Question Number 1

The plaintiffs in both of the following situations have sued the State of Franklin in federal court challenging the described government practices on the ground that the practices violate their rights under the Equal Protection Clause of the United States Constitution.

Graduate School Admission: The University of Franklin (UF) is a public university located in the State of Franklin. Admission to the UF Graduate School is based on the following 100-point selection index:

- 70 points for academic record
- 3 points for Franklin residency
- 3 points for children of alumni
- 4 points maximum for admissions essay
- 5 points maximum for personal achievement, leadership, or public service
- 15 points for racial or ethnic minority status

Applicants receiving a score of 65 or higher are automatically accepted. Those with lower scores are put on a waiting list or rejected.

Plaintiffs, all of whom have superior academic records, are non-minority individuals suing the UF Graduate School alleging that their applications were rejected as a result of the racial or ethnic minority status component of the selection index.

"Racial or ethnic minority" is defined as a member of one or more "groups that have historically been victims of discrimination, like African-Americans, Hispanics not of European descent, and Native Americans."

The evidence at trial shows that the sole basis upon which the UF Graduate School justifies its selection index is that it "sees tremendous value in the educational benefits of a diverse student body, and a racially diverse student body further enhances those benefits."

"Diversity" is defined as "including, but not limited to, life experience, work experience, socio-economic status, unique talents, race, or ethnicity."

Mandatory Retirement for Firefighters: In response to a highly publicized incident in which a 55 year-old firefighter was physically unable to rescue a 300 pound person from a burning home, the Franklin Legislature passed a law to require all uniformed firefighting personnel to retire at the age of 50. The Legislature made a finding that, "Physical abilities tend to decline with age, and public safety requires that firefighters be at the peak of physical strength."

Smokey has been a firefighter in the Anytown, Franklin, Fire Department for more than 25 years. He is the reigning champion of the World's Most Physically Fit Firefighter Competition, which pits firefighters from around the world against each other in tests of physical strength and endurance as well as firefighting and rescue skills.

Shortly after the effective date of the mandatory retirement law, Smokey turned 50 and was required, against his will, to retire as a uniformed firefighter. He sues the State to keep his job and invalidate the new retirement law.

How should the federal court rule in each case? Explain fully.

Question Number 2

In 1995, Testator, domiciled in Ohio, made a last will and testament (Will-1) that left all his property to his wife, Spouse. Will-1 was executed with all of the necessary formalities for execution and attestation.

In 1996, Testator made a second will (Will-2), which in its entirety stated: "I leave all my interest in Sunny Acres, the farm I inherited from my father, to Junior, my son from a prior marriage, and I leave to Friend my collection of art." Once again, all required formalities for execution and attestation were complied with.

In 1997, Testator sold Sunny Acres to Junior for a cash down payment and a promissory note and mortgage to secure the balance. In the deed conveying Sunny Acres to Junior, Testator reserved all oil, gas, and mineral rights for himself.

In 1998, Testator and Spouse divorced. When the divorce became final, Testator wrote the words "cancel – new beneficiaries: Junior and Friend" in the margin of Will-1.

In 2000, Testator and Spouse reconciled and remarried. At about that time, commercial quantities of gas were discovered on Sunny Acres.

In 2006, Testator died without making another will or codicil. He was survived by Spouse, Junior, and Friend. Testator's net estate, after taxes, claims, and expenses, consisted of the oil, gas, and mineral rights in Sunny Acres, the balance owed by Junior on the promissory note and mortgage on Sunny Acres, and the art collection. Will-1 and Will-2 were both presented for probate in Ohio.

1. What claims would Spouse and Junior likely assert to the oil, gas, and mineral rights, and to whom would the court order distribution of those rights? Explain fully.

2. What claims would Spouse and Junior likely assert to the balance on the promissory note and mortgage, and to whom would the court order distribution of that asset? Explain fully.

