

ESSAY QUESTION 1

Several months ago, in an effort to kill Husband, Wife put a lethal quantity of rat poison in a marinade for a steak dinner she had prepared for Husband. Wife overcooked the steak and served it to him, but Husband refused to eat it.

A few weeks later, Wife asked Son, the couple's twenty-year-old son, to show her how to cut the brake line on Husband's car. She said she was going to lure Husband to Mountain Overlook, get him drunk, cut the brake line, and push the car over the cliff with Husband in it. Although Son had no love for Husband, he told Wife it was a stupid idea and that he wanted no part of it.

Still later, Wife approached Daughter, the couple's eighteen-year-old daughter, with the same idea about cutting the brake line. Daughter agreed to show Wife how to cut a brake line and to demonstrate the process on June 1, as suggested by Wife. Daughter went so far as to purchase a set of wire cutters with which to accomplish the task. Before June 1, however, Daughter reconsidered and told Wife she would not go through with it.

On July 1, Wife contacted Stranger and offered him \$5,000 if he would shoot and kill husband and make it look like a robbery. Stranger agreed. Wife paid Stranger \$2,500 and promised to pay the remaining \$2,500 after Husband's death. When Stranger went to carry out the plan, he found Husband with another woman, Mistress. Stranger shot and killed Husband and, to eliminate her as a witness, he also shot and killed Mistress. Wife refused to pay the \$2,500 balance, asserting that, by killing Mistress, Stranger had exceeded what Wife had intended.

Discuss what criminal charges prosecutors may bring against Wife, Son, and Daughter. Your answer should consider each criminal offense independently and should include a discussion of any possible defenses that may be raised.

ESSAY QUESTION 2

In 1989, Testator executed a valid will ("Will 1") leaving one-half of his property to his wife, Wife, and the remaining one-half in equal shares to his three adult children, John, Ken, and Lynn, who are his only issue. The bequest to Wife was accompanied by the following statement: "I owe all my success to Wife. It is because of her that I have been able to accumulate my great wealth, and I will always be indebted to her for that."

In 1994, Testator and his son, Ken, had a major disagreement. Intending to disinherit Ken, Testator obliterated all references to Ken in Will 1, and, at all places in Will 1 that referred to "three children," he changed the references to "two children."

In 1995, Testator made a new will ("Will 2"), which he wrote in his own handwriting on the back of an envelope. In Will 2, Testator left one-half of his property to Wife and the remaining one-half of his property to be divided equally between John and Lynn. Will 2 named Testator's older brother, Bob, as executor. Testator signed Will 2 at the end in the presence of Bob and John, both of whom signed as witnesses at Testator's request.

During 1996, Testator and Ken reconciled. Expressing remorse that he had earlier disinherited Ken, Testator destroyed Will 2 by putting it through his paper shredder and announced in the presence of two witnesses that Will 1, as written in 1989, was his last will and testament.

In 1998, Testator and Wife divorced. Intending to make a new will ("Will 3"), Testator said in the presence of his secretary and Bob, "I state that I am of sound mind and body, that I revoke all prior wills, and that it is hereby my last will and testament that I leave all my property to be divided equally among my children, John, Ken, and Lynn." The next day, his secretary reduced Testator's statement to writing, and the secretary and Bob signed as witnesses in the lines provided for witness signatures at the end of Will 3. However, purely by oversight, Testator never signed Will 3.

Testator died in 2000 survived by Wife, John, Ken, and Lynn.

Explain the legal effect of each of the actions taken by Testator. Which will, if any, is in effect, and who will inherit his property? Explain fully.

ESSAY QUESTION 3

Chemco is a company that sells rubber compounds to Medical Products Company (“MPC”). MPC uses the compounds supplied by Chemco to manufacture components which are sold to Prosthetic Devices Inc. (“PDI”), which incorporates them into artificial human replacement joints. All three companies are Ohio corporations with their principal places of business in Ohio.

In 1980, Plaintiff received an artificial joint manufactured by PDI. In 1999, nineteen years later, she filed an action in the Court of Common Pleas of Lucas County, Ohio, alleging that the joint caused her to develop cancer. Plaintiff named as defendants both MPC and PDI. MPC subsequently filed a third-party complaint against Chemco alleging breach of warranty and alleging that Chemco had improperly sold to MPC raw materials containing carcinogenic material. Chemco’s response to the third-party complaint is due shortly.

You have learned the following:

1. MPC has not paid Chemco for its last shipment of rubber compound (payment was due six months ago), and MPC currently owes to Chemco the sum of \$500,000 on open account. MPC is now refusing to pay because it claims the compound was defective.
2. In the process of manufacturing components for PDI, MPC injected an untested chemical softening agent (and known carcinogen) into the rubber compounds.
3. Chemco’s sales agreement, which was signed by MPC, contains the following language:

MPC shall indemnify and hold harmless Chemco from any and all causes of action brought against Chemco arising from the sale of any products manufactured by MPC, which products contain Chemco’s rubber compounds.

4. Prior to surgical implantation, Plaintiff signed a consent form which specifically states that the implantation of PDI’s joint “may cause pathology (including cancer) to surrounding tissue” and that “patient releases PDI from any liability arising from injury or death caused thereby.”
5. Plaintiff became specifically aware of her claim against the defendants well over seven years ago; the statute of limitations for bringing such suits in Ohio is two years after discovery of the cause of action.
6. Chemco thinks that MPC deceived it into believing that MPC would not use its rubber compound for products implanted in humans. Chemco cannot supply any evidence to support its belief that MPC fraudulently misled Chemco.
7. Chemco believes that Plaintiff’s attorney, who signed the complaint, may have liability to Chemco for its attorney fees if the court dismisses the case, because the Plaintiff’s claims are clearly outside the statutory period of limitations.

For items 1 through 6 above, describe separately what defenses, affirmative defenses, or counterclaims are available to Chemco and when each should be pled. In response to item 7 above, state the standards of liability of Plaintiff’s attorney. Consider in your answer (where

applicable) whether any defenses to the Plaintiff's claims that may be available to the original defendants in the suit (PDI and/or MPC) are also now available to Chemco as a third-party defendant, since the third-party complaint is based only upon breach of warranty.

In your answer, deal only with the procedural rules and issues. Do **not** discuss the merits of any claims or defenses.

ESSAY QUESTION 4

On October 1, 1997, Pat's pickup truck was damaged in an accident in which cars driven by Donna and Ted simultaneously struck Pat's truck. There were no physical injuries, but Pat's truck suffered \$5,000 in damage. Donna and Ted were clearly at fault.

Wishing to avoid a lawsuit, Pat attempted repeatedly over a period of time to convince Donna and Ted to pay for the damage voluntarily. On September 15, 1999, having just learned that the two-year statute of limitation applicable to his claims against Donna and Ted was about to expire, Pat told them that, unless they each agreed immediately to pay him \$2,500, he was going to sue them.

Donna and Ted both told Pat they would pay him but said they did not have the money and would need time. The oral agreement they each reached with Pat on September 15 was as follows: They would each pay Pat \$2,500, payable at the rate of \$100 per month commencing on October 15, 1999, and continuing until the final payment on October 15, 2001. In return, Pat promised not to file suit based on the October 1997 collision.

Ted made the October, November, and December 1999 payments by check. On the notation line of the third check, he wrote, "3rd of 25 payments due Pat for truck damage." That was the last payment Ted made.

Donna made the October, November, and December payments in cash. Although she kept promising to do so, she made no further payments.

On what legal theory or theories can Pat sue Donna and Ted to recover the balance of what they agreed to pay him, what defenses might Donna and Ted reasonably raise, and who would be likely to prevail in the suit? Discuss fully.

ESSAY QUESTION 5

Mr. P is a self-employed entrepreneur who gets involved in a variety of deals in order to make a buck. He has, in the past, worked on occasion with Mr. A in the course of his business dealings. Mr. A is not an employee of Mr. P. Mr. P approaches you now with the following issues:

1. In 1997, without first consulting Mr. P, Mr. A approached Stockbroker and told him, "My friend, Mr. P, is willing to take some risks, but only on stock that you think has the potential to double in value within a year. If at anytime in the future you identify such a stock, purchase up to \$10,000 of it for my friend and he will reimburse you immediately." Mr. A told Mr. P of this conversation, and Mr. P said, "Okay, fine"; however, Mr. P never had any direct contact with Stockbroker. Last month, Stockbroker identified a stock that he believed met the desired specifications, purchased \$10,000 of it, and contacted Mr. A for reimbursement.

