QUESTION 1

In September of 1999, Jerry was shot and killed by a man known as "Lucky." Jerry's brother, Tony, and his friend, Lou, got together after Jerry's funeral to have a few drinks. While drinking at a local bar, Lou suggested that he and Tony go out and find Lucky to exact revenge for the killing of Jerry. Tony readily agreed to the idea. After drinking for a couple more hours and finalizing their plans to get Lucky, Tony and Lou left the bar in a highly intoxicated state.

Tony drove his car to a friend's house to secure a gun, and Lou went in to get the gun. Lou was able to borrow a nine-millimeter semi-automatic pistol loaded with 15 live rounds of ammunition. He test-fired the gun outside the house and determined that it was in good working order.

Once Lou returned to the car, he handed the gun to Tony and said "let's go get Lucky." Lou and Tony talked about where they would go to find Lucky and how they would kill him once he was found. They decided to kidnap him, bind and blindfold him, and then shoot him in the head.

Tony began to drive to an area across town where Lou and Tony believed they would find Lucky. During the drive they continued to talk about their plan to execute Lucky and even argued about which one of them should get to shoot Lucky.

Tony began to drive faster and faster the more excited he became over the conversation with Lou. At a speed of about 70 MPH, Tony struck and killed a pedestrian crossing a busy highway on her way to a shopping mall. Lou screamed at Tony to "get out of here," so Tony drove off to try to avoid arrest for the traffic mishap. A short time later the police were able to apprehend Lou and Tony on their way back home.

Tony and Lou were indicted for the aggravated murder of the pedestrian. Tony agreed to plead to a lesser charge of involuntary manslaughter in return for his promise to testify to the above facts against Lou.

You have been appointed by the Court to serve as Lou's attorney. Lou wants your advice on whether or not he can be convicted of aggravated murder or any lesser offense. Because he wasn't driving the car and had no intention of harming the pedestrian, Lou believes he is not criminally liable for the pedestrian's death. Lou informs you that both he and Tony were intoxicated and neither of them knew what they were doing when this accident occurred.

Explain why Lou can or cannot be convicted of a crime in the State of Ohio for causing the death of the pedestrian; what other crime or crimes may he be charged with; and what his defenses are.

QUESTION 2

Frank Fan, a huge Cincinnati Reds supporter, is inspired to come up with a Christmas (December 25) gift for his son. To get some ideas, Fan heads to his favorite sports memorabilia store, Sports-R-Us, on October 25th.

At the store, Fan decides that he will get his son "mint condition" rookie cards of all the current Reds players. Storeowner, Marge Merchant, informs Fan that she has "mint condition" rookie cards in stock for all of the current Reds players, except Pokey Reese. Although Merchant has a "fair condition" Pokey Reese rookie card on display that she offers to sell Fan, Fan states that he would prefer not to give his son a card of "inferior quality." Nevertheless, Fan expresses to Merchant that the rookie card set would be "worthless" if incomplete, and asks Merchant if she will continue looking for cards of a higher quality and "hold" the Pokey Reese display card for him "just in case." Merchant responds, "I'll tell you what I can do. I'll try to find you a Pokey Reese rookie card by Christmas. In any event, I'll sell you my display card for $15 at any time up until Christmas."

Merchant then hands Fan her business card, on the back of which she has scribbled and initialed the following:

> Will give Fan first shot at any mint condition Pokey Reese rookie card that I locate before Christmas. Pokey Reese display card (fair condition), $15 through December 24.
>
> M.M. 10/25/1999

Satisfied with this offer, Fan buys the remainder of the rookie cards from Merchant for $150, and shoves the business card into his pocket.

As Fan leaves the store, he is approached by Casey Collector, who informs Fan that she will sell Fan a "mint" Pokey Reese card from her private collection for $25. Thinking that he might still get a better deal from Sports-R-Us on high-quality cards, Fan tells Collector, "I'll give you $5 now, and if Sports-R-Us can't find a card to my liking before Christmas, I'll buy your Pokey Reese for $25." Collector accepts the $5 and tells Fan, "You've got yourself a deal."

The Reds win the World Series on the strength of a Pokey Reese home run, causing his rookie card to skyrocket in value.

On Christmas Eve, Fan returns to Sports-R-Us and asks Merchant if she has been able to locate a "mint" Pokey Reese rookie card. Merchant truthfully tells Fan that she has not, and adds that her display card is no longer for sale. Ultimately, Merchant refuses Fan's $15 tender for the display card and Fan leaves the store empty handed.

After leaving Sports-R-Us, Fan goes to Collector's residence. When Collector answers the door, she immediately asks Fan, "What are you here for? Surely not the Pokey Reese card. It is no longer for sale." Fan responds, "Sure it's for the card. I paid you $5 so that I could buy the card for Christmas if I had to. Now you are going to sell it to me." Collector chuckles, takes $5 out of her purse, throws it at Fan, and closes her door while saying, "Here's your lousy $5. This card is worth a bundle now."

Fan asks you what he can do. Discuss his potential claims against Merchant and Collector under Ohio law.

QUESTION 3

In response to the wave of violence spreading through the state's schools, the Ohio legislature recently enacted the School Nonviolence Act, which requires public schools to develop and implement extensive security measures. To comply with the requirements of the Act, Public High School ("Public") implemented the following security measures:

1. All teachers must disclose whether they belong to, or have ever belonged to, any organization that advocates violence or the use of weapons for any purpose. Those belonging to any such organization will be required to terminate their membership or lose their employment.

2. No student organization will be permitted to meet at the school unless its members join and pay dues to Students for Safety. The purpose of Students for Safety is to meet the additional security costs of keeping Public and other local schools open during non-school hours. Students for Safety meets weekly and holds an annual fund-raiser, but members are not required to attend or participate in the meetings or the fund-raiser.

3. All Public student organizations must participate in Public's annual "Say No to Guns" Rally and must devote at least 15 minutes of each meeting to reading aloud from "Firearms Kill," a pamphlet prepared by an anti-gun group.

4. Public's administration fears that some student organizations might be advocating the use of violence at the school. Thus, it has prohibited the following organizations from holding meetings or conducting any activities at the school:

   A. Students for the Right to Bear Arms, an organization whose stated purpose is to protect the right of citizens to own and use firearms. The group focuses on lobbying efforts to fight gun control legislation.

   B. Students for the Violent Overthrow of Public, a group that advocates the violent overthrow of Public's administration, teachers, and students.

Discuss the validity of each of Public's restrictions on its students and teachers. Explain the basis and potential merit of a challenge to each restriction.

QUESTION 4

Bobco, Inc. is an Ohio corporation. Its articles of incorporation conform to the basic standards required by Ohio law. It has one class of stocks, of which 100 shares have been issued.

Bobco has five directors, one of whom is Bob. In addition to being a director, Bob is also president and chief executive officer. Under its code of regulations, Bob is authorized to appoint a chief financial officer after non-binding consultation with an evaluation committee made up of three of the other directors.

Bob's brother-in-law, Larry, was interested in the position of chief financial officer. Bob suggested to Larry that he submit his resume to the evaluation committee. Several candidates, including Larry, were reviewed by the committee, and Larry's academic and employment credentials were by far the best. Known only to Bob, however, was the fact that Larry had been convicted of fraud when he was a college student. The conviction occurred when Larry was struggling with a drug habit, which Bob believed Larry had kicked years ago. Bob did not inform the committee, or any of his fellow directors, of Larry's conviction, although he did disclose Larry's college drug problem.

The committee recommended that Larry be appointed chief financial officer, and Larry was thereafter unanimously approved by the board of directors. At first, Larry performed wonderfully. After a while, however, Bob began to suspect that Larry was using drugs again. Bob confronted Larry, who broke down in tears, confessed his drug problems, and further confessed that he had been diverting company money to feed his drug habit. Larry swore that he was going to start rehab, and that he would reimburse the money he had pilfered. Bob, thinking about how brokenhearted his sister would be if she knew about Larry's problems, promised to keep quiet and give Larry a second chance if Larry promised to enter treatment immediately. Larry gratefully accepted this offer.

While Larry was in rehab, Joe, one of Bob's fellow directors, discovered that Larry wasn't really on vacation, and confronted Bob, demanding an explanation. Bob confessed that Larry had a drug problem, and that Larry had diverted company funds. Joe prepared and circulated a resolution among the directors to remove Larry as chief financial officer. The other directors were not willing to remove Larry, but were willing to submit the question to the shareholders. A meeting of the shareholders was properly noticed and convened. Because they didn't want to influence the shareholders, the three directors who called the meeting did not attend. The only directors present were Joe and Bob. At the meeting, a majority of the shareholders voted to remove Larry as chief financial officer.

You are counsel for the corporation, and the directors have asked you the following questions. First, what claims, if any, does the corporation have against Bob, and what defenses might Bob have against those claims? Second, was Larry's removal as chief financial officer proper? Explain your answers in detail.

QUESTION 5

Police Officer was walking near the bank when he was approached by Mr. A. "Officer, I just saw two men enter the bank," said Mr. A. "Both of them looked nervous and they were carrying a big bag."

Officer headed toward the bank and, as he came to the front door, Ms. B ran out and yelled, "Joe Jones and Sam Smith are robbing the bank!" Officer entered the bank, observed the bank tellers pointing to a side door, and heard a shot coming from outside that door. Officer ran through the door and found Mr. C lying on the ground with a gunshot wound in the chest. "Joe Jones just shot me," Mr. C said. "He and Sam Smith were carrying a bunch of money they stole from the bank."

Mr. C was taken to the hospital where he told the Doctor, "Joe Jones shot me at close range right after he and Sam Smith robbed the bank." Mr. C died several hours later.

Jones and Smith having fled the scene, Officer returned to the bank and interviewed Teller, who was working the station at which the robbery took place. Teller told Officer that at least $5,000 was stolen. Officer also interviewed Ms. D, an elderly woman who knew Jones and Smith and had seen the robbery. She told Officer that Jones and Smith were indeed the bank robbers. Ms. D returned home that evening and wrote a letter to her best friend detailing the events of the day.

It is now two years later. Smith has been apprehended, but Jones is still at large. You are the judge in a trial in which Smith is being tried before a jury only on the charge of robbing the bank. At trial, the following situations occur:

Prosecutor puts Officer on the stand and he testifies that (1) he became aware of the impending robbery when Mr. A told him he saw two nervous, suspicious looking men entering the bank; the Defense objects. Officer then testifies that (2) Ms. B informed him that Jones and Smith were robbing the bank; the Defense objects.

Officer further testifies that (3) Mr. C, as he lay grievously wounded, told him that Jones and Smith were carrying a large amount of money; the Defense objects.

Prosecutor then puts Doctor on the stand who testifies that (4) as he was treating Mr. C for his gunshot wound, Mr. C told him that Jones and Smith had robbed the bank; the Defense objects.

Prosecutor calls Ms. D to identify Smith as one of the bank robbers. However, Ms. D's faculties have declined over the past two years and her memory of the event is fragmented. She does recall having written the letter to her friend the night the bank was robbed. Prosecutor (5) moves to have Ms. D's letter to her best friend admitted into evidence; the Defense objects.

Prosecutor calls Teller who (6) offers the daily ledger record from the bank to verify that $5,000 was missing from her station on the day in question; the Defense objects.

Finally, Prosecutor calls Mr. E, a cousin of Joe Jones. Mr. E is a respected member of the community. Mr. E testifies that (7) Jones told him several months ago that he and Smith robbed the bank; the Defense objects.

Explain whether the evidence offered in each situation is admissable or inadmissable and why it is or is not admissable.

QUESTION 6

PART ONE:

Real McCoy, a widower, had two children: son, Junior, and daughter, Daisy. The McCoys lived on a 100-acre estate called Blackacre. Blackacre had been in the McCoy family for generations and passed to Real in 1980 by a deed which stated:

> Blackacre has remained in the McCoy family for one hundred years and shall remain So. I, Grandpa McCoy, hereby convey Blackacre to Real McCoy.

A few years ago, Junior McCoy married Betsy Hatfield. The Hatfields and the McCoys have been feuding for generations. Real became concerned that should Junior and Betsy ever divorce, Betsy might receive Blackacre as part of the divorce decree. Real was also concerned that if his daughter, Daisy, ever married then her husband might own Blackacre.

With these issues in mind, Real conveyed 50 acres of Blackacre to Junior and the other 50 acres to Daisy. The deed to Junior stated:

> I, Real McCoy, hereby grant fifty acres of Blackacre to Junior McCoy so long as Junior does not divorce his wife, Betsy Hatfield McCoy.

The remaining 50 acres of Blackacre were conveyed to Daisy as follows:

> I , Real McCoy, hereby give the remaining fifty acres of Blackacre to Daisy McCoy but if Daisy ever marries, then I shall have the right to reenter and reclaim said fifty acres of Blackacre.

Assume that the deeds are not void for public policy reasons. Discuss fully the ownership rights passed in each of the deeds.

PART TWO:

Two years later, Daisy gets married while Betsy and Junior divorce. Betsy and her family, however, will not permit Junior to return to Blackacre and have threatened to go back to court so that "the Hatfields will take Blackacre!"

Junior tells Daisy that because she married, Real now owns her 50 acres of Blackacre. At the same time, Real, aging and ill, asks Daisy if he can move in with her, on a temporary basis, while he recuperates.

Again, assume the deeds are valid and enforceable. Discuss fully the ownership rights of Real, Junior, Daisy and Betsy as to each 50-acre portion of Blackacre. Do not discuss any public policy issues.

QUESTION 7

You have been engaged by John Smith ("Trustee"), a trustee in a Chapter 7 bankruptcy proceeding for the ABC Company ("Company"), which filed for bankruptcy on March 1, 1999. Trustee has advised you that certain of the creditors of Company have made claims to the property claiming they have liens and security interests in certain property. Trustee informed you of the following facts:

1. On January 2, 1998, Company granted Bank Two a security interest in all of its tangible and intangible property to secure a loan which Bank Two then made to Company in the sum of $1,000,000. The security interest established was pursuant to a validly executed security agreement describing all of the assets owned by Company and stated that it covered all inventory, furnishings, furniture, and accounts receivable now or hereafter owned by Company. There have been various sales of property, and Company has more accounts receivable at the present time than existed on January 2, 1998. On December 15, 1998, Bank Two filed financing statements with the recorder's office in the county in which Company had its principal place of business and also filed them with the Secretary of State, Columbus, Ohio.

2. On February 1, 1998, Company purchased three air conditioners from New Air Company. Two of the air conditioners were window air conditioners. The third was a large air conditioner which was to replace the existing air conditioner on the building which Company owned. On February 2, 1998, Company installed the large air conditioning unit into the existing heat, air and ventilating systems which service most of the building. The two window air conditioners were needed for Company's executive offices but have not been placed in service. On February 8, 1998, New Air Company filed financing statements with the recorder in the county in which the building was located and with the Secretary of State claiming it had a purchase money security interest in the equipment. At the time of the purchase of the air conditioning equipment, the building was encumbered by a first mortgage to Old Trust Company which described the building as well as the land. The mortgage was properly recorded in the county in which the building was located.

3. Company's records show that it purchased a photocopying machine on January 1, 1999, from Photo Co. and it has not paid for the same. Photo Co. filed financing statements with the county and the state on March 10, 1999, claiming a purchase money first security interest in the photocopying equipment. The equipment has a fair market value of $25,000 and a balance due of $10,000.

4. On February 1, 1999, Company purchased a computer from Computer Co. and has not paid for the same.

The Trustee wishes to maximize the funds available to the general creditors of the Company and has asked for you to determine whether or not any of the claims of any of the various creditors are invalid and thus would allow that property to become property of the Trustee and would be available for the payment of unsecured debts.

Prepare a memorandum discussing the rights of each of the parties, including Trustee, to the Company's various property.

QUESTION 8

Mark and Celeste, who were residents of Franklin County, Ohio, lived together from 1978 to 1984. Even though Mark and Celeste cohabitated, they never held themselves out as a married couple. One child, Ann, was born out of wedlock in 1980. In 1984, shortly after Ann's fourth birthday, Mark moved out and took a job as the president of a struggling computer firm in Cincinnati, Ohio. Even though Celeste was certain that Mark was the father, she never brought any administrative or legal proceeding regarding Mark's parentage of Ann. Mark furthermore never took any formal steps to declare his parentage of Ann. Mark nevertheless has regularly visited with Ann and has provided financial support to Ann throughout her childhood.

In 1986, Celeste married David. David and Celeste had one child, Beth, who was born in 1987. David and Celeste thereafter divorced in 1992. As part of the divorce proceeding, David was ordered to pay child support for Beth to Celeste in the amount of $100 per week. David was also given liberal visitation rights with Beth. The divorce decree did not include any provisions relating to Ann.

David continued to pay child support until 1996 when Celeste married Pete, who had been a college friend of David's. David was extremely upset about the marriage. As a result, David has had no further contact with Beth; nor has he paid any child support since 1996.

Pete and Celeste have retained you to discuss the possibility of Pete's adopting both Ann and Beth. During your meeting with them on January 25, 2000, Pete and Celeste have disclosed to you the following facts:

Ann has graduated from high school and is going to turn 20 in March 2000. Ann is aware that Mark is almost certainly her biological father. Mark has just recently retired with substantial wealth as a result of his computer business going through an initial public offering. However, Mark has just learned that he has terminal cancer. Mark has never married and has no other children. Ann does not want Pete to adopt her since she has a close relationship with Mark and she has always considered Mark to be her real father.

Beth has established a close relationship with Pete. However, neither Celeste nor Pete has discussed the possibility of the adoption with Beth. David, is aware that Pete now wishes to adopt Beth, and David has indicated that he will never consent to the adoption.

Pete and Celeste have asked you for legal advice regarding the following issues:

1. Can Pete adopt Ann? If so, what individual or individuals would need to be notified and/or consent to the petition for adoption?

2. Can Pete adopt Beth? If so, what individual or individuals would need to be notified and/or consent to the petition for adoption?

3. Does Ann have any right to inherit from Mark? Does Pete's effort to adopt Ann have any impact on this issue? Is there anything that either Celeste or Ann can do to ensure that Ann has a right to inherit from Mark?

Fully explain your answers. You can assume that Mark has no will and that Ohio law applies.

QUESTION 9

Settlor, a widower, had only one child, Son. Years ago, Settlor made and funded two separate irrevocable inter vivos trusts, executing separate instruments with all necessary formalities at the same time. Each trust provided that Son, now an adult, should receive all trust income during Son's life. Each trust named its Trustee and stated:

> Neither the principal nor the income of this trust shall be liable for the debts of any beneficiary, and no beneficiary shall have the right to assign or anticipate his or her interest herein, prior to the actual distribution of that interest by the trustee.

Trust #1 provided further that, at Son's death, the trust principal should be distributed to the "City of Hope, Ohio, to be used to build a public hospital as may be needed to serve the community."

Trust #2 provided that, at Son's death, the principal should be distributed "among my descendants, as my child Son shall appoint by will." Son has two children, ages 22 and 25.

Neither trust provided for any further contingent beneficiaries.

Settlor is seriously ill, although he is competent to make any decisions about his estate plan. Settlor reconsiders the terms and effects of both trusts. Settlor has decided that now he wants to allow Son to use the corpus of Trust #2 as Son sees fit.

The City of Hope would prefer to use its share of Trust #1 to build an emergency care center in its community center. The trust corpus would be entirely inadequate now to build a hospital, the corpus would not provide any operating funds, and the private well-funded Hospital in the City of Hope is completely adequate for the community's present and future in-patient needs.

Answer the following questions under Ohio law. Assume for purposes of your answer that court approval of any changes on the trusts will probably be required.

I. Can Settlor, Son, and City of Hope, by agreement, compel termination of Trust #1, if the court finds that a material purpose of the trust (limiting Son's access to funds) is not attained by the termination? If Trustee objects to its termination as a denial of Trustee's due process, does it change the result?

II. Can Son and City of Hope compel termination of Trust #1, after Settlor's death, to divide its assets between themselves?

III. If Settlor dies intestate without realizing that the City of Hope's hospital needs have changed so that the assets of Trust #1 are entirely inadequate for that remainder beneficial interest, does the trust fail on Son's death? Does it affect the result if Trustee recommends termination of the trust and reversion of its assets?

