler convertible, which Testator owned when he made his will. By the time of his death, Testator had sold the Chrysler and purchased a 1999 Cadillac convertible, which he owned at the time of his death.
2. He left to his daughters, Beth and Mary, \$100,000 each. Among Testator's papers at the time of his death were two cancelled checks for \$50,000 each, one payable to Mary, the other to Beth. On Beth's check, there was the following notation: "This represents a portion of your inheritance." There was no notation on Mary's check.
3. He left to his son, Norm, 100 shares of ABC Co. At the time of Testator's death, he actually owned 200 shares – 100 shares he had bought in 1990 and an additional 100 shares he had received in 1998 as a stock dividend.
4. He left to his friend, Dan, \$50,000.

The will did not make any disposition of the sizeable residue of Testator's estate.

Norm died in December 2001; he was survived by a natural son, Ken, and an adopted daughter, Jill.

Dan murdered Testator in January 2002. Dan was tried for the murder but was found not guilty by reason of insanity. Testator was survived by Friend, Beth, Mary, and Dan.

Many years ago, while traveling in the Far East, Testator had adopted a boy, Simon, in accordance with the laws of the Republic of Korea. Testator had not heard from Simon since 1970, and it was assumed by all that Simon had been killed in the Vietnam War. In fact, Simon is alive and has claimed rights to a distribution from Testator's estate.

1. What rights, if any, do Friend, Beth, Mary, Dan, Ken, and Jill have in the specific bequests made in Testator's will? Discuss fully.
2. What are the rights, if any, of Simon in Testator's estate? Discuss fully.
3. Who will share in Testator's residuary estate? Discuss fully.

QUESTION NUMBER 10

Entrepreneur operated a tool supply and equipment rental business in Downtown, Ohio. Part of the property on which the business was located consisted of a lawn surrounded by shrubs.

In 2000, Entrepreneur hired Landscaper to care for the lawn and shrubs. Landscaper and Entrepreneur entered into a written agreement, which provided that Landscaper would care for the lawn and shrubs for five years for \$150 a month.

Within a few months, Landscaper developed problems with his lawn-care equipment. Entrepreneur and Landscaper orally agreed that Landscaper could use some of Entrepreneur's rental equipment in exchange for a reduction in the monthly lawn and shrub service fee to \$100 a month. Landscaper resumed performance using Entrepreneur's equipment.

Friend, an acquaintance of Entrepreneur, owned a billboard advertising company. Friend had incurred some debts to third parties, and, in early 2001, Entrepreneur loaned Friend \$10,000 to cover those debts. Friend agreed to repay the loan within a year.

In late 2002, Friend had still not repaid Entrepreneur any of the \$10,000, so Entrepreneur, having decided that billboard advertising would enhance his business, told Friend, "Since you haven't paid the loan as agreed, I want you to furnish me with \$10,000 worth of billboard advertising over the next three years." Friend agreed, and they signed a document reciting simply that Friend would furnish Entrepreneur with \$10,000 worth of billboard advertising over the next three years.

In 2003, Entrepreneur put his business up for sale, and Buyer agreed to buy it. The written purchase agreement signed by both Entrepreneur and Buyer included a clause providing that Buyer would be responsible for all agreements entered into by Entrepreneur in connection with the business, including the agreements with Landscaper and Friend. Entrepreneur and Buyer notified Friend of this fact, and Friend said he would have "no problem working with Buyer." However, they failed to notify Landscaper.

When Buyer took over in late 2003, he called Landscaper, told him that he (Buyer) was the new owner, said he was canceling the lawn and shrub care service, and demanded the return of the equipment Landscaper was using. Landscaper then complained to Entrepreneur, who disclaimed any liability, asserting that it was Buyer, not Entrepreneur, who terminated the contract.

Friend concluded that he owed no debt to Buyer and that he was not obligated to provide free advertising to Buyer. He told Buyer that he would no longer provide the advertising.

1. In a suit for breach of contract by Landscaper against Entrepreneur and Buyer, is either Entrepreneur or Buyer liable to Landscaper for damages? If there is liability, should it be calculated on the basis of the \$150 per month fee or on the basis of the \$100 per month fee? Discuss fully.

2. In a suit for breach of contract by Buyer against Friend for failing to provide the advertising, who should prevail? Discuss fully.

QUESTION NUMBER 11

Owner is a distributor who buys furniture directly from manufacturers and resells the furniture to retail outlets. All of the transactions detailed below occurred in the year 2003.

On March 15, Owner took delivery of a shipment of furniture into his inventory and borrowed \$50,000 from Bank to pay for it. On that date, Owner and Bank executed a financing statement that described the inventory as collateral and gave Bank a security interest both in the inventory and the proceeds of the sale of the inventory. Also on that date, Owner sold the inventory to Dealer, one of Owner's regular retail outlets, for \$60,000 on credit, and Dealer signed an "Installment Contract" agreeing to pay the purchase price plus interest in 12 monthly installments. The Installment Contract did not mention Bank. Owner immediately sold and delivered the Installment Contract to Finance Company for \$55,000. On April 10, Bank filed the March 15 financing statement with the Ohio Secretary of State.

On April 15, Owner borrowed \$25,000 from Bank and they executed a financing statement granting Bank a security interest in Owner's computer system. On May 1, Owner sold his computer system to Purchaser, with whom he had never before done business but whom he had met at a cocktail party. On May 10, Bank filed the April 15 financing statement with the Ohio Secretary of State.

On May 15, Owner borrowed \$5,000 from Bank to purchase a sophisticated stereo system, which, with Bank's knowledge, was to be used in Owner's home. Owner signed a promissory note for \$5,000 plus interest; the note identified the stereo system as collateral. Bank never filed a financing statement relating to this transaction. On June 20, Owner sold the stereo system to Neighbor, telling him, "I need to get rid of this before Bank repossesses it."

Owner has made no payments on any of the Bank loans. Bank is now asserting claims against (1) the inventory in Dealer's possession; (2) the Installment Contract now in Finance Company's possession; (3) the computer system now in Purchaser's possession; and (4) the stereo system now in Neighbor's possession.

Who will prevail on each of those claims? Discuss fully.

QUESTION NUMBER 12

Child, age 10, lives down the street from a shooting range owned and operated by Range Co. The shooting range is surrounded by a chain link fence. After the shooting range closed for the day, Child entered it through a hole in the fence and found a loaded shotgun left on the firing range by a patron. When Child attempted to fire the shotgun, the shell manufactured by Shell Co. exploded in the chamber. Child suffered severe injury and was hospitalized for several weeks. Child's parents incurred significant medical expenses as a result.

Range Co. was aware for some time that the fence was in disrepair and that neighborhood children often entered the shooting range to play after hours. Range Co.'s patrons furnished their own firearms and ammunition and rented lockers in which to store them. Range Co. was aware, however, that occasionally patrons would forget to lock up their firearms at the end of the day.

Shell Co. was aware that on a prior occasion one of the shotgun shells it manufactured had exploded in the chamber of a shotgun and injured the person who was shooting the gun.

Child's parents were aware that, although they had admonished Child to stay away from the shooting range, Child and his playmates occasionally ignored the admonition.

1. On what theories, if any, can Child and his parents recover damages against Range Co., what defenses might Range Co. reasonably assert, and what is the probable result of each? Discuss fully.

2. On what theories, if any, can Child and his parents recover damages against Shell Co., what defenses might Shell Co. reasonably assert, and what is the probable result of each? Discuss fully.