

QUESTION 1

Landlord leased an apartment to Tenant for \$500 per month for 12 months. The written lease specified that Tenant was to be the only occupant of the apartment. Upon signing the lease, Tenant paid Landlord a \$1,000 security deposit, the equivalent of two months' rent.

Shortly after occupying the apartment, Tenant allowed Friend to move in. Tenant did not obtain Landlord's consent. Eleven months into the lease, Tenant and Friend had a disagreement, and Tenant moved out, leaving Friend to live in the apartment. Tenant stopped paying the rent and left no forwarding address.

When Landlord failed to receive the rent payment, he went to the apartment and found Friend living there. He ordered Friend to take his belongings and leave, which Friend did.

Upon inspecting the apartment, Landlord found a hole in the bedroom wall, a damaged kitchen cabinet, soiled carpets, and generally scuffed walls in all the rooms where pictures had been hung.

Within two weeks after Tenant left, Landlord sent a letter to Tenant's last known address, which was the apartment, expecting that the post office would forward it. In the letter, he stated, "You still owe me \$500 for the last month's rent. Also, I have found the hole in the bedroom wall, the damaged kitchen cabinet, the soiled carpets, and the scuffed walls, and I am going to offset the past due rent and the cost of remedying those items against your \$1,000 security deposit." The letter came back from the post office marked "Return to Sender – No Forwarding Address."

Landlord offset \$500 against the \$1,000 security deposit to cover the last month's rent and retained the remaining \$500 to cover some of the damage to the apartment.

Landlord subsequently discovered Tenant's whereabouts and then filed suit against Tenant to recover \$1,500, which he estimated as being the balance of what it would cost to repair the bedroom wall and the kitchen cabinet, clean the carpets, and paint all the walls in the apartment.

Tenant filed a counterclaim seeking to recover the \$1,000 security deposit, statutory damages for Landlord's withholding of the security deposit, and attorney's fees.

1. Is each of the claims being made by Landlord recoverable as damages, and what is the likely outcome of Landlord's claim against Tenant? Discuss fully.
2. What is the likely outcome of Tenant's counterclaim? Discuss fully.

QUESTION 2

Able was seriously injured in an automobile accident caused by Zeno, a drunk driver. Able was taken to the hospital, where he died a week later after suffering intensely.

Able was survived by the following relatives:

- His wife, Betty, who had relied entirely on Able for support. Betty remarried six months after Able's death;
- His grandfather, Gramps, who was financially self-supporting but whom Able had visited weekly and helped with the household chores;
- His mother, Mary, who was also financially self-supporting and whom Able would see only on holidays; and
- His minor nephew, Ned, who relied substantially on Able for support.

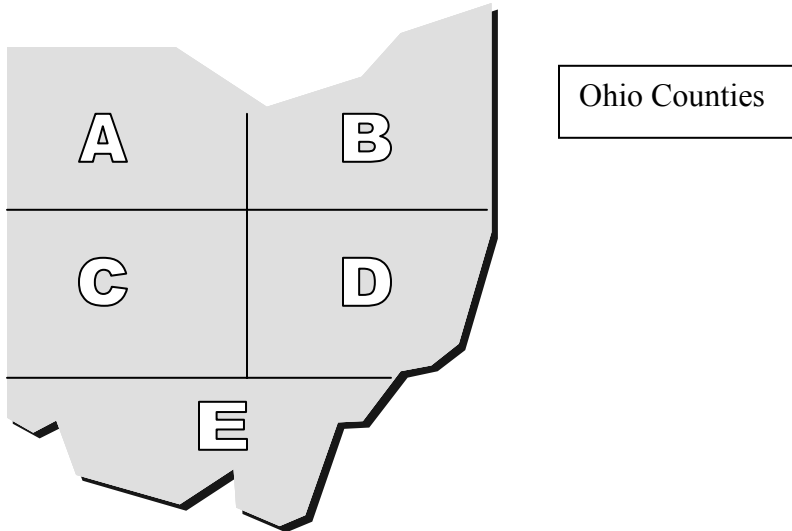
The personal representative of Able's estate, on behalf of *each* of Able's survivors *and* Able's estate, seeks answers to the following questions:

1. What claims, if any, can each assert against Zeno?
2. What types of compensatory damages may each recover?
3. Does any of the claims carry the potential for recovery of punitive damages?
4. What factors, if any, exist that might curtail the damage recovery of any of Able's survivors or the estate?

Answer these questions. Discuss fully.

QUESTION 3

Each of the cases recited below has been filed in the Court of Common Pleas for County A, Ohio. In one case, the defendant has filed a motion to dismiss and, in the other two, defendants have filed motions to transfer to another county. The map shows the locations of the relevant Ohio counties.



Case 1 – Products Liability: Bigco, Inc. is a Delaware Corporation with its principal place of business in County A. Bigco owns a children’s clothing factory on the Pacific island nation of Zox. The cloth used in manufacturing a line of overalls is extremely flammable and tends to ignite at very low temperatures. A number of Zoxian children wearing the overalls were seriously burned when they came in contact with a variety of low-output heat sources.

The parents of one such Zoxian child filed this products liability suit against Bigco in County A. They sued in Ohio because, unlike Zoxian law, Ohio law permits contingency fee contracts and does not require the “loser” of a lawsuit to pay the “winner’s” attorney fees. Moreover, even though the substantive law of Zox will apply regardless of the forum, Ohio’s procedural law is more favorable to plaintiffs than that of Zox.

Bigco timely filed a motion to dismiss on the ground that the suit should proceed in the courts of Zox. Bigco has agreed to accept service and be sued in Zox, to permit extensive discovery on Zox, and to waive any Zoxian statute of limitations that might bar the action. All the key defense witnesses and documents are located on Zox.

If the plaintiffs succeed in County A, it is nearly certain that hundreds of similar lawsuits will be filed against Bigco in County A.

Case 2 – Medical Malpractice: Plaintiff sued ten physicians for malpractice in County A. The alleged malpractice occurred in a hospital in County B. All ten physicians practice medicine exclusively in County B. Nine of the ten physicians reside in County B. One of them resides in County A. Before the deadline for filing an answer to the complaint,

one of the defendant physicians residing in County B filed a motion to transfer the case to County B; he based the motion on the ground that, as to him, venue in County A is improper and inconvenient.

Case 3 – Wrongful Death: The parents of a child who was murdered in County A filed this civil suit for wrongful death. The defendant had been acquitted of the crime on a technicality. The murder trial had been televised from beginning to end in Counties A, B, C, and D. In those counties, there has been public outrage that the defendant “got away with murder.”

Counsel for the defendant filed a timely motion to transfer the case to County E on the ground that there has been so much publicity surrounding the child’s death that his client cannot get a fair trial elsewhere in Counties A, B, C, and D.

How should the court rule on each of the motions? Discuss fully.

QUESTION 4

ABC Corporation, incorporated under the laws of the State of Ohio, is located in Columbus, Ohio. ABC's Articles of Incorporation contain the following provisions:

"Article II. The Board of Directors shall have the authority to issue shares of stock in the corporation as follows:

- A. 100 shares of Class A Common Stock;
- B. 100 shares of Class B Preferred Stock. In the event of liquidation of the corporation, Class B stockholders shall have preference over Class A stockholders.

* * *

"Article IX. All shares of stock issued by the corporation shall be redeemable at the discretion of the Board of Directors."

In the past two years, the directors have taken the following actions:

1. Two years ago, when ABC was in robust financial health, XYZ Corporation made a hostile attempt to take over ABC. In order to defend against the takeover, ABC's directors decided to redeem some of the corporation's outstanding stock. The directors singled out Dave, a dissenting shareholder, and sent him a letter notifying him that, "pursuant to the Articles of Incorporation," ABC was redeeming, at fair market value, the 25 shares Dave owned. Dave, fed up with ABC's management, accepted the money and returned the shares.
2. ABC then sold the 25 shares it had redeemed from Dave to Faith, a faithful shareholder the directors were confident would vote against the hostile takeover. Indeed, XYZ's takeover bid was defeated.
3. ABC continued to prosper, and a year ago the directors voted to issue a special \$10 per share dividend to the owners of Class B preferred stock. This dividend was in addition to the annual dividend ABC regularly paid all of its stockholders.
4. Six months ago, the market for ABC's products seriously declined due to the weakening economy. Last month, at a time when ABC still possessed a significant amount of cash but was in a negative equity position because of outstanding liabilities, the directors met and decided to issue the usual annual dividend to both classes of stockholders. The Board reasoned that, although times were currently tough, ABC would weather the storm and that not issuing the dividend would "send the wrong message."

Did the Board of Directors have the authority to take each of the above actions, and, if the Board acted without authority as to any of the actions, can the directors be held personally liable? Discuss fully.

Do not discuss what form any action against the directors would take (such as direct or derivative).

QUESTION 5

In 1985, Dad and Mom, residents of Ohio, executed valid wills leaving their substantial estates to each other, then to be divided equally between their two children, Al and Barb.

After Dad died, Al continued to operate the family business, as he had done during Dad's later years. Barb, who was a fine artist, had no business sense. Al frequently complained to Mom that Barb meddled in the business and would eventually ruin it if she ever became part owner.

Worried that the business would suffer if Barb became an owner, Mom visited her lawyer's office to discuss the matter. The lawyer was out of the office, so Mom explained her concerns to Pete, the paralegal, and Sara, the secretary. Mom told them she wanted to do something about it right away because she was leaving for an extended vacation in Florida. Pete told Mom to write down what she wanted to do. Mom took a blank piece of paper and wrote the following:

To Whom It May Concern: In case of my death,
I would want Al to get our family business.

/s/ Mom

June 1, 2002

Mom signed the paper at the very bottom of the sheet, leaving no room for anyone to sign below her signature. Pete signed his name in the left-hand margin alongside the text. Sara also signed her name in the left-hand margin and took the paper to her desk and notarized it. She then put the paper on the lawyer's desk.

Later that afternoon, en route to the airport to catch her flight to Florida, Mom was killed in an automobile accident.

Mom's 1985 will was duly admitted to probate. Al presented the June 1, 2002 handwritten note for admission to probate. Barb opposed admission of the note on the ground of undue influence -- i.e., that Mom had been induced to write the note by Al's constantly badgering her about what Al had considered Barb's "meddling" in the business.

At a hearing on whether the note should be admitted, Sara testified that (a) it was her signature in the left-hand margin; (b) she recognized Mom's signature from having seen other legal documents Mom had signed over the years; and (c) she had no present recollection whether she actually saw Mom sign the note but that it was her uniform practice to notarize documents only when the person signed the document right in front of her. Pete testified that Mom very clearly knew what she wanted to do when she made the note. He also testified that (a) he remembered Mom writing and signing the note; (b) he signed it in the margin immediately after Mom signed it; but (c) he does not remember if Sara was present at the time.

1. Has Al made out a *prima facie* case that the handwritten note was a properly executed codicil? Discuss fully.

2. Assuming the handwritten note is a valid codicil, is its language definite and direct enough to change the children's shares in the family business? Discuss fully.
3. How should the court rule on Barb's challenge based on undue influence? Discuss fully.

QUESTION 6

In 1970, Mary and John, residents and citizens of Ontario, Canada, were boating on Lake Erie. They decided to cross the lake and have lunch in Sandusky, Ohio. While walking around town, Mary, who was pregnant but not due to give birth for another month, unexpectedly went into labor. The two hurried to a local hospital, where Mary gave birth to a son, Dan.

Although the immigration authorities detained John and Mary briefly, the authorities declined to take action against them for their illegal entry into the country and allowed them to return to Canada with their son. Two years later, Mary gave birth to a second son, Frank, in Canada.

In 1988, Dan got a job with the Canadian government. As a condition of employment, he was required to take an oath of loyalty to the Canadian government. The oath stated, among other things, that Dan's "allegiance was given solely and completely to Canada and to none other."

At the time he signed the oath, Dan was unaware of the circumstances of his birth, although when he turned 21 three years later, his parents did relate to him the story of his adventurous birth. Although he lived and worked in Canada, Dan never voted in a Canadian election.

In 1992, Dan and Frank decided to move permanently to Ohio. Dan was allowed to enter the U.S. under a claim of U.S. citizenship. Frank married a woman from Cleveland and was granted permanent resident alien status.

In 1995, both Dan and Frank became ardent members of a new political party, Destroy Our Government (DOG), which is dedicated to repealing the constitutions of the United States and the various states and instituting a form of government in which all property is held by the government and shared equally by the citizens. In 1999, Congress passed an Act making membership in DOG grounds for deportation of aliens.

Last month, the U.S. government instituted proceedings against Dan to revoke his alleged citizenship and against Frank to deport him. At the time the proceedings were commenced, both Dan and Frank were in Canada visiting their parents. When they attempted to re-enter the U.S., they were denied admission at the border.

Dan and Frank wish to resume their lives in Ohio.

1. Does Dan have a valid claim of U.S. citizenship? Discuss fully.
2. Did the government act properly in denying Dan and Frank re-entry? Discuss fully.
3. Does the government have the power to deport Frank, and, assuming that it does, what procedural rights does Frank have before deportation can occur? Discuss fully.

QUESTION 7

City purchased land several miles from the city limits and drilled new water wells to augment City's water supply. The land on which City drilled the wells adjoins Midville, an unincorporated village that contains 70 homes and several small businesses.

In the five years since City drilled the wells, many of the wells in Midville have dried up or lost capacity. Midville residents have been forced to drill deeper wells in order to have an adequate supply of water. Fifty of the residents sued City to recover their costs of drilling the deeper wells.

Counsel for the plaintiffs prepared charts outlining each plaintiff's damages, intending to use the charts as evidence at trial. Prior to trial, defense counsel filed a written motion *in limine* requesting the court to exclude the charts at trial. Plaintiffs' counsel filed a written opposition. Before selection of the jury, the court heard argument on the motion *in limine* and granted it. The written motion and the opposition were preserved as part of the record in the case.

During direct examination of the first plaintiff at trial, counsel referred to one of the charts and offered it in evidence. Defense counsel asked to approach the bench and, in a sidebar conference that was recorded by the court reporter, said, "Your Honor, we argued this before trial. You know my position." The court responded, "I think I'll receive the chart in evidence." The chart was received in evidence, and the trial proceeded.

One of the issues at trial was proximate cause, i.e., whether City's wells caused plaintiffs' wells to dry up. Plaintiffs' counsel called an expert witness, who gave his opinion as to the well of one of the plaintiffs: that the reason this plaintiff had to drill a new well was that City's wells drew down the surrounding water supply.

Plaintiffs' counsel, over objection from defense counsel, then asked the court to take judicial notice that the same was true for all the plaintiffs. The premise for plaintiffs' counsel's request was that it would avoid having to call the expert to give the same testimony for each of the 50 plaintiffs.

One of the plaintiffs, Smith, had been interviewed by City's investigator before the litigation began. Smith had told the investigator that, in August 1998, which was before City drilled its wells, he (Smith) had experienced a loss of capacity in his well. During cross-examination of Smith, defense counsel introduced into evidence that portion of Smith's statement.

Plaintiffs' counsel immediately said, "Your Honor, defense counsel has a copy of the August 1998 repair bill from ABC Drilling Co. for replacement of a defective pump on Mr. Smith's well. I request that you require counsel to introduce that bill at this time."

1. Did plaintiffs' counsel preserve the record for an appeal from the court's admission of the damage chart?
2. How should the court rule on plaintiffs' counsel's request for judicial notice?
3. How should the court rule on plaintiffs' counsel's request that defense counsel be required to introduce the repair bill?

Discuss each fully.

QUESTION 8

Farmer located Mower in the Yellow Pages and hired him to cut the grass on Farmer's farm in Ohio. Farmer gave Mower specific instructions that Farmer wanted to be present when Mower cut the grass so he could make sure it was done the way Farmer wanted.

Mower asked his nephew, Nephew, to help with the grass cutting and told Nephew to use Mower's truck to transport Mower's equipment to Farmer's property. Mower's equipment yard adjoined a busy section of highway. As Nephew drove the truck from Mower's driveway onto the highway, he crossed the path of an oncoming car driven by Victim. Victim, the sole occupant of the car, collided with Nephew's truck and suffered serious injuries in the collision.

Nephew received a traffic ticket for violating a state statute that requires vehicle operators entering the highway from private driveways to yield the right of way to oncoming traffic. Victim, who admitted he had been driving "a bit over the speed limit," received a speeding ticket. Although an open can of beer was found in Victim's car, Victim was not cited for driving under the influence of alcohol.

In a suit for damages based on negligence,

1. What theories of liability should Victim assert against Nephew, Mower, and Farmer? Discuss fully.
2. What affirmative defenses should each of them assert against Victim? Discuss fully.

QUESTION 9

On January 2, Mary, a resident of Sylvania, Ohio, visited a new apartment complex. She was not sure she wanted to rent a unit, but she felt pressured by the hard sell tactics of the rental agent. She reluctantly wrote a check on her account at City Bank to Landlord to cover the \$500 deposit, but she intentionally postdated the check to January 10.

At the time she wrote the check, she had a balance of \$1,000 in her account. On January 3, Mary phoned her account representative at City Bank to explain the postdate on the check. The account representative was unavailable, so Mary left the following message on the voice-mail machine: "Hi, this is Mary. Yesterday, I wrote my check number 244 for \$500 to Landlord. I intentionally postdated it to January 10, so I don't want the check cashed until I make up my mind about whether I really want the apartment. Call me if you have any questions. You have my phone number."

