

QUESTION 1

In 1995, Owner purchased a farm in a rural area of Ohio. The farm was adjacent to an existing privately owned airport (“Airport”) that historically served single-engine private aircraft. The flight path for take-offs and landings at Airport was directly over Owner’s farm.

On June 30, 1997, “Carrier,” an airfreight carrier that operates large jet aircraft, began using Airport’s runway for Carrier’s daily jet freight service. Airport’s landing fees were much lower than were those at the full service airport 30 miles away. Airport’s runway, however, was 1,000 feet shorter than recommended for fully loaded jet aircraft.

Owner did not reside on his farm but he did keep a restored antique car in one of the barns. He leased the acreage to a tenant, who farmed it for him.

On January 2, 1998, one of Carrier’s jets crashed on Owner’s land. Subsequent investigation established that the aircraft had encountered severe wind shear on take-off and failed to get airborne. The same investigation revealed, however, that the aircraft could have taken off safely if it had had 1,000 more feet of runway.

The crash destroyed the antique car, the barn in which it was stored, and crops. Carrier claimed that, since the crash had occurred as the result of an act of God and Carrier had not intended to crash the jet, Carrier had no liability to Owner. Airport claimed that Owner “knew we were here when he purchased the farm” and that “we aren’t responsible for how Carrier flies its planes.”

On June 1, 2001, Owner filed a civil suit against Carrier and Airport. The complaint contained three causes of action asserting that Carrier and Airport were jointly and severally liable for (1) damages to the land and the crops as a result of unlawful trespass; (2) nuisance arising from the danger to which the farm was exposed; and (3) damages for the value of the barn and car resulting from the defendants’ negligence.

What elements must Owner prove in order to maintain his causes of action, what defenses might Carrier and Airport be expected to assert against Owner, and what is the likely outcome of each cause of action? Discuss fully.

DO NOT DISCUSS GOVERNMENTAL AIR TRAFFIC AND SAFETY REGULATIONS OR IMMUNITIES.

QUESTION 2

Woody, a renowned master carpenter, entered into valid written contracts with four homeowners: Alan, Bob, Christine, and Dave. Each homeowner sought Woody out because of his unique skill and personal reputation as a deck builder. Each contract provided that Woody would build a custom-crafted cedar deck attached to the homeowner's home for \$10,000 to be paid on completion of each deck.

Soon after Woody started working on Alan's deck, Alan lost his job and knew he would not be able to pay Woody the full price. Alan asked Woody whether he would complete the job for \$5,000 in cash and Alan's classic guitar, which was valued at \$4,000. Woody orally agreed and completed the deck. Alan refused to pay Woody any money or to deliver the guitar.

Woody worked on and completed Bob's deck while Bob was out of town. When Bob returned home, he noticed that his prize-winning roses at the side of the house had been trampled. Bob threatened to file suit against Woody to recover \$2,500 for damage to the roses. Bob told Woody that, if he would relinquish his right to receive \$10,000 and accept \$8,000 in full payment for the deck, Bob would forbear suing Woody. Woody agreed, and they signed an agreement that Woody would relinquish his \$10,000 claim and accept \$8,000 in return for Bob's forbearance. Bob then paid the \$8,000. A week later, Woody remembered that he had worked only at the back of the house and not anywhere near the damaged roses. Woody now demands that Bob pay him the additional \$2,000.

Soon after starting work on Christine's deck, Woody broke his arm while playing in a weekend touch football game at the city park. His arm had to be put in a cast. He told Christine he would not be able to complete the deck by the May 30 date specified in the contract but that he would resume work as soon as his cast was removed. Christine told Woody for the first time that the reason she had specified the May 30 completion date was that she had been counting on having the deck completed in time for her daughter's graduation party on June 1. She told him that it was too late to cancel or postpone the party and that she was going to hold him responsible for any additional expenses she incurred. Christine had to pay \$1,000 to rent a hall for the party. Woody resumed work as soon as his cast was removed and finished the deck on June 30. Christine tendered \$9,000 to Woody and told him that was all she was going to pay.

A few months later, as Woody was set to begin work on Dave's deck, a wildfire destroyed large tracts of cedar forests. As a result, the price of cedar doubled. At the new high price for cedar, Woody would be required to build Dave's deck at a loss. Woody told Dave he would not build the deck unless Dave agreed to pay the increased price for the cedar. Dave refused and said he was going to hold Woody to the \$10,000 contract price.