2. Late last year, without first talking to Mr. P, Mr. A met with Developer who was interested in purchasing three acres of land belonging to Mr. P. Mr. A and Developer agreed on a purchase price of \$100,000, with the condition that Mr. P first pay for the demolition of several old buildings on the site. Mr. A informed Mr. P of this conversation, but failed to mention the condition of demolishing the buildings. Mr. P subsequently sent a letter to Developer saying, "I agree to sell you my property on the terms you agreed to with Mr. A."

3. Two months ago, Mr. A met with Owner, the proprietor of a struggling widget factory. Mr. A told Owner that he knew someone who would buy the factory if the price was \$100,000 or less. Owner agreed to sell for \$100,000. Mr. A reported this conversation to Mr. P, who said he would think about it. Meanwhile, the widget market skyrocketed and Owner called Mr. A and told him he was no longer interested in selling the factory. After this conversation, but before Mr. A could talk to Mr. P, Mr. P sent a letter to Owner saying, "This letter is to confirm my purchase of your factory on the terms negotiated by Mr. A."

Mr. P tells you he really wants to buy the widget factory because he would make a great deal of money from the transaction. However, he does not want to purchase the stock because his investment objectives have changed, and he does not want to sell his acreage because he has just learned of the demolition condition, which would make the deal considerably less profitable to him.

1. Is Mr. P obligated to reimburse Stockbroker for the \$10,000 stock purchase? Why or why not?

2. Must Mr. P sell his acreage to Developer? Why or why not?

3. Can Mr. P enforce the purchase of the factory from Owner? Why or why not?

Do not discuss issues of the Statute of Frauds, the Uniform Commercial Code, or federal and state securities in your answer.

ESSAY QUESTION 6

Investor met Broker at a cocktail party, where Broker was accompanied by a woman whom Investor recognized as a neighbor of his. In a casual conversation, Broker told Investor about a "conservative mutual fund that seemed to have a 20% upside potential over the next few months."

The next day, in his first venture into the stock market, Investor deposited \$10,000 with Broker and instructed him to use it to purchase shares in the mutual fund Broker had described at the party. A few months later, Investor asked Broker to cash in the mutual fund shares. The value of the shares had dropped to \$5,000, and, when Investor received the check from Broker, he became furious.

Investor telephoned Broker's office and, in a fit of temper, left the following voice mail message on Broker's private phone line:

This is Investor calling, you phony! You're a thief. Where's the other \$5,000 I gave you and the 20% upside you promised me? What did you do, drink it all up, gamble it away, and spend it on your mistress? You probably had to spend it treating that disease you caught from sleeping with my neighbor's wife. Believe me, I'm going to do everything possible to see that no one ever invests money through you again!

When Broker listened to the voice mail message, he called his secretary into his office and replayed the message so she could hear it. In fact, Broker does not drink or gamble, but he was having an affair with the woman who had accompanied him to the cocktail party.

The next day, Investor stormed into Broker's office, where Broker was meeting with Jones, a prospective client who was about to invest \$100,000 through Broker. Investor yelled:

This guy is the worst broker I've ever known! He just lost half of the money I gave him to invest! I'm going to sue him for everything he's got! Don't give him a dime!

Broker's rejoinder was:

This guy is a nut! Listen, Investor, I know you're going through treatment for mental problems. You'd better pay your psychiatrist a visit.

In fact, Broker had no knowledge whether Investor was being treated for mental illness or had a psychiatrist.

As a result of the incident, Jones left the office and declined to invest any money through Broker.

Investor then wrote a letter to the State Securities Commission complaining that:

Broker is a crook and a dishonest broker. I gave him \$10,000 a few months ago, and now my shares are worth only \$5,000. I don't know what happened to my money. Take his license away!

Investor also drafted and filed with the court a *pro se* complaint in which he alleged:

Broker claims to be an investment broker; he stole my money and spent it on his mistress (my neighbor's wife), gambling, and heavy drinking.

