

QUESTION 1

Officer Ott, on foot patrol in Metropolis, Ohio, heard what sounded like gunshots in the distance. While running in the direction of the gunshots, Ott heard a report over the police radio that the Quickie-Mart two blocks away had been robbed at gunpoint. The report continued that witnesses of the robbery had called 9-1-1 and described the perpetrators as a white male in his late teens to early twenties and a white female in her mid-to-late teens.

About a block away from the Quickie-Mart, Ott observed Suzy Suspect, a young, white female, walking briskly down the alley wearing sunglasses and carrying an oversized shopping bag. Ott recognized that this young woman fit the general description of the female perpetrator and thought it odd that she would be wearing sunglasses on such a dark, cloudy day. Ott also found the woman's bag to be suspicious and wanted to have a look inside.

As Ott approached Suspect, she stopped dead in her tracks. Ott identified himself as a police officer and asked Suspect whether she knew anything about the Quickie-Mart robbery. Before Ott could finish his question, Suspect began running down the alley. Ott began to chase her, yelling "Stop, . . . police!" Suspect then began to discard from her bag bundles of money that were bound together with ribbons that bore the Quickie-Mart emblem. She also discarded a small handgun.

Ott overtook Suspect on foot, handcuffed her to a nearby light post, and recovered the bundles of money and the handgun from the sidewalk. After brief but unproductive questioning of Suspect, Ott continued down the alley in the direction that Suspect had been walking.

As Ott came to the end of the alley he observed Nervous Nelson, a nervous-looking young man, who was wearing an overcoat and pacing back and forth in front of an idling car parked at a meter. When Nelson saw Ott approach, he quickly turned around and reached for the car door handle with his left hand, while simultaneously reaching under his overcoat with his right. Before Nelson got any further, Ott ordered him to "freeze." Nelson complied with Ott's order, and Ott conducted an initial "pat down" of Nelson, feeling the outside of his clothing. Ott felt a hard, oblong object that appeared to be tucked into Nelson's waistband behind his back. Ott then reached under Nelson's overcoat and found a long screwdriver, but nothing else. Ott took the screwdriver and then asked Nelson to identify himself. Nelson told Ott that he was Nervous Nelson, and, on request, gave Ott his driver's license.

By this time, police backup had arrived. Ott told Nelson that he would need to see if his identification checked out, and placed Nelson in the backseat of a parked cruiser. Ott then ran a computer check of Nelson, which in two minutes came back positive as to his identification and negative as to Nelson's having any criminal record. Over the next 25 minutes, Ott talked to other police officers on the scene, but learned little, as most of the witnesses had already been taken to the police station. Ott then returned to the parked cruiser and told Nelson that they would have to continue their conversation at the police station a block away.

At the station, Ott escorted Nelson to an interrogation room and told him to take a seat. After Nelson was seated, Ott read him his Miranda rights, told him that they had caught the girl, and asked him whether there was anything else that Ott should know. Nelson voluntarily stated, "Yeah, I did it. The girl was just along for the ride. From now on you'll have to talk to my lawyer."

As the investigation unfolded, police learned that the screwdriver recovered from Nelson had been used to pry open the Quickie-Mart safe.

As a new assistant prosecutor, give your legal opinion of the likelihood the money, gun, screwdriver, and Nelson's confession will be suppressed on Fourth Amendment grounds. Please discuss, confining your answer to the question posed.

QUESTION 2

Tom has been fired and is short of cash as usual. Tom owes Landlord \$1500 for the past three months' rent.

Tom's parents and his older brother would do almost anything to help Tom solve his financial problems but are themselves short of cash.

Tom's father offers to give his favorite golf clubs to Golfer, if Golfer will pay Landlord \$300 towards Tom's back rent. Golfer agrees, and Tom's father delivers the clubs. When Landlord learns of the deal from Tom's father, she puts down a non-refundable deposit on an exquisite new ball gown.

Meanwhile, Tom's mother agrees to reveal her secret brownie recipe to Brownie, Inc., in exchange for Brownie's promise to pay \$700 to Tom, which his mother hopes Tom will use to pay Landlord.

Finally, Tom's brother offers to make a cocaine delivery for Dealer in exchange for Dealer's promise to pay \$500 to Landlord. Although Dealer has never heard of Tom and doesn't have any idea why he's being asked to pay Landlord, he readily agrees to the deal.

A week later, things fall apart.

After playing poorly with his new clubs, Golfer calls Tom's father to complain. They agree to modify their agreement so that Golfer is to pay Landlord only \$200. Golfer promptly makes the payment.

Brownie tries the recipe but is dissatisfied, primarily because Tom's mother withheld the key ingredient. Brownie tells Tom and his mother that it is withholding payment until it gets the missing ingredient. Tom sues Brownie, seeking payment of the \$700. The next day, Tom's mother and Brownie decide to rescind their agreement altogether.

Meanwhile, Tom's brother makes the cocaine delivery for Dealer, but Dealer refuses to pay anything to anyone.

Tom and Landlord are both upset that only \$200 of the rent has been paid. Landlord is especially upset because she has lost her deposit on the new ball gown.

Discuss fully the rights, if any, of Tom and Landlord against Golfer, Dealer, and Brownie and any applicable defenses.

QUESTION 3

Corporation is an Ohio corporation with 30,000 shares of common stock and 7,500 shares of unrestricted preferred stock outstanding. Corporation's board of directors is comprised of nine members who are elected to staggered three-year terms.