What are Woody's rights against and/or obligations to Alan, Bob, Christine, and Dave? Discuss fully.

QUESTION 3

In 1998, one of Airline's aging jets crashed during Flight 101, a flight from Orlando, Florida, to Pittsburgh, Pennsylvania, killing all persons on board. The families of the deceased passengers brought a class action in federal court in Pittsburgh. The suit named Airline and Manufacturer (MFG), the manufacturer of the aircraft, as defendants. Plaintiffs' complaint alleged that Airline had negligently maintained and operated the aircraft and that MFG had negligently and defectively designed the rudder mechanism. MFG cross-claimed against Airline, alleging that the cause of the crash was Airline's negligent maintenance and operation of the aircraft.

In the lawsuit, the jury returned a verdict finding that Airline was not liable to plaintiffs on their complaint or to MFG on its cross-claim for negligent maintenance and operation of the aircraft. However, the jury found that MFG was liable to plaintiffs on the ground that the sole proximate cause of the crash was MFG's negligent and defective design of the rudder mechanism. MFG paid the judgment in 1999, and no appeals were taken.

In 2000, Airline Flight 202 crashed en route from Pittsburgh to Columbus, Ohio, killing all on board. The aircraft used for Flight 202 was manufactured by MFG from the same design plans and was the same age and model as the

Flight 101 aircraft that had crashed in 1998. A number of the families of the decedents of Flight 202, none of whom was a family member of those killed in the Flight 101 crash, sued Airline and MFG in an Ohio court of common pleas.

Plaintiffs' complaint in the Flight 202 suit alleged that Airline had negligently maintained and operated the aircraft and that MFG had negligently and defectively designed the rudder mechanism. Airline cross-claimed against MFG asserting the right to full indemnification if Airline is found liable on plaintiffs' complaint. MFG cross-claimed against Airline, alleging that the sole cause of the crash of Flight 202 was Airline's failure to train its pilots properly during the last four years.

The parties have filed the following motions in the Flight 202 suit, and each motion is contested on all appropriate grounds:

1. Plaintiffs move for summary judgment against MFG on plaintiffs' negligent and defective design claim on the ground that the judgment rendered against MFG on that same issue in the Flight 101 suit bars MFG from relitigating that issue in this case.
2. Airline moves for summary judgment against the plaintiffs on the ground that the judgment in the Flight 101 suit, where the issue whether Airline had negligently maintained and operated its aircraft was decided in Airline's favor, is binding against the plaintiffs in the Flight 202 case.
3. Airline moves for summary judgment on MFG's cross-claim that Airline failed to train its pilots properly. Airline's motion is based on the ground that, because MFG could have asserted but failed to assert that claim in the Flight 101 suit, MFG is barred from asserting that claim in the Flight 202 suit.
4. Airline moves for summary judgment against MFG on Airline's cross-claim for indemnification. Airline's rationale for this motion is that the judgment in the Flight 101 suit, which Airline asserts is binding on MFG, established that the sole proximate cause of

the crash was MFG's negligent and defective design of the aircraft's rudder mechanism and that, as a consequence, Airline is entitled to indemnification.

How should the court rule on each motion? Discuss fully.

QUESTION 4

Landlord owned a five-story apartment building in Anytown, Ohio. He employed Super as his superintendent to maintain the property. Approximately 40 tenants leased apartments in the building.

Super recently entered the second floor apartment leased by Renter to repair a leaky faucet. He noticed that Renter had purchased a new computer. Later that day, while Renter was at work, Super used his master key to enter Renter's apartment, took the computer, and carried it out of the apartment.

Neighbor, an elderly woman who leased the apartment across from Renter, saw Super leaving Renter's apartment with the computer and threatened to report him to the police. Super dropped the computer, shoved Neighbor back into her apartment, and forced her to climb onto the fire escape outside her bedroom window. He knew Neighbor was feeble and would be likely to fall. She did fall on to the fire escape as she was climbing out her window and injured her leg.

Super scrambled down the fire escape and, to create a distraction while he escaped, he set fire to a garbage dumpster alongside the apartment building. The sparks from the fire ignited a fire on the roof of Landlord's apartment building. Landlord had failed to equip the apartments with smoke alarms, contrary to a local ordinance making such failure a fourth degree misdemeanor. The fire spread rapidly to the apartments on the top floor, and, although most of the top floor tenants managed to escape, two of them died of smoke inhalation. Proper smoke alarms would have alerted these tenants, and they probably would not have died.