1. On what legal theories, if any, may Broker assert claims against Investor arising out of the following incidents, what are the elements of proof necessary to support each claim, and what is the likelihood that Broker can prevail on each claim:

- a. The voice mail message.
- b. The remarks Investor made in Broker's office.
- c. The letter Investor wrote to the State Securities Commission.
- d. The allegations in Investor's *pro se* complaint.

Discuss each of the above fully.

2. On what legal theories, if any, can Investor assert a claim against Broker arising out of remarks Broker made while Investor was in his office, what are the elements of proof necessary to support the claim, and what is the likelihood that Investor can prevail? Discuss fully.

ESSAY QUESTION 7

Smith and Jones are the sole officers and directors of New Growth Corporation ("New Growth"), an Ohio corporation. New Growth has issued 500 shares of common stock. Of these, Smith owns 260 shares, and Jones owns the remaining 240 shares.

The Articles of Incorporation of New Growth contain only the following provisions: (i) the sole business purpose of the corporation is to purchase and sell real estate located in the State of Ohio; and (ii) the corporation is authorized to issue 1,000 shares of common stock and 1,000 shares of preferred stock, and the preferred stock may be issued by the Board of Directors in one or more series and on terms to be determined by the Board of Directors.

Smith, in her capacity as President of New Growth, proposes to take the following actions:

- (1) Sell the Oldgate Apartments owned by New Growth for its fair market value of \$1,000,000. The Oldgate Apartments is New Growth's only asset aside from cash and accounts receivable;
- (2) Purchase for \$2,000,000, its fair market value, the Blue Grass Arms, an apartment building located in Kentucky and owned by Realty.com, Inc., an Ohio corporation;
- (3) Finance the purchase of the Blue Grass Arms by using the proceeds from the sale of the Oldgate Apartments as the down payment, borrowing \$1,000,000 on a promissory note at 10% interest, and securing the loan with a first mortgage on the Blue Grass Arms;
- (4) Cause New Growth to issue and sell 500 shares of preferred stock for \$1,000,000 to outside investors; the preferred stock would carry a 6% dividend and be redeemable in five years; the \$1,000,000 would be used to pay off the loan on the Blue Grass Arms;
- (5) Cause New Growth to purchase Jones's 240 shares at a premium and have herself (Smith) become the sole officer and director of New Growth; and
- (6) If New Growth cannot effect the sale of the preferred shares as specified in number (4), above, merge New Growth with Realty.com, Inc. and thereby acquire an ownership interest in the Blue Grass Arms.

Under Ohio law, is there anything that would prevent Smith from unilaterally accomplishing each of the actions she is proposing, and, if so, what steps would have to be taken and to what extent would Jones's participation be required to carry out each action lawfully? Discuss each action separately and fully.

ESSAY QUESTION 8

On June 1, 2000, Victim suddenly changed lanes on a highway directly in front of Trucker's tractor-trailer, almost causing a rear end collision between her car and Trucker's tractor-trailer. Infuriated, Trucker proceeded to drive his truck into the rear of Victim's vehicle, causing it to leave the roadway where it slammed into a guardrail. Victim's car was heavily damaged and Victim suffered severe head injuries. As a result of the incident, Trucker was charged with felonious assault.

Trucker's criminal trial is scheduled for July 1, 2000. The investigation has revealed the following facts.

1. Victim was convicted of the felony crime of aggravated vehicular homicide in May of 1989. She was placed on probation for two years which she successfully completed.
2. Victim was convicted in May of 2000 of a misdemeanor offense of "passing a bad check" in violation of a municipal ordinance. She has not been sentenced on this offense, and she intends to appeal the conviction when she is sentenced.
3. Victim has filed a civil action against Trucker's employer for damages for the personal injuries she sustained in the collision with Trucker. Trucker has a certified copy of the lawsuit, and he would like to introduce it into evidence at the criminal trial.
4. Victim's next door neighbor, Neighbor, is willing to testify for Trucker. She has lived next door to Victim for ten years. She says she is not a close friend of Victim, but she knows that Victim has lied about two other automobile collisions in which Victim claimed to be injured in order to get insurance settlements. Neighbor also says all of Victim's neighbors think she is not the sort of person who tells the truth.

