

Question Number 1

Crim was abruptly terminated from his job by his employer, Boss. Boss immediately retrieved Crim's security badge, escorted him out of the building, and notified the security guard that Crim was not to be allowed to enter the building. Boss also cancelled Crim's authorization code for access to the company computer network.

When Crim got home, he realized that he had not copied several of his personal computer files, including a novel he had written and stored on the company's computer hard drive. He tried unsuccessfully to log on to the company system from his home. Still angry about his abrupt firing by Boss and now about the cancellation of his computer access, Crim put a pistol into his coat pocket and drove back to the company building. His intention was to somehow get into Boss's office and use Boss's laptop computer to get access to the company's computer and copy the personal files. It was late in the day, so Crim was confident that Boss would already have gone home for the day.

When Crim arrived in the lobby of the building, he noticed that the security guard was distracted, so he was able to hurry past the guard toward Boss's office. However, when he opened the door to Boss's office, he was surprised to see Boss standing by the desk. When Boss told him to "get out," Crim became enraged, pulled the pistol out of his pocket, and fatally shot Boss. Crim hurriedly grabbed Boss's laptop computer and walked out of the office with it.

On the way out, he saw Vicki, the receptionist, who was getting ready to leave for the day. Vicki, who did not know that Crim had been fired, had occasionally gone out with Crim for a drink after work so, when Crim asked her to have a drink with him, she readily agreed. Crim's real reason for asking Vicki to have a drink with him was that, in case he had trouble with the security guards, he could use her as a hostage.

The security guards had received word of a commotion in Boss's office. When they saw Crim, they had their weapons drawn and tried to stop him to question him. Crim seized Vicki and, shielding himself with her, headed toward the door. Crim and the guards exchanged fire. A bullet fired by one of the guards struck and killed Vicki.

On these facts, can Crim be convicted under applicable Ohio criminal statutes of the following crimes for the deaths of Boss and Vicki:

1. Murder?
2. Voluntary manslaughter?
3. Aggravated murder?

Explain your answers fully as to each crime for each victim. Do not discuss defenses.

Question Number 2

Town, located in Ohio, wanted to attract new businesses into its area to revitalize commerce and create jobs for its citizens.

Company, a private entity, was starting a business that provides free vocational training to troubled teenage boys. Because Company does not charge its students, it is dependent upon state and local grants to fund its operations.

Town, which had an interest in the success of a federally designated “Economic Development Area,” was able to convince Company to locate in that area by donating a building to Company for its operations, providing ten years of tax relief on the property, and providing an interest-free loan to Company to fund its entire set-up costs. Town also helped Company get substantial state funding by co-sponsoring grant applications to the state.

After details with Town were finalized, Company began its operations and unilaterally adopted a policy that prohibited hiring women because of the “potentially dangerous” work environment.

Petitioner, a citizen of Ohio, applied for a job with Company but was told by Company that, although she was otherwise completely qualified for the position, she would not be hired because of Company’s policy prohibiting the hiring of women.

Petitioner sued Company and Town alleging that Company and Town each violated her rights under Title 42 USC § 1983 and the Fourteenth Amendment of the U.S. Constitution.

Will Petitioner prevail in her action against either Company or Town or both? Explain fully.

Question Number 3

Victim was permanently disabled when a truck owned by Company and driven by its employee, Driver, collided with Victim's car in Township, Ohio. Victim filed and timely served a personal injury complaint against Company and Driver in state court. The complaint alleged that Driver's negligence caused the accident, and Victim sought \$10 million in damages.

Driver timely filed and served an answer to the complaint in which he denied liability. Company prepared an answer denying liability and asserting as an affirmative defense that the collision occurred because Victim had run a red light. Company gave the answer to its office messenger with instructions to file it with the court and serve it upon Victim. The messenger became distracted by another project and forgot to file and serve the answer.

