

QUESTION 1

Officer Alert and his partner, Officer Ready, were on routine patrol in their city. They decided to conduct a surveillance of a known "crack house." They observed many enter the house and leave within two minutes.

They also observed a late model Buick with the license plate showing it to be from a neighboring county. The officers observed the car to have four occupants. One of the passengers, Right Front, exited the vehicle from the right front seat, entered the crack house, and exited 90 seconds later. After he returned to the car, the officers observed the four occupants of the car huddle together as if some sort of exchange were occurring. The Buick left the crack house and the officers followed.

Two intersections later, both officers watched as the Buick failed to stop at a stop sign and drove through the intersection. Officer Alert immediately activated his overhead lights and the Buick pulled to the curb. Officer Alert approached the Buick and learned that the name of the vehicle's operator was Driver.

Driver went on to state that she and the others had been visiting her cousin for several hours and had just left. She said they were returning to her house in the neighboring county. A computer check showed her license to be valid, but she could not produce the car's registration.

Officer Alert ordered Driver to step from the vehicle for a check to see if she was armed. Driver refused to do so. Driver was forcibly removed from the car, searched, and no weapons were located on Driver's person. Officer Alert informed Driver that he was going to check the vehicle identification number through the windshield of the car. Driver told him not to do so. Alert reached in and removed the road map from the dashboard so that he could read the number. Upon doing so, Alert saw a small plastic bag containing what he recognized to be crack and seized it. Driver was arrested. A computer check based on the vehicle identification number revealed the car was Driver's.

At this time, Right Front bolted from the car with Officer Ready giving chase. Ready yelled for Right Front to halt, which only had the effect of quickening his pace. Right Front ran up to the side door of a house just down the street. He opened the door with a key, threw in whatever he had in his hand, locked the door, and then turned around to smile at Ready while inquiring what the problem was. Right Front proudly informed Ready that this was his house and that Ready may not enter. A computer check confirmed as much to Ready's chagrin. Unbeknownst to both Alert and Right Front, Right Front's neighbor, Neighbor, witnessed the whole thing. Neighbor broke into Right Front's back door and emerged from the side door with a vial of crack cocaine that Neighbor said he found just inside the side door. Neighbor surrendered the vial to Ready, who arrested Right Front for possessing the crack.

Upon Driver's arrest, a third passenger, Left Rear, was observed fidgeting in his seat. Ready and Alert ordered the remaining passengers to exit the vehicle. Officers Ready and Alert asked all present for a consent to search. All four occupants of the car refused, demanding that the police obtain a warrant. Ready searched the vehicle anyway. Another vial of crack was found under Left Rear's seat. Left Rear also was taken into custody.

Driver, Right Front, and Left Rear have all filed motions to suppress the crack cocaine sought to be used against them in their respective cases and the validity of their arrests. You are the trial judge and must rule on the motions. This includes the propriety of each person filing a motion. Discuss all issues fully.

QUESTION 2

Leah King, a wealthy widow, had three daughters, all of whom she loved equally even though each had a problem in Leah's estimation.

The oldest daughter, Gladys, age 28, had a stimulating job, was very bright and capable, with well-behaved children and a kind husband. She and her husband, however, lived quite beyond their means and were always overextended in debt. Gladys claimed she was too busy to watch the dollars.

The middle daughter, Rose, age 25, had been married to a mean, controlling tyrant who divorced her and got custody of their three children. Rose was ordered to pay child support and spousal support to her ex-husband, but she had lost her job due to her constant absences due to attending court proceedings in contesting the divorce action, and she was now too depressed to find another job.

The youngest daughter, Carol, age 19, was sweet, generous, and naive, and devoted her energies to worthy causes.

Leah wanted to treat them all equally and protect and provide, and had, therefore, established a trust for each of them. She has fully funded each trust with assets that generate for each daughter an income of over \$20,000 per year.

Each trust provided:

The income of the trust shall be paid by the trustee at least annually to my daughter, _____, and so much of the trust principal as the trustee deems appropriate. However, if my daughter, should attempt to alienate her interest, or if she should become bankrupt, or if her creditors should seek to reach it by attachment or other judicial process, her right to receive the income shall cease, and thereupon, the trustee may, in his sole discretion, apply such part of the income as the trustee deems necessary for her reasonable support, maintenance, and health, or for any extraordinary expense caused by illness, accident, or emergency. If, while my daughter is beneficiary, the trustee shall deem that the income derived from the trust fund is insufficient for the purposes above, then the trustee may pay to my daughter or for the benefit of my daughter, such part of the principal of the trust estate as deemed necessary.

Upon the death of my daughter, _____, prior to reaching age 50, the trust will terminate and the trustee shall distribute the remaining trust estate to said daughter's lineal descendants, per stirpes. If there are no lineal descendants, then to my surviving daughters, equally.

The trust principal of each trust is to be distributed to each of the daughters when each reaches the age of 50.

You are the trustee, and the following have occurred:

1. Gladys' creditors, having sued her and obtained judgment, are seeking payment of their judgments from the trust.
2. Rose's ex-husband has obtained a judgment for unpaid child and spousal support and is seeking payment of the support obligations from the trust.
3. Carol, in a spirit of wanting to take a vow of poverty, has assigned her rights to the income to the Good Sisters of the Homeless.

Advise the trustee as to the rights of the beneficiaries, the extent of their interests, and his rights and obligations to the beneficiaries and the creditors.

QUESTION 3

Kryptonite is a rare material found mostly on the African and Asian continents. A number of years ago, the State of Texarkana discovered substantial deposits of Kryptonite ore on state-owned lands. Since there was little demand for the ore, Texarkana made no effort to commercially mine and sell it.

In the course of developments in space technology, refined Kryptonite ore was found to be ideal in the manufacture of cooling tiles used to sheath the nose cones of space vehicles. Texarkana then began to mine Kryptonite ore and sell it in the open market, both in Texarkana and outside the state. Production of Kryptonite ore from Texarkana's mines amounted to about 5% of the total used in the United States, with the rest of the supply coming from Africa and Southeast Asia.

Because of domestic turmoil in the countries that mined and exported Kryptonite ore, the world's supply of Kryptonite ore has recently diminished by 50%. Consequently, the Texarkana Corporations Commission (the appropriate state agency) entered an order confining the sale of Kryptonite ore mined on Texarkana's state-owned land to Texarkana residents only. The order further required that Kryptonite ore mined on Texarkana state-owned land could be used only for manufacturing done in the state of Texarkana.

Assume that neither the Congress of the United States nor any federal agency having appropriate jurisdiction has taken any action to regulate the mining, refining, manufacturing, and marketing of Kryptonite ore and its derivative products.

The Lex Luthor Company, located in Kansas, is a manufacturer that uses Kryptonite ore in its manufacturing. It has for many years been supplied with raw and partially refined Kryptonite ore originating from Texarkana state-owned land. The Lex Luthor Company is in the business of manufacturing and selling Kryptonite products throughout the United States and the world. The order of the Texarkana Corporations Commