

QUESTION 1

Husband and Wife had been having marital problems for years. One morning, Husband was reviewing a credit card bill and found charges to a local hotel, which tended to confirm his suspicions that Wife was having an affair with his friend, Buddy. Husband decided to kill Wife.

While Wife was in the shower, Husband put a few drops of poison in her coffee cup and left it on the kitchen table. Wife came into the kitchen, poured coffee into her cup, and was about to take a sip when the doorbell rang. Wife said, "Oh, that's Jenny from next door. We're going shopping this morning." When he heard Wife invite Jenny to have a cup of coffee, Husband poured Wife's coffee down the drain.

Husband then decided that it might be a better idea to kill Buddy. That afternoon, Husband met with a professional killer and told him he would pay him \$50,000 to kill Buddy. Killer agreed to kill Buddy that night, and Husband gave him \$10,000 as a down payment. Husband told Killer he could find Buddy at 10:30 p.m. in an isolated part of the warehouse where he worked.

When Husband returned home, he found Wife reviewing the credit card bill. She told him she had been paying for a friend to stay at a local hotel to escape her abusive husband. Husband called Killer, but he was not home. Husband left the following message on Killer's answering machine: "The deal's off. I've made a mistake. Call off the hit on Buddy and you can keep the \$10,000."

Killer returned later that day and listened to Husband's message. Killer decided to kill Buddy anyway and keep the taped message so that he could blackmail Husband to pay the remaining \$40,000.

At 10:30 that night, Killer got in his car to go to the warehouse. The car would not start. Realizing that he had little time to find Buddy, he asked Neighbor for a ride. Neighbor, who was aware of Killer's profession, did not ask Killer why he needed to go to a warehouse at 10:30 at night. Neighbor drove Killer to the warehouse and waited in the car. Killer found Buddy just where Husband said he would be and fired one fatal gunshot to Buddy's head. Killer jumped in Neighbor's car and said, "That was a close one. Step on it." Neighbor drove Killer home and never saw him again. Killer was never apprehended.

Assume Killer committed the offense of murder and that the state can establish all of the above facts.

1. Husband has been charged with:
 - (a) attempted murder of Wife, and
 - (b) conspiracy to commit murder of Buddy.
2. Neighbor has been charged with complicity to commit murder of Buddy.

What elements of each crime must the state prove to convict Husband and Neighbor, what defenses might Husband and Neighbor raise, and what is the likely outcome on each charge? Discuss fully.

QUESTION 2

Mother and Father married in 1970. Mother and Father had one son (Son) and one daughter (Daughter). Soon after Daughter's birth, Mother and Father were legally divorced.

Charles and Mother married in 1980. Charles and Mother did not have any children together. Charles and Son developed a very good relationship, and Charles adopted Son. Daughter did not get along with Charles, and he did not adopt her. After she left home to go to college, Daughter had very little contact with Charles or Mother.

Son left home soon after he reached the age of majority. Son and his high school sweetheart (Sweetheart) had a child, Able, in 1992. Son and Sweetheart married in 1994, and Son legally acknowledged paternity of Able. Son and Sweetheart had a second child, Baker, in 1996.

In 1998, Son became seriously ill. Mother sent Son a check for \$30,000 accompanied by a note to Son, stating:

Enclosed is a check for \$30,000 to help pay some of your medical bills. I know that you need this money more now than you will after I am gone.

Son died in 2000.

Mother died last month, survived by Charles, Daughter, Able, and Baker. The assets in Mother's estate consist of \$210,000 in cash. She did not leave a will.

To whom and in what amount should Mother's estate be distributed? Discuss fully.

QUESTION 3

Owner contracted with Builder to construct a warehouse on Owner's property. Builder subcontracted with Roofer to construct the roof. During the construction, Employee, an employee of Owner, was injured when part of the roof collapsed and struck her.

Employee sued Owner, Builder, and Roofer for negligence and intentional infliction of emotional distress in state court in Ohio. Owner, Builder, and Roofer filed cross-claims against each other for indemnification and contribution.

After all the parties conducted discovery, Owner, Builder, and Roofer each filed motions for summary judgment against Employee. The court made the following rulings:

- It granted Owner's motion against Employee as to all of Employee's claims;
- It granted the motions of Builder and Roofer as to Employee's claim of intentional infliction of emotional distress;
- It denied the motions of Builder and Roofer as to Employee's negligence claims.

The trial court also stated in its order that "There is no just reason for delay of an appeal."

After the court entered judgment on its rulings, Owner dismissed his cross-claim against Builder and Roofer. Thus, the remaining claims are:

- Employee's claims for negligence against Builder and Roofer; and
- The cross-claims of Builder and Roofer against each other and Owner.

Employee filed in the Court of Appeals an immediate notice of appeal of the trial court's rulings. Owner, Builder, and Roofer filed motions to dismiss the appeal for lack of jurisdiction on the ground that there was no final, appealable order of the trial court.

What factors will the Court of Appeals consider in determining how to rule on each of the motions to dismiss, and what is the probable outcome on each? Discuss fully.

QUESTION 4

Nephew decided to approach Uncle, his elderly uncle, who was independently wealthy, about cosigning on a bank loan for a new Corvette that Nephew wanted to buy.

Nephew had seen Uncle at a family function two months earlier and, although some family members said Uncle had lost his mind, Nephew thought Uncle was merely an eccentric.

Nephew made an unannounced visit to Uncle, and it took a few minutes before Uncle recognized him. The floor in Uncle's house was covered with hundreds of old newspapers, which Uncle said were necessary so he could keep up to date on current events because "You can't trust everything the government tells you."

Nephew told Uncle about the car he wanted to buy and that the bank would not lend him the money unless he had a cosigner. Uncle said he was delighted to help. He said, "Let's find my car keys, and we'll go to the bank right now." After a 30-minute search, Nephew found Uncle's keys in a plastic container in the refrigerator. Uncle remarked, "Oh yeah. I forgot I put them there."

At Bank, the loan officer explained the terms of the loan and told Uncle that he would be responsible for the payments if Nephew failed to make them. Uncle said, "I understand the terms, young man. Give me the paperwork so we can seal the deal." Uncle and Nephew signed the necessary documents, and Bank dispersed the funds.

Six months later, Cousin, Uncle's daughter, took Uncle to a physician for examination. The physician found that Uncle was at the time of the examination suffering from extreme dementia.

A year later, Nephew left town and ceased making the payments on the loan. Bank demanded payment from Uncle, who refused, saying, "I never entered into any agreement with Bank." Bank then sued Uncle to recover the loan balance.

Uncle hired an attorney who did not know that a physician had diagnosed Uncle as having dementia. However, the attorney knew about Uncle's eccentric behavior at the time of Nephew's visit and the visit to Bank with Nephew. The attorney asserted as a defense that Uncle's contract with Bank was void or voidable.

When Cousin learned of the lawsuit, she obtained court-ordered legal guardianship over Uncle and his estate and an adjudication of Uncle's incompetence. Cousin joined the lawsuit as Uncle's guardian and asserted the defense that Uncle's contract with Bank was void or voidable.

1. How should the court rule on the defense asserted by Uncle's attorney? Discuss fully.
2. How should the court rule on the defense asserted by Cousin? Discuss fully.

QUESTION 5

Landlord owned two cottages on a lake in Ohio. On January 1, 2000, Landlord entered into an oral agreement with Tenant to rent one of the cottages for two years, at \$4000 a year, payable on the first day of each year. Tenant paid Landlord \$4000 rent for the first year. Tenant continued living in the cottage, but she did not pay rent for the year commencing January 1, 2001.

Landlord also entered into an oral agreement with Renter under which Renter agreed to pay \$250 per month to rent the second cottage. Renter paid the rent as agreed.

On January 1, 2002, Landlord entered into written agreements with Tenant and Renter to rent the cottages:

With Tenant, Landlord entered into a two-year lease agreement for rent in the amount of \$10,000, to be paid in two annual installments of \$5000, due at the end of each year, on December 31, 2002, and December 31, 2003, respectively. The lease provided that it would terminate at the end of the two-year term if either party gave written notice of intent to terminate at least 30 days prior to its expiration. Otherwise, the lease would be automatically renewed and extended under the same terms and conditions.