The 1999 annual meeting was held, as always, on the third Thursday in May at 10:00 a.m. at Corporation's main headquarters in Columbus, Ohio. The three directors up for re-election this year were O. Kay, Al Right, and Old Timer, each of whom had served on the board for multiple terms. Although O. Kay and Al Right had met with little opposition from shareholders, many felt that Old Timer was too resistant to change, and they questioned his ability to lead Corporation into the twenty-first century.

Old Timer has been elected to term after term, due primarily to his close relationship with some of the major shareholders. This year, however, he faced a stronger challenge than ever before. A young shareholder named Grass Roots had won the support of many other shareholders with his forward-looking ideas. Two weeks before the annual meeting, Grass Roots notified Corporation's president that he wanted the voting at the meeting to be cumulative.

(1) At the May 20, 1999 annual meeting, many shareholders were present to cast their votes. A few of the major shareholders (holders of a total of 10,000 shares of common stock and 5,000 shares of unrestricted preferred stock) were present. Their votes were equally divided among the three incumbent directors: O. Kay, Al Right, and Old Timer. Several minority shareholders (holders of a total of 5,000 shares of common stock) appeared as well, casting all of their votes for Grass Roots.

(2) Corporation's president, a close friend of Old Timer, appeared at the meeting to vote the shares of stock held by Corporation. He cast all votes for Old Timer.

(3) Some of the shareholders who were unable to attend the meeting voted by proxy.

(a) Corporation had on file "Powers that Be" proxies that were signed last year by some major shareholders. Each proxy, by its explicit terms, was to expire on May 31, 2000, and authorized a representative of Corporation to vote for each of the incumbent directors at the annual meetings in 1998, 1999, and 2000.

(b) Corporation received notice just before the meeting that one of the shareholders who executed a "Powers that Be" proxy had died a few days earlier.

(c) As part of a last-minute effort to support Grass Roots, several signed proxies came flooding in via facsimile on the morning of the meeting. Each proxy stated that all votes should be cast for Grass Roots.

(4) Big Bucks appeared just after the vote, announcing that he had not received notice of the meeting. He stated that, although he knew the meeting was always held near the end of May, he had never been informed of the exact date, time, or location. He indicated that, had he received proper notice, he would have revoked the "Powers that Be" proxy that he executed last year.

Applying Ohio law, evaluate the shareholders' votes. Regarding subsection (1), indicate how many votes validly were cast for Grass Roots and/or Old Timer. Regarding the other subsections, indicate whether the votes cast or the actions taken were valid. Explain the reasoning behind your answers.

QUESTION 4

Sally, your old law school friend, married John, an investment analyst, right after she graduated from law school. Sally then took a position with a large law firm.

In the spring of 1994, Sally had her first child and wanted to stay home and care for her baby. She left the law firm, where she was earning \$65,000 annually, to do freelance legal research and writing out of her home. Working no more than 20 hours per week, Sally earned \$18,000 her first year; \$23,500 her second year; and nearly \$30,000 during her third year at home. In December 1996, Sally gave birth to her second child. Working at home became more difficult with two children to care for, and Sally's annual income consequently dropped to approximately \$17,500 per year.

Throughout most of the marriage, John earned an annual salary in excess of \$150,000 as an investment analyst. John also managed to invest much of their income wisely. For example, John invested a \$50,000 inheritance Sally received from her grandmother, and that investment has steadily been realizing income of \$8,000 annually. During the last year, however, John decided to change jobs. He is now also working at home as an investment consultant. He expects to gross approximately \$50,000 this year.

Throughout their marriage, Sally and John have lived a very comfortable life in a large house in a prestigious suburb. They belong to the local country club, where Sally and John both maintain many of their business connections.

This morning, Sally comes to your office to tell you that her marriage to John is over. She wants to file for divorce and wants you to represent her. Sally explains that she can't really afford to support herself and feels that she is entitled to some spousal support, at least until both her children are in school and she can start a legal practice. Because her monthly bills will be at least \$4,000, and she's grossing less than \$20,000 annually from her current legal practice, she wants \$2,500 in monthly spousal support for at least the next three years, until the younger child starts school.

Sally reveals that she signed an antenuptial agreement on the day of her wedding to John. She's not sure what it says; she didn't really read it. Three hundred guests were waiting, so she just signed it. Sally seems to think it only affects the division of property, and not spousal support.

You get a copy of the antenuptial agreement, and determine that Sally did not waive any right to spousal support. She did, however, agree to accept only 10% of the marital assets. After investigating the couple's financial situation, you discover that John was worth \$2,500,000 at the time he married Sally, and he is now worth over \$12,000,000.

- (1) Can Sally get spousal support? Explain what standards and principles will guide the court's decision.
- (2) What share of the marital property is Sally entitled to? Explain.
- (3) Assume that Sally was awarded spousal support of \$2,000 per month, until further order of the court. Two years later, John moved to modify and/or terminate spousal support, claiming that Sally was having great success with her law practice. Her annual income had risen from \$20,000 to \$40,000 over that period. Sally opposed the

motion, contending that she still needed to stay home with the younger child, and stressed that, although she had seen an increase in income, so had John. His income was back up to its pre-divorce level of \$150,000. What will be the outcome? Explain.

QUESTION 5

“Pistol” Bird and his twin brother “Gunner” Bird were the stars of the Smalltown highschool basketball team. They were scheduled to play in the state championship basketball game Friday night. During a recess on school grounds the day before the big game, one of the school’s administrators observed one of the brothers smoking a cigarette in violation of a written school policy. The administrator reported to the Superintendent of Schools that one of the twin brothers was smoking but he didn’t know which one it was.

The Superintendent reviewed the school board policy that prohibits smoking on school grounds. He found that the policy further provides that those who violate the no smoking rule are prohibited from participating in any school sponsored athletic activity for two weeks. Because he felt the need to make an example of this situation, the Superintendent suspended both boys from the basketball team effective immediately.