3. What claims would Spouse and Friend likely assert to the art collection, and to whom would the court order distribution of that asset? Explain fully.

Do not discuss intestate succession or spousal statutory rights.

Question Number 3

John owns a parcel of land in Any County, Ohio and operates three separate businesses on the premises: a vegetable farm; a retail appliance store; and a truck sales and repair business. John entered into the following financing arrangements:

The Land: The parcel of land is currently encumbered by a mortgage in favor of Land Bank to secure a loan from Land Bank. Land Bank properly filed and recorded the mortgage in 1995. No security agreement was signed by John and no financing statement was filed.

The Vegetable Business: John had a portable hothouse that he moved on his land to incubate the vegetables. He also had a large, movable sign identifying the vegetable-growing operations. Immediately after John planted the 2006 crop of vegetables, he borrowed operating funds from Farm Bank to finance costs of the current season. He executed a valid security agreement granting Farm Bank a security interest in "the vegetables and all proceeds thereof." On February 1, 2006, Farm Bank filed with the proper public authority a financing statement listing the collateral described in the security agreement.

The Retail Appliance Business: John operated the appliance business in a building at the front, northwest corner of his parcel of land, and he had a separate movable sign identifying the appliance business. On March 1, 2006, John borrowed money to purchase inventory and for operating expenses for the appliance business from General Bank. He executed a valid security agreement granting to General Bank a security interest in "all of John's property, including inventory, machinery, parts, equipment, accounts receivable, and all proceeds therefrom relating to all of John's businesses." On March 1, 2006, General Bank filed with the proper public authority a financing statement listing the collateral described in the security agreement.

The Truck Sales and Repair Business: John operated the truck business in a building at the front, northeast corner of his parcel of land, and he had a separate movable sign identifying this business as well. On April 1, 2006, John borrowed money from Truck Bank to purchase trucks for resale and spare parts. John executed a valid security agreement granting to Truck Bank a security interest in "all trucks, spare parts, and proceeds thereof." Truck Bank also took possession of the original certificates of title to the trucks in John's inventory and made notations of Truck Bank's security interest on each of the certificates. On April 1, 2006, Truck Bank filed with the proper public authority a financing statement listing the collateral described in the security agreement.

In May 2006, John experienced severe financial problems and defaulted on all of his obligations to the banks. To raise quick money he held a "fire sale" at his appliance store, offering very deep discounts. Mary, recognizing this as a great bargain, bought all new appliances for her personal use at her home. John also offered selected spare truck parts to his friend, Arthur, a gas station owner. He told Arthur that his creditor banks might claim to have security interests in the parts, but Arthur needed the parts so he decided to take the risk. Arthur paid fair market value for the parts.

The banks seek to foreclose on their security interests and assert the following claims to the property:

1. Land Bank claims to have a security interest superior to all others in the land, its improvements, the growing vegetables, and the signage.

2. Farm Bank claims to have a security interest superior to all others in the growing vegetables. It also claims to have the right to continue to use the land to complete the growing cycle and harvest the vegetables.

3. General Bank claims to have a security interest in all of John's property, except the land and improvements, but including the vegetables, the hothouse, trucks, spare parts, and signage.

General Bank also claims that Mary must turn over to it the appliances Mary purchased and that Arthur must turn over to it the spare parts he purchased.

4. Truck Bank claims to have a security interest superior to all others in the trucks and spare parts. It also claims that Arthur must turn over to it the spare parts he purchased.

Which Bank can legitimately claim a superior security interest, and how should the claims of each of the banks be resolved? Explain fully.

Question Number 4

Farmer, a widower, owned four parcels of property in fee simple absolute in Ohio. He transferred the four parcels by valid and enforceable deeds as follows:

Parcel I: To University by a deed stating, "I, Farmer, hereby grant Parcel I to University, so long as it uses the property for a library named after me." University has decided not to build the library and has contracted to sell the property to City for a dog park.

Parcel II: To his daughter, Ann, by a deed stating, "I, Farmer, hereby grant Parcel II to Ann for life and then to her heirs at law." Ann has one child, David.

Parcel III: To his oldest son, Bob, by a deed stating, "I, Farmer, hereby grant Parcel III to Bob for life, and upon his death, to Bob's son, Steve."

Parcel IV: To his youngest son, Carl, by a deed stating, "I, Farmer, hereby grant Parcel IV to Carl in fee simple; however, if Carl does not graduate from college within five years after graduating high school, then I shall have the right to reclaim said acreage."

What is the nature of the title and the ownership rights that passed in each of the deeds, and to whom did the ownership rights attach? Explain fully.

Do not discuss any public policy issues.

Question Number 5

Owner is the chief executive officer and sole shareholder of MarketCo, a marketing company in Ohio. Veep is a vice president of PrintCo, a printing company, also in Ohio. Owner and Veep are long-time friends and business acquaintances.

Over Thanksgiving dinner at Veep's house in November 2002, Veep and Owner orally agreed that PrintCo would produce specially designed brochures featuring MarketCo's logo for use in MarketCo's business. They agreed that, beginning in January 2003, PrintCo would deliver 10,000 brochures each month for 24 months at a cost of $1.00 per brochure, for a total of $240,000. Veep wrote down some notes of their agreement on a piece of scratch paper, signed it, and gave Owner a copy. The notes stated in their entirety, "MarketCo; Jan. 2003 thru Dec. 2005; 240,000 @ $1.00; ship 3,000 per month." Owner and Veep did not discuss their agreement again in 2002.

In 2003, PrintCo shipped the 10,000 brochures monthly and MarketCo paid for them timely. Beginning in January 2004, however, MarketCo experienced financial difficulties and was unable to pay for three shipments of brochures shipped by PrintCo. In April 2004, Veep called Owner and told him that, unless PrintCo received prompt payment, PrintCo would not ship any more brochures. Veep also said that PrintCo had run out of special paper and ink stocks used in printing the MarketCo brochures and, unless PrintCo received assurances of future payment, it would not renew its supplies.

Because the brochures were essential to the conduct of MarketCo's business, Owner said, "Don't worry. I'll send you a personal check for the three unpaid shipments and I'll personally pay you for any future shipments if MarketCo cannot pay."

Veep agreed on PrintCo's behalf and asked Owner to incorporate his promise into a written guaranty and send it to PrintCo. Owner promised to do so promptly, but he never got around to it, and Veep never followed up with Owner. Owner did pay by personal check for the three past due 2004 shipments. PrintCo purchased the necessary supplies, printed the brochures for the remaining nine months of 2004, and began shipping again. Owner personally paid for the brochures in April and May 2004, but MarketCo's finances continued to deteriorate and, in June 2004, MarketCo and Owner informed PrintCo that they would not accept or pay for any more shipments.

PrintCo sued MarketCo and Owner for breach of contract to recover $70,000, the contract price for seven months worth of MarketCo's specially designed brochures that it had printed and still had in inventory. MarketCo and Owner each asserted the defense of the Statute of Frauds.

1. Can PrintCo overcome the Statute of Frauds defense asserted by MarketCo? Explain fully.
2. Can PrintCo overcome the Statute of Frauds defense asserted by Owner? Explain fully.

Question Number 6

User, a drug addict residing in Anytown, Ohio, was arrested for possession of marijuana. User was offered a deal to dismiss the charge if he would provide the police with information about drug dealers in the area. To get the deal, User described a tall, slender man named Dealer, and told the police that Dealer regularly sold drugs out of vacant houses in User's neighborhood.

The police undertook a three-day surveillance of vacant houses in User's neighborhood. During the surveillance, the police saw a house among the vacant houses that appeared to be occupied, and they occasionally saw a man who fit the description of Dealer entering and leaving the house, each time using a key to unlock and lock the front door. Over the three days of surveillance, the police observed a number of vehicles stopping near that occupied home. Occupants of those vehicles would enter the house for just a few minutes, return to their cars, and drive away.