Would the following be admissible at Trucker's criminal trial:

1. Information about Victim's May 1989 felony convictions?
2. Information about Victim's May 2000 misdemeanor conviction?
3. A certified copy of Victim's civil action against Trucker's employer?
4. Neighbor's testimony?

Discuss fully.

ESSAY QUESTION 9

For years Joe Hunter has owned and operated a carpet cleaning company which services local residential customers in central Ohio. He is the only person employed by his company. He is an avid deer hunter and, every year, hunts with his friends in central Ohio.

Hunter was recently charged with his second domestic violence offense under an Ohio statute that makes the offense a felony. He admitted to his attorney that he beat his wife during an argument, and said he is willing to plead guilty to a misdemeanor, pay a fine, be put on probation, and submit to counselling and treatment. He is adamant, however, that he will not plead guilty to a felony because it would mean that he would be barred under state law from owning and using guns. That, in turn, would require him to give up deer hunting, which he is unwilling to do.

Hunter's attorney negotiated the requested plea bargain with the prosecutor. Hunter entered a plea of guilty. After explaining all of Hunter's rights to him and accepting his misdemeanor guilty plea, the court imposed sentence in accordance with the terms of the plea bargain. In the course of doing so, the court advised Hunter that he was henceforth subject to the following Federal Firearms Disability statute:

It shall be unlawful for any person who has been convicted in any court of a misdemeanor crime of domestic violence to possess, in or affecting commerce, any firearm or ammunition, or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

Hunter attempted to withdraw his plea, but the court refused to allow him to do so. He then filed suit in an appropriate federal court challenging the constitutionality of the Federal Firearms Disability statute.

What arguments should the government make in support of the validity of the Federal Firearms Disability statute; what arguments should Hunter make that the statute is unconstitutional; and how should the court rule? Discuss fully.

ESSAY QUESTION 10

Charley recently started a retail music and book business and opened his store in Madison County, Ohio.

On June 1, 2000, Charley arranged with Disc Co. for the purchase of compact discs on credit for \$20,000. On that day, Charley signed a security agreement describing the discs and granting Disc Co. a security interest in "all current and after-acquired inventory and the proceeds thereof." Disc Co. immediately filed properly-executed financing statements with the Secretary of State of Ohio and the Recorder of Madison County. Later that day, Disc Co. delivered the compact discs to Charley's store.

On June 2, 2000, Charley arranged with Book Co. for the purchase of books on credit for \$20,000. He signed a security agreement, which contained his name and address and the name and address of Book Co. and described the number and titles of the books he was acquiring from Book Co. The security agreement granted to Book Co. a security interest in "all books now or hereafter purchased from Book Co. and the proceeds thereof." Because Book Co. had exhausted its supply of financing statement forms, they made photocopies of the security agreement, and Charley signed the copies. Book Co. immediately filed signed copies of the security agreement with the Secretary of State of Ohio and the Recorder of Madison County.

Having seen the financing statement Disc Co. had filed the day before, Book Co. delivered a letter to Disc Co. informing Disc Co. that Book Co. expected to acquire a perfected purchase money security interest in all books it sold to Charley and that Book Co.'s security interest would take priority over any claim of Disc Co. Disc Co. did not respond to the letter.

The next day, Book Co. delivered to Charley's store the books described in the security agreement.

In the ensuing week, Charley held a very successful grand opening sale. The sale generated \$10,000 in cash and \$25,000 in credit card sales, of which \$15,000 was attributable to the sale of books and \$10,000 to the sale of discs.

Flushed with his success, Charley closed the store for a few days, flew to Las Vegas with the \$10,000 in cash, and promptly lost it all at the gambling tables. On his way out of the casino, Charley was struck by a car and killed. Neither Disc Co. nor Book Co. has been paid anything for the goods they had delivered to Charley.

The inventory remaining at the store consists of discs having a value of \$5,000 and books, also having a value of \$5,000. The \$25,000 from the credit card sales has been paid by the credit card companies and deposited in the store's commercial bank account.

