

QUESTION 1

Museum contracted with Columbus Security Company of Ohio ("Security") for the services of one of its security guards to fill in while one of Museum's own guards was on vacation. Security assigned Guard to work at Museum under the supervision of Museum's curator. Under the contract between Museum and Security, Museum would pay Security the hourly contract price for Guard's services, and Security would pay Guard's wages.

On Guard's first day at Museum, he was told by the curator, "Our regular truck driver called in sick today. I need you to drive our truck to an art dealer's showroom on Main Street, pick up a priceless statue, bring it back to the museum, and put it in the storeroom."

Guard started driving to the art dealer's and, on the way down Main Street, he saw his friend, Friend, entering a tavern. Guard decided to stop and ask Friend to accompany him and help him load the statue. He parked the truck and entered the tavern. Guard decided to have a drink before leaving, and, while sitting at the bar, Guard got into a heated argument with Owner, the owner of the tavern, over who had been the better quarterback -- John Elway or Joe Namath. Upset that Owner was saying derogatory things about Guard's favorite, Joe Namath, Guard punched Owner, knocking him to the ground and breaking his jaw.

As Guard and Friend fled from the tavern, Guard tossed the keys to Museum's truck to Friend and said, "You drive until I calm down." Friend and Guard then drove to the art dealer's and loaded the statue into the truck.

Friend offered to continue driving, and Guard got back into the passenger seat. As Friend was backing out of the parking lot, he failed to see a car driven by Soccer Mom passing directly behind him. Museum's truck collided with Soccer Mom's car, and Soccer Mom suffered a painful whiplash. Not realizing that he had collided with another car, Friend drove away. Friend drove to where he had parked his own car and turned the truck back over to Guard. Guard then returned to the museum.

By this time, it was nightfall and well after Museum had closed. While unloading the statue, Guard heard a noise and saw a shadow coming down the back hall. Guard, who had a fear of the dark, panicked, drew his gun, and shot at the shadow. It turns out that the shadow was Janitor, a maintenance worker employed by Museum, and that one of Guard's bullets struck Janitor, severely injuring him.

What vicarious liability, if any, do Museum and Security have for the injuries to Owner, Soccer Mom, and Janitor arising from the conduct of Guard and Friend? Discuss fully: [Do not discuss any rights Janitor may have under the Workers' Compensation Laws.]

QUESTION 2

An anonymous phone call tip informed the police that "Quaalude" Joe ("Joe") had made a big buy of drugs to sell to students at high school. From earlier arrests and convictions, the police knew that Joe was a drug dealer and that he dealt drugs to juveniles.

The anonymous caller informed the police that, within the hour, Joe would be driving his red BMW convertible down Main Street toward the high school and that Betty, the blonde female passenger in the car with him, is his assistant in the drug trade.

Before acting on the tip, the police confirmed that a red BMW convertible was registered to Joe. They also confirmed by surveillance that a red BMW convertible driven by Joe, with a blonde female passenger, had entered Main Street and was heading in the direction of the high school. Joe was driving carefully and not in violation of any traffic laws. However, believing that time was of the essence, the police did not attempt to obtain a search warrant.

Two blocks from the high school, the police stopped Joe's car and asked Joe and Betty to exit the car. Over Joe's objection, the police conducted a search of Joe and the car. They found nothing on Joe's person. They did, however, find and seize a .38 caliber revolver from the glove compartment and well over 100 Quaaludes contained in separate plastic baggies from the trunk.

After the search of the vehicle, Joe was arrested and charged with the crimes of aggravated trafficking in drugs and carrying a concealed weapon. Betty was not searched or immediately arrested, but she was later charged with the crime of aggravated trafficking in drugs.

Joe's lawyer has filed a motion to suppress the evidence of the guns and drugs found in his vehicle. Betty's lawyer has also filed a motion to suppress the evidence of the drugs, asserting that she knew nothing about the Quaaludes concealed in the trunk of Joe's car. Both motions are based on alleged violations of the Fourth Amendment to the United States Constitution by the police.