On January 4, while shopping in a second-hand shop, Mary recognized a rare painting that was priced at \$800. She knew it was really worth \$10,000. Mary knew she did not have any agreement with City Bank to pay overdrafts, but, believing that she still had \$1,000 in her checking account, she wrote check number 245 to Shop Owner for \$800. Shop Owner decided to hold the painting until Mary's check cleared.

On January 7, Landlord presented Mary's \$500 check to City Bank, which paid it.

On January 8, Mary, without knowledge that Landlord had cashed the check, delivered to him a letter telling him she did not want to rent the apartment unit.

On January 8, Shop Owner presented Mary's \$800 check to City Bank, which dishonored it because there was an insufficient balance in Mary's account to cover the check. Angered by this, Shop Owner sold the painting to someone else. He also filed a criminal complaint against Mary for drawing a check upon insufficient funds. Mary was convicted. She had to pay \$3,000 in attorney fees, fines, and court costs.

Mary, asserting that City Bank wrongfully dishonored the \$800 check to Shop Owner, seeks to recover from City Bank the \$500 paid to Landlord, the \$3,000 the criminal prosecution cost her, the \$9,200 she lost when the painting was sold to someone else, damages for embarrassment and harm to her reputation, and punitive damages.

For each of the following issues, what are Mary's rights against City Bank, and what defenses, if any, might City Bank reasonably assert:

1. City Bank's dishonor of the \$800 check?
2. Mary's claim for the \$500 paid by City Bank to Landlord?
3. Mary's claim for the \$3,000 it cost her to defend the criminal prosecution?
4. Mary's claim for the \$9,200 loss on the painting?
5. Mary's claim for harm to her reputation?
6. Mary's claim for punitive damages?

Discuss each issue fully.

QUESTION 10

Bob, an Ohio college student, was dating three women: Mary, Sara, and Jane. He had run up a significant credit card debt and needed money to reduce it. He asked his sister, Carol, for a loan of \$2,000.

Carol was convinced that the girlfriend Mary was the source of Bob's money problems. She told Bob she would give him the money and that he would not have to pay it back, on condition that he agree never to wed Mary. Bob agreed and Carol gave him \$2,000.

Wondering whether she had made a wise decision, Carol consulted Alex, an acquaintance she believed was versed in the law because he had represented himself in a number of lawsuits. She knew that Alex is not a licensed lawyer anywhere, and that, in Ohio, one must be licensed before being able to practice law. Carol paid Alex \$200 to advise her on whether the agreement she had made with Bob is enforceable. She has heard nothing from Alex, and he has not returned her phone calls.

A few weeks later, Bob called Carol again and asked her for more money. Bob told her he needed \$1,500 to pay off the balance of his credit card debt. He said he needed an additional \$1,500 because he had an opportunity to buy an herbal concoction he said was a proven aid to study and memory retention. He was sure he could sell this to his fellow students at a profit. He promised he would use those profits to pay off the entire \$3,000. In fact, Bob knew, but did not tell Carol, the substance he was going to buy and sell to his fellow students was an illegal drug.

Carol lent him \$3,000, and Bob signed an agreement that set out the two purposes for the loan and promised to pay it back in two weeks.

Bob used \$1,500 to pay off the balance on his credit card debt. Bob called Dealer, the person who had offered him the herbal concoction, and arranged a meeting. They met in a back alley near the campus. Dealer said he needed \$1,500 to acquire the herbal concoction, which he would deliver to Bob the next day. Bob gave Dealer the \$1,500, but Dealer never delivered the concoction.

Bob and Mary got married. Bob then told Carol that he had married Mary and that his opportunity to buy the herbal concoction had fallen through, so he cannot repay the \$3,000 loan.

In a suit for breach of contract:

1. Can Carol recover from Bob any or all of the \$5,000 he got from her?
2. Can Carol recover from Alex the \$200 she paid him for legal advice?
3. Can Bob recover the \$1,500 he paid Dealer?

Discuss each answer fully.

QUESTION 11

Client retained Jones as his attorney to file a divorce action against Client's wife. Jones is a solo practitioner who had only recently started practicing law. The following events occurred in the course of the representation:

In their initial meeting, Client told Jones that he was having a secret relationship with a man named Ralph, that he had secreted \$200,000 of marital money under a fictitious name in a bank account, that he had no intention of sharing the money with his wife, and that he did not want any of this disclosed to anyone. Jones told Client that his wife was entitled to half of that money.