Thereafter, the following events occurred in the sequence listed:

1. Having received no answer from Company, Victim filed a motion for default judgment against Company but did not serve the motion upon Company. Without a hearing or other proceedings, the trial court granted the motion and entered judgment awarding Victim the \$10 million sought in the complaint.

2. When Company received notice of the default judgment, it investigated the circumstances, discovered the messenger's inadvertence, and confirmed that this had never happened before. Company immediately filed and served a motion for relief from the judgment. Before Victim received Company's motion for relief from judgment, and without a hearing or other proceedings, the trial court granted Company's motion and set aside the default judgment.

3. The case proceeded to trial. On September 15, 2004, the jury returned a verdict against both Company and Driver for \$10 million, and the court entered judgment on the same day. On October 10, 2004, and without having moved for a directed verdict at the close of Victim's case in chief, Company and Driver filed motions for judgment notwithstanding the verdict (JNOV), on the ground that "although there was *some* evidence favoring Victim, the verdict was not sustained by the greater weight of the evidence." The trial court denied the motions for JNOV.

Discuss each of the trial court's rulings and explain fully why each ruling was correct or incorrect.

Question Number 4

Finance Co. is the holder of the following items of commercial paper, each of which was validly executed and complete in every respect in the State of Ohio at the time that Finance Co. received the items:

Check # 1: A check from Tom, which Finance Co. received in the ordinary course of business. Tom's check was in payment of a loan he received from Finance Co. Along with the check, Tom sent a letter stating in bold print that, after carefully computing the interest on the loan, it was clear that Finance Co. had not calculated the interest on the loan correctly and that the check represented the full payment of the balance due on his loan. Finance Co. deposited the check and credited Tom's account for the amount of the check.

Promptly after crediting Tom's account with the payment, Finance Co. filed suit against Tom for the balance due on his account.

Check # 2: A check from Mary to Finance Co. for a monthly loan payment. Finance Co. was concerned whether Mary had funds in her account to pay the check and therefore hired a messenger with instructions to go to Mary's bank, First Bank, and present the check for payment. The messenger arrived at First Bank at 3:40 p.m. and requested that the bank give him the payment due on the check. Although Mary had funds in her account at that time, the teller refused payment for two reasons. First, the messenger had no evidence that he had authority to act for Finance Co. Second, First Bank had a notice conspicuously displayed at the bank stating that its established policy was that checks received after 2:30 p.m. could not be paid on that date but would be paid on the next business day. A week later, the manager of Finance Co. went to First Bank to cash the check. First Bank advised the Finance Co. manager that Mary no longer had funds in her bank account.

Finance Co. has filed suit against First Bank for payment of Mary's check.

Check # 3: A check, which was drawn by John, payable to Hardware Store. Hardware Store endorsed the check to Lucy, in payment of her last month's wages. Lucy then endorsed the check and delivered it to Finance Co. in payment of the balance due on her account. Finance Co. presented the check to John's bank, Second Bank, and Second Bank gave Finance Co. notice of dishonor because there were no funds in John's account. The notice of dishonor was given to Finance Co. three days after Second Bank received the check. Second Bank was unable to give notice of dishonor earlier because its check processing center was materially damaged by fire. The notice of dishonor was given immediately after the processing center was back up and operating. Second Bank did not give notice of dishonor to John, Hardware Store, or Lucy.

Finance Co. has filed suit against Second Bank, Hardware Store, and Lucy for payment.

Promissory Note: A Promissory Note from Nancy dated January 1, 1989, payable one year after its date to Finance Co., evidencing a loan it made to Nancy. Finance Co. has never received any payment on the loan and has not made any effort to obtain payment from Nancy.

On December 31, 2000, Finance Co. filed suit against Nancy for the amount due on the Promissory Note.

Will Finance Co. prevail against each of the following defendants in its lawsuits:

1. Against Tom for the balance on his account after depositing Check # 1?
2. Against First Bank for payment of Check # 2?
3. Against Second Bank, Hardware Store, and Lucy for payment of Check # 3?
4. Against Nancy on the promissory note?