In its opposition to the motions, the State admits that the search of the vehicle was without a warrant and without Joe's consent, but maintains that the search was justified.

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

QUESTION 3

In 1989, Ann executed a will in compliance with all formalities required by law. Ann died testate on January 1, 1999. Her husband, Tom, had died in 1988.

Ann is survived by the following:

(1) Son A, who is a child born to her as a result of a relationship with another man, which occurred prior to her marriage to Tom (Son A was never adopted by Tom);

(2) Son B, a natural child of Tom and Ann;

(3) Grandchild, the only child of deceased Son C who was a natural child of Tom and Ann (Son C died in 1990);

(4) Daughter, a child adopted by Tom and Ann; and

(5) Stepdaughter, a child of Tom by a prior marriage (Stepdaughter was never adopted by Ann).

Ann's will contained the following dispositive provisions:

(1) a bequest of 100 shares of PrimeStar stock to Son A;

(2) a direction that any debt due to her from any of her children is to be forgiven;

(3) a devise of any residence that Ann owned at the time of her death to Stepdaughter;

(4) a bequest of \$100,000 to each of Son A, Son B, Son C, and Daughter;

(5) the residuary disposition of Anne's estate to Son A.

At the time of Ann's death, her estate consisted of the following property:

(1) 100 shares of Good Oil Company, having a value of \$10,000;

(2) a promissory note from Stepdaughter payable to Ann for \$10,000;

(3) a residence having a fair market value of \$100,000, encumbered with a mortgage that has encumbered the residence since 1980 and that has a current balance due of \$20,000;

(4) cash of \$300,000, after payment of all debts, funeral expenses, costs of administration, and taxes.

Ann had previously sold the stock that she had owned in PrimeStar.

What property and in what amounts should each person named in Ann's will receive? Discuss fully.

QUESTION 4

Polly was driving in the downtown area of Anytown, Ohio with her mother, Mona, and daughter, Diana, as passengers in the car. Just as Polly's vehicle entered an intersection, another vehicle, which was drag racing at the time, ran a red traffic light and collided with Polly's vehicle. Everyone in Polly's vehicle sustained injuries, and Polly's vehicle, which was a total wreck, had to be towed from the scene.

Diana sustained only minor physical injuries and was treated in the emergency room and released from the hospital. Although her physical injuries were minor, Diana is now afraid to ride in the car and frequently wakes up at night, screaming about the accident. Polly has taken Diana to the pediatrician several times for consultations.

Polly sustained soft tissue neck and back injuries in the accident. Her doctors opine that the injuries should subside sufficiently to allow her to resume normal activities in six months and have prescribed physical therapy in the meantime.

At the time of the accident, Polly, whose husband had recently left her, was living with Mona. Polly was not employed, but she had been actively planning to open her own business, a children's book store, in three weeks. She had ordered an extensive inventory of books, due to arrive in two weeks, and had entered into a one-year lease to rent "the perfect spot" in a busy strip mall. Because of her injuries, she has been unable to do the remodeling and other work necessary to prepare for the opening of her business. She anticipates that she will not be able to open the store for six to eight months. Polly is also concerned that she will be obligated to pay for the shipment of books she ordered and to pay the monthly rent for the store even though she will be unable to open the store and generate revenues.

Mona was most seriously injured. She suffered a broken arm and leg and severe head injuries. After emergency trauma surgery and a two-week stay in the hospital, Mona died from her injuries. Up to the time of her death, she had been a school teacher for 23 years. She had been supporting Polly and Diana ever since Polly's husband had run off.

Mona had life insurance payable to Polly as the beneficiary. Both Mona and Polly had insurance that covered most of the hospital and medical bills for Polly, Diana, and Mona, and Polly's automobile insurance covered the damage to her car.

Under Ohio law, what types of damages are recoverable by Polly, Diana, and Mona, what components of recovery will be considered, and how will their damages be measured? Discuss fully.