On Friday, the Bird family hired a lawyer who quickly prepared a verified complaint and a motion for temporary restraining order (TRO) seeking to prohibit the suspension of the twins so they could play in the championship game that night. The complaint and motion were filed and brought before the Court of Common Pleas late Friday afternoon. No notice of the hearing on application for a TRO was given to the Superintendent before the hearing was held.

The motion for TRO set forth the fact that the suspension was without due process; that it was unfair to suspend both twins when only one was observed smoking; that the suspension would immediately and irreparably harm the twins; and that the Superintendent was not notified of the hearing because of extreme urgency of resolving this matter before the Friday night championship game. The Court granted the TRO and restrained the Superintendent from enforcing the athletic suspension of the twins. The Court did not require the Birds to post a bond.

The Superintendent was upset with the Court for issuing the TRO. He has asked you the following questions:

- (1) Was it proper for the judge to issue the order on an ex parte basis?
- (2) On what grounds can the Superintendent challenge enforcement of the order?
- (3) Assume the twins play in the game Friday. Are any further legal remedies available to the Superintendent?
- (4) In addition to answering the questions asked, what other advice should be given to the Superintendent?

Please explain your answers.

QUESTION 6

Safety First Meat Packing Equipment Company (Safety First) manufactures meat packing equipment. Molly used Safety First equipment at her former job as a meat packer. Molly has brought a product liability suit against Safety First in federal court. She claims that the Safety First equipment she used was so designed that it caused her to develop carpal tunnel syndrome. Safety First, in turn, has brought a third party claim against its insurance company, Reliable Assurance, alleging that Molly's claim is covered by the insurance policy issued to Safety First by Reliable.

Molly wants to introduce a videotape into evidence at trial. The video, which was prepared by Molly's expert witness, shows several student volunteers using the same Safety First equipment that Molly will testify she was required to use at her former job. Molly will also testify that the student volunteers are using the equipment in the same way she used the equipment. The video shows that the volunteers began to experience muscle cramps and fatigue while operating the equipment. Molly's expert will testify that the demonstration shown on this video is part of the basis for his opinion that Molly's operation of Safety First's machine caused her injuries.

Molly also wants to introduce into evidence a chart showing the number of injuries that have occurred using Safety First's machinery in the last 10 years. The chart is based on information contained in surveys that Safety First admits were prepared on a quarterly basis by Safety First's quality assurance department to assist Safety First in monitoring customer satisfaction with its products.

Safety First wants to introduce into evidence a copy of the latest Occupational Safety and Health Administration (OSHA) report on safety standards for meat-packing equipment.

Safety First also wants to introduce into evidence a photocopy of a business insurance policy issued by Reliable. Larry Pais, vice president of Reliable, will testify that his signature appears on the last page of the photocopy. The parties agree that the photocopy is not a complete copy of the insurance policy, as it is missing the section dealing with coverage for product liability claims; however, no one has been able to locate a more complete copy of the policy.

Safety First, however, also intends to introduce into evidence a letter on Reliable letterhead and addressed to Safety First which states: "In response to your earlier query, we are pleased to state that the business insurance policy we are prepared to offer you will include coverage for product liability claims. Yours very truly, Larry Pais." Although Larry Pais will testify that he does not remember sending such a letter to Safety First, Safety First's handwriting expert will testify that the signature on the letter is "almost identical" to the signature appearing on the business insurance policy.

You are the U.S. district court judge and must rule on the following motions:

- 1.) Safety First has moved to exclude Molly's expert's video as well as the chart reflecting reports of equipment use injuries.
- 2.) Molly has moved to exclude the OSHA report.
- 3.) Reliable has moved to exclude the business insurance policy and the letter.

How do you rule on each motion? Explain fully.

QUESTION 7

Kim assisted her mother with the bookkeeping for her mother's catering business, and had authority to sign checks for the business.

I. Kim wrote an uncertified check to pay for supplies for her mother's business on an account held in her mother's name. The check was made payable to "Wholesale Foods" and was signed by Kim. Upon receipt of the check, Wholesale Foods sold the check to a third party for value. The check was subsequently dishonored. The third party demanded and received repayment from Wholesale Foods.

Will Wholesale Foods recover from either Kim's mother or Kim? If so, on what basis will it recover? Discuss fully.

II. On May 1, Kim obtained a cashier's check from Olde Bank, made payable to herself, which she intended to use to pay a deposit on a rental hall. On July 5, Thief stole the check from Kim. On July 10th Kim realized the check had been stolen and made a claim for the amount of the check to Olde Bank. Olde Bank responded by requesting that Kim post a bond in the amount of the check before it would reimburse her. On July 15, Thief forged Kim's signature on the back of the check and deposited the check into an account at New Bank. New Bank promptly presented the check to Olde Bank for payment and Olde Bank honored the check. On August 1, Kim again called Olde Bank demanding repayment of the amount of the check and refusing to provide a bond.

Can Kim recover the amount of the cashier's check from Olde Bank or New Bank? If Kim recovers from Olde Bank, can Olde Bank recover the amount of the check from New Bank? Discuss fully.

QUESTION 8

Betty Smith is married to James Jones. Betty recently telephoned you to obtain your legal advice regarding the sale of Blackacre, a farm that has been in Betty's family for over 40 years. Betty explained that Columbus Oil Company had offered to pay her \$1,000,000 for Blackacre, and that she is interested in selling it.