Neighbor, furious at Super, managed to climb back into her apartment and get a pistol she kept in her nightstand. Leaning out her window, Neighbor saw Super running through the crowd that had gathered as the fire trucks were arriving. She took aim and fired the pistol intending to hit Super, accidentally hitting and killing Bystander.

Of what crimes might Super, Landlord, and Neighbor each be indicted? Discuss fully.

QUESTION 5

Testator and Wife married in Franklin, Ohio in 1965. They later had two children: Daughter, born in 1968, and Son, born in 1970.

In 1972, Testator executed a valid will (1972 Will) in which he left all his property to Wife if she survived him, and, if not, to Daughter and Son, per stirpes. The will named Testator's brother, Brother, as executor.

In 1990, Testator was called up for active military duty for the Gulf War. On November 26, 1990, the day before he left for the war, Testator wrote, entirely in his own handwriting, the following document:

- I, Testator, revoke my 1972 Will. I intend this instrument to be my Last Will and Testament. I nominate Brother as executor. I wish to dispose of my property as follows:
- A. I give my 1956 Ford Thunderbird automobile to Brother;
 - B. I give one half of my real and personal property to my beloved wife, Wife; and
 - C. I give the remainder of my estate in equal shares to my children who survive me.

Testator signed and dated this document immediately below paragraph C. Nobody else signed the document. Testator then placed it in his safe deposit box at Bank, clipped to his 1972 Will.

Testator returned from the Gulf War, and, in 1993, he and Wife divorced. Neither Testator nor Wife ever remarried. However, they remained friends and kept in frequent contact with each other.

In early 2000, Testator was diagnosed with a terminal illness. Wife moved back in with Testator and provided daily care to him for the rest of his life.

In October 2000, Testator wrote, entirely in his own handwriting, a new will:

- I, Testator, declare this document to be my Last Will and Testament. I have previously revoked all my prior wills except for my November 26, 1990 Will. I hereby make the following changes to my November 26, 1990 Will:
- a) I give \$10,000 to the American Cancer Society;
 - b) I furthermore wish to provide for my ex-spouse, Wife. Therefore, I leave all the rest of my property, personal and real, in accordance with the terms of my November 26, 1990 Will, which I incorporate herein. My November 26, 1990 Will is located in my safe deposit box at Bank.

In the presence of Brother and two neighbors, Testator declared it to be his will and signed and dated it. He asked Brother and the two neighbors to sign it just below his signature, and they did so.

In November 2000, Son was killed in an automobile accident. Son is survived by his son, Junior.

Testator died in December 2000. At the time of his death, his estate consisted of a 1956 Ford Thunderbird and \$210,000 in cash and securities.

Brother has obtained possession of the original 1972 will, the original November 26, 1990 will, and the October 2000 will.

What is the legal significance of each of the wills executed by Testator, and how should Testator's estate be distributed? Discuss fully.

ANSWER ACCORDING TO OHIO LAW.

QUESTION 6

Customer maintained a checking account at Bank in Columbus, Ohio. Bank's business hours are 9:00 a.m. to 4:00 p.m. At the commencement of business on Tuesday, October 31, the balance in Customer's account was \$1,000. Bank has no established cut-off hour for payment of items received by Bank during the banking day.

On Tuesday, October 31, the following events occurred:

Item # 1: At 10:00 a.m., Bank received by mail a check in the amount of \$500 drawn on Customer's account. That night, before midnight, Bank settled for (i.e., paid) this item during its regular evening processing.

Item # 2: At 1:00 p.m., a second check, this one in the amount of \$400 and also drawn on Customer's account, was presented for payment at a teller's window in Bank. Bank paid that item in cash.

Item # 3: At 2:00 p.m., Bank received by mail a third check drawn on Customer's account. This check was in the amount of \$100 and was deposited in the account of another customer of Bank. Bank did not settle for (i.e., pay) this item during its regular evening processing.

