

QUESTION 1

Frank and Mae were married in Anytown, Ohio in 1960. They were lifetime residents of Anytown and had three children, Alex, Bill and Connie.

Alex graduated from college in June 1990 and, upon graduation, Frank gave Alex \$10,000. At the same time that he gave Alex the money, Frank also gave Alex a short note stating as follows:

I am very proud of you son and as a result, I am giving you an early payment of \$10,000 to be considered part of your inheritance.

/s/ Frank

Two years later, Bill graduated from college. Frank also gave Bill \$10,000; however Frank did not give Bill a note similar to the one that he gave Alex. Shortly after receiving the \$10,000 payment, Bill wrote a short note to his father in which he stated:

Thank you, Father, for the \$10,000 gift. I will use the money to pay off my student loans.

/s/ Bill

Connie has just recently graduated from college. While traveling together to Connie's graduation ceremony on June 1, 1998, Frank, Mae, and Alex were involved in a serious automobile accident. Frank was killed instantly. Mae survived Frank by five days, dying on June 5, 1998. Alex later died on June 20, 1998, as a result of the injuries he sustained.

At the time of their deaths, Frank and Mae owned the following property:

- A. \$90,000 in a passbook savings account titled solely in Frank's name.
- B. A \$10,000 U.S. Savings Bond titled in Mae and Connie's names, jointly with a right of survivorship.
- C. Mae's diamond necklace -- valued at \$15,000 -- which was located in Mae's safety deposit box.

Accompanying the diamond necklace was a short note written by Mae which stated as follows:

Upon my death, I bequeath this diamond necklace to my daughter, Connie.

/s/ Mae

The only person who signed the note was Mae.

Alex is survived by his wife, Daisy, and his two minor sons, David and Doug. Bill is currently living in California and as a result, Connie has hired you to handle Frank and Mae's estates. After Alex's death, Connie located the note which had been written by Frank to Alex, and the note that Bill gave to Frank. Connie has also provided you with the original handwritten note of Mae which was found in Mae's safe deposit box.

In addition to the three notes, Connie has also provided you with the passbook for the savings account titled only in Frank's name, and the U.S. Savings Bond. Connie has indicated that there are no other writings or documents dealing with how Frank or Mae wanted to distribute their property. Connie has asked you to provide her with legal advice regarding the following questions:

- A. Do the notes from Frank to Alex and from Bill to Frank have any legal significance?
- B. Who is entitled to receive a share of the \$90,000 passbook savings account? For each person or estate, identify the amount they are entitled to receive.
- C. Who is entitled to receive a share of the \$10,000 U.S. Savings Bond? For each person or estate, identify the amount they are entitled to receive.
- D. Who is entitled to receive Mae's diamond necklace?

Prepare a brief memorandum to Connie in response to her questions and explain your legal rationale.

QUESTION 2

A seven-year-old child (“Child”) is the alleged victim of an act of sexual abuse by her stepfather (“Step”). Child’s mother (“Mom”) took her to the local family services agency after being referred there by a doctor (“Doc”) who did a physical examination of Child upon Mom’s insistence that Step had molested Child.

During his examination of Child, Doc found evidence of physical and possibly sexual trauma consistent with Mom’s allegations of sexual molestation.

At their interview at the family services bureau, Child and Mom related the identical story about Step to Sally, the social worker. Sally is a ten-year veteran of the agency who investigated the case, and, because of her investigation in this case and her experience in cases like this, Sally is of the opinion that Step committed the act of sexual molestation upon Child. Based on that opinion she refers the case to the County Prosecutor, and an indictment for sexual abuse is issued against Step.

Upon receipt of his indictment, Step notifies you of his predicament and asks you to represent him. Step tells you that he didn’t do this and that he has several character witnesses who will vouch for him and say he would never do such a thing.

During your investigation of the case, you learn that the only eyewitness against Step is Child. You also learn that Mom and Step have been experiencing marital problems and that Mom is out to get Step because he was unfaithful to her with a younger woman.

At the pre-trial with the Prosecutor, you learn that the State will call the following witnesses:

Child:	to testify about what Step did to her;
Mom:	to testify about what Step did to Child;
Doc:	to offer the opinion that sexual molestation of Child did occur;
Sally:	to offer the opinion that Step did the sexual molestation.

Pursuant to your duty to provide reciprocal discovery, you tell the Prosecutor that you will call several character witnesses and your client, Step. The Prosecutor then informs you that Step has a criminal conviction for sexual molestation from 15 years ago and that she will use it against your client if he testifies.

Your trial preparation includes a review of the Ohio Rules of Evidence so you can challenge the Prosecutor’s evidence and avoid any problems with the witnesses you intend to present.

Identify and discuss the evidentiary issues involved with each of the Prosecutor’s witnesses and with all of the defense witnesses, and evaluate the admissibility of the proposed testimonies.

QUESTION 3

I. City of Destruction

The City of Destruction (“Destruction”) has enacted a municipal ordinance authorizing its Department of Code Enforcement (“DCE”) to inspect, condemn, and demolish, if necessary, any unsafe structure to safeguard the public. Once a structure is condemned, the property owner is granted a reasonable time period to cure the defects. If the owner fails to cure the defects, Destruction is authorized to take appropriate action. Destruction’s ordinance is constitutional.

Mr. Rubble owns the newly constructed but unoccupied Plush Palace, a hotel located in downtown Destruction. The Plush Palace was constructed for \$3,000,000.

On May 13, 1998, DCE inspected the Plush Palace to certify it for occupancy. Upon inspection, DCE found that the hotel’s foundation was defective because it was incorrectly formed and poured. The foundation could not support the weight of the building when occupied with people and furniture. Further, if not repaired immediately, the Plush Palace would collapse endangering the surrounding buildings and the public at large. Hence, DCE denied Mr. Rubble an occupancy permit.

On May 14, 1998, DCE condemned the Plush Palace and ordered Mr. Rubble to repair the foundation within 30 days (a reasonable time period). The order further provided that the failure to comply would result in demolition of the Plush Palace on or after June 17, 1998. Mr. Rubble failed to comply with the Order. On June 18, 1998, DCE demolished the Plush Palace.

Mr. Rubble feels that the demolition of his building was a violation of his rights. He believes that Destruction should pay him \$3,000,000, which is just compensation.