IV. Assume that Son decides that he needs money quickly, to build a fitting memorial to his deceased parents. Son wants to terminate Trust #2. Son's two children oppose the termination, relying upon the trust's "non-acceleration/anticipation" clause. Under what circumstances, if any, may Son obtain termination of Trust #2?

QUESTION 10

Mary, recently dumped at the altar by her childhood sweetheart, Mark, goes to a car dealership to test-drive the new Ferrari convertible, thinking she deserves to treat herself to something special. The dealer, happy to oblige, gives Mary the keys to a lovely red speedster. While Mary is trying out the Ferrari, she sees Mark crossing the street arm-in-arm with Mary's best friend, Lisa. Enraged, Mary floors the Ferrari and aims straight for Mark, yelling, "I'm going to get you, you weasel, and I'm coming back for your new girlfriend too!" Mary sends Mark flying over the hood of the Ferrari, and continues driving away.

Mark is writhing in the middle of the street in obvious distress. Lisa begins looking wildly for a phone. There is none around except for a cell phone lying on the passenger seat of a nearby parked car. Not knowing what else to do, Lisa breaks the car window with a handy brick and uses the cell phone to call 911. While Lisa is calling, Mary circles around the block for another shot at Lisa. Hearing the distinctive roar of the Ferrari's engine, Lisa ducks behind a telephone pole. Seeing the telephone pole, Mary thinks better of trying to hit Lisa; Lisa, however, throws the handy brick at Mary, and it hits Mary's shoulder. Mary speeds away.

The paramedics arrive and immediately remove Mark to the nearest hospital emergency room. When Mark arrives, he is still conscious but in extreme pain. The emergency room physician informs Mark that both of Mark's legs are broken and will require immediate surgery. Mark responds by saying, "Do what you need to do." During the surgery, the emergency room physician performs a complex procedure to pin Mark's shattered knees and shins back together. However, the physician also notices that Mark has a large heart-shaped mole on his left thigh. Remembering that large, oddly shaped moles can become cancerous, the physician removes the mole. The physician doesn't know, however, that Mark had the mole examined by his regular doctor last week (who pronounced it to be wholly non-cancerous), and that Mark has a great deal of affection for the mole, since his new girlfriend Lisa thinks it's very cute.

While Mark is on the operating table, Mary returns to the car dealership (having pulled a jacket on to hide her minor shoulder injury) and hands the dealer the keys to the Ferrari. The dealer looks out the display room window and notices that the Ferrari has a huge dent in its front fender. Seeing this (but not letting on to Mary that he noticed), the dealer asks Mary to step into his back office to discuss possible lease options, then locks Mary in the office. The dealer then promptly calls the police, and leaves Mary in the back office, kicking and pounding until the police show up minutes later.

In light of these facts, identify the potential claims:

(a) Mark has against Mary;

(b) Mark has against the emergency room physician;

(c) Lisa has against Mary;

(d) the car dealership has against Mary;

(e) Mary has against Lisa;

(f) Mary has against the car dealership; and

(g) the owner of the parked car and the cell phone has against Lisa.

Also identify each defense that can be raised against these claims.

QUESTION 11

Driver took his car to Repair Shop, where he and Repair Shop entered into a valid contract to fix Driver's brakes.

After retrieving his car from Repair Shop, Driver took Passenger for a ride. Along the way, Driver picked up Hitchhiker. Unbeknownst to any of them, a fourth person, Stowaway, had been hiding in the trunk of the car since it left Repair Shop.

Driver sped through a tight curve. When he tried to apply the brakes, they failed, and the car hit a tree. Hitchhiker and Stowaway received minor injuries. Passenger was severely injured.

The next day, Hitchhiker and Stowaway sued Driver in an Ohio court of common pleas, alleging that Driver had negligently operated his automobile. Driver, in turn, filed a third-party complaint against Repair Shop, alleging that it had negligently performed the repair work.

Driver moved for summary judgment against Stowaway, arguing that he owed Stowaway no duty of care. The trial court agreed and entered the following judgment:

Upon due consideration, Driver's Motion for Summary Judgment against Stowaway is hereby granted.

Stowaway immediately filed a notice of appeal. He also filed for a writ of procedendo in the appellate court. Stowaway sought a writ ordering the trial judge not to proceed with the trial before Stowaway's appeal could be decided.

Stowaway's filings notwithstanding, the case went to trial on schedule. The trial went smoothly until the judge gave the jury an improper instruction on the meaning of the term "negligence." Driver did not object to the instruction because he thought it would help him defeat Hitchhiker's negligence claim.

Even with the erroneous instruction, the jury found Driver negligent. It did not, however, find Repair Shop negligent.

Driver now seeks answers with explanations to the following questions:

1. Was the trial court's entry of summary judgment against Stowaway immediately appealable?

2. Was procedendo the proper writ for Stowaway to seek in order to stop the trial judge from proceeding with the trial?

3. If Driver appeals the judgment in favor of Repair Shop based upon the trial judge's erroneous jury instruction, will he succeed?

4. If Passenger now sues Driver, can Driver deny he was negligent, even though a jury already has found otherwise?

5. Can Driver now sue Repair Shop successfully for breach of contract and, if so, what damages are recoverable?

QUESTION 12

I. Juror is sitting on a jury in an Ohio court hearing a felony case. During a recess, she wanders through the courthouse and stops in to visit her college classmate, the County Prosecutor, who is not involved in the trial she is hearing. Juror tells County Prosecutor that she is a juror on a particularly interesting case, and she innocently volunteers that she did not find the complainant's testimony on the stand to be very credible. County Prosecutor consults you for your legal advice as to what if anything he should do.

II. In another trial, City Prosecutor becomes irate and excited during his final argument because of what he considers to be the flimsiness of the defendant's alibi testimony in a traffic trial. He describes the defendant's testimony as "well-rehearsed lies," a "smokescreen," "garbage," and a "pack of lies," and accuses Defense Counsel of knowing so. Defense Counsel asks you, after her client is acquitted, what if anything she should do about it.

III. After a substantial verdict for the plaintiff in a civil trial, Defense Lawyer speaks with the jurors who have been discharged from that case. Defense Lawyer obtained court permission to do so, supposedly in order to improve his trial skills. These jurors were excused until next week when they can be called to sit on other cases. Defense Lawyer knows that it is unlikely he'll see these jurors again, but he has several cases set for trial next week. A juror expresses concern in conversation with Defense Lawyer whether his client, the defendant, would be put out of business because of the substantial money damages verdict the jury rendered against the defendant. Defense Lawyer is well aware that the verdict amount was fully covered by insurance. Nevertheless, he tells the concerned juror that his client will probably have to file bankruptcy and close his business. You hear this entire discussion while sitting in the courtroom waiting for your own pretrial conference. You must decide whether you have any duty to act with regard to the conversation you heard.

IV. Plaintiff's Attorney, presenting his witnesses to the jury during morning testimony in a malpractice trial, is dumbfounded when the trial judge excludes the testimony of his only expert witness, on the grounds that Plaintiff's Attorney had advanced excessive expert witness fees to this expert. Plaintiff's Attorney asks for a continuance, which the judge refuses to grant. The judge allows a recess until after the lunch hour. During the noon recess, desperate for some excuse to delay the trial, Plaintiff's Attorney calls the judge's office privately from his own office and tells the judge's secretary that he's in the hospital emergency room being admitted to the hospital for observation for chest pain and numbness in his arms. After telling his client that the "stupid judge" has now given them a continuance upon reconsideration, he sends his client home. Plaintiff's Attorney then sits in his office until he receives a message from the court that the judge has discharged the jury, but the court cannot find any record of his hospital admission. Plaintiff's Attorney walks down the office hall and asks for your legal advice.

Answer each question posed above. What ethical considerations and disciplinary rules are raised in each of the above situations?

QUESTION 13

The United States government had long recognized the country of Ebola, a "developing" nation. In 1987, Ebola's government was overthrown and a revolutionary government seized power. The United States Embassy in Ebola was blockaded, a number of U.S. nationals were taken prisoner, and the Embassy guards were imprisoned.

All Ebolan private corporations were seized by the revolutionary government and were nationalized. A number of these companies were holding assets in the United States. By Presidential Executive Order, diplomatic recognition of Ebola was withdrawn, all of its assets located in the United States were seized, and possession of the assets was placed in the custody of the Alien Property Custodian.

Negotiations were begun between the United States Department of State and the revolutionary government of Ebola, in an attempt to have the interned U.S. nationals repatriated. While these negotiations were on-going, lawsuits were commenced in the United States by persons claiming rights against Ebola or its nationalized companies, and in some cases judgments were secured and certificates of judgment were filed with the Alien Property Custodian.

After protracted negotiations, the Department of State reached an agreement with the heads of state of Ebola wherein ownership of all assets of Ebola or its nationalized companies located in the United States was assigned to the United States, and the interned U.S. nationals were to be immediately repatriated. The present government of Ebola was to be diplomatically recognized by the U.S. and normal diplomatic relations were to be resumed. All of the foregoing agreement was executed by Presidential Executive Order.

An action was brought against the United States challenging the President's power to make an executive order of this scope, and the judgment creditors and claimants against the assets intervened, setting up their claims.

Assume that forums, venues, parties, standing, and jurisdictions were proper.

Are the U.S. President's Executive Orders valid? If so, what effect do such orders have on the claims, rights and ownership of the property of Ebolan nationalized companies located in the United States, with respect to the following:

1. The United States of America;
2. Judgment creditors; and
3. Claimants whose claims had not yet reached judgment?

Explain fully.

QUESTION 14

Patrick Principal was the sole shareholder, director, and officer of Major Corporation ("Major") and Minor Company ("Minor"), both Ohio corporations. Patrick was authorized to sign and endorse checks of both companies. Major had an account with Asset Bank. Minor maintained several bank accounts at Best Bank.

On July 1, 1999, Major received a check payable to Major in the amount of $10,000. On July 2, 1999, Patrick took the $10,000 check to Best Bank and endorsed it as follows:

"For Deposit Only

/s/ Patrick Principal"

He attached a deposit slip for the Minor checking account to the check indicating that $9,000 was to be deposited to Minor's account and $1,000 cash returned to him. Best Bank accepted the check, and deposited the funds into Minor's account and gave Patrick $1,000 in cash.