After Client left the office, Jones telephoned his friend, Kelley, an experienced lawyer. Swearing Kelley to secrecy, Jones told him about Client's \$200,000 secret bank account and asked for his advice on whether he had been correct in advising Client that his wife had a one-half interest in that money. Kelley said yes.

Client's wife was then served with the divorce complaint. Later that day, she got into an argument with Client about it, and Client assaulted her. The police arrested him.

Client was released on a \$10,000 bond written by Bonder. Client asked Jones to represent him at his arraignment, which was set for the next afternoon. Client told Jones that he did not intend to appear at the arraignment. Jones agreed to appear on Client's behalf.

Client did not appear at the arraignment. The judge asked Jones where his client was, and Jones responded, "He called me yesterday and told me he wasn't going to appear." The judge immediately issued a bench warrant for Client's arrest.

At about 7:00 p.m. that evening, Client telephoned Jones and made an appointment to meet with Jones on the next day. He told Jones that he was hiding in his garage waiting for his wife to get home from a meeting at about 11:00 p.m. and that he was "going to beat her up good this time." Jones did not respond. When Client's wife arrived home, Client beat her severely.

The next day, Client telephoned Jones and told him, "I'm on my way to your office. I know the cops and Bonder are looking for me. Don't tell them where I am."

Jones intended, when Client arrived, to tell him that he was terminating his representation of Client. Before Client arrived, Jones received a phone call from Bonder, who told Jones, "If you'll tell me where Client is, I'll make a deal with you that, in the future, I'll give your clients a 10% discount on bail bonds." Jones agreed and told Bonder that Client was on his way to Jones' office. Bonder notified the police, who waited for and arrested Client when he arrived.

What issues, if any, do the above facts present for Jones under the Code of Professional Responsibility and the Disciplinary Rules? Discuss fully.

QUESTION 12

A recent news article reported on open drug sales on the streets of Police District No. 1. This prompted the officer in charge of the Narcotics Unit to issue a special bulletin. The bulletin ordered a concerted crackdown on drug dealers in District No. 1.

Detective Dan was an experienced plainclothes narcotics officer who had worked in District No. 1 for many years and had participated in numerous arrests and convictions of drug dealers. On a June evening, Dan was driving an unmarked car near a local park in District No. 1. Dan knew from prior experience that the park was a place where lots of drug deals went down. Dan saw a man, Joe, carrying a brown paper grocery bag and walking among the cars in the park's parking lot. Dan did not recognize the man as a resident of the District.

Dan watched as Joe stopped at a number of the cars, peered in the windows, and stopped and talked to any occupants he encountered. He seemed to walk with a slight limp in his right leg. Occasionally, Joe would reach into the paper bag, remove a small item, hand it to the occupant of the car, take something handed to him by the occupant of the car, and move on to another car.

As Joe approached, Dan got out of his car and identified himself as a police officer. Joe took off running and appeared to place something in his mouth and swallow it. Dan caught up with him as Joe started to get into what turned out to be Joe's car. When Dan asked Joe to identify himself, he said, "I'm Joe."

Joe placed the bag he was carrying on the hood of his car. He remained silent when Dan asked him what was in the bag. When Dan tried to grab the bag, Joe pushed Dan's hand away and tried to reach into his back pants pocket. Dan pushed Joe up against the car and, as Dan patted Joe down, he felt a bulge in the back pocket of Joe's pants. When Dan asked what it was, Joe remained silent. Dan reached into the back pocket and found a loaded .22 caliber handgun.

Remembering the right-foot limp he had seen, Dan told Joe to take off his right shoe. When Joe refused, Dan bent over and removed the shoe himself. A small plastic bag of what appeared to Dan to be cocaine fell out of the shoe. At that point Dan handcuffed Joe. Dan then took the paper bag, opened it, and found drug paraphernalia.

Dan put Joe in the police car and drove him to a nearby hospital, where he instructed the emergency room doctor to pump Joe's stomach. As a result, the doctor removed a plastic bag of cocaine.

Joe was then given his Miranda warning, taken to jail, and subsequently indicted for carrying a concealed weapon, possession of drug paraphernalia, and possession of cocaine with intent to sell.

In a pretrial motion, Joe's attorney moved to dismiss on the ground that the arrest violated Joe's Fourth Amendment rights and, in the alternative, to suppress the gun, the drug paraphernalia, the cocaine found in Joe's shoe, and the cocaine extracted from Joe's stomach.

1. How should the court rule on the motion to dismiss? Discuss full
2. How should the court rule on the motion to suppress as to each of the items of evidence? Discuss fully.