QUESTION 5

Sean worked for Frank, his father, in Frank's furniture store, which was operated as a sole proprietorship. Sean had ambitions to take over the business in a few years when Frank retired. Frank never completely trusted Sean's business judgment and, instead, relied heavily on Randy, Frank's trusted store manager of many years. Frank had always harbored the notion that he might sell the business to Randy upon Frank's retirement.

To prove to his father that he could run a business on his own, Sean set out to build and operate a small store in a nearby town. Sean applied for a \$100,000 loan from Bank, which agreed to lend him the money only if Frank also signed the promissory note. Frank agreed but made it clear to both Bank and Sean that Sean was to be on his own and that the new store would not be considered a branch of Frank's store.

Realizing that he would need Randy's cooperation if he were to make the second store a success, Sean told Randy that, because he was a possible successor to the business, Bank also required his signature on the note. Randy agreed to sign the note.

Bank prepared a valid promissory note for \$100,000. Sean and Frank signed it at the bottom right-hand corner as follows:

/s/ Sean

Maker

/s/ Frank

After Frank had left the room, Sean told Bank's loan officer that Randy also wanted to sign the note as an indication of his commitment to the business. He took the note out to the lobby where Randy was waiting. Randy signed the note on the back in a space that provided as follows:

Indorsements: Collection Guaranty Only

/s/ Randy

After a few months, Sean's store failed. Discouraged, Sean left town, and his whereabouts are unknown. The balance due on Bank's note after a foreclosure sale is \$80,000.

1. What are Frank's and Randy's obligations to Bank on the note? Discuss fully.
2. What are Frank's and Randy's rights against each other on the note? Discuss fully.

QUESTION 6

Acme constructs and installs electronic control panels ("panels"). Acme entered into the following written contracts:

Project No. 1. Acme contracted with the City of Cleveland to install panels at a city electric plant. At the time of entering into the contract, Acme had a revocable license from Licensor, which owned the patents on components needed for the construction of Cleveland's panels. Cleveland was not aware that the only way Acme could construct the panels was by using the licensed components, and the contract was silent on the subject.

Unknown to both Cleveland and Acme at the time they entered into the contract, Licensor had sold the patents to Newco. Before Acme could build the panels for the Cleveland contract, Newco lawfully revoked the license to Acme, thereby revoking Acme's right to use the patented components. Newco will agree to issue a new license to Acme only if Acme agrees to pay twice the price it was paying under the earlier license. Such a price increase would make the contract unprofitable for Acme.

Project No. 2. Acme contracted with the City of Delaware to install replacement panels for an aging city water plant. Acme built all the panels as required, but just before the actual installation date the plant was destroyed by fire. The fire marshal is suspicious that the fire may have been set by disgruntled city employees.

Project No. 3. Acme contracted with the City of Toledo to manufacture and install panels at its new electric plant. The contract did not mention that it would be necessary for Toledo to obtain a zoning variance to build the plant. When Toledo attempted to get the variance, the Zoning Board unexpectedly refused to grant the variance and all appeals have failed. Thus, the new plant cannot be constructed at the intended site, and Toledo refuses to accept the panels that Acme had manufactured.

Project No. 4. Acme entered into a written contract with Smith, a commercial painter, by which Smith agreed to paint the walls of Acme's business office. Before starting the work, however, Smith suffered a heart attack which prevents him from doing the job. The lowest cost substitute painter Acme has been able to find will cost double Smith's price. Smith is unable to do the work and refuses to obtain a substitute painter.

- (1) Describe the general contract principles that determine whether the parties are or are not discharged from their obligations under the above contracts. Discuss fully.
- (2) Applying those principles to each of the above contracts, what are Acme's rights and obligations on each of the contracts? Discuss fully.

QUESTION 7

Jeannie sued Acme Pharmaceutical Company ("Acme") in state court. Her complaint alleges that she sustained severe liver damage as a result of using PainBegone, an over-the-counter pain killer manufactured by Acme; that the liver damage has made Jeannie an invalid; and that she can no longer work and now requires a liver transplant. Jeannie's attorneys seek to recover damages, including Jeannie's medical expenses and lost wages.