In October 1999, Major defaulted under the terms of a loan with Asset Bank. As a part of a work-out agreement, Major assigned to Asset Bank all of its assets, including accounts receivable and general intangibles. Asset Bank sued Best Bank claiming that Best Bank had paid the $10,000 check improperly. Asset Bank demanded repayment of the $10,000 to it as successor to any legal claims of Major pursuant to the work-out agreement.

You report to the general counsel at Best Bank. She asks you to advise her as to the basis for the claim that Best Bank paid the check improperly and the arguments that can be made on behalf of Best Bank that it is not obligated to pay the $10,000 or any part of it to Asset Bank as claimed. Explain fully.

QUESTION 15

Testator, a 50 year-old male, has suffered from severe alcohol abuse since he was 10 years old. With each passing year, Testator's alcohol abuse grows progressively worse. Testator is drunk more often than he is sober.

In 1985, Testator made a valid written will, "Will-A." In Will-A, Testator bequeathed his estate to his Wife and two adult children, Son and Daughter, in equal shares. Wife and Friend, a long time acquaintance of Testator, were named as co-executors.

On November 12, 1999, after having consumed five shots of bourbon within the last hour, Testator called Son, Friend, and Wife to his bedside to discuss the provisions of a new will, "Will-B". First, he took Will-A and drew a line through the provision that provided that Daughter would inherit one-third of his estate.

Then, Testator, with a slurred voice, proclaimed in the presence of Son, Friend, and Wife that "I am excluding Daughter from my estate since she has not visited me in ten years." He then put Will-A in his lock box and placed the box under his bed.

A half-hour later, as Testator stumbled and fell while getting out of bed, he further proclaimed that "I hereby bequeath 75 percent of my estate to my Wife and 25 percent to my Son." Testator then proclaimed, "I am done; I have a new will, Will-B." Testator then got back into his bed and fell asleep.

Fifteen minutes later, Testator awoke with Bubba, his golden retriever, lying at the foot of his bed. After talking to Bubba about his estate, Testator again called Friend to his bedside and instructed Friend to write a new will, "Will-C". Instead of bequeathing his estate only to Wife and Son as he had earlier proclaimed, Testator bequeathed his estate to his Wife, Son, and Daughter, in shares of 65 percent, 25 percent and 10 percent, respectively. After only ten minutes, Friend had hand-written Will-C, a one-page document, as instructed by Testator. Friend placed a line for Testator's signature on the bottom of the page, immediately below the following language:

> I, Testator, sign, publish and declare this Instrument, consisting of one hand-written page, to be my Last Will and Testament:
>
> _____ _____
>
> DATE TESTATOR

Testator immediately read Will-C and signed his name on the signature line in the presence of Friend. Then Friend, in the presence of Testator only, signed Will-C as a witness to Testator's signature. At Testator's request, a day later Friend asked Testator's next door neighbor, Bob, to sign Will-C as a witness to Testator's signature. While Bob recognized the signature as being that of Testator, Testator did not acknowledge his signature at the time Bob signed as witness. Neither Wife, Son, nor Daughter was aware that Testator had made Will-C.

One week later, Daughter learned from Son that Testator had proclaimed that he would leave her "nothing" in Will-B. Outraged over Son's revelation, Daughter went to Testator's home and confronted him about being disinherited. Before Testator

could tell Daughter that he had made provision for her in Will-C, Daughter picked up an empty bourbon bottle and struck him over the head. Testator died from the blow. Daughter was arrested and convicted of Testator's murder.

On February 15, 2000, Wife and Friend have come to you for advice. They have possession of Will-A and Will-C. Also, Friend has described Testator's oral declarations whereby Testator created Will-B. Wife and Friend ask your opinion as to which will, if any, is valid and who will take under the will. Explain your answer fully.

QUESTION 16

Amy and Bill formed an Ohio partnership in 1997 for a fixed term, to expire on December 1, 1999, and for the limited purpose of developing residential property in Wood County, Ohio. In the summer of 1999, Bill became over-committed due to his extravagant life style. Without advising Amy, he directed $500,000 from partnership funds to day trade securities on the Internet, resulting in the purchase of stocks. The stocks fell in value to $10,000. While Bill had the stocks issued in his own name, he paid dividends over to the partnership. Several months later, facing certain personal financial ruin, Bill made the following assignments:

1. To his creditor C, for his personal debts, he assigned all of his title and ownership of the stocks. C was unaware that the stocks were purchased with partnership funds and she accepted the assignment in good faith to forgive Bill's debt.

2. To his creditor D, for his personal debts, he assigned his interest in all of the partnership assets as well as his right to all partnership profit distributions, which he grossly overstated in value, and which D accepted in good faith to forgive Bill's debt.

On December 1, 1999, the partnership's real estate development was not yet completed and would not be finished until the end of the following year. Amy and Bill continued on to complete it.