1. Do Disc Co. and Book Co. have perfected security interests in the remaining inventory and the bank account, and, if so, at what point in time were their security interests perfected? Discuss fully.
2. What are the respective rights of Disc Co. and Book Co. in the remaining inventory and the bank account? Discuss fully.

ESSAY QUESTION 11

Lawrence Lane is a lawyer recently admitted to practice law in the State of Ohio. Since graduation from law school, he has worked full time as an editor for a publisher of law books.

Late last year, Lane agreed to defend Client in a lawsuit brought against him. Client, while driving his car, had struck another vehicle that was stopped and off the roadway. Lane set up a file in which he kept the case pleadings, witness statements, police reports, discovery documents, photographs, and other materials relating to the case.

Lane never told Client about his lack of experience in handling automobile collision cases. Client soon sensed that Lane did not know what he was doing and fired him.

Client hired Amy Adams, an attorney experienced in automobile collision cases. After entering an appearance on behalf of Client, Adams spoke to Lane and asked him to forward Client's file immediately, telling him that she had only one day to respond to plaintiff's motion for summary judgment. Lane refused, saying he would not release the file until Client paid him for the time he had spent on the case.

In the course of discussions occurring between Client and Adams after Adams undertook Client's defense, Client confided the following: Although he had veered off the highway because he had fallen asleep at the wheel, he had signed answers to plaintiff's interrogatories in which he stated that he veered off the highway to avoid hitting a deer that had jumped out in front of his car. After the interrogatory answers were served on plaintiff's counsel, Client told Lane how the accident really happened. Lane did nothing to correct the interrogatory answer and, during Client's deposition, did nothing to dissuade Client from again asserting that a deer had caused him to veer off the highway. At Lane's request, Client signed a blank sheet of paper, which Lane immediately notarized and later used to type up Client's affidavit, again attesting to a deer's having caused Client to veer off the highway. Client has the original affidavit in his possession.

Client instructs Adams that, in filing the opposition to plaintiff's motions, he should use the affidavit that Lane had prepared because he is now too committed to the deer story to change it. Client also instructs Adams not to say anything to anyone else about Client's fabrication of the deer story or Lane's conduct for fear that Lane will disclose the fabrication.

1. What ethical violations, if any, did Lane commit? Discuss fully.
2. What ethical obligations does Adams have in light of her knowledge about the conduct of Client and Lane? Discuss fully.

ESSAY QUESTION 12

Buyer responded to an advertisement for an open house, where she was met by Tenant, who was renting the house from Seller. Tenant explained that his lease was due to expire in two weeks and that he was showing the house for Seller, who had decided to sell it rather than rent it out again.

Buyer liked the house and was particularly attracted by the following features:

1. Wall-to-wall carpeting recently installed by Seller in the odd, diamond-shaped family room. The carpeting was laid over an unfinished plywood subflooring and was secured around the perimeter by carpet tacks.
2. A beautiful oriental throw rug purchased by Seller and held with carpet tape to the hardwood floor in the entry way to keep the rug from slipping.
3. Electric ceiling fans purchased and installed in each of the bedrooms by Tenant at the beginning of his tenancy.
4. A room that had been converted by Tenant to a library. Tenant had lined the room with custom-built, floor-to-ceiling bookcases anchored with bolts and brackets to the floor, walls, and ceiling. Tenant told Buyer, "This room makes a perfect library, and I hope the new owner will fill the shelves with books."
5. A high-security vault Tenant had bolted to the floor in a walk-in closet. Tenant used the vault to store valuable merchandise he sold in the jewelry business he conducted from the house.
6. A five-stall horse stable, which unbeknownst to Buyer had been built by Neighbor under the mistaken belief it was situated on Neighbor's adjoining property.

Buyer was ecstatic, and soon she and Seller entered into a valid written contract for the purchase of the property.

After closing and recording the deed, Buyer took possession. She was horrified to find that Seller had removed the carpeting and throw rug, that Tenant had removed the ceiling fans, bookcases, and vault, and that Neighbor had taken the horse stable. Buyer believed that in purchasing the property from Seller she also was purchasing each of the above items, though the purchase contract was silent as to these items, and the matter was not the subject of any specific discussions.

Analyze fully Buyer's right to ownership of each of the items listed above as against Seller, Tenant, and Neighbor.