In the course of discovery, Jeannie's attorneys learned that, in the ordinary course of business, Acme's marketing department generates monthly written reports summarizing all complaints received from consumers and physicians regarding PainBegone. Acme circulates the monthly reports to its product development and pharmaceutical research staffs.

Jeannie's attorneys also learned that, at the request of Acme's in-house attorneys, Acme investigates and prepares written reports on any complaint that asserts that the use of PainBegone has caused some type of injury. This is done routinely, regardless of whether a lawsuit has been filed on any particular complaint. The files and reports on these injury-based complaints are sent to Acme's in-house attorneys who, in turn, circulate the reports to Acme's product development and pharmaceutical research staffs.

Doctor, a well-respected researcher, is the only researcher conducting comprehensive independent studies of the impact of PainBegone on liver function. Although he has not yet published any findings, Doctor has been conducting his studies for years and possesses the only existing independent store of research data on the effects of PainBegone on liver function. When Jeannie's attorney's contacted Doctor's office to consult with him, they learned that Doctor had already been retained by Acme as a consulting expert in the suit filed by Jeannie.

Doctor has not been identified by Acme as an expert who will testify on behalf of Acme. He has, however, submitted to Acme a written report expressing an opinion on the viability of Jeannie's claim. Doctor's opinion is based on his accumulated research data.

Jeannie's attorneys have made formal discovery requests for copies of Acme's monthly complaint reports, all documents relating to investigations of injury-based complaints, and all documents Acme has received from Doctor. Acme's attorneys have refused to produce any of the documents. As to the monthly complaint reports and the documents relating to the investigations of injury-based complaints, Acme's attorneys object on the ground that they are work product. As to Doctor's report, they object on the ground that Doctor has not been identified as a testifying expert.

Acme's attorneys have made formal discovery requests that Jeannie produce all of her medical records and tax returns showing her earnings for the past 10 years. Jeannie's attorneys have refused to produce any of the documents and have objected on the ground that the documents are privileged.

Each side has filed a motion to compel production of the requested documents.

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

QUESTION 8

The After-School Act ("Act"), a state statute, authorizes local school boards to adopt reasonable regulations for the use of school property for specified purposes when the property is not in use for school purposes. The list of specified purposes does not mention use for religious purposes. The Act requires that the permitted uses shall be open to the general public.

Pursuant to the Act, the Jemo City School Board ("Board") issued rules under which it has allowed social, civic, political, and recreational after-school uses of its high school ("School") property, but it has consistently denied requests for use by religious organizations.

Teacher is employed as a teacher at School. Teacher's son, Son, is a graduating senior at School. Teacher and Son are members of Heart Church ("Church"), a small fringe denomination.

As part of her religious observance, Teacher chants four times daily. While at work, Teacher softly chants religious incantations during her lunch hour in the teachers' lounge. Several other teachers have objected, complaining that they were annoyed by Teacher's engaging in her unorthodox religious practice on school property. Board told Teacher that, if she did not cease her religious chanting on school property, she would be terminated. Teacher persisted, and Board terminated her.

Church applied to Board for permission to use School facilities for a lecture series on the religious perspective of marriage. Church stated that the lecture series would include religious content but that it would be open to the general public, not just members of Church. Board denied Church's application on the grounds that it does not allow after-school use for church-sponsored or religiously oriented events.

Board invited Minister, a leader of a prominent local church, to deliver prayers during School's upcoming graduation ceremony. Teacher objected because she did not want Son subjected to the prayers. Board declined to withdraw the invitation to Minister and told Teacher to keep Son at home if she did not want him to hear the prayers.

What rights guaranteed by the United States Constitution, if any, did Board violate by:

1. Terminating Teacher because she refused to stop chanting during her lunch hour?
Discuss fully.
2. Refusing to allow Church to use School's facilities? Discuss fully.
3. Allowing Minister to lead the graduation prayers over Teacher's objection?
Discuss fully.