On Wednesday, November 1, at 3:00 p.m., Bank's mail clerk delivered to Bank's manager a notice of attachment served on Bank by a judgment lien creditor of Customer. The notice of attachment had actually been received by Bank at 9:00 a.m. on Tuesday, October 31, but its delivery to the manager had been inexplicably delayed. The notice of attachment ordered Bank to hold and pay to the judgment creditor all sums up to \$1,000 in Customer's checking account. The notice correctly informed Bank that Bank would be liable to the judgment creditor for any sums paid out of the checking account at or after the time of service of the notice of attachment to the extent that such payments had the effect of reducing the balance below the amount necessary to satisfy the \$1,000 attachment.

What steps, if any, can Bank take with respect to each of the three Items to avoid liability to the judgment creditor? Discuss fully.

QUESTION 7

Corp is an Ohio corporation with 700 shareholders of record holding its publicly traded common stock. Corp has assets valued at \$60 million.

Acquirer is a California corporation that wishes to acquire a controlling interest in Corp. Several months ago, Acquirer purchased a single share of Corp's common stock and, based on its ownership of that share, obtained a copy of Corp's shareholder list. Acquirer thereafter sent all shareholders a cash tender offer to purchase their shares at a specified price that was \$10 over the market price and began soliciting proxies from Corp's larger shareholders. Corp's articles of incorporation authorized votes by proxy, and Acquirer's proxy statements contained all the necessary disclosures. Eventually, Acquirer was able to purchase shares of Corp. pursuant to its tender offer and received a good response to the proxy solicitation.

In response to Acquirer's takeover intentions, Corp's directors called a special shareholders' meeting, in accordance with Ohio law, to vote on the proposed acquisition of controlling interest by Acquirer. Before the meeting, Corp received 300 signed proxies representing a majority of the shares authorizing Acquirer to vote the shares in favor of the acquisition at the meeting. All the proxies had been sent to Corp's corporate secretary by facsimile (fax) within the time required by law. The proxies were silent as to whether they were revocable.

Corp's directors then began personally contacting the shareholders that had signed the proxies, asking them to appear at the special meeting to vote their own shares against the acquisition. Shareholders who actually attended the meeting represented a quorum of the shares. The following happened just before or at the meeting:

- 1) Some 100 of the shareholders that had given Acquirer their proxies did appear at the meeting and demanded to vote their shares;
- 2) Another 25 shareholders sold their shares after giving their proxy to Acquirer, but before the shareholder meeting;
- 3) Two people that issued proxies to Acquirer are minors and two people have died since issuing the proxy to Acquirer;
- 4) Thirty-three shareholders that had given Acquirer their proxies appeared at the meeting, but remained silent; and
- 5) Corp directors convinced the remaining 138 shareholders who had given proxies to Acquirer to sign new proxies giving Corp authority to vote at the shareholder meeting.

Acquirer demanded that all 300 original proxies be acknowledged and all the votes represented by the proxies be counted in favor of the acquisition. As it was, the directors of Corp refused to acknowledge any of the proxies because they had been submitted via fax rather than in the original signed versions. Moreover, the directors counted the votes of those shareholders who had signed proxies but who nevertheless appeared at the meeting to vote. These shareholders, together with those who had not signed proxies, represented a majority of the shares, and they all voted against the acquisition. As a result, Acquirer's proposed acquisition was defeated.

Will Acquirer be successful in challenging the vote against the acquisition? In your answer, discuss the validity of the various proxies.

QUESTION 8

Lucky had a very unlucky week. On Monday, he participated in a friendly snowball fight with some other adults from his neighborhood. He received a nasty cut over his eye when Buster, one of the participants, hit him with a “Buster Special,” a tightly packed snowball in which Buster had concealed a small stone. Lucky did not see Buster’s snowball coming before it hit him.

On Tuesday, Lucky went to Hospital to have his eye examined. Mistaking him for a dangerous patient missing from Hospital’s psychiatric unit, Hospital’s staff forcibly strapped Lucky to a bed. Two hours later, they realized their mistake and set Lucky free.

On Wednesday, Lucky encountered Buster again. Buster was just a few feet away and had another snowball in his hand. Buster cocked his arm as if to throw the snowball and shouted, “Here comes another Buster Special.” Lucky pivoted to avoid being hit, slipped on some ice, and twisted his ankle. Buster did not throw the snowball.

On Thursday, Lucky returned to Hospital to have his painful ankle examined. At Lucky’s request, a physician employed by Hospital gave Lucky an injection of medication to relieve the pain. The physician failed to mention that the medication is known to cause a significant increase in pain in one out of every 10,000 people who take it. Lucky’s pain increased dramatically, and he had to spend an extra day (Friday) in Hospital to get his pain under control.