You suggested that before you met with Betty, she send you as many papers as she had regarding Blackacre so that the first meeting would be productive. You have just received from Betty the following papers:

(a) The original of a recorded Warranty Deed dated January 1, 1940. It is signed by John Alexander (who was married to Mary Alexander), transferring title to Blackacre to Thomas Smith and Judy Smith (Betty's parents) as joint tenants with rights of survivorship.

(b) A survey for Blackacre dated January 1, 1940. It shows that Blackacre consisted of four acres of land having two separate contiguous parcels of land, designated as Lots Nos. One and Two. The survey also shows an old wall indicating a date of 1910. The old wall is partially on Lot No. One, although it has belonged to and been maintained by the adjacent property owner. There were no other improvements shown on the survey.

(c) A certified copy of a death certificate showing that Thomas Smith died on December 1, 1966.

(d) The original of a recorded Quit-Claim Deed dated January 1, 1981, from Betty's mother, Judy Smith, to Betty and her brother, Mark Smith. The Quit-Claim Deed provides that, for a term of 10 years, Mark has the right to reside in Blackacre, and that Judy has the right to reside in Blackacre for the remainder of her life.

(e) A copy of a Lease dated December 1, 1982. It was signed by Betty as the Landlord and ABC Petroleum Corp. as the Tenant and leased Lot No. Two of Blackacre to ABC Petroleum Corp. for purposes of constructing and operating a gas station. The term of the Lease was for four years, with a monthly rent of \$1,000, plus 1% of sales made by the gasoline station. The Lease was not witnessed, notarized, or recorded. The Lease provided that ABC Petroleum Corp. had the right to construct a gasoline station on Lot No. Two and had the right to purchase Blackacre for \$100,000 at any time during the term of the Lease.

(f) Bank account records for all of the rent that Betty has received under the Lease from ABC Petroleum Corp. but has not disbursed. The records show that lease payments of \$1,000 per month were current through the end of 1998; however, after December 31, 1998, ABC Petroleum made no further payments.

(g) A survey of Blackacre dated January 1, 1999. The survey shows that the stone wall on Lot No. One is still there, but that no gasoline station was erected on Lot No. Two.

(h) A letter from a real estate broker stating that Columbus Oil Company is willing to purchase all of Blackacre for \$1,000,000. The letter states that Columbus Oil Company will not require that title be given absolutely and in fee simple for Blackacre, but will accept good record marketable title to Blackacre.

Advise Betty regarding the following:

- 1) What are the rights of the various parties to Blackacre? Who currently owns Blackacre?
- 2) How may Betty proceed with the sale of Blackacre to Columbus Oil Company? In order to complete the sale of Blackacre, what documents must be executed and by whom?

QUESTION 9

I. Husband and Wife had one child, Son. Husband was concerned about Wife's financial security in case of Husband's death, so he took out a \$25,000 life insurance policy on his own life, designating Son, who was then an adult, as the policy's beneficiary. Husband, Wife and Son then had a family meeting. Son agreed with Husband at their meeting that if Husband died before Wife did, Son would give Wife any amount of money she requested, up to the face amount of the insurance policy proceeds which Son would receive from his father's insurance policy. When Husband died, Son received the insurance policy proceeds.

Several months ago, Wife asked Son for the money from the life insurance proceeds. Son refused to give the proceeds to Wife because he knew she intended to give the money to a non-profit group that saves greyhound dogs from destruction. Son maintains the insurance proceeds in a separate bank account.

Wife asks the Court to require Son to give her the money she sought from the life insurance proceeds. There is no written documentation of Son's alleged oral agreement with his parents, which agreement Wife vigorously asserts. Unfortunately, Son cannot confirm or deny it, because he has become legally incompetent in the meantime.

II. Uncle and Father were brothers. Father had a studious son, Nephew. When Nephew was in grade school, Father confided to Uncle that Father was worried about Nephew's college expenses. Uncle responded that he was interested in providing for Nephew's college education. Uncle offered to set up a trust for Nephew's schooling - in case of his own intervening death before Nephew was ready for college -- if Father would serve as trustee. Father readily agreed to do so.

Uncle obtained a comprehensive trust agreement form from the public library and filled out a detailed express trust. The trust provided that, in the event of Uncle's death, Father would be trustee for certain of Uncle's assets, for Nephew's education. The trust also provided that if Nephew decided not to go to college, the trust proceeds would revert to Uncle's wife, Aunt. Uncle funded the trust by designating for it one-half of Uncle's bank accounts at his own death.

As Nephew was ready to apply to college, Uncle died intestate. At the time of his death, Uncle had substantial bank accounts in his own name alone which were adequate to send Nephew to the best private college. Nephew obtained a partial scholarship to State University.

Aunt, who didn't know about Uncle's generosity to Nephew, was counting on Uncle's full bank accounts as her inheritance. Both Father and Aunt now each claim the proceeds of Uncle's trust agreement.

Upon these facts and Ohio law, who prevails in each of the two cases described above, and upon what grounds? Include only relevant definitions and applicable legal principles. Identify separate issues and facts bearing on them to reason to your legal conclusions.

Would your answer change if Nephew obtained a full scholarship covering all his college expenses, rather than a partial scholarship?

QUESTION 10

Patient was a middle-aged man who died of lung cancer in December 1997. Patient's family and his estate (Plaintiffs) brought suit in an Ohio common pleas court against Doctor and Clinic, doctor's employer, for malpractice in diagnosing and treating Patient's lung cancer. On behalf of Patient's estate, the complaint stated a survivorship claim for conscious pain and suffering. On behalf of Patient's next of kin, the complaint stated a claim for wrongful death.