The police sent Informant, a confidential informant they had used before and found reliable, to the subject house with instructions to buy drugs. Informant entered the house and, after a few minutes, returned and reported to the police that he had purchased cocaine from a short blonde woman, and that he had observed a very large quantity of cocaine on the kitchen table.

Acting upon all of the above information, which they incorporated into an affidavit, the police immediately obtained a search warrant for the subject house from a local magistrate. As the police approached the house to execute the warrant, Dealer fled through the back door carrying what appeared to be a brown satchel. Some of the police officers stayed to secure the subject house and some gave chase to Dealer.

Parker, a neighborhood resident not connected in any way with Dealer, had parked his car on the street about a block away and had left the passenger compartment doors unlocked. After looking around the area for a few minutes, the police looked through the window of Parker's car and found Dealer hiding in the back seat. The police surrounded the car and arrested Dealer.

The police then returned with Dealer to the subject house to execute the search warrant in the house but found no evidence of drugs or drug paraphernalia therein. Frustrated by this failure, the police went back to Parker's car and searched the unlocked passenger compartment for drugs. They found nothing in the passenger compartment, but when they pried open the trunk lid they did find three kilos of cocaine in a brown satchel in the trunk of Parker's car.

Based upon the discovery of such a large quantity of cocaine, Dealer was charged and indicted for Aggravated Trafficking in Drugs. Dealer's lawyer filed a motion to suppress the evidence found in Parker's trunk, basing it on the assertions that the search of the house, Dealer's arrest, and the search of Parker's car were unlawful.

1. Was the search of the house lawful? Explain fully.
2. Was the arrest of Dealer lawful? Explain fully.
3. Was the search of Parker's vehicle lawful insofar as Dealer was concerned? Explain fully.

Question Number 7

Bill is an art dealer with his business located in Columbus, Ohio. Bill entered into the following transactions:

1. Bill sold what he described as a valuable print to Mary (another art dealer) for $10,000 knowing that it was a fake worth only about $10. Mary signed and gave to Bill a negotiable promissory note for the entire purchase price. Bill then transferred Mary's note to Jones (another art dealer) to pay for a painting that Bill purchased from Jones. Jones subsequently transferred Mary's note to Builder, who was building a new section on Jones' store. Builder had learned about Bill's defrauding of Mary before Builder accepted her note from Jones, but Builder did not actually participate in the fraud upon Mary in any way. Finally, Mary learned about the fraud and also about Builder's awareness of the fraud before the payment due date of the note. Mary has refused to pay the note to Builder claiming it was obtained by a fraud and that Builder was aware of the fraud when he accepted the note.

2. In a separate transaction, Bill endorsed and delivered to Jones a personal check that Bill had received from Ted in the amount of $50,000 showing Bill as the payee and drawn on Ted's bank, Bank. When Bill endorsed the check to Jones, he wrote above his signature "Pay to Jones Only." Jones ignored Bill's directive and endorsed the check over to Bill's ex-wife, Ex, for interior decorating services she was providing for the new section in his store. Bill is furious and demands that Bank not make payment on the check to Ex as its transfer violates his endorsement terms.

3. Bill executed a promissory note to his father, Father, who was worried about his ability to pay his own funeral expenses after his death, in exchange for Father's promise to make a will devising a rare painting to Bill. The note stated, "In consideration of Father's promise to devise the painting to me, I promise to pay to the estate of Father, or his assignee, the sum of $25,000 within two days after Father's death." Father told Bill that he intended to assign the note to a funeral director in order to receive services. However, contrary to all of Bill's wishes and contrary to Father's stated intention, Father assigned the note to Dealer in payment of a new sports car telling Dealer, "Don't worry, I'm very old and in poor health and you will get your money right after my death." Father, in fact, died four weeks later and left all of his property, including the painting, to Bill's brother. Bill is furious and refuses to pay Dealer the $25,000.