- a) Advise Mr. Rubble as to whether Destruction violated his rights by demolishing the Plush Palace.
- b) Advise Mr. Rubble as to whether Destruction is obligated to pay him any compensation for the demolition of the Plush Palace.

Explain your answers and discuss all applicable rules of law.

II. City of Pain Park

Mr. Hagman owns a 100-acre farm which is located in two cities, to-wit: 50 acres situated in the City of Pain Park and 50 acres situated in the City of Amer.

Pain Park has decided to build a new football stadium with parking for its hometown Booters football team. The stadium will be available for other public community activities. Pain Park needs all 100 acres comprising Mr. Hagman’s farm to build the stadium.

On December 1, 1997, Pain Park offered Mr. Hagman \$100,000 for his farm. Mr. Hagman has lived on the farm all of his life. He rejected the offer for sentimental reasons.

Pain Park, on January 10, 1998, adopted a resolution regarding the alleged necessity and intent to appropriate Mr. Hagman's farm, including the 50 acres located in Amer. An ordinance authorizing the law director to commence an appropriation action was passed by the Pain Park City Council on January 20, 1998. The next day, January 21, 1998, Pain Park commenced an eminent domain action against Mr. Hagman seeking fee simple title to all 100 acres by filing a Petition for Appropriation in Common Pleas Court of Campy County, the county in which both Pain Park and Amer are situated. In its petition, Pain Park proposes to pay only \$1,000 per acre.

It is undisputed that Pain Park has the power of eminent domain.

Mr. Hagman is very disturbed over the appropriation action. He has retained you to represent him in the action. During your initial consultation, he asks that you answer the following questions:

- a) Can Pain Park use its eminent domain power to acquire title to the 50 acres located in Amer?
- b) If the Court determines that Pain Park can acquire any portion of Mr. Hagman's farm, what sort of compensation is he entitled to receive? Do not focus on the amount.
- c) Is Mr. Hagman entitled to a jury trial on the issue of compensation? If so, what is the role of the jury regarding the issue of compensation?

Explain the legal basis for your answers.

QUESTION 4

Last month, Robin Watcher was strolling along a country lane with her expensive, high-powered binoculars, looking for birds. As she rounded a corner, she came upon Louie and Lennie Local, the young sons of a nearby farmer.

“Hey, those are nice glasses,” Louie said as he approached Watcher.

“Get away from me,” Watcher replied, giving Louie a firm shove backward to emphasize her point.

Louie stepped toward Watcher again and said, “All I want is those glasses,” at which point Watcher pulled a pistol from her carry bag and pointed it at Louie’s head.

“I could kill you,” Watcher said. Louie began to duck. Watcher elevated the gun slightly and fired above Louie’s head, intending to scare him. Louie, terrified, passed out and fell, striking his head on the road and causing serious injuries. His brother Lennie collapsed on the ground and became helplessly hysterical, thinking his brother had been killed.

The bullet fired by Watcher, meanwhile, passed through some undergrowth and struck Harvey Hiker in the arm. Watcher was not aware of Hiker’s presence.

Hiker began bleeding profusely. He spotted a nearby large house, which happened to be the country estate of Landon Gentry. Hiker ran to the house to seek assistance. He rang the doorbell but no one answered. Desperate because of the blood he was losing, Hiker kicked in a large window to gain access to the house. Unfortunately, because the drapes were closed, he failed to see a valuable antique vase on a table in front of the window. The vase was destroyed by his kick.

Once inside, Hiker grabbed a towel to staunch his bleeding and then called for emergency assistance. While he waited for help, Landon Gentry arrived home. Seeing the window and his precious vase broken, Gentry became furious. Hiker tried to apologize, said he would wait outside for the ambulance, and started to leave the house.

“You’re not going anywhere,” Gentry yelled. “Sit in that chair.” Hiker was too weak to resist and collapsed into the chair.

By the time the paramedics arrived, Gentry had calmed down and realized Hiker was in serious trouble. He let the paramedics in and they took Hiker to the hospital.

Gentry then noticed that Hiker’s wallet had fallen out onto the chair. He found \$500 in the wallet. Gentry thought \$500 woefully insufficient to cover the damage to his property, but felt it was a start. He took the money to the bank and put it into his savings account.

Among these five individuals-- Watcher, Louie and Lennie, Hiker and Gentry--at least seven potential civil causes of action exist. In your answer, discuss who can sue whom; what the basis is for each potential cause of action; any defenses that are available to any party; and what likelihood the plaintiff in each action has of prevailing on the merits.

QUESTION 5

Abner Little had only one problem. His mother, Mrs. Little, always said that he was too good to everyone and that “Abner’s just a boy who can’t say no.”

When he met Sue, Abner could not help falling for her sweet talk. She sweet talked him into making love to her, and as a result Sue got pregnant. Abner wanted to do the right thing and marry her but she kept finding excuses. She had concluded he was just too easy-going and not good husband material. After her son, Bobby, was born, she married Tom. Abner really wanted to see his son and provide for him, but Sue would not let him. Abner did not want to cause any fuss so he just sent gifts to Sue’s parents to give to Bobby.

Paula, whom he had known since high school, approached Abner with a proposition. She and her long-time female partner decided they wanted to have a child. She asked him if he would provide the semen to impregnate her. She promised she would not seek any support, but if he wanted a relationship with the child, that would be acceptable. As a result, Carla was born, and Abner did visit with Carla regularly.

Abner’s friends, Joan and Jack Jones, had been married for a number of years. To their sorrow, they discovered, after many tries to have children and after tests and procedures, that the reason they were unable to have children was traceable to Jack’s becoming sterile after a bad case of the mumps when he was at college. Their doctor suggested artificial insemination. The Joneses knew about Bobby and Carla and, seeing that Abner’s children were exceptionally healthy and bright, decided they preferred a known donor with proven results over an unidentified donor. They asked Abner to be a donor for artificial insemination into Joan. Abner agreed to be a sperm donor for his friends’ sake. He went to their physician, who accomplished the procedure. Twins David and Darla were the result. For a couple of years Abner enjoyed visiting his friends, the Joneses, and playing with the twins.