With Renter, Landlord entered into a written lease agreement under which Renter agreed to pay \$250 per month. The lease provided that it could be terminated by either party upon 30 days' notice of intent to terminate.

In November 2002, Landlord was killed in a car wreck. Upon hearing the news, Tenant immediately vacated her cottage and has not paid any rent pursuant to the written lease.

Renter remained in his cottage and made his rental payments for November and December 2002. On January 1, 2003, Landlord's estate gave Renter thirty days' notice to vacate the cottage. Renter did not pay rent for January or February 2003, but he is still living at the cottage.

1. How would a court characterize the tenancies of Tenant and Renter under:
 - a) The oral agreement of each with Landlord? Discuss fully.
 - b) The written agreement of each with Landlord? Discuss fully.
2. What are the liabilities of Tenant and Renter to Landlord's estate under:
 - a) The oral agreement of each with Landlord? Discuss fully.
 - b) The written agreement of each with Landlord? Discuss fully.

QUESTION 6

XCO is a small, privately owned Ohio corporation with annual revenues of about \$10 million. XCO has outstanding 100 shares of common stock, all of which is owned by the Jones Family Trust (“Trust”). XCO has consistently returned a small profit for each of the last several years.

The Board of Directors of XCO consists of three individuals, each of whom is an executive officer of XCO, including Smith who is Chief Executive Officer. All three directors are required to constitute a quorum.

At the annual meeting of XCO’s Board, three items of business were unanimously approved as follows:

1. The directors approved the award of a \$1 million contract to Shadow Corp. to supply raw materials to XCO. Unknown to the other directors or any other representative of XCO, Smith had a stock ownership interest in Shadow Corp. and had secretly established Shadow Corp. for the sole purpose of doing business with XCO. The price of the raw materials in the XCO/Shadow Corp. contract was slightly higher than the prices bid by other vendors, but the quality of the raw materials to be supplied by Shadow Corp. was acceptable.
2. The directors approved a \$2 million long-term contract and a \$400,000 cash deposit with Dot Com Corp. to supply XCO with a new computer system. The directors had failed to investigate the financial stability of Dot Com, which was a failing company at the time the contract and deposit were approved. One month later, Dot Com declared bankruptcy, and the entire \$400,000 advanced by XCO was lost.
3. The directors approved a 15% increase in their own salaries as officers. At the time, other companies in XCO’s market had put a freeze on executive salaries because of poor economic conditions.

The Trust wishes to challenge these three actions of the Board. On what theories might the Trust reasonably claim that each of the Board actions was improper under Ohio law, what defenses might the Board reasonably assert, and what is the probable outcome on each of the Trust’s claims? Discuss fully.

QUESTION 7

Lender is a businessman in Anytown, Ohio. In the last year, Lender engaged in the three business transactions recited below. In all three, Lender obtained properly executed security agreements and perfected his security interests by filing financing statements with the required regulatory authorities. The security agreements were “bare bones” agreements. They recited the amount loaned and described the collateral. None of them contained any provisions regarding post-default disposition of collateral.

I. In the first transaction, Lender loaned Dealer \$400,000 for the purchase of inventory, which was the collateral for the loan. Dealer purchased the inventory and ceased making payments on the loan. Lender notified Dealer that she was in default of their agreement. Lender and Dealer agreed that Lender would take possession of and sell the inventory at a public auction on Dealer’s premises to satisfy the balance of \$400,000 in principal and interest owed to Lender.

Before the sale, Bank notified Lender that Bank had a security interest in Dealer’s inventory. Bank’s security interest had been perfected after Lender’s and was therefore subordinate to Lender’s. The balance Dealer owed Bank was \$50,000.

Lender advertised the sale and gave Dealer and Bank two weeks notice of the time and place. Lender incurred \$25,000 in attorney’s fees and other expenses in carrying out the sale. The auction went well, and the inventory sold for \$500,000.

II. In the second transaction, Lender loaned Manufacturer \$100,000 to finance the production of goods, which were the collateral for the loan. Manufacturer produced the goods and sent them for temporary storage in a warehouse owned by Owner and then defaulted on the loan.

Lender, who was a business acquaintance of Owner, told Owner that Manufacturer had defaulted on the loan and that Lender was taking possession of the goods stored in Owner’s warehouse. Lender truthfully told Owner that the goods were worth \$100,000 but that, in order to save the time and expense of getting rid of the goods, he would sell them to Owner for \$50,000. Owner agreed and paid Lender \$50,000.

Lender then notified Manufacturer that he had sold the goods for \$50,000. Lender demanded that Manufacturer pay him the \$50,000 balance that was due on the loan.

III. In the third transaction, Lender loaned Broker \$50,000 to finance a shipment of fresh vegetables, which was the collateral for the loan, from California to Distributor in Ohio.

While the vegetables were in transit, Broker notified Lender he would not be able to pay off the loan when due. Lender described the situation to Distributor and offered to sell the shipment to Distributor for \$45,000. Distributor accepted and paid Lender \$45,000. Lender then called Broker, told him of the sale to Distributor, and demanded that Broker pay him the \$5,000 still due on the loan.

In each of the transactions, was Lender’s disposition of the collateral lawful, and who owes how much money to whom? Discuss fully.

QUESTION 8

The Ohio Legislature recently enacted three statutes that had an impact on Judge, Mover, and Alien.

I. Statute No. 1 provides:

All appellate court judges shall retire at the age of seventy years.
This provision shall not apply to juvenile court judges.

In enacting Statute No. 1, the Legislature determined that intellectual ability is an essential requirement for judges and concluded, based on testimony from geriatric experts, that mental dexterity frequently declines at age 70.

Judge, a 70-year-old Ohio appellate judge, sought to run, once again, for his appellate seat. Relying on Statute No. 1, the county's board of elections refused to allow him to file for re-election.

II. Statute No. 2 provides:

Public welfare assistance may be granted only to or on behalf of a person residing in the State of Ohio who has resided in Ohio for at least one year immediately preceding the date of application for assistance.

The Legislature's goal in enacting Statute No. 2 was to control the state's welfare expenses and to discourage individuals from moving into Ohio simply for the purpose of receiving aid.

Mover moved from Iowa to Ohio in June of 2002. Mover then applied for public welfare assistance in Ohio on July 1, 2002. On the basis of Statute No. 2, the county welfare office denied Mover's application for welfare assistance.

III. Statute No. 3 provides:

No person shall be appointed as a law enforcement officer in the State of Ohio unless that person is a citizen of the United States.

When enacting Statute No. 3, the Legislature found that citizens are more likely than aliens to be familiar with and sympathetic to American tradition and that this trait is essential in exercising the discretion required in law enforcement.

Alien is an alien eligible to become a naturalized citizen. He is lawfully in Ohio as a permanent resident. Alien applied for appointment as an Ohio State Trooper. Relying upon Statute No. 3, state authorities refused to allow Alien to take the qualifying examination.

On what basis might Judge, Mover, and Alien each assert that the statute that was applied to him is unconstitutional under the U.S. Constitution? In each case, what standard of review will be applied? Discuss fully.

QUESTION 9

Plaintiff brought an action in an Ohio state court alleging claims of medical negligence against her physician, Doctor, and nursing negligence against Nurse, a private nurse not employed by Doctor or by any hospital. The following occurred at trial:

- Plaintiff called MD as an expert to testify regarding Doctor's negligence. MD is a licensed physician who was actively engaged in the practice of medicine for 20 years. Since retiring from active practice five years ago, MD has taught surgery half of his time at a major medical school. In formulating his expert opinion, MD testified that he relied in part upon a chapter in a well-known medical textbook. Doctor moved to exclude the testimony of MD, claiming he is not qualified to testify as an expert.
- Plaintiff called RN as an expert to testify regarding Nurse's negligence. RN is a licensed registered nurse who worked in a major hospital for 15 years but quit practicing two years ago. Nurse moved to exclude the testimony of RN on the ground that RN does not currently practice nursing.
- Doctor called Surgeon, a physician, to offer expert testimony that Doctor was not negligent. On cross-examination, Plaintiff sought to introduce evidence that Surgeon is a defendant in a separate, unrelated lawsuit where it is alleged that Surgeon committed the same type of malpractice that Plaintiff alleges in her case against Doctor.
- During cross-examination of Surgeon, Plaintiff attempted to impeach Surgeon with statements contained in the textbook relied upon by MD. Doctor moved to preclude the use of the statements in cross-examination.
- Doctor offered to introduce evidence of Plaintiff's conviction of theft nine years ago. The conviction was legally expunged two years ago, and Plaintiff has not been charged with or convicted of any crime since her theft conviction.