In January 2000, Amy received a demand from D for Bill's one-half of the partnership's property, claiming that the partnership had dissolved either by its own terms or by Bill's assignment of all of his interest to D and claiming that he was entitled to force a sale of the partnership assets. In this regard, D had obtained a charging lien from the Wood County Court of Common Pleas, and he now insists upon an immediate audit of all of the partnership's books and financial records and a cessation of any additional expenditures of money by the partnership.

Amy has now learned from Bill that he purchased the stocks with partnership funds but that he subsequently assigned them to C in order to satisfy his debt to C. Bill is now destitute and uncollectible.

Amy has come to you for advice on behalf of the partnership; she would like you to provide answers to the following questions:

1. Did the partnership really dissolve on December 1, 1999?
2. Does C now own the stock or can the partnership demand it?
3. Can D force a sale of the partnership's property?
4. What monies or assets is D entitled to pursuant to his charging lien?
5. Is D entitled to an audit of the partnership's books and financial records?
6. Must the partnership now cease any further expenditures of money?
7. What are the partnership's obligations to D going forward?

Please number your answer to correspond with Amy's questions. Ohio law applies in all cases. Provide reasons for your responses and do not discuss claims that Amy, the partnership, C or D may have against Bill personally.

QUESTION 17

Defendant was indicted pursuant to a secret indictment issued by the Cuyahoga County Grand Jury on February 15, 1997, for the crimes of attempted aggravated murder and grand theft.

This secret indictment was unsealed three years later on February 16, 2000. Defendant, whose whereabouts were unknown, was arrested on February 19, 2000. Defendant's arraignment occurred a week later on February 26, 2000.

At Defendant's arraignment, a not guilty plea was entered on Defendant's behalf. Defense counsel requested bond for Defendant, citing to the court that his client had no previous convictions, owned a home in this community, and would appear at trial, fighting to the end, to establish his innocence. The prosecution objected to any bond being furnished to Defendant. The prosecution related to the court that Defendant had stolen $2,700,000 from two individuals and, when confronted by one of the victims, Defendant attempted to kill him. Finally, the prosecution noted that, in light of the serious nature of the charges against Defendant, flight from the jurisdiction was a distinct possibility. The arraignment judge denied bail and assigned a trial judge to preside over the upcoming trial, to commence on March 14, 2000.

Prior to trial, defense counsel timely filed with the trial judge the following motions:

1) A motion to dismiss the criminal charges, asserting that his client did not receive a speedy trial under the laws of Ohio and the United States Constitution.

2) A motion for bond, renewing his objections previously made.

3) A motion for a separate trial on the attempted aggravated murder charge and the grand theft case.

4) A motion to dismiss all criminal charges, on the basis of prosecutorial misconduct in using a secret indictment.

5) A motion for discovery, requesting sanctions, claiming the prosecution did not furnish the defense with a Bill of Particulars with respect to the crimes and other documents to substantiate the theft of $2,700,000. The prosecutor did not deny that she had failed to furnish the Bill of Particulars and other documentation to the defense counsel.

6) A motion for the production of grand jury transcripts of prosecution witnesses to be used by the defense for impeachment purposes.

Assume you are the trial judge. How would you rule on each of the above motions? Please state your reasons.

QUESTION 18

Parent is the proud father of ten-year-old Son. Wanting the best for Son, Parent believes that Ohio Academy, a private, non-denominational, and highly respected academic institution, would be ideal and applied for his admission.

Several months prior to the upcoming school term, both Parent and Son met with Academy's Headmaster. All went well and Parent, Son, and Headmaster agreed that Son should enroll. To accomplish this, Parent signed an enrollment contract. The contract provided that Parent would pay Academy $5,000 for a one-year enrollment. Parent immediately paid the required $1,000 deposit, leaving a balance of $4,000.

By the terms of the contract, the remaining balance was to be paid beginning with the school term's commencement in September. As to cancellation of the contract, the relevant provision reads:

> It is further agreed that enrollment can be canceled without penalty only if done in writing prior to July 1st. If enrollment is canceled after July 1st, Parent is obligated to pay the full tuition fee, less any previously paid deposit.

This provision was just above the signature lines and was printed in the same size type as the rest of the contract. Academy desired the provision because budgeting decisions, which included staff salaries, department budgets, and permanent improvements, were based on expected tuition receipts as of July 1st.

After entering into the above-described agreement, Parent had second thoughts and decided to send Son to another school. Parent notified Academy in writing on July 15 that Son would not be attending Academy.

Immediately after receiving the cancellation letter from Parent, Headmaster informed Parent that "because the notice of cancellation was untimely, the tuition balance was due consistent with the terms of the written agreement".

Parent has since refused to pay the outstanding balance due under the contract, arguing that he "substantially complied" with its terms, and that to require him to pay the balance of tuition would be unconscionable. Since there was no wait list for admission, Academy made no attempt to fill Son's position in the entering class. It is now October and Academy has filed suit against Parent. Please answer the following questions and explain fully.

I. A. Did Parent breach his contract with Academy?

B. Is there a difference if Son had been forced to withdraw after July 1st due to an unexpected illness?

II. Regardless of your answer above, assume that Parent is found to have breached the enrollment contract with Academy.

A. Is Academy entitled to damages in the full amount of the tuition due according to the terms of the contract?

C. Does Academy have any duty to mitigate its damages?