Abner was struck in the head by a golf ball and his personality changed. The following have now happened:

1. Tom has filed a petition for the adoption of his step-son Bobby, and Abner was notified. Abner decided to oppose the adoption.
2. Paula did not like the change in Abner’s personality and would not let Abner visit with Carla.
3. Abner has decided he should establish his paternity of Carla, David and Darla.
4. Abner’s mother wants visitation with all of her grandchildren.

Discuss what actions Abner can take and his rights regarding Bobby, Carla, and the twins.

Discuss what actions Mrs. Little can take and what rights she has regarding Bobby, Carla, and the twins.

QUESTION 6

Monte is considered by all who know him to be an eccentric. And though not a lawyer, Monte is versed in the law. One recent day, Monte wakes early to begin a busy day of offers, acceptances, and considerations of considerations. You are an observer. “For my first legally enforceable agreement today,” Monte says to himself, “I will form a unilateral contract.” And so Monte offers a reward of \$100 to anyone who finds and restores his faith in the legal system.

I. Unaware of Monte’s offer, an elderly icon by the name of Holmes comes along. He says to Monte, “Why the long face?” Monte tells Holmes of his disenchantment with the current state of the law, but not his offer of reward. To which Holmes replies, “My dear Monte, cheer up. As I’ve been saying for decades, and as law students have been accepting without question for nearly as long, the life of the law has not been logic but experience.” This makes Monte feel worse.

a. Holmes later learns of the previous offer of reward. Should he collect? Why or why not?

b. What if Holmes’s words instead, as if by magic, caused Monte to conclude, “You know, Holmes is right. My faith is restored. Thanks a lot Holmes.” Holmes, later learning of the previous offer of reward, demands it. Should he collect? Why or why not? Is there any difference if Holmes was aware of Monte’s offer before uttering his healing words?

II. In order to make money to pay his mortgage, Monte offers a weekly lecture series on the Common Law each year. Attendance is, needless to say, sparse. In fact, there are no students, except for Holmes’s ten-year-old son, Oliver. Monte gives several lectures to Oliver, intending to complete the six-month regimen and to charge Holmes the customary price. Holmes never asked Monte to give these lectures to his son but silently allows them to continue to the end, all the while having reason to know of Monte’s intentions.

a. Is Holmes obligated to pay the price of the lecture series? Why or why not?

b. Is there any difference if Holmes was unaware of Monte’s intentions? Why or why not?

III. Later, Monte comes across an old acquaintance by the name of Singer. By profession, Singer is a singer. Monte says to Singer, “You know, Singer, interest in my Common Law lectures is waning, especially among the lawyers. Perhaps if we combined our expertise, greater interest would be generated. If you will come and sing Broadway show tunes at next Tuesday’s lecture in your best Frank Sinatra style, I will pay you \$100.” Singer responds, “I’m thrilled to do it and I accept. For \$100, I will sing Broadway show tunes at next Tuesday’s lecture in my very best Elvis Presley style.” Monte wonders if something legally significant has just happened.

Has a contract been formed? Why or why not?

QUESTION 7

Susan Clarke, a former law school classmate, comes to your office seeking advice. Ms. Clarke, an assistant county prosecutor for ten years, has been in private practice for the past year and a half. Because her practice recently became very busy, she hired an associate, Joseph Burke. Mr. Burke just received his license to practice law this year, but he has fifteen years of experience as a police officer.

After hiring Mr. Burke, Ms. Clarke discovered that her client base was not growing as fast as she thought it would. Concerned that she will not have enough work to keep two attorneys busy, Ms. Clarke has decided to advertise the services of her firm.

- 1) Ms. Clarke has designed the following web page ad:

CRIMES - R - US

Former Prosecutor and Police Detective
SPECIALIZING IN CRIMINAL DEFENSE

Free initial consultation

Thereafter you pay an Economical Hourly Rate or on a Contingent Fee Basis
“Sue Clarke believed in my innocence and got me acquitted,”

D.W., former client

274-6377
1234 Main Street, Suite 204
Akron, Ohio

Ms. Clarke wants your legal opinion on her advertisement. Critique the entire ad. Explain how the ad might be changed, if changes are needed.

- 2) Ms. Clarke is also considering a proposed arrangement with another former law school classmate, Fred Deacon, an attorney who practices primarily domestic relations law. Mr. Deacon has agreed to refer criminal cases to Crimes-R-U's for a finder's fee of \$50 - \$100.

Do you recommend that Ms. Clarke pursue such an arrangement? Explain your reasoning.

- 3) After leaving your office, Ms. Clarke drove by the scene of a minor traffic accident. She stopped to offer help and, while waiting for the police to arrive, she spoke to the driver of the damaged vehicle, Alice Geller. Ms. Geller had a strong odor of alcohol about her person, had glassy and bloodshot eyes, staggered as she walked, and appeared to be very intoxicated. Ms. Clarke informed Ms. Geller that she was an attorney and advised her that, if she was in fact legally intoxicated, she should refuse to take the breathalyzer test and then call a good lawyer. Ms. Geller asked Ms. Clarke whether she would be her lawyer.

Should Ms. Clarke represent Ms. Geller? Explain.

4) When Ms. Clarke arrived back at her office, one of her parents' friends, Jack Feeney, called her about representing him in a civil matter. (Ms. Clarke does occasionally take civil cases.) Mr. Feeney wants to sue his neighbor because he "put up an ugly fence that blocks my view." After discussing the situation with Mr. Feeney, Ms. Clarke concluded that the suit would be meritless and she told him so. His response was, "I don't care if I can get any money out of him, I just want to inconvenience him. Besides, the threat of legal action might get him to take that fence down."

Ms. Clarke is considering representing Mr. Feeney in this matter. She knows he can afford to pay her hourly rate and she needs the income. What should she do and why?

QUESTION 8

MEMORANDUM

TO: Law Clerk
FROM: United States District Judge I. Neda Helpp
RE: Warbucks v. Trador

The above-captioned case was tried to the Court last week. I want you to draft a proposed court decision based on these facts and your legal knowledge.

George (“Daddy”) Warbucks was a hard-driving and hugely successful industrialist. Late in life, Warbucks adopted a young orphan named Annie. He spent the remaining years of his life, at Annie’s urging, making vast charitable contributions.

Warbucks died last year. He left his remaining estate, including his vintage car collection, to Annie. Estate taxes, however, forced Annie to sell Warbucks’ four prized vintage automobiles: a 1929 Auburn 8-120 Boat Tail Speedster, a 1929 Dusenberg Model J Murphy convertible, a 1932 Mercedes-Benz SSK and, the crown jewel of the collection, a 1938 Bugatti 57 Atlantic.