Plaintiffs' medical experts testified at the trial. They established that an August 1, 1996 X-ray of Patient's chest indicated a mass on the right lung of Patient. They also established that Doctor should have but did not order a biopsy of the mass and therefore failed to diagnose the mass as cancerous.

Plaintiff's experts also established that Doctor took a second X-ray of Patient's chest on July 1, 1997. It revealed that the cancerous mass had significantly increased in size and, because of the extent to which the cancer had grown, would probably be incurable. Plaintiff's witnesses established that, after reviewing the July 1997 X-ray, Doctor altered and falsified his August 1996 X-ray report by adding, in his own handwriting, ". . . as Patient does not want a biopsy, we will continue to observe."

Also admitted at trial was a videotaped deposition taken of Patient shortly before he died. In this deposition, Patient testified that he had never refused to have the mass on his lung biopsied. According to Patient, Doctor had assured him that the mass appearing on the August 1996 X-ray was merely a "benign growth."

The evidence adduced at trial also indicated that, during the last year of his life, Patient experienced severe pain and suffering as a result of the lung cancer. Patient's family members established that, because of the defendants' actions and the resulting death of Patient, they suffered and will continue to suffer emotional and mental anguish.

The trial record revealed that Doctor's net worth is somewhere between \$500,000 and \$1,500,000, and Clinic's assets exceed \$20,000,000.

Following the trial, the jury awarded Plaintiffs damages against the defendants as follows:

- On the survivorship claim against Clinic, no compensatory damages and \$1,500,000 in punitive damages;
- On the wrongful death claim against Clinic, \$1,000,000 in compensatory damages;
- On the survivorship claim against Doctor, \$500,000 in compensatory damages and \$2,000,000 in punitive damages for Doctor's alteration of Patient's medical records;
- On the wrongful death claim against Doctor, \$1,000,000 in compensatory damages.

The defendants now appeal the jury verdict. The defendants present the following assignments of error, each properly preserved for appeal:

- 1) The jury's award of compensatory damages for the survivorship and wrongful death claims against each defendant was excessive;
- 2) The jury's award of punitive damages against Doctor based upon the alteration of Patient's medical records was erroneous; and
- 3) The jury's award of punitive damages on the survivorship claim against Clinic was erroneous.

How should the appellate court rule as to each assignment of error? Apply Ohio law and explain your decisions.

QUESTION 11

The State of Franklin at one time was the United States' leading producer of coal. Because of the abundance of this natural resource, Franklin became the home to many electric power plants. Power produced in Franklin satisfied not only its needs, but also those of a number of nearby states.

In recent years, increasingly stringent federal clean air requirements have dried up the out-of-state market for Franklin's coal, which is unfortunately high in pollutants. Franklin's own electric plants have begun to import, in increasing tonnage, cleaner-burning coal from other states. The coal industry in Franklin faces serious decline. Franklin's electric plants could use Franklin-produced coal, but it would require the installation of expensive pollution control equipment at the plants. Buying out-of-state coal is cheaper, and keeps the price of power produced in Franklin competitive with other interstate electric suppliers.

Recognizing the plight of both its coal and electric generating industries, the Franklin legislature recently passed the following:

1. A law requiring that all coal burned in Franklin electric plants first be "cleaned" at processing plants in the state of Franklin. The cleaning process removes a significant percentage of pollutants from coal. Although there are processing plants in other coal-producing states, Franklin's statute requires the coal to be cleaned at Franklin plants because they are subject to inspection by Franklin inspectors.

2. A \$10 per ton tax on all coal purchased for use in the state of Franklin, whether Franklin coal or out-of-state coal. The proceeds of this tax go directly to the Franklin Coal Mining Association for the purpose of researching and developing new pollution control strategies that will make Franklin coal more marketable.

3. An incentive program to encourage Franklin electric plants to install pollution control equipment. The program gives Franklin utilities that install such equipment a partial credit against their corporate franchise tax for the cost of the equipment.

4. A \$1 per ton assessment for each mile that coal is shipped within the state by truck. Most Franklin electric plants are located relatively close to Franklin coal mines and coal purchased from those mines is trucked to the plants. Out-of-state coal is also shipped by truck but must travel through the state to get to the electric plants, which means the distance traveled is significantly longer than that of Franklin produced coal. The proceeds of this assessment go to the highway maintenance fund of the Franklin Department of Transportation.

Out-of-State Inc. is a large coal producer with operations in a number of states. It does not produce coal in the state of Franklin, but it does export coal to Franklin to sell to Franklin electric plants. Out-of-State Inc. has brought suit to enjoin all of the recent enactments of the Franklin legislature listed above.

In your answer, discuss the legal theories under which these enactments might be challenged, and what the likelihood is of each of the four enactments being either upheld or invalidated.

QUESTION 12

I. Lawyer committed legal malpractice when he failed to file an action for personal injury on behalf of Client One against Defendant within the applicable statute of limitations. It is undisputed that Client One's claim for damages against Defendant has a value of \$100,000.

After he realized his mistake, Lawyer scheduled an office conference with Client One. During the office conference, Lawyer informed Client One about his malpractice. He then lied by stating that Client One's claim against Defendant was really worth only \$5,000. Lawyer then told Client One that, because he had failed to file the action when required, Lawyer was willing to pay Client One \$10,000 to settle any claim that Client One may have had against Lawyer. Lawyer presented Client One with a prepared contract and release which fully exonerated Lawyer from any liability for his malpractice for the sum of \$10,000. Relying upon the advice of Lawyer, Client One signed the contract and release on the spot. Lawyer gave Client One a check for \$10,000.