How should the trial judge rule on each of the following motions:

1. Doctor's motion to exclude the testimony of MD?
2. Nurse's motion to exclude the testimony of RN?
3. Plaintiff's motion to introduce evidence that Surgeon is a defendant in a similar malpractice suit?
4. Doctor's motion to preclude use of statements from the medical textbook in cross-examination of Surgeon?
5. Doctor's motion to admit evidence of Plaintiff's theft conviction.

Discuss fully.

QUESTION 10

During their first year in practice after being admitted to the Ohio bar, three friends from law school confront the following issues:

Attorney: Attorney represents Employer in a wrongful termination suit filed by Plaintiff, who claims he was fired because of his age. During the course of the litigation, Attorney learns that many of Plaintiff's co-workers suspect that Plaintiff had an affair with his secretary. The affair had nothing to do with Plaintiff's termination. However, if he did have an affair with his secretary, he would have been terminated because Employer's policy prohibited such relationships. Plaintiff's wife is not a party to the lawsuit.

The matter is set to go to trial in two weeks, and Attorney's attempts to obtain a favorable settlement for his client have been unsuccessful so far. Attorney plans to tell Plaintiff's counsel that he will cross-examine Plaintiff about the affair at the trial. The information ultimately would be relevant to the issue of damages. Otherwise, Attorney's only reason for wanting to disclose the co-workers' suspicions about the affair is to force Plaintiff into a settlement rather than have to deal with his wife's reaction to the questioning about the affair.

Prosecutor: After obtaining a grand jury indictment for felony assault against Defendant, Prosecutor is approached by Citizen, who tells Prosecutor that Victim, the victim of the assault, had fabricated the charges against Defendant. Citizen, who works with both Defendant and Victim, said Victim told Citizen and three other co-workers that she was going to file a false charge against Defendant to get back at him for a workplace dispute. Citizen provides Prosecutor with a list of names of the three others and states that he has not shared this information with Defendant or Defendant's attorney. Prosecutor and Defendant's attorney have already reached a plea bargain for Defendant to plead guilty to a misdemeanor assault charge. Prosecutor does not plan to share Citizen's information with Defendant's attorney.

Lawyer: Lawyer's first successful conviction after a jury trial is being appealed. The basis for the appeal is Lawyer's statements during closing argument, where Lawyer referred to the Appellant's testimony at trial as a "bunch of lies" and Appellant's attorney as using his "bag of tricks" to "pull the wool" over the jury's eyes. The case turned on the credibility of the Appellant and one other witness in the case. Lawyer believes the appeal has no basis and that Appellant's attorney is just bitter because he lost the trial.

What ethical issues does the conduct of Attorney, Prosecutor, and Lawyer raise under the Disciplinary Rules of the Ohio Code of Professional Responsibility? Discuss fully.

QUESTION 11

Hotel is a small bed and breakfast hotel run by the Smith family and located in an old Victorian home in a fishing village. Alan read an advertisement for Hotel describing it as “an informal place where employees do not wear name tags or uniforms, just Hawaiian shirts and khaki shorts.” Alan arranged to go fishing one weekend and decided to give Hotel a try. He reserved a room for two nights and indicated he would arrive by noon on Friday. He received a letter confirming his stay in Room 7.

Alan arrived at 11:00 a.m., parked his car on the street in front of Hotel, and entered the lobby. Facing the entrance was a desk with a sign saying “Ring Bell To Check In.” Room keys hung on a board behind the desk. On an adjacent table was a “Guest Services” sign. A hand-written note tacked to that sign said: “Gone fishing – if no one is behind the desk, leave a note.”

A young woman dressed in a Hawaiian shirt and khaki shorts, who was sitting at a game table in the otherwise empty lobby, asked Alan if he was checking in. Alan gave her his reservation confirmation letter, and she went behind the desk and gave Alan the key to Room 7.

Alan asked if he might deposit his Rolex watch in the hotel safe. The young woman said “Yes,” took the watch from Alan, made a note on Alan’s confirmation letter, and gave the letter back to him. Alan went off to unpack.

In his room, Alan found a note informing him that the fishing boat he had chartered for the next day had been canceled. Alan returned to the lobby, which was now empty, anxious to find another charter boat. As Alan exited Hotel, a man wearing a Hawaiian shirt asked Alan if he wanted valet parking for his car, to get it off the street. Alan agreed, gave the man his car keys, and took a numbered parking ticket from him.

Alan told the man he wanted to charter a fishing boat. The man said he could arrange a charter boat for Alan through Hotel for \$200 cash. Alan said he was reluctant to deal with a parking attendant for that amount of money. The man said the manager, Mrs. Smith, let him do it all the time. Alan gave him the \$200 cash. The man then jumped in Alan’s car, threw it into reverse, and backed it into a tree.

The sound of the crash brought a woman in a Hawaiian shirt, wiping her hand on her apron, to the front door of Hotel. She looked at the man who had wrecked Alan’s car and yelled at him, “You’re fired!” The man jumped out of Alan’s car and ran away.

The woman introduced herself as Mrs. Smith. She explained to Alan that she had been back in the kitchen baking for the past 15 or 20 minutes. She said that she hadn’t heard Alan ring the desk bell, but that she would take care of him now.

Alan explained to her what had happened to him since he had arrived at Hotel. Mrs. Smith stated that Hotel did not have a young woman working as a desk clerk. She searched the check-in desk, but Alan’s Rolex was gone. Mrs. Smith also told Alan that the now-fired parking attendant was not authorized to arrange fishing charters.

Is Hotel liable to Alan for:

- 1) The loss of his Rolex? Discuss fully.
- 2) The property damage to his car? Discuss fully.

3) The loss of the \$200 he gave the parking attendant? Discuss fully.

QUESTION 12

James, Ken, and Supervisor, co-workers at Plant, regularly played jokes on one another. One Monday last month, James placed a red tag on Supervisor's back, identifying him as "Chief Idiot." Supervisor retaliated by placing a rubber snake in James' lunch box. On Tuesday, James told Ken that Supervisor had informed them that they could leave work an hour early for "lack of work." Ken left work and was docked an hour's pay. On Wednesday, James threw balloons filled with red colored water at Ken and Supervisor, leaving red stains on their clothing.

On Thursday, Ken and Supervisor decided to get even with James. Supervisor turned on his office video camera so that the entire Plant could view and hear everything in his office. Then, Supervisor ordered James into his office, telling him he wanted to discuss James' work performance. When James entered the office and saw Ken, he knew something was up and turned to leave. Supervisor prevented him from leaving by shutting and locking the door.

Ken grabbed James' arms and legs and wrestled him to the floor. Ken poked James in the stomach and chest and held his right wrist so tightly that it fractured, causing James severe pain as he struggled to free himself.

With tears streaming from his eyes, James screamed, "Don't do this to me" as he rolled around on the floor and attempted to flee. After a few moments more of tickling and wrestling, Ken let James up. Supervisor unlocked the door and told James to get out.

The whole ordeal, which lasted fifteen minutes, was broadcast to the Plant from Supervisor's office. As James walked through the Plant, all his co-workers clapped and laughed at him. James immediately left work. He received medical treatment for his wrist. He did not receive any other treatment, but did not return to work for three weeks.

Jones has sued Ken and Supervisor.

1. How should the court rule on a claim by James against Ken for assault and battery? Discuss fully.
2. How should the court rule on a claim by James against Supervisor for false imprisonment? Discuss fully.
3. How should the court rule on a claim by James against Ken and Supervisor for intentional infliction of emotional distress? Discuss fully.