Annie sought the assistance of Warbucks’ long-time friend, Telford Trador, to handle the sales. Trador, who had been Warbuck’s broker in purchasing each of the cars, operates the country’s foremost vintage car auction. Trador nonetheless suggested that he be allowed to arrange private sales of the automobiles. “I’ll find you the right buyers and you’ll get top dollar.” Trador was very direct: “I really want to do this for you. Daddy Warbucks was my friend and always paid generous commissions. I’ve already made enough off these cars; I won’t charge you a cent.” Annie quickly agreed, telling Trador to sell the automobiles to anyone he thought appropriate, “as long as it’s not Charles ‘Rooster’ Hannigan,” Warbucks’ long-time business nemesis.

Roughly two weeks later, Trador informed Annie that he had found buyers for all four cars. “The Auburn will be sold to the Auburn Museum in Auburn, Indiana, where the car was made. The Museum will pay you top dollar for the car and has offered to pay me a \$10,000 finders’ fee if you agree.” Trador also told Annie that he had located unnamed private collectors who would buy the Dusenberg and Mercedes at prices Annie specifically authorized. As to the Bugatti, Trador explained that it had been his lifelong ambition to own this car, and he now had the financial resources to purchase the Bugatti himself. “I want you to be comfortable selling it to me, so I’ll pay you fair market value plus \$100,000.” Annie responded, “Leapin’ lizards!” and quickly agreed. All the transactions were consummated and Annie soon received more than \$2 million for the four automobiles.

Less than 60 days later, Annie learned that Rooster Hannigan was driving the Mercedes around town, telling his friends that “old Warbucks must be spinning in his grave.” Outraged, Annie hired a private detective, Sam Spade, to investigate. The evidence Spade developed was presented at trial. It established that Trador arranged the sale of the Mercedes to Hannigan because “Hannigan was willing to pay more than

anyone else for that car and I knew Annie needed the money. Daddy Warbucks is dead so what's the big deal about selling the car to Hannigan?"

The evidence also proved that, in addition to the \$10,000 Trador received from the Auburn Museum, Trador received a back-end commission of \$25,000 from the purchaser of the Dusenbergs. Trador explained that "I got Annie a very fair price, but my other client, the purchaser, wanted to compensate me for my services in arranging the transaction and he agreed \$25,000 was fair." Trador also admitted that 30 days after he purchased the Bugatti from Annie, he resold it to Sandy Morgan for \$400,000 profit over what he paid Annie. Trador testified "I never discussed the Bugatti with Morgan before I purchased the car from Annie, but I was aware Morgan wanted a Bugatti for his collection and that he had repeatedly said that he'd pay any price if the car became available." Morgan confirmed Trador's story. Trador felt strongly that his actions were appropriate: "I paid Annie a huge premium to buy that car. Why shouldn't I make a profit if I know of a purchaser who will pay even more?"

Based on the facts outlined above, please prepare an analysis explaining the applicable legal duties and legal principles. Please specifically state your conclusions as to the grounds for any liability, the amount of damages that should be awarded, if any, and the reasons for each conclusion.

QUESTION 9

Larry and Lori owned an unincorporated lawn service business (“L-L Lawns”). They maintained a checking account for the business at Savings Bank. Checks drawn on the L-L Lawns account required only one signature.

On July 2, Larry wrote a check to Fertilizer Supply Company for \$1,000. He had intended to make a deposit to cover the check that day, but did not make the deposit until 10:00 a.m. on July 3. When the \$1,000 check was presented for payment at 9:00 a.m. on July 3, there were insufficient funds in the L-L Lawns account to cover it. The bank employee who was handling the matter knew Larry and decided to hold the check until later in the day in case a deposit came in. She attached a note to the check that said, “insufficient funds, 9:00 a.m.” At 4:00 p.m., a supervisor noticed the check had not been processed and issued a notice of dishonor.

As a result, Fertilizer Supply Company canceled L-L Lawn’s account for fertilizer purchases and prosecuted Larry on the check. Larry filed suit against Savings Bank for wrongful dishonor, seeking damages for cancellation of its Fertilizer Supply Company account and for the criminal prosecution.

Also on July 2, Lori wrote a check on L-L Lawn’s account for a new truck for the lawn business. She postdated the check to July 9 so she would have time to cover the check. Later that day, Lori called a friend who worked at Savings Bank, told her she had purchased a new truck and mentioned that she intended to deposit sufficient funds by the 9th to cover the check. Lori asked her friend if she could see that the check did not clear until she could make a deposit.

On July 3, Lori was killed in a car accident. On July 5, the check for the truck was presented for payment. Later that day, Larry called Savings Bank, informed a bank employee of Lori’s death and told the bank employee to dishonor the check. On July 6, Savings Bank paid the check, creating an overdraft in L-L Lawn’s account. Larry filed a second cause of action against Savings Bank for paying the check despite his instruction to dishonor the check.

1. Is Savings Bank liable to Larry for damages due to its dishonor of the \$1,000 check to Fertilizer Supply Company? Discuss fully.
2. Is Savings Bank liable to Larry for refusing to dishonor the check for the truck? Why or why not?

QUESTION 10

Sally was hired in 1996 as a radio dispatcher for the police department of Utopia, Ohio. Her supervisor, Robert Harris (Chief) was the police chief of that city.

From the beginning of her employment with the city, the Chief made it clear to Sally that he was a fervent believer in God's Word. He believed his decisions as police Chief should be guided by the principles of his faith, and he had been sent by God to Utopia to save as many people from damnation as he could.

The Chief had daily conversations with Sally, all of which occurred at work while Sally was on duty. The Chief continuously interjected his religious observations and quotations from the Bible in conversations with Sally.

During Sally's employment, the Chief criticized her for living with a man out of wedlock and asserted he would do something about cleansing her sinful ways. Sally concluded that the Chief considered her immoral.

In an effort to save Sally's soul, the Chief provided Sally with a copy of the Bible and other religious materials. He called her attention to a religious videotape entitled "Hell's Fire" which the Chief placed with the police department's training materials.