Explain your answers fully.

Question Number 5

Allen, a businessman in Smalltown, Ohio, has been sued in Ohio state court for breach of three separate written contracts he entered into under the following circumstances:

1. Publisher v. Allen: Allen, who was running for mayor of Smalltown, wrote an article about his opponent, the incumbent mayor, that was patently false and defamatory. Allen contracted with Publisher, owner of the local newspaper, to pay \$6,000 for Publisher to print the article on the day before the election. Publisher knew the contents of Allen's article were false and defamatory but, nevertheless, printed it.

The written contract also provided for the purchase of \$5,000 worth of advertising for Allen's business unrelated to his mayoral campaign.

When Allen lost the election, he refused to pay Publisher anything, and Publisher sued.

2. Don v. Allen: Allen owned a shipment of plastics that was aboard a cargo ship en route from Europe. Allen contracted to deliver the shipment to Don at the Port of New Orleans, Louisiana, on a specific date. A week before the scheduled delivery, Hurricane Katrina destroyed the port and all other Gulf ports in the vicinity. The ship carrying the plastics was unable to dock and unload. Don sued Allen for breach of contract.

3. Karl v. Allen: Allen drafted a contract in which he agreed to sell to Karl a molding machine owned by Allen. The contract price was \$20,000. The written contract contained an ambiguity as to whether the machine was equipped with a particular attachment. One reasonable interpretation of the contract was that, if Karl had to purchase one on the open market, the machine equipped as Allen intended to sell it could be acquired for \$25,000. An equally reasonable interpretation was that the machine so equipped could only be acquired on the open market for \$30,000.

Allen fell into arrears with his creditors, and Allen's equipment was repossessed. As a result, Allen was unable to deliver the molding machine to Karl. Karl went out on the open market and paid \$30,000 for the molding machine. Karl sued Allen for breach of contract, seeking to recover \$10,000, the difference between the \$20,000 contract price and the \$30,000 Karl paid.

What defenses, if any, can Allen reasonably assert in each of the foregoing lawsuits for breach of contract? What arguments, if any, can the plaintiffs make in response, and how is the court likely to rule? Explain fully.

Question Number 6

Mother was driving her car in downtown Anywhere City, Allen County, Ohio, with Daughter as a passenger, when her car collided with a gravel truck owned and driven by Trucker. The crash, which was very loud, startled and alarmed several passers-by, one of whom used his cell phone to call “911” and request an ambulance.

Among the passers-by who witnessed the collision were Trucker’s girlfriend, Girlfriend, and a 14-year-old boy, Boy.

Mother later brought suit in Allen County Common Pleas Court for negligence against Trucker, alleging that she suffered severe back injuries. Although Daughter, Girlfriend, and Boy lived in Anywhere City, none of them was subpoenaed or appeared at the trial as a witness. Other than Mother and Trucker, the only trial witnesses were Officer, an Anywhere City police officer, and Physician, the emergency ambulance doctor, both of whom arrived at the scene of the accident 10 minutes after the collision.

The following testimony was offered at the trial:

1. Officer’s testimony that, when he arrived upon the scene, he overheard Girlfriend say, “I was just walking down the sidewalk, and I thought I recognized Trucker’s truck going through the intersection. It seemed to me that the light was green for him. He did not seem to be going very fast either.” Trucker’s attorney seeks to introduce this testimony to show that Trucker had a green light and was not speeding.

2. Officer’s testimony that he heard Boy say, “Holy cow! I saw that truck run that red light!” Mother’s attorney seeks to introduce this testimony to prove that Trucker did in fact run the red light.

3. Officer’s testimony that, “Boy told me he heard Daughter say, ‘That guy in the truck hit us so hard when he ran the red light that it gave me a severe headache.’” Mother’s attorney seeks to introduce this testimony to prove that Daughter’s pain was due to Trucker’s negligence.