Assume that both of the notes and the check were properly executed and transferable.

1. Can Builder force Mary to pay him the $10,000?
2. Can Bank properly pay the $50,000 check to Ex?
3. Can Dealer compel Bill to pay him the $25,000?

Discuss fully the reasons for your answers.

Question Number 8

Coach, once a nationally recognized college basketball star whose athletic talents had once dominated the sports news, had been hired by the Anytown, Ohio Middle School District to coach the boys' basketball team. One of the team members recently came home from basketball practice and complained to his mother, Mother, that Coach routinely yelled at and insulted the team members and that the guys were tired of Coach smacking them on the back to get their attention. Recalling that she had heard Coach yell at the boys, Mother sent the following e-mail message to the parents of the other team members:

> Team Parents,
>
> I am concerned about Coach's behavior and I question whether he should be coaching adolescent boys. I have heard him yell at the kids and berate them, but I was sickened to hear from my son that Coach also touched him in what I consider to be an inappropriate manner. I urge you to talk to your sons about whether they have experienced or witnessed any offensive touching by Coach. I think Coach's behavior is appalling, and I would like the parents to get together to discuss this problem.
>
> A Concerned Mother

Father, the father of another boy on the basketball team, was outraged when he read Mother's message, and he immediately forwarded her e-mail message to everyone in his e-mail address book, which included friends and business associates in Anytown.

The next day, Father went to the school gym, where Coach and the boys were in the middle of basketball practice. In the presence of the team members and other onlookers, Father shouted across the gym to Coach, "My kid's off the team, you pervert! You other boys should be careful around this pedophile!" Father grabbed his son by the arm and escorted him out of the school.

Most of the community eventually heard about Father's accusation about Coach, which prompted many angry parents to insist that the school board take action. A full investigation by the school district revealed that, other than being somewhat temperamental, Coach had no record of criminal or other inappropriate conduct toward boys he coached. Nevertheless, because the community had lost faith in Coach, the school board elected not to renew Coach's one-year contract. Due to the adverse publicity of this incident, Coach has been unable to find employment elsewhere. Coach sued Mother and Father for defamation.

Under Ohio law, what causes of action for defamation can Coach assert against Mother and Father, what defenses might Mother and Father each raise, and what is the likelihood that Coach will prevail on each cause of action? Explain fully.

Harvey

Question Number 9

Iva, a sports writer for Newspaper, was covering a home game of the Crashers, the local hockey team. She was struck by a puck when it flew off a player's stick into the press box. Later, Iva learned that the Crashers were testing a prototype of the "Playon II," a new stick manufactured by Acme, Inc. Acme hoped to sell the Playon II to the Crashers.

Iva filed a workers' compensation claim with the Industrial Commission against Newspaper. She also timely filed a two-count personal injury complaint in common pleas court of Any County, Ohio against the Crashers, Newspaper, and Acme, alleging generally the operative facts surrounding her injury.

In count one of her personal injury complaint, Iva demanded judgment "in excess of $25,000" and alleged as the bases for liability the following facts: the Crashers had failed to adequately protect the press box from stray pucks; Acme knew or should have known that the Playon II was defective as designed; and Newspaper had assigned her to cover a dangerous sport without providing her with protective equipment.

In count two of her complaint, Iva asked for an injunction preventing Acme and the Crashers from contracting for the sale and purchase of the Playon II sticks.

All defendants filed timely answers denying liability, and thereafter, the following pleadings and motions were filed and served:

- <u>Motion #1</u>: A week after filing its initial answer, the Crashers filed an amended answer adding the affirmative defense of "assumption of the risk." Iva filed a motion to strike the Crashers' amended answer on the ground that the Crashers had failed to obtain leave of court for the filing.