Interspersed in the Chief's religious lectures were reminders to Sally's at-will employment status. Sally considered these religious lectures unwelcome but refrained from making her objections to the Chief. Sally felt if she asked the Chief to stop the lectures she would risk being discharged from her job.

A year later, in 1997, Sally disagreed with the Chief who did not favor a centralized dispatching system. Sally told city council members that she favored the system, and it was subsequently approved. Infuriated, the Chief's religious harangues then continued in earnest.

The Chief wanted Sally to attend his Church. Several days later, the Chief called Sally into his office and asked if she attended his Church's services the previous Sunday. When she admitted she had not, the Chief told her she would follow God's way or Satan's way. If she chose Satan's way, she would not work in the police department. Sally told the Chief to "leave me alone."

The Chief then conducted an investigation into Sally's religious background. He discovered Sally was a member of the Quinteria religion. As part of her religion, Sally practices animal sacrifice during religious services as a principal form of devotion. The purpose of the sacrifice is to make an offering to the spirits. The sacrificed animals are then cooked and eaten after the rituals.

The Chief notified the city prosecutor that his employee was in violation of Section 10 of the Codified Ordinances of the City of Utopia which provided:

. . . the practice of killing, slaughtering or sacrificing animals for any type of ritual is forbidden.

The penalty section provides for a fine of \$500 or ten days in jail or both.

The Chief told Sally what he discovered and that he would not permit the “evil spirit” that has taken over Sally’s soul to continue to live in God’s police department. Sally was then charged by the city prosecutor. A municipal judge found her guilty of violating Section 10 and fined her \$500. At that point, Sally told the Chief he had “crossed the line,” and she was going to “get a lawyer and sue him.” A couple of days later, the Chief fired Sally. The Chief stated the firing was due to her deficient performance as a dispatcher.

Sally requested that the public school auditorium be made available for the Quinteria religious services on a weekly basis. The Utopia Board of Education refused. Sally was perplexed since the Board’s regulation provided:

. . . no group may be allowed to conduct religious services on a school premises after school. However, the use of school premises by outside organizations after school for purposes of discussing religious materials is permissible.

Sally filed a lawsuit against the Chief, the city, and the school board in federal district court. Assume all state remedies have been exhausted, and as a law clerk for the district court judge, discuss these three issues:

- (1) Whether the Chief’s conduct and statements to Sally ran afoul of the United States Constitution. If so, which amendment did the Chief violate and how did the Chief violate the constitution?
- (2) Whether the City of Utopia’s ordinance regulating animal sacrifice is in violation of any amendment of the United States Constitution. If so, which amendment and why?
- (3) Whether the Board of Education properly refused use of the high school auditorium.

Please discuss in detail.

QUESTION 11

The development of a new drug, Ziagra, has caused considerable excitement around the U.S. The drug, which is sold only by prescription, requires about one hour to take effect, and has the unique ability to remove facial wrinkles for a 3-4 hour period. It is recommended for use no more than 5 times per week, and only by those over the age of 55, since overuse or use by a younger person can cause a painful tightening of the facial skin.

The drug is being heavily advertised by pharmacists, and to the benefit of consumers, a price war has developed as different pharmacists battle to attract users into their stores to purchase the drug. The manufacturer of Ziagra is flooding mailboxes across the country with advertisements touting the wonders of this new miracle drug that purportedly “makes a person look twenty years younger.”

The American Association of Retired Fellows (“AARF”), a non-profit organization whose members are comprised of retired persons across the United States, is crazy about this new medical breakthrough, and has been handing out pamphlets on street corners to the elderly, explaining the benefits of Ziagra on the well-being and social life of the over 55 population. The pamphlets also provided useful information on the recommended dosage and potential side effects.

In order to abate the sweeping hysteria, several countermeasures have been taken by various government authorities in the state of Kismet, a conservative midwestern state in the United States:

1. The Kismet State Board of Pharmacy, the regulatory body responsible for licensing and preserving professional standards of pharmacists, and for maintaining integrity and safety in the distribution of drugs in that state, has caused the following statute to be enacted, which the Board has the responsibility for enforcing:

A pharmacist licensed in Kismet is guilty of unprofessional conduct if he or she publishes, advertises or promotes, directly or indirectly in any manner whatsoever, any amount, price, or fee for the drug Ziagra.

The Board believes that the Ziagra price wars are damaging to the professional image of the pharmacist, and that the aggressive price competition is making it impossible for pharmacists to supply professional service in the handling of Ziagra, reducing the pharmacist’s status to a mere retailer, ultimately jeopardizing the health of the consumer. A consumer action group has brought suit against the State Pharmacy Board challenging the validity of the Kismet statute.

2. In Shangri-La, capital city of Kismet, the local AARF members distributing the Ziagra pamphlets on street corners were arrested and charged under a new municipal ordinance that prohibits “the distribution on streets or sidewalks of any handbills, pamphlets, or other written information.” Most of the Ziagra pamphlets ended up on the ground as litter after recipients read them. The city purportedly passed the

ordinance to stop the littering, which was becoming an expense to clean up. AARF has brought suit against Shangri-La challenging the validity of the municipal ordinance.

3. The Kismet State Legislature has enacted another statute prohibiting the mailing of unsolicited advertisements for Viagra. Concerned about the exaggerated and unfounded language telling users they “look twenty years younger,” and that such mailings would lead to abuse and over consumption of the drug, the State Legislature decided to impose a complete ban on unsolicited mail advertising of Viagra. The manufacturer of Viagra has brought suit against the State of Kismet challenging the validity of the advertising statute.

In each of the above situations, discuss:

- A. the First Amendment challenges that these proper parties could respectively raise against each of the above government actions;
- B. how the U.S. Supreme Court would analyze each situation; and
- C. the potential outcomes.

QUESTION 12

Robin borrowed Hood's video tape, then repeatedly refused to return the tape. Hood, who had a prior conviction for burglary, decided to use the self-help approach. One day, Hood waited outside Robin's house until Robin left for work. Hood then entered the house without Robin's permission by removing a screen from an open window. Hood retrieved his own tape and departed.

An hour later, Hood returned to Robin's house, entered the same way, and departed with two tapes belonging to Robin. Hood intended to sell the tapes and keep the money for his own use.