4. Physician’s testimony that Daughter told him, “My mother has a lower back injury from a previous car accident, so please be extra careful with her so as not to aggravate the injury.” Trucker’s attorney seeks to introduce this testimony to prove that Mother had a pre-existing back injury.

What objection, based on the ground that each is an out-of-court statement, should be made to each of the enumerated items of testimony? How should the court rule on each objection and why? Explain fully.

Question Number 7

In December 2003, Grandmother conveyed Blackacre, the Ohio family farm she owned in fee simple, to her three grandchildren, Susan, John, and Ted. Grandmother's validly executed and recorded quitclaim deed stated:

I, Grandmother, widowed, of Columbus, Ohio, hereby convey all my right, title, and interest in Blackacre to my grandchildren, Susan, John, and Ted, for their joint lives, remainder to the survivor of them.

In January 2004, Susan moved into the house on Blackacre, while John and Ted lived elsewhere. Susan paid \$3,000 in property taxes and spent \$900 for landscaping to enhance the appearance of the property during her occupancy. Susan also leased parts of Blackacre to local farmers to grow crops. Susan realized a profit of \$12,000 from the leases. Susan moved away from Blackacre in December 2004.

In 2005, John conveyed his interest in Blackacre to his wife, Ann, for life, with the remainder to his son, Charles. Shortly after this conveyance, Ann died unexpectedly.

In 2006, Ted died. He left a will devising "my interest in Blackacre to my son, David."

To date, there have been no further conveyances of any interest in Blackacre.

1. As of the end of 2004, what were the rights of the then-owners of Blackacre to a share of the lease profits realized by Susan, and what were their obligations to contribute to the taxes and landscaping expenses paid by Susan? Explain fully.
2. In 2007, who are the owners of Blackacre, and what is the nature and extent of ownership interest of each? Explain fully.

Question Number 8

Babysitter was babysitting Child, a four-year-old, at the home owned by Child's mother, Mother. The home was located in a residential neighborhood of Apex, Ohio.

At approximately 2:00 p.m., Babysitter and Child were blowing bubbles in the driveway at the front of the house. To amuse Child, Babysitter turned to chase a bubble and tripped over a red push broom that Mother had inadvertently left on the driveway. Babysitter fell and broke her right wrist. While Babysitter lay dazed on the driveway, Child wandered across Slow Street, the street adjacent to the driveway, and into a neighbor's yard.

Babysitter saw Child and struggled to her feet to retrieve Child. Just as she was about to enter onto Slow Street, she noticed Driver traveling down the street at a high rate of speed. Believing she could make it across Slow Street before Driver reached her point of crossing, Babysitter darted into the street. Unfortunately, she overestimated her running ability. Although Driver saw Babysitter and applied his brakes, he was unable to stop in time and struck Babysitter. Babysitter sustained injuries to her shoulder and back.

The town of Apex has a municipal statute that provides:

No person shall operate a motor vehicle at a speed greater or less than is reasonable or proper, having due regard to the traffic, surface, and width of the street or highway and any other conditions, and no person shall drive any motor vehicle upon any street or highway at a greater speed than will permit the person to bring it to a stop within the assured clear distance ahead.

The posted speed limit for Slow Street is twenty-five miles per hour. Just before Driver hit Babysitter, he was traveling thirty-five miles per hour.

Babysitter's wrist still hurts and is deformed. This deformity causes her distress and embarrassment, for which she is under the care of a psychiatrist.

1. What causes of action, if any, might Babysitter assert against Mother to recover for her personal injuries, what defenses might Mother reasonably raise, and what is the likely outcome of each? Explain fully.

2. What causes of action, if any, might Babysitter assert against Driver, what defenses might Driver raise, and what is the likely outcome of each? Explain fully.

Do not discuss workers' compensation issues.

Question Number 9

Nina purchased a commercial building in Anytown, Ohio, from Yelena and Zelda, who owned the building as tenants in common. Nina financed the purchase through a valid promissory note payable to Zelda that required monthly payments. Nina, Yelena, and Zelda are all residents of Anytown.