On Saturday, Lucky again encountered Buster. Holding his arm behind his back, Buster approached Lucky and said he had a “special delivery” for Lucky. As Buster began to bring his arm forward, Lucky reacted by punching him, breaking Buster’s nose and causing Buster to drop the get-well card and gift he had been about to hand Lucky.

1. What potential civil actions does Lucky have against Buster and against Hospital, what defenses might Buster and Hospital reasonably assert, and what is the likely outcome of each claim? Discuss fully.
2. What potential civil action does Buster have against Lucky, what defense might Lucky reasonably assert, and what is the likely outcome of Buster’s claim? Discuss fully.

DO NOT DISCUSS ANY CLAIMS BASED ON NEGLIGENCE.

QUESTION 9

In 2001, Client received from Grantor the following five deeds purporting to convey to Client five separate parcels of land he purchased. The conveyances were made by deed, and there were no purchase agreements.

DEED ONE: This deed is entitled “Quitclaim Deed,” was executed in compliance with all laws, and was properly recorded. The description of the property in the deed is: “The land that is being conveyed is the same land that was acquired by Grantor by that certain deed dated January 2, 1990, recorded in Volume 60, Page 20 of the Deed Records of Hill County.”

DEED TWO: This deed is entitled “General Warranty Deed” and was executed in compliance with all laws. It has not been recorded. It contains a complete legal description of the land it purports to convey.

DEED THREE: This deed is entitled “Limited Warranty Deed,” was executed in compliance with all laws, and was properly recorded. The deed contains a complete legal description of the land it purports to convey. Client learns that the land is encumbered by a mortgage that was created by a person who owned the land before the Grantor, who executed and delivered this deed to Client.

DEED FOUR: This deed is entitled “General Warranty Deed.” It was executed and witnessed but it was not acknowledged. It was recorded. The deed contains a statement that “This parcel consists of 10 acres.” Separately, and in the space provided for the legal description, the deed describes by metes and bounds the complete legal description of the land it purports to convey. A survey made by Client reveals that the parcel contains only eight acres.

DEED FIVE: This deed is entitled “Quitclaim Deed,” was executed in compliance with all laws, and was properly recorded. The deed contains a complete legal description of the parcel. The parcel described in this deed is surrounded on three sides by parcels owned by others. Client’s Grantor had acquired the property in 1980 by a recorded deed that contained the following term: “For a term of 40 years from the date hereof, whosoever shall be the owner of the land described herein shall erect and maintain fences so as to divide the land described herein from the adjacent parcels owned by others.” The fence on the south side is in good condition; the fence on the west side has partly collapsed and is otherwise in poor condition; and the fence on the east side has been removed.

1. What interests in the land described does each of the deeds convey to Client?
2. What rights, if any, does Client have against Grantor?
3. What obligations, if any, does each of the deeds impose on Client? Discuss fully.

QUESTION 10

The city of Our Town, Ohio restored the buildings and other structures in its previously blighted central historic district. The object of the restoration was to revitalize that part of the community and enhance the economic base of Our Town. In accordance with the Our Town's Master Plan, all structures were restored to conform to a certain architectural and aesthetic theme designed to recreate the ambience of late Nineteenth Century Our Town. The Master Plan had the intended economic result in that people from surrounding communities and tourists from elsewhere were attracted to the shops, hotels, and restaurants by the uncluttered turn-of-the-century atmosphere.

The following was one of the ordinances intended to preserve the desired atmosphere and old-time feel of the place:

Billboard Ordinance

All billboards, signs, and other structures advertising the goods and services of business establishments within the Historic District shall be subject to design review and approval of the Planning Director and shall be in accordance with the Master Plan. No property owner, tenant, merchant or other person doing business within the Historic District shall maintain any billboard, sign, or other structure containing commercial speech or advertising material at any place other than on the premises of the business whose goods and services the billboard, sign, or other structure is advertising.

Any billboard, sign, or other structure maintained in violation of this ordinance shall be deemed to be a public nuisance. Any citizen of Our Town shall have the right to sue the violator to abate the nuisance and to recover costs and attorney's fees.

Bill's Bike Shoppe ("Bill's"), one of the merchants in the Historic District, was located at the end of an alley about 100 feet back from the intersection of the alley and the main street. At that intersection, Bill's had erected a 3-foot by 5-foot placard bearing the legend: "Visit Bill's Bike Shoppe and See the Olde-Tyme Velocipedes," with a large red arrow pointing to Bill's shop.