A neighbor witnessed Hood's activities and reported them to Robin. Robin became extremely irate and he drove immediately to Hood's house. Robin forced open the door of Hood's house and confronted Hood in the hallway. He grabbed Hood in a stranglehold and forced Hood to accompany him to the kitchen. Robin then struck Hood on the head with a hammer, fracturing Hood's skull. Robin left Hood lying unconscious on the kitchen floor, then Robin retrieved his own tapes and departed.

On the way through the living room, Robin tripped over a lamp cord, unintentionally causing a lamp to fall to the floor. After Robin had left the house, the broken bulb started an electrical fire in the house. Fortunately for Hood, a neighbor saw the flames and rescued Hood from the kitchen. Hood spent several days in intensive care in critical condition and remained in the hospital for several weeks, but he eventually recovered.

Analyze and explain any criminal offenses that are involved in the activities of Hood and Robin.

QUESTION 13

United Consolidated Just About Everything Corporation (“United”) is a huge, international conglomerate that makes, among many other things, turbo expander power recovery turbines for jet aircraft engines at its plant in Dayton, Ohio. Recently, the Antitrust Division of the United States Department of Justice brought a civil suit in federal court in Dayton against United alleging monopolization and attempted monopolization of the domestic market for turbo expanders in violation of the Sherman Act. Your law firm has been chosen by United to defend the case. Sara Smith, the senior trial partner responsible for the defense, has come to you for help. The government has filed a massive set of interrogatories and broad requests for production of documents. Ms. Smith has met with the appropriate United executives in order to review the discovery requests and, in the process, learned that, unfortunately, the company possesses certain information and documents, which she would prefer not to disclose.

Ms. Smith has provided you with the following list of documents or informational facts that the government seeks to discover and has asked your opinion as to each regarding excludability from discovery by the government under the Federal Rules of Civil Procedure.

1. There is a memo in the company files from C.E.O. to the Marketing Department. It generally describes the U.S. market for turbo expanders and concludes that: “With a little luck, we can drive the few remaining competitors out of the market.” A copy of the memo was shown as sent to “Sara L. Smith, Esq., Legal Counsel.” Can she claim privilege as a defense to production of this memo?
2. In C.E.O.’s turbo expander desk file, there is a letter from C.E.O. to a catalogue company ordering a very expensive mink coat for his secretary, which purchase he did not disclose to Mrs. C.E.O. Can Ms. Smith refuse to produce this letter as not relevant to anything having to do with the subject matter of the suit?
3. In the company files there is a copy of a liability insurance policy issued to United that pertains exclusively to premises liability for the Dayton plant (e.g., employee injury, slip and fall, etc.). It was recently increased to \$100 million. Does she have to produce this insurance policy?
4. There is a memo in C.E.O.’s desk file containing a chart of the worldwide market for turbo expanders that was prepared at the request of Ms. Smith (but never sent to her) after the case was filed in order to acquaint Ms. Smith with probable market share arguments of the government. The chart shows United as having 92 percent of the worldwide market for turbo expanders last year and 96 percent of the U.S. market this year. Does she have to produce the chart?
5. C.E.O. advised Ms. Smith that he ordered a consultant’s study of company operations several weeks ago that, once completed, will probably show in the report that there are virtually no substitutes for turbo expanders for power recovery purposes in jet engines. He offers that he can delay the completion of the consultant’s study and report until after she answers the discovery requests. Is this an effective way to protect the study and report from discovery?
6. The government wants to discover United’s confidential research and development files for all of its products in current development, which, if they become

public, may place United's intellectual property program at risk. What should Ms. Smith do?

7. Finally, C.E.O., in total frustration has exclaimed, "We are not going to give them any of this stuff. In fact, most of it is on its way to Freddie the Shredder as we talk!" What sanctions might United face if the government finds out about Freddie's destruction of these documents?

Please number your answer to correspond to the questions. Remember, you are only being asked to provide your opinion on discoverability and the consequences of refusal to comply, not on the ultimate admissibility or litigation value of any of these matters. As to each matter, be sure to explain your answer fully.

QUESTION 14

Building Products, Inc. ("Building Products") sells building supplies. Your client, Global Bank, has a loan outstanding to Building Products in the amount of \$1,000,000. The loan is secured with a properly perfected security interest in Building Products' equipment and inventory. Unfortunately, Building Products has been having financial problems.

Two and one half years ago, Building Products entered into an agreement, titled "Lease Agreement," for a computer system with Computer King, a computer manufacturer. The computer system, which is used to control the inventory in Building Products' three stores (all located in Ohio), was delivered by Computer King when the Lease Agreement was signed. Other than the Lease Agreement, no other documents were signed and no Uniform Commercial Code financing statements were filed by Computer King. The Lease Agreement requires monthly payments of \$2,000 and contains an option to purchase the equipment for \$500 at the end of the term. The owner of Building Products told your client, at the time the Lease Agreement was signed, that the computer equipment was worth approximately \$75,000 but that, by the end of the lease term, the equipment would have very little or no value.

Last week, the owner of Building Products told your client that he just learned of new software -- available from a local software supplier at a nominal cost -- which will extend the useful life of the computer system for another three years. Building Products wants to exercise the option to purchase, but Building Products is six months behind in the monthly payments. Computer King, also aware of the existence of the new software, wants to take back the computer equipment, claiming that Building Products is in default under the Lease Agreement.

The building supplies that Building Products sells at each of its three locations include aluminum siding and replacement windows. Ace Supply, Inc. ("Ace Supply") supplies the siding and windows to Building Products pursuant to a Consignment Agreement that provides:

Ace Supply shall provide, on consignment, inventory of aluminum siding and replacement windows to Building Products for sale to Building Products' customers. Ten percent of the sales proceeds shall be paid by Building Products to Ace Supply at the time of each sale. Building Products shall post signs in its stores clearly evidencing that title to the aluminum siding and replacement windows shall at all times remain in the name of Ace Supply. Any aluminum siding or replacement windows not sold within three months of delivery shall be returned to Ace Supply.

Ace Supply has continued to supply aluminum siding and replacement windows to Building Products since the Consignment Agreement was signed on January 1, 1997. Having become aware of Building Products' financial trouble, Ace Supply has just informed Building Products that it intends to have trucks arrive at each of the three stores

on Saturday to pick up its siding and windows. Building Products called your client's loan officer to inform the bank of the call from Ace Supply, and the loan officer has in turn called you for advice on whether the bank should agree to let Building Products release the inventory to Ace Supply. The loan officer tells you that she had previously visited only one of these stores and does not recall seeing a sign indicating that the aluminum siding and replacement windows were being sold on consignment. The loan officer also informed you that she had been told by Building Products that Ace Supply was the only supplier with which Building Products did business on consignment.