II. Lawyer agreed to represent Client Two on her claim of sex discrimination against the State of Uma. Unknown to Lawyer, the Court of Claims had original and exclusive jurisdiction over such an action. Lawyer mistakenly filed the action with the Court of Common Pleas instead of the Court of Claims. By the time Lawyer learned of his mistake, the Judge had dismissed the case, and the applicable statute of limitations barred the re-filing of the case in the proper court. Therefore, Client Two could no longer pursue her action.

III. Client Three retained Lawyer as his attorney to prepare, file and prosecute his divorce case. Client Three paid Lawyer the requested fee of \$2,000. Lawyer prepared a complaint for divorce and filed it with the clerk of court. At the time of the first scheduled hearing on the divorce, Lawyer appeared late and without his file, so the court continued the hearing for seven days. At the next scheduled hearing, Lawyer appeared on time but he brought the wrong file. Since Lawyer was again not prepared to go forward, the court dismissed the case without prejudice.

IV. Client Four retained Lawyer to file an estate tax return for her late husband's estate. She paid him the requested fee of \$2,000. Lawyer filled out the return and had Client Four sign it.

Lawyer failed to file the return on time. Almost 16 months after the due date, Client Four inquired of the status of the return. Realizing that he forgot to file the return, Lawyer immediately filed it. As a result of the late filing, the estate was assessed \$40,000 in late penalties and interest.

As to scenario I, what advice, if any, should Lawyer have given to Client One before Client One signed the contract and release and accepted the \$10,000 payment? Focus solely on Lawyer's having induced Client One to execute the contract and release exonerating him from malpractice, and his payment of only \$10,000 to Client One. Fully explain your answer and the reasons for your answer.

As to scenarios II, III and IV, analyze each scenario under the Code of Professional Responsibility. Discuss any applicable Disciplinary Rules and Ethical

Considerations. Fully explain your answer and the reasons for your answer. Do not discuss the disciplinary process, procedure, or possible sanctions.

QUESTION 13

Smith is a sole proprietor who operates a consulting business in Baker County, Ohio. On May 15, 1998, Smith obtained a loan from Bank. Smith executed a Security Agreement which provided Bank with a security interest in all of Smith's "office equipment, supplies and furniture, whether presently owned or thereafter acquired." Bank filed a financing statement with the Secretary of State and with Baker County Recorder on May 16, 1998.

On October 15, 1998, Smith purchased an office computer system on credit from a local retailer, ABC, Inc. ("ABC"). Smith executed a Note and a Security Agreement covering the office computer system which provided as follows:

In the event of a default, the debtor authorizes ABC to enter into or upon the debtor's property in order to take possession of the collateral. The debtor voluntarily waives any and all rights to challenge the method of repossession utilized by ABC and the debtor furthermore voluntarily waives any and all right to receive notification of any kind regarding any public or private sale which may be conducted by ABC.

On November 1, 1998, ABC filed a financing statement with the Secretary of State and the Baker County Recorder covering the office computer system.

During the spring of 1999, Smith's business incurred financial problems causing Smith to miss several installment payments to both Bank and ABC. ABC notified Smith in writing that it was declaring the entire remaining debt of \$10,000 in default and that ABC intended to repossess the office computer system. Smith sent a letter to ABC requesting ABC to delay any efforts to repossess the collateral since he hoped to cure the default within 30 days.

Despite Smith's request, ABC decided to repossess the collateral and assigned the task to Max, an ABC employee. Max, who was a large and physically imposing individual, parked next door to Smith's office on the following day. After waiting for Smith to leave for lunch, Max entered the office and, in a loud voice, demanded that Smith's secretary turn over the collateral since Smith was in default. Feeling somewhat intimidated, Smith's secretary quickly identified the office computer system. Max left the premises with the collateral before Smith returned from lunch.

Later that afternoon, a Bank collector contacted Smith regarding his debt. Smith told the collector that ABC had already repossessed the office computer system. Bank thereafter notified ABC in writing that it was asserting an interest in the collateral that ABC had repossessed.

The collection manager at ABC decided to sell the collateral at a public sale. ABC placed an ad in the *Daily Grind*, a newspaper of general circulation in Baker County, Ohio, which advertised the time, place, and the manner of the public sale for a two-week period. Due to the waiver language in the ABC Security Agreement, ABC did

not provide any further written notification of the public sale to Smith or to any other creditors.

The office computer system was sold for \$5,000 at the public sale to a third party, leaving a deficiency balance of \$5,000. After the sale, ABC demanded that Smith pay the \$5,000 deficiency. Smith hired an attorney who forwarded a letter to ABC alleging that ABC cannot collect the deficiency balance since ABC acted improperly in repossessing the collateral and in the manner that the public sale was conducted. In addition, ABC has received a letter from legal counsel for Bank indicating that Bank is asserting a right to the proceeds from the public sale.

Advise ABC of its rights under Ohio law regarding:

- a. The legality of its repossession of the collateral;
- b. The legality of the public sale;
- c. Whether ABC can collect its deficiency balance from Smith; and
- d. Whether ABC or Bank is entitled to the proceeds.

Explain your answers fully.

QUESTION 14

Gramps, a lifelong resident of Anytown, Ohio, died recently at age 65 after a prolonged illness. Throughout his life, Gramps cultivated and seemed to enjoy his reputation as a recluse and eccentric. Gramps lived modestly in his childhood home and had few friends. People were surprised to learn that he left an estate valued at more than \$1,000,000. Greedy is Gramps's grandchild and only heir. Greedy was surprised and delighted at the news of Gramps's great wealth -- at least initially.

On July 1, 1999, the county probate court admitted to probate what was purportedly Gramps's will. The will was validly executed and was dated December 31, 1998, New Year's Eve. Greedy was aghast to learn that Gramps's will made no allowance for him. In fact, the relevant clause read:

I, Gramps, hereby expressly make no provision for my grandchild, Greedy.