After taking title to the building, Nina borrowed money from Mortgage Company to fund a scholarship she had established at the local college. In the loan documentation, Nina gave Mortgage Company a mortgage on the building to secure the loan.

Subsequently, Nina leased the building to Corporation for two years. Soon after taking occupancy, Corporation discovered that the building had serious structural damage that had been camouflaged with drywall and siding. Corporation vacated the building and discontinued paying rent. As a result, Nina lacked income and was unable to make the monthly payments on the note to Zelda.

Zelda filed a two-count complaint against Nina. In Count I, Zelda stated a claim on the promissory note. In Count II, Zelda alleged that Nina had defamed her by asserting publicly that Zelda had stolen money from her church.

Nina's response to the lawsuit included the following: (i) a timely answer in which she denied liability on the promissory note; (ii) a counterclaim against Zelda for rescission of the purchase and sale of the commercial building on the ground of fraudulent failure to disclose the structural damage; (iii) a third-party complaint against Corporation for breach of the lease agreement; and (iv) a motion to dismiss Zelda's defamation claim on the ground that it was improperly joined with Zelda's claim on the promissory note.

Just after Nina filed her responses, Mortgage Company filed a motion to intervene in the lawsuit. Mortgage Company based its motion to intervene on the proposition that none of the other parties adequately represented its interests and that its interest in the second mortgage would be destroyed if Nina is successful in rescinding the purchase agreement. Mortgage Company's complaint, which accompanied the motion to intervene, sought a judicial declaration that it has a valid mortgage that cannot be defeated by Zelda and Yelena.

Zelda moved to dismiss Nina's counterclaim for rescission on the ground that Nina, by failing to join Yelena, had failed to join a necessary party. Zelda also opposed Mortgage Company's motion to intervene, arguing that Nina and Corporation could adequately represent Mortgage Company's interests in the lawsuit.

Corporation moved to dismiss Nina's third-party complaint on the ground that Corporation was improperly joined as a third party.

How should the court rule on:

1. Nina's motion to dismiss Zelda's defamation claim?
2. Mortgage Company's motion to intervene?
3. Zelda's motion to dismiss Nina's counterclaim for rescission?
4. Corporation's motion to dismiss Nina's third-party complaint?

Explain your answers fully.

Question Number 10

Michael, an Ohio attorney, held himself out as a “certified estate planner.” John is a financial planner. Michael and John entered into an agreement under which Michael would perform estate planning services for any clients that John referred to him, and Michael would remit to John, as an “administrative fee,” 10% of the fees paid to Michael by all such clients.

Michael required all clients, at the initial meeting, to sign a document stating

Client is aware that Michael’s liability for professional malpractice is limited to \$25,000 and that all disputes shall be submitted to arbitration by an arbitrator selected by Michael. The decision of arbitrator shall be final and binding on all parties.

Michael drafted estate planning documents for Wilma, who had a sizeable estate. When Wilma died, it was discovered that there were serious deficiencies in the documents. The deficiencies resulted in millions of dollars of tax liabilities that could lawfully have been avoided if the documents had been properly drafted.

Wilma’s heirs filed an ethics complaint against Michael with the Ohio Supreme Court Disciplinary Counsel. They also sued John, alleging that he knew of Michael’s incompetence, and that he had knowingly failed to inform them of it because of his interest in obtaining the 10% administrative fee.

John retained Stanley to defend him in the suit brought by the heirs. Stanley undertook the representation notwithstanding that his practice involved almost exclusively divorce and child custody matters. However, soon after accepting John’s case and recognizing his lack of expertise, Stanley attended a half-day continuing legal education course to learn something about estate planning.

Stanley got busy with a large custody case and inadvertently missed the filing deadline for his first responsive pleading, with the result that a default judgment was entered against John.

What ethical violations, if any, did Michael and Stanley commit? Explain fully. (Please note: the answer to this question is substantially the same under either the Ohio Rules of Professional Conduct that went into effect on February 1, 2007, or the Ohio Code of Professional Responsibility that was in effect before that time.)