1. Please analyze the respective rights of Computer King and Global Bank in the computer system.
2. Please analyze the respective rights of Ace Supply and Global Bank in the aluminum siding and replacement windows.

QUESTION 15

Your new client, Albert Trust, comes to your office for advice. He explains to you the legal problem that he is having as the appointed executor of the estate of his friend, Patrick Smith, III. Both Patrick and his wife died in April 1991.

Patrick Smith, III executed his last will and testament on July 27, 1988, and two intervivos trusts (designated as "Trust A" and "Trust B"). His spouse, Sally Megan Smith, was named the first life-income beneficiary of "Trust A," and his brother Solomon Smith, was named as the first life-income beneficiary of "Trust B." Each trust was funded with cash and securities worth \$2,000,000 from Patrick's business.

Trust A

Under the provisions of Trust A, Patrick named his best friend, Albert Trust, and college roommate, Henry Will, as trustees. Both individuals were residents of Clark County, Ohio, and both were duly appointed as Co-Trustees of Trust A in Madison County in September 1988. Item Ten of the trust provided, inter alia, that:

The trustees above named and/or their successors in trust shall have in addition to and not in limitation of powers herein above set forth or conferred by law, the following powers exercisable at any time:

In the event that any of the above named trustees shall die, resign or fail to qualify and the right to resign is herein specifically granted, jurisdiction is hereby granted to the Common Pleas Court of Madison County, Ohio, to appoint a successor trustee; such appointment of a successor trustee by the Common Pleas Court of Madison County, Ohio, shall be upon the recommendation of the remaining trustee or trustees.

In May of this year, Henry died. In accordance with Item Ten of the trust, Albert filed an application to have James Harris appointed as Co-trustee. James is a resident of Franklin County. The Madison County Court refuses to follow the recommendation. Instead, it has appointed Timothy Taylor, a resident of Madison County.

Trust B

Under another provision of Patrick's trust, he named Beneficiary Bank Corp. from Detroit, Michigan as the sole trustee of Trust B. Unlike Trust A, Trust B was silent about any successor trustee. Upon the death of the first life-income beneficiary, Item Twelve of Patrick's trust provided for the following total disposition of Trust B assets as follows:

One Hundred per cent of Trust B . . . shall be held in trust for the benefit of my brother, SOLOMON SMITH...

Upon the death of my said brother, or upon the death of the survivor of myself and my said wife if my said brother is not then living, the Trust estate held or intended to be held for his benefit or the balance thereof then remaining, shall vest in and be distributed share and share alike to his then living children, or in the event one or all of his said children have predeceased my said brother, and the survivor of myself and my said wife, if my said brother is not then living, said funds shall then go to the lineal descendants of my said brother's children per stirpes.

Albert tells you that Solomon, who died last month, had one natural child, Samuel, born July 2, 1988, and one adopted child, Jodie. Jodie was born May 18, 1992 and adopted on December 2, 1997. Additionally, Solomon had Jodie designated as one of his heirs. The remaining corpus of Trust B was to vest in, and be distributed to, "his then living children."

In addition, In January 1998, Albert received a letter from Beneficiary Bank Corp. that it was going out of business effective immediately and that Neighborhood Trust Co. from Indiana may purchase the assets of Beneficiary Bank Corp. Having never heard from Neighborhood Trust Co., in February 1998 Albert began investing the trust assets and paying the obligations of the estate.

Albert desperately needs your help and expresses the following concerns:

1. Can he serve as both the executor of his friend's estate and trustee of the trust?
2. Does he have any legitimate grounds to appeal the court's decision to appoint Taylor as co-trustee of Trust A?
3. Since Samuel was Patrick's only "natural child," can Jodie also inherit assets from Trust B?
4. Are Albert's actions regarding Trust B's assets and obligations proper?

What advice should you give to your client as to each concern? Discuss fully.

QUESTION 16

Fourth and Main Streets is a busy intersection, where traffic is controlled by an electric signal. One summer morning, Andy Gump was driving a red auto on Main Street, proceeding through the intersection, when his vehicle was struck by a gasoline truck traveling on Fourth Street. Andy was killed. There were several pedestrians on the sidewalk near the intersection.

Carl Smith, the truck driver, was injured in the crash and was taken to the hospital in a police ambulance. Carl did not seem to be badly injured, his main complaint being pains from striking his chest against the steering wheel. While in the ambulance, Carl gave a statement to a police officer that he had entered the intersection on the “yellow” light and that Andy was “cheating” on the signal. During an examination in the emergency room, Carl suffered sudden cardiac arrest and died.

Andy’s Administrator brought an action for wrongful death against the oil company in the appropriate Ohio common pleas court. At the trial, the Plaintiff-Administrator called Bill Jones as a witness. Bill testified that he was standing on the sidewalk near the intersection when he heard a loud crash. Bill did not see the accident, but testified that immediately after the crash, he heard a woman scream, “The oil truck ran the red light!” Bill further testified that he did not know where the voice came from, except it was “a woman’s voice.”

Bill also testified that shortly after the crash he heard a man say, “If the driver of the red car had been looking where he was going, the collision would never have occurred.” Bill was unable to identify who the person was that made this statement.

The Administrator also offered the testimony of the policeman who investigated the accident. The officer testified that he arrived on the scene ten minutes after the accident had occurred and interviewed the witnesses, including Bill. The police report contained Bill’s comments that he heard the woman scream, “The oil truck ran the red light!” and the comments of the other bystander concerning Andy, the driver of the red car, and the bystander’s statement, “If the driver of the red car had been looking where he was going, the accident would never have occurred.” The officer was unable to identify or locate those two declarants.

The Administrator then offered the police report into evidence. The attorney for the oil company made timely objections to: 1) Bill’s testimony regarding the woman’s scream and her statement; 2) Bill’s testimony regarding the other bystander and his comment about the actions of the driver of the red car; 3) the introduction of the police report.

The defendant’s attorney offered the testimony of the police officer who was riding in the ambulance regarding Carl’s statements made to him concerning the cause of the accident. This was objected to by the plaintiff.