QUESTION 9

President is CEO of NetScope, a computer manufacturer. The shares of NetScope are publicly held and traded on a national stock exchange.

Chief, Chief of Research and Development for NetScope, sent President a memorandum advising President that Chief's department had developed a revolutionary new microchip that would increase NetScope's revenues by 25% annually. Secretary, who had prepared the memorandum for Chief, believed in Chief's projections and purchased 1,000 shares of NetScope stock.

The day after receiving Chief's memorandum, President instructed his broker to buy 10,000 shares of NetScope stock in "street name," i.e., in the name of the broker as nominee, thus not disclosing the true name of the purchaser.

President prepared a report for NetScope's Board of Directors and sent it for printing to Printing Co., a company NetScope uses for all its corporate printing. Printer, an employee of Printing Co., learned of the new microchip while reading the galley proofs of President's report. Knowing a good thing when he saw it, Printer called his stockbroker, Broker, told Broker what he had learned, and purchased 10,000 shares of NetScope. Broker, acting on Printer's information, also bought 10,000 shares.

The day following receipt of Chief's memorandum, President was playing golf with his friend, Friend. President casually mentioned the new microchip to Friend and told him that "it should be a really good thing for NetScope." On the following day, acting on President's remarks, Friend purchased 10,000 shares of NetScope stock.

Two weeks later, NetScope made a public announcement of the development of the new chip. Immediately thereafter, NetScope's stock, which had been trading at around \$25, went up to \$50. A few days later, President, Secretary, Printer, and Broker each sold their shares, realizing "short swing" profits of about 100% on their investments. Friend did not sell his shares.

Did the actions of President, Secretary, Printer, Broker, and/or Friend violate the federal Securities and Exchange Act of 1934, and, if so, what liabilities do they each have? Discuss fully.

QUESTION 10

Victim was driving her car around Dead Man's Curve when her car and a car driven by Driver collided. Driver fled the scene of the accident. A police officer, Officer, investigated the accident. Victim subsequently sued Driver for negligence.

A year later, Victim's suit against Driver came to trial before a jury. Victim's theory of the case was that Driver had been travelling at an excessive speed as he approached Dead Man's Curve. Driver's theory of the case was that Victim had crossed into Driver's lane of travel. The following occurred at the civil trial:

Without any evidence that Victim had ever stated otherwise, Victim testified that she spoke with Officer at the scene of the accident:

- [1] "I told Officer right then and there that I had been driving very carefully when Driver's car hit me."

On cross-examination, Driver denied any knowledge that it was dangerous to drive at excessive speed on the approach to Dead Man's Curve.

- [2] Victim's attorney offered in evidence an accident report from an accident at Dead Man's Curve in which Driver had been involved two years earlier. The report indicated that Driver was at fault because he had been driving at an excessive speed as he approached Dead Man's Curve.

Pass, who had been Driver's passenger at the time of the accident, testified that, before Driver fled the scene of the accident, Pass said to Driver, "You took that turn way too fast."

- [3] Pass said that Driver did not respond orally but that Driver shrugged his shoulders.

On direct examination, Wit, who had been a passenger in Victim's car at the time of the accident, stated that Victim had been driving carefully.

- [4] On cross-examination, Driver's attorney offered Wit's deposition testimony, in which Wit had stated that she believed Victim had probably crossed the double yellow lines on the road.

Officer testified that he had spoken to Wit at the scene of the accident and that Wit had told him:

- [5] "Just before the collision, Victim was distracted by something at the side of the road and wasn't looking at the road ahead of her."

Assume that, at each of the numbered points above, an appropriately worded objection was lodged that the proffered evidence constituted hearsay under the Ohio Rules of Evidence. How should the court have ruled on each objection? Discuss fully.