Question Number 11

Intending to make a novel proposal of marriage to his girlfriend that evening, Boyfriend telephoned Chef, the owner of a local restaurant, and made a 5:30 p.m. dinner reservation. During the conversation, Boyfriend told Chef he wanted to arrange for a diamond engagement ring to be delivered to their dining table in a champagne glass. Chef said he would tell Posey, his regular hostess on duty that evening, about the plan. Chef also instructed Boyfriend to give Posey the ring when he entered the restaurant. Chef said, "Posey will take care of it from there."

When the couple arrived at 5:15, Boyfriend parked his car in the restaurant's lot. They found the front door locked and a handwritten note tacked to the front door that said, "We open at 5:30. For early drinks, go around back to the patio." In the patio, they were greeted by a woman wearing a nametag labeled "Hostess." As they were being seated, Boyfriend handed "Hostess" \$200 and the diamond ring and whispered to her, "Here's the cash for a bottle of your best champagne. You know what to do with the ring." "Hostess," it turns out, was an imposter, who did not work for Chef and who earlier that day had overheard Chef tell Posey about the arrangement. "Hostess" disappeared with the ring and the \$200, and her whereabouts are unknown.

At 5:30, when the restaurant opened, Boyfriend tracked down Chef and Posey and told them what had happened. Chef apologized profusely but said truthfully that he knew nothing about any note tacked to the front door or about anyone posing as "Hostess."

As Posey was accompanying Boyfriend and his girlfriend to their table, Posey whispered to Boyfriend that on other occasions when a customer wanted to "surprise" his fiancée, Chef would allow Posey to go to the jewelry store next door and buy an item of jewelry for the customer. She said that if Boyfriend would give her the money, she would buy a ring for him and deliver it in a glass of champagne. Boyfriend was skeptical but, when Posey assured him that Chef occasionally allowed her to do this, Boyfriend gave Posey \$1,000 in cash and told her to buy the best ring she could get for that. Posey disappeared with the \$1,000 and has not been seen since.

When Posey failed to return, Boyfriend took his girlfriend by the hand and stormed out of the restaurant, protesting loudly that he was going to sue Chef. Outside, he handed his car keys to Valet, the parking attendant employed by Chef, and pointed to his car. As Valet was bringing the car around, Chef came out to see what the trouble was. When Boyfriend angrily told Chef what had happened with Posey, Chef truthfully told Boyfriend he had never authorized Posey to purchase jewelry or any other items for customers and that Boyfriend was an idiot for believing Posey's story.

Valet, distracted by the argument going on between Boyfriend and Chef, crashed Boyfriend's car into another parked car. It turned out that Chef had a longstanding rule, well known to Valet, that Valet was supposed to retrieve and deliver cars that only Valet

himself had parked and was prohibited from retrieving cars that the customers had parked themselves.

Based on agency principles relating to an agent's authority, is Chef liable to Boyfriend for damages resulting from the acts of:

1. Hostess?
2. Posey?
3. Valet?

Explain your answers fully.

Question Number 12

Husband and Wife died in an automobile collision on a remote highway in rural Ohio. When the crash was discovered 48 hours later, medical professionals were unable to determine how long either had survived after the crash.

Neither Husband nor Wife had prepared a will. Husband and Wife, having recently married, owned no joint property. Husband's estate consisted of a bank account with a balance of \$100,000. Wife's estate consisted of a bank account with a balance of \$300,000.

Husband is survived by Brother and by Nephew, who is the son of Husband's deceased Sister. During his lifetime, Husband advanced Sister the sum of \$50,000. Sister acknowledged this advancement in writing.

Wife, who had been previously married, is survived by Biological Daughter, Adopted Daughter (who had been legally adopted), and Two Grandchildren, who are the children of Wife's deceased Son.

To whom and in what amounts should the cash estates of Husband and Wife be distributed? Explain fully.