- <u>Motion # 2</u>: Acme filed a motion asking the court to order Iva to provide a more definite statement on two issues relating to count one of Iva's complaint: (1) the specific facts upon which she based her allegation that Acme "knew or should have known" that the Playon II was defective as designed; and (2) the precise amount of damages she was seeking to recover.

- <u>Motion # 3</u>: Acme also filed a motion asking the court to dismiss count two of Iva's complaint for injunctive relief on the ground that Iva's claim was not justiciable because there was currently no agreement between Acme and the Crashers for the sale and purchase of the Playon II sticks.

- <u>Motion # 4</u>: In its initial answer, Newspaper had pleaded as a defense that Iva's personal injury claim was foreclosed by the Workers' Compensation Act because it arose in the course of her employment. Iva and Newspaper subsequently executed a written settlement agreement of Iva's workers' compensation claim releasing Newspaper from all claims, whereupon Newspaper filed a motion asking the court for leave to file a supplemental answer to add the defense of "release" based on the

workers' compensation settlement. Iva opposed this motion on the ground that Newspaper had waived this defense because it had failed to assert it in its initial answer.

The court of common pleas then held a hearing to address the issues raised in the motions and to schedule a trial date. Acme presented uncontradicted evidence that they currently had no commitment for the sale and purchase of Playon II sticks.

How should the court rule on each of the four motions? Explain your answers fully.

Question Number 10

Driver owned a landlocked parcel of land, the only access to which was over an easement that the owner of the adjoining parcel had granted to her. The deed granting the easement had been duly executed and recorded in the county recorder's office.

One day while driving across the easement, Driver's car went out of control and struck a tree. Driver was severely injured. She was taken to the hospital where she underwent extensive treatment, the course of which was charted in voluminous medical records.

Driver filed a claim with her insurance carrier, Insco. While in the hospital, Driver gave a tape-recorded statement to Insco's insurance adjuster. Based in part on the tape-recorded statement, Insco refused to pay Driver's claim. Driver sued Insco in an Ohio court of common pleas to recover on her insurance policy.

The following evidentiary issues arose during the trial:

1. Driver's attorney had obtained Driver's voluminous medical records from the hospital and prepared a chronological summary of the records of Driver's treatment. Driver's attorney offered the summary in evidence.

Insco's attorney objected, stating that Insco had not been given the opportunity to examine the underlying medical records, which were in the possession of Driver's attorney.

2. When shown an uncertified copy of the easement deed, Driver testified that she was the owner of the landlocked parcel to which the easement attached and that she was the one who had actually recorded the deed when she received it from the owner of the neighboring land.

Over Insco's objection, Driver's attorney offered in evidence the uncertified copy.

3. Insco's attorney played back the tape-recorded statement that Driver had given to the adjuster. Although the audio quality of the recording was good, Insco's attorney offered the tape-recording in evidence and sought the court's approval to give the members of the jury a typed transcript of the statement for use during their deliberations.

Driver's attorney objected to Insco's proffer of both the tape-recording and the transcript.

4. There was a provision in Driver's insurance policy to the effect that, as a condition of coverage, Driver would be required to sign an agreement stating the limits of the amount of coverage for medical bills and that Insco would not be required to pay medical bills until Driver signed such an agreement. Insco was not able to produce any such agreement signed by Driver and sought to introduce testimony from an Insco employee that Driver must certainly have signed such an agreement because Insco would not have issued the policy without it.

Driver's attorney objected to the proffered testimony.

How should the court rule on each of the foregoing objections? Explain fully.

Question Number 11

Alpha, Bravo, Charlie, and Delta entered into a partnership in Anytown, Ohio to form a construction business. They named the business ABCD Partnership ("ABCD"). On January 1, 2007, they signed the partnership agreement, and each partner made a capital contribution of $25,000 for the purchase of equipment and supplies. The partnership agreement recited the amount of each partner's capital contribution. They all worked in the business and, by agreement, Bravo kept the partnership books.