Instead, Beneficiary ("Ben"), a long-time friend of Gramps, was named the sole beneficiary under the will. Greedy immediately took action, hiring a lawyer who filed a will contest in the probate court. The discovery process has now been completed.

I. Evidence uncovered during the discovery period demonstrated conclusively that Gramps was a chronic alcoholic, often drinking from early in the morning until late at night. When drinking, he was also prone to fits and bouts of ranting and rage. Gramps's usual and preferred drinking partner was Ben. As to New Year's Eve, 1998, the date of Gramps's will, Ben testified at deposition that he spent the entire day with Gramps and that both he and Gramps remained sober. Ben testified that New Year's Eve was the only night of the year Gramps refrained from drinking, Gramps having described it as "amateur night." Greedy uncovered no evidence to the contrary relating to December 31st.

On what basis could Greedy challenge the will? Explain and analyze fully.

II. Assume, instead, the evidence developed that the December 31st will was new, replacing a 1996 will in which Greedy was named the sole beneficiary and Ben was not named at all. In all other respects, the two wills were identical. Since 1996, Gramps and Greedy's relationship soured. At the same time, Ben's relationship with Gramps flourished to the point where Ben moved in with Gramps and, in effect, shielded Gramps from his grandchild, Greedy. When Greedy called to speak to his grandfather on the telephone, Ben would always answer and hang up. Eventually, Ben obtained an unlisted number for Gramps. When Greedy came to visit, Ben would always open the door and send Greedy away. A security gate was later installed and the gatekeeper was given express instructions from Ben not to allow Greedy entry.

Greedy has attacked the validity of the December 31st will. Describe and detail the grounds upon which an action on these facts would be based. Explain fully.

III. What if, instead of dying after a prolonged illness, Gramps died after being shot by Ben? Assume again that Ben was the sole beneficiary identified in Gramps's will. Ben is charged criminally in connection with Gramps's death. Before coming to trial, Ben commits suicide.

What becomes of Gramps's assets? Explain fully.

QUESTION 15

Numerous foreign dignitaries and government officials met in the city of Accord, Ohio, in an attempt to negotiate a resolution to a military conflict occurring in eastern Europe. The gathering was dubbed the “Accord Assembly.”

In an attempt to encourage the success of the meetings and to guarantee that the negotiations were not hampered by insults or critical comments that demonstrators might make regarding the participating countries’ policies or conduct, Accord City Council enacted Ordinance 2000. The Ordinance prohibits any person from “displaying any flag, banner or placard critical of a foreign government or any officer thereof” within 500 feet of City Hall, the meeting place for the Accord Assembly. A violation of the ordinance is a misdemeanor.

On the first day of the Accord Assembly, Pete Protestor stood on a sidewalk within 300 feet of City Hall carrying a sign that said, “Stop the Killing.” After determining that the sign was critical of a foreign government, Accord police officers took the sign away from Protestor and charged him with a violation of Ordinance 2000.

The next day, Protestor appeared in the same place. He was dressed in military fatigues, held crutches and wore bandages on his head, arm and leg. Protestor had stained the bandages red so that he would look like a wounded, dying soldier. Protestor simply lay down on the sidewalk. Protestor neither carried a sign nor said a word. When asked by the police to move, Protestor refused, claiming that by lying on the sidewalk, he “wanted everyone to remember that while they’re in there talking, people are bleeding and dying. And the longer they take, the more people will die.”

Police arrested Protestor, charging him with a violation of an Accord city ordinance that prohibits anyone from “sitting, lying or otherwise obstructing a public sidewalk between the hours of 8 a.m. and 6 p.m. in commercial areas.” The purpose clause of the ordinance states that it is to “promote the safe and efficient movement of pedestrians and goods on public sidewalks of commercial areas and promote economic health in the downtown and neighboring commercial areas by removing the obstructions to shoppers caused by people sitting or lying on the sidewalk during regular business hours.” City Hall is located in a commercial area of the city. A violation of this ordinance is also a misdemeanor.

Discuss fully the First Amendment challenges Protestor might make to the two criminal charges he faces.

QUESTION 16

In 1983, Amy, Barry, and Charles formed an Ohio general partnership called "Landco." The business of Landco was to purchase, develop, and sell real estate for the construction of commercial warehousing. Each of the three signed a partnership agreement which provided that (1) each would share equally in all profits, (2) the partnership would dissolve upon the death of any partner, and (3) upon dissolution the remaining partners would have authority to wind-up partnership affairs.

Landco operated profitably every year. On December 15, 1998, Amy was killed in an automobile accident while visiting her parents in California. At the time of Amy's death, the assets and debts of Landco were as follows:

Assets:

Miscellaneous stocks and bonds -	\$ 750,000
Cash deposits -	<u>\$ 150,000</u>
Total Assets	\$ 900,000

Debts:

Unsecured bank notes -	\$ 450,000
General partnership creditors -	<u>\$ 250,000</u>
Total Debt:	\$ 700,000

Charles learned of Amy's death from her mother almost immediately after the accident. On December 16, he placed an advertisement in the legal notice section of the *Cleveland Herald*, a newspaper of general circulation in the Cleveland area, advising of Amy's death and the resulting dissolution of Landco.

On December 18, unbeknownst to Barry, Charles borrowed \$400,000 from Security Bank of Cleveland (Landco's bank and lender for many years) on behalf of Landco to buy a "great piece of property" in Cleveland. Security Bank had not yet actually heard of Amy's death and did not see the legal notice in the *Herald*. Security Bank loaned the money pursuant to an unsecured "partnership note" which Charles signed as a representative of Landco.