Tom and Fred, residents of the Historic District, saw the sign, and Tom began to dismantle it and tear it up. A police officer happened to be passing by in a patrol car and saw Tom doing so. When Tom refused to pay attention to the officer's order to desist, the officer arrested Tom.

Fred became irate at the officer and began repeatedly shouting at the officer, "You idiot cop! Leave him alone, you stupid idiot!" The police officer arrested Fred, who was charged with a violation of the following ordinance:

Interfering with a Police Officer Ordinance

It shall be a misdemeanor for any person to, in any manner, interrupt, abuse, harass, annoy, or interfere with a police officer in the execution of the officer's duty.

1. In a suit by Tom against Bill's to require Bill's to remove the placard, Bill's asserts as a defense that the Billboard Ordinance is unconstitutional. Is Bill's likely to prevail on that defense? Discuss fully.

2. In the prosecution of Fred, Fred asserts as a defense that the Interfering with a Police Officer Ordinance is unconstitutional. Is Fred likely to prevail on that defense? Discuss fully.

QUESTION 11

Consultant proposes to prepare a marketing plan to assist Lawyer in developing clientele and generating additional fees. The plan would contain the following components:

A. A telephone directory advertisement stating that (1) Lawyer specializes in and limits his practice to personal injury, criminal, and domestic relations cases and (2) Lawyer will accept such cases on a discounted and reasonable contingent fee basis.

B. A letter to be signed and sent by Lawyer to other attorneys in the community advising them that (1) Lawyer will accept referrals in personal injury and criminal cases and (2) Lawyer will pay a reasonable referral fee if requested by the referring attorney.

C. A letter to be signed and sent by Consultant to tenants who have been sued for eviction by their landlords, (1) advising the tenants of their statutory rights and (2) stating that Lawyer is available to represent them on a fee basis. Consultant would obtain the names and addresses of the tenants from court records.

D. A brochure (1) containing biographical data about Lawyer and (2) which Consultant would personally distribute to passersby on street corners and at fairs, festivals, and other similar events.

1. Which components of the plan could be ethically implemented as they now stand?
2. Which ones pose ethical problems?
3. How, if at all, could the ones that pose ethical problems be modified to make them ethical?

Discuss fully.

QUESTION 12

Rita, an 85-year-old woman with physical and mental disabilities, was a resident at Nursing Home. She suffered an injury when Aide, a nursing aide hired by Nursing Home three months earlier, battered her.

Aide was subsequently indicted for criminal assault. She initially pleaded guilty but later withdrew the plea and entered a plea of no contest. The court found Aide guilty and placed her on probation.

Rita's guardian sued Nursing Home and Aide in Ohio state court. The civil complaint alleged that Nursing Home and Aide had committed assault and battery against Rita and that Nursing Home was negligent in hiring and supervising Aide.

At the jury trial of the case, the attorney for Rita's guardian offers the following evidence:

1. The testimony of a former supervisory employee of Nursing Home that, based on her personal observations, Aide was short-tempered and was easily irritated by severely disabled residents of Nursing Home.
2. Testimony that, two months before Aide's assault on Rita, another nursing aide employed by Nursing Home had assaulted another resident.
3. The testimony of Aide's previous employer, a hospital, that Aide had been disciplined for losing her temper with patients.
4. Aide's initial guilty plea and subsequent criminal conviction for the assault on Rita.
5. A letter that Nursing Home had sent to Rita's guardian offering to pay Rita's medical expenses resulting from the assault by Aide.
6. Testimony that Aide was fired after the assault on Rita and that, immediately thereafter, Nursing Home implemented a new policy requiring full preemployment background checks and psychological evaluations of all nursing aide job candidates.

Also at the trial, Nursing Home's attorney offers the following evidence:

7. The testimony of Nursing Home's human resources manager that, although Aide's personnel file has been lost and she has no specific recollection of the result in Aide's case, the human resources manager's consistent practice before hiring a nursing aide was to contact all of a job candidate's prior employers, and to reject any candidate as to whom a prior employer gave information that indicated the candidate was not suited for the position.

Assume that the respective attorneys have properly objected to admissibility of the items of evidence listed above. How should the court rule on each item? Discuss fully.