The business struggled at first and, on February 1, 2007, Delta contributed an additional $10,000 to purchase supplies for ongoing projects.

The company from which ABCD customarily purchased concrete blocks had failed to make a timely delivery, so Alpha, without telling the other partners, contracted with Supplier to buy the blocks at a significantly higher price. Supplier knew that Alpha was a partner in ABCD but did not specifically inquire as to Alpha's authority to contract.

In May 2007, Charlie and Delta brought a business opportunity before ABCD to contract with Anytown to build a gazebo in the city park for completion in three months. Alpha and Bravo declined the opportunity. Charlie and Delta then formed a partnership called Gazebo Partners and made equal capital contributions. The partnership agreement stated that the partnership would be for a specific three-month period. It actually took them four months to finish the project and, in the final two weeks of the project, Gazebo Partners ran short of money, so Charlie contributed $5,000 to finish the work.

In July 2007, disagreements between Delta on the one hand and Alpha, Bravo, and Charlie on the other had reached the point where Delta decided to leave the ABCD partnership. Delta told Bravo that she wanted to examine the books. Bravo refused to allow her to do so, saying that Alpha, Bravo, and Charlie, a majority of the partners, had voted against giving her access to the books.

Delta continues to demand the opportunity to examine the books of ABCD. In addition, she demands that she be repaid her initial capital contribution of $25,000, with interest from January 1, and the $10,000 she contributed on February 1, also with interest from February 1.

Charlie demands that either Delta or Gazebo Partners repay him the $5,000 he contributed during the final two weeks of the city gazebo project. Delta asserts that neither she nor Gazebo Partners is liable to Charlie because, at the time he contributed the $5,000, the three-month term of Gazebo Partners had expired.

ABCD complains about the price Supplier charged for concrete blocks and refuses to pay Supplier's invoice. Bravo tells Supplier that the contract made by Alpha was invalid because it was not approved by a majority of the ABCD partners.

Both ABCD Partnership and Gazebo Partners were formed under and are governed by the Ohio Uniform Partnership Law.

1. What and against whom are Delta's rights regarding her demand to examine the ABCD books and her demand for repayment of the two capital contributions with interest? Explain fully.

2. What and against whom are Charlie's rights regarding his demand for repayment of the $5,000? Explain fully.

3. What and against whom are Supplier's rights to recover on his invoice? Explain fully.

Question Number 12

Smith is a newly admitted attorney in the State of Ohio. Smith set up practice as a sole practitioner and shares office space with a former classmate, Collins. Smith's legal work since admission to the bar is limited to one victorious small claims case for a neighbor.

Smith had studied health care law in several of his law school classes and recently attended a lengthy seminar on the 2007 changes to various health care regulations. The new changes in the voluminous government health regulations were very technical, lengthy, and confusing to a layperson. To generate business and to serve the needs of the elderly, who Smith believed could benefit from his knowledge of this area of the law, Smith decided to send letters to residents of the local retirement villages and senior centers offering legal assistance in this area.

Smith sent out about 100 letters addressed to the elderly residents on Smith & Collins letterhead that he had printed for this purpose. The letters stated in their entirety the following:

"I am a newly admitted attorney in your area and would like to offer my assistance to you in deciphering the recent changes to the government health care regulations affecting senior citizens. I am willing to offer you a discounted hourly rate for my services. I have a 100% rate of client satisfaction.

Also, if you have been in an accident or suffered injury due to the negligent acts of another, I would be pleased to assist you with that claim as well."

/s/ Smith

Smith did not intend to practice personal injury law, but thought his letter might generate leads that he could refer to Collins.

1. Was it ethically permissible for Smith to send a direct solicitation letter to these potential clients? Explain fully.

2. In what respects, if any, does the letter as drafted violate Ohio rules of ethics? Explain fully.

3. What required disclosures, if any, are omitted from the letter as drafted? Explain fully.