As the trial judge, how would you rule on these offers of proof and on what basis would you find any of them admissible or inadmissible into evidence? Please explain your answer fully and give a complete rationale for your rulings.

QUESTION 17

Hartman, Lyle, Fran and Lenny have been friends since they were in grade school in North Park, El Dorado. While in school, Shef, the school cook, provided them with advice as they grew up, as well as many meals. It's been years since they were in school, but Hartman, Lyle, Fran and Lenny would like to help Shef realize his life-long dream of being the head chef of a five-star restaurant. Shef has since retired from the North Park School District and has settled in Columbus, Ohio. Hartman, Lyle, Fran and Lenny have decided to start a restaurant business in Columbus, even though the four of them remain residents of El Dorado.

Mr. Harrison, a former teacher from North Park who has also retired to Columbus, has approached the four friends about operating a nightly bingo game and a few slot machines in the restaurant's basement. He has offered to split the profits with the restaurant business. Gambling is not yet legal in Columbus.

The four friends have approached you, an Ohio lawyer, to help them form an Ohio corporation for the purpose of operating this restaurant with bingo and slot machines. During an initial meeting, you learn the following information from your clients. They would like to name the corporation "North Park," in honor of their hometown. They have decided that the corporation will have a total of 1,000 shares to be purchased at \$1.00 per share. They have decided to offer Shef the opportunity to own 40 preferred shares without any voting powers. Your clients would equally own the remaining shares, which would be vested with all voting powers and the right to receive dividends.

Hartman, Lyle, Fran and Lenny, being experienced business persons in El Dorado, have prepared the only document they believe is necessary to form an Ohio corporation. They show you their proposed articles of incorporation which provide as follows:

ARTICLES OF INCORPORATION

FIRST. The name of said corporation shall be "North Park."

SECOND. The purpose for which this corporation is formed is: to engage in any lawful act or activity for which a corporation is organized under Chapter 1701 of the Ohio Revised Code.

THIRD. The number of shares which the corporation is authorized to have outstanding is 1,000.

Part I.

Are the four friends able to incorporate this business in Ohio? What changes if any, need to be made to the articles of incorporation to accomplish your clients' goals?

Assume that Hartman, Lyle, Fran and Lenny have taken all of your advice and have properly incorporated their business in Ohio. In the week since incorporating, all of the outstanding and authorized shares have been purchased as outlined above. The four

friends want to make some additional provisions regarding the corporation and again have come to you for advice.

Since all of the shareholders with voting power reside in El Dorado, they want all shareholder meetings to be held in El Dorado at least once a year. They have also decided that there should only be three members of the board of directors, that only shareholders should be members of the board of directors, and that they, too, should meet in El Dorado. They have agreed that Hartman, Lyle and Fran should be the directors and that Lenny should be President. Because Lenny is extremely forgetful, Hartman, Lyle and Fran do not wish him to have the authority to enter into any contracts which would bind the corporation for more than five years without first obtaining approval from the board of directors.

Part II.

Hartman, Lyle, Fran and Lenny want to know whether they can add the above conditions, and, if so, when and how they can do so without amending the articles of incorporation. Include in your discussion whether they should change their plans for the shareholders' and directors' meetings.

QUESTION 18

I. Bonnie is Al's daughter. She first came to live with Al when she was age 12, some years after her parents' divorce. She lived with him until she reached 18.

Bonnie claims that Al cheated her out of money that they each put in a joint bank account while she lived with him between the ages of 12 - 18. She claims that she worked summers beginning when she was 15 years old at the Mr. Freeze Ice Cream Store, and that she worked there for three summers, earning \$600 each year, based on pay stubs in her possession. She says that she gave one-half the money each year to her father, a total of \$900, which he put into their joint bank account. She wanted to save money to buy a car. The signature card for the bank account had the notation: "Bonnie can only withdraw funds with Al's signature." Bonnie admits that Al gave her money from the account occasionally when she asked for it, a total of \$200.

Al claims that he opened the account for a "rainy day" and, in case anything happened to him, for Bonnie. Al had intended the funds ultimately to be a gift to Bonnie, but when Bonnie's mother gave her a car when she was 17, Al decided that she didn't need those savings. At that time he closed the account and he kept the \$2,000 total then on deposit. Al claims that he made regular payments to the account from his wages, although he admits that Bonnie deposited a total of \$900 and that he withdrew and gave her \$200, because he approved of her requests. Bonnie always kept the account passbook. He closed the account before she reached age 18 so that she could not make any claim against him for the money. Because Bonnie obtained the car she wanted from another source and because Al feels that he should be entitled to her wages while she was a minor, when he provided her support, Al refuses to give her any money back.

II. Separately, Al enjoyed playing golf every other week with his brother, Carl, although Al was a very poor player who often lost his temper during their games. Al thought he would improve his poor game by buying a new expensive set of golf clubs, worth almost \$500. Despite his high hopes, Al's new set of clubs did not help in his game with his brother yesterday. After one particularly erratic shot went out of bounds, Al threw down his bag of new clubs at Carl's feet saying, "I'm quitting this game, I mean it! You can have these worthless clubs."

Carl had already admired the expensive clubs, so he picked them up, cleaned them off and took them home with him, looking forward to using them as his own, appreciative of Al's generous gift. Al showed up at Carl's house this morning with a hang-dog embarrassed look on his face and asked for his clubs back from Carl. Al apologized and told Carl that because Carl knew about Al's bad temper, he was sure that Carl would understand that he had not meant to give the clubs to Carl the day before. Carl wants to keep the clubs.

III. Al sends another child, Donna, to an independent private high school, Valley School. The annual tuition at the school is \$3,500, which is Al's obligation under his divorce decree. Al wants to reduce his federal income tax liability, so he first proposed to the school principal that Al would give Valley School \$4,000 if the school would give him a receipt for a gift in that amount, which will also satisfy his tuition

payment obligation for the school year. The school principal is reluctant to do that. Al has now given the school his \$4,000 check with a notation on the check saying “gift to Valley School”.

Al has consulted you for your best legal advice. Analyze each transaction above and determine:

- I. What amount, if any, does Bonnie get back from Al in the joint bank account? Explain.
- II. Who is entitled to keep the golf clubs? Explain.
- III. Has Al made a gift to the school? Explain.