QUESTION 11

Wife was operating an automobile in which her spouse, Husband, was a passenger. She was driving well above the posted speed limit when she lost control of the automobile and crashed into a large tree that had been planted near the road by Owner. Husband was killed, and Wife was seriously injured. Wife was charged with the crime of vehicular homicide as a result of Husband's death.

Wife consulted Lawyer, whom she knew was newly admitted to the practice of law. Lawyer's legal experience consisted of his current employment as a law librarian and the occasional representation of acquaintances in simple real estate transactions. In fact, Wife had met Lawyer one year ago when Lawyer had represented Owner in the sale of Owner's home to Wife's friend. At the conclusion of that transaction, Lawyer had sent Owner a termination letter telling Owner that Lawyer's representation of Owner was concluded and that Lawyer was no longer his attorney. Lawyer has had no other contact with Owner since that time.

Wife asked Lawyer to represent her as follows: (1) to undertake her defense in the criminal case against her; (2) to file a personal injury lawsuit against Owner on the theory that Owner had been negligent in planting the tree too close to the road; (3) to file a wrongful death lawsuit against Owner on behalf of Wife, the two children of Husband and Wife, and the parents of Husband; and (4) to arrange for her to be appointed as administratrix of Husband's estate for the purpose of initiating the wrongful death suit.

Lawyer agreed to represent Wife in all of the matters indicated above. In the criminal case, he offered to represent Wife free of charge unless she is acquitted and, if acquitted, Wife would pay Lawyer \$10,000. Wife agreed.

In the civil suits, Lawyer offered to advance and pay all litigation costs and Wife's living expenses until the civil suits are concluded in exchange for Wife's oral agreement to pay Lawyer 60% of the proceeds from each of the civil suits. Even though Wife could afford to pay litigation costs and living expenses herself, she agreed to the fee arrangement on the condition that she would not have to reimburse those costs and expenses if she lost the civil suits. Lawyer agreed to Wife's condition.

Wife wants only Lawyer to represent her because of their past acquaintance. Figuring that he can learn as he goes along, Lawyer has agreed to represent Wife and has decided not to associate other counsel.

What ethical issues, if any, are revealed by Lawyer's conduct in his representation of Wife? Discuss fully.

QUESTION 12

Buyer wants to purchase a parcel of land that is not currently subject to any valid easements. He is considering making an offer on one or more of the following properties.

Whiteacre

For a number of years, Whiteacre was subject to a valid, recorded power line easement in favor of Local Utility Company. Last week the owner of the utility company declared in front of the owner of Whiteacre and several witnesses, "Local Utility Company hereby releases Whiteacre from any and all easements in favor of Local Utility Company."

Blackacre

Adam owns Blackacre. Several years ago, Blackacre became subject to a valid express easement which granted Owner, the owner of the adjoining property (Live Oak), the right to use a path across the southwest corner of Blackacre to reach a nearby meadow. Last year, Owner died, leaving Live Oak to Adam. After owning Live Oak for one week, Adam sold it to New Owner in a transaction in which there was no mention of any easement. Since she bought Live Oak, New Owner has been walking over the same path previously used by Owner across the southwest corner of Blackacre to reach the meadow.

Redacre

Redacre was created one year ago when the owner of a large tract of land divided his property into two parcels, Redacre and Blueacre. He retained ownership of Redacre and conveyed Blueacre to his son. Because of the way the property was divided, only Redacre has access to any public road. The only way to reach the road from Blueacre is by passing over Redacre. Although the son, residing on Blueacre, has been using a road on Redacre to get to and from the public road, no written instrument has ever existed granting the son an easement over Redacre. Redacre is now for sale.

Greenacre

The owner of Greenacre has a full-length basketball court in his backyard. Last year, he wrote an unsolicited letter to his next door neighbor telling the neighbor that, until further notice, he could play basketball on the court every Saturday afternoon. The letter was signed by the owner of Greenacre, witnessed and notarized. Since receiving the letter, the neighbor has in fact played basketball at Greenacre every Saturday.

Addressing each of the parcels separately, explain which ones are currently encumbered by valid easements and which are not. Discuss fully.