Also on December 18, on behalf of Landco but unbeknownst to Charles, Barry (who was on vacation in Florida and had not heard of Amy's death) telephoned a friend, Jones, in Cleveland, and borrowed \$800,000 from him to buy computer equipment and a new office building for Landco. Jones did not know of Amy's death at the time of this transaction. Jones had never had any dealings with Landco before, but he trusted Barry

and loaned the money, also pursuant to an unsecured “partnership note” which Barry signed as a representative of Landco.

After Amy’s death, her executrix learned that her personal debts would exceed her assets unless she could recover the value of Amy’s partnership share in Landco, which the executrix estimated to be “around \$67,000” based upon Landco’s financial statement at the time of Amy’s death.

The following claims have now been made:

1. Security Bank demands repayment from the partnership of its loan for \$400,000;
2. Jones demands repayment from the partnership of his loan in the amount of \$800,000;
3. Amy’s executrix demands payment of the value of Amy’s equity share of Landco;
4. Charles demands a temporary capital contribution to Landco (until the property purchased with the money is sold) from Barry and from Amy’s estate to satisfy the \$400,000 debt to Security, since that debt exceeds the total value of partnership net assets after debt;
5. Amy’s creditors demand payment of Amy’s personal debts from the assets of Landco; and
6. Barry demands a capital contribution from Charles and from Amy’s estate for their shares of Jones’ debt.

You are the attorney for Landco. Prepare a memorandum that describes the legal obligations of Landco, of the partners to Landco, and of Amy’s executrix, in response to each of these claims.

QUESTION 17

Architect, an architectural firm, entered into a contract with the Hospital to prepare detailed drawings for a \$3,000,000 addition to the Hospital. The addition was to be constructed on filled land adjacent to the Hospital.

The agreement was covered by a written contract which was accompanied by an addendum drafted by Architect. Under the terms of the contract, Architect's fee was to be 6% of the project cost with all drawings and plans to be delivered to the Hospital. The addendum stated that the performance provision of the contract was conditional upon the Hospital's getting a satisfactory loan commitment and a proper building permit from the City.

Each party executed the agreement after the addendum was attached to the contract. Neither party signed the addendum.

Construction clearance was delayed for some 13 months after execution of the agreement by the parties, then canceled. During this 13-month delay, Architect, with the knowledge of the Hospital, completed 90% of the work required by the agreement.

The Hospital obtained a satisfactory loan commitment after a delay of nine months. However, the City refused to grant a zoning change necessary for a proper building permit unless the Hospital entered into an indemnity agreement with the City to protect the City from any liability for allowing construction on filled land. The Hospital declined to give the required indemnity, and no building permit was issued by the City.

The Hospital gave notice to Architect to discontinue work on plans only after the Hospital refused to sign the indemnity agreement required for a building permit. Architect never delivered any plans or drawings to the Hospital.

Architect sued to recover the full amount of the fee required to be paid by the Hospital under the agreement signed by the parties.

Should Architect recover anything? If not, why not? If you believe Architect should recover from the Hospital, explain why and how much.

QUESTION 18

An Ohio grand jury indicted Smith, age 28, for rape and child abuse, both felonies. The complaint had been made by the child's mother, who was estranged from Smith, her former boyfriend. The child was five years old.

A member of the Police Department's Rape Unit interviewed the child and took her to the Police Administration Building. There, the child was examined by a surgeon and a medical technician who were attached to the Rape Unit and were employees of the Police Department. Their duties were to examine the child and determine rape or other signs of physical abuse. The examination was complete and consisted of a detailed history of the alleged event, observation of the child's body for marks of physical violence, and the taking of a vaginal smear to determine the presence of semen. Laboratory analysis then revealed the presence of semen in the sample taken from the child. During the examination, the child identified Smith and described the rape. The child was also interviewed by a case worker for the local children's services agency, who took a complete oral statement wherein the child identified Smith and described the rape.

At Smith's trial, the Prosecutor called the medical technician who produced the records of the examination and who testified that she was present at all times during the examination and prepared the report. The Prosecutor offered the records of examination of the child, which included the child's identification of Smith in response to questioning by the surgeon. The laboratory analysis result was contained in the report. However, the analysis was not performed by the medical technician, and the person who performed the analysis was not called.

The Prosecutor did not offer the testimony of the child, who was available, but offered instead the statements of the child through the medical technician of the Police Rape Unit who overheard the child describing Smith's acts and identifying Smith. The Prosecutor also offered the testimony of the case worker from the children's services agency, who testified as to her complete interview of the child, including the child's description of the identity of Smith and the rape. Another county social worker was subpoenaed and appeared with records of complaints against Smith for similar conduct and investigations of prior sexual abuse of minors. These investigations had nothing to do with the present charges against Smith. The files contained reports, some anonymous, to the agency; records of investigations of complaints; and some statements of persons who "believed" Smith to be "odd."

During the trial, it came out that the child's mother had told someone prior to this incident that she was going to "get Smith." This was offered as evidence by the defense through that independent witness.

Timely objections were made to all of the above offers of proof.

As the trial judge, please state whether you would admit:

1) the records and reports of the Police Department's Rape Unit of the examination of the child;

2) any history of or statement of the child to the medical technician concerning the occurrence;

3) the testimony (including the child's statements) of the social worker to whom the child identified Smith;

4) the files the county social worker produced of complaints and investigations of Smith regarding allegations of prior sexual abuse of minors;

5) the statement about Smith attributed to the child's mother.

How would you rule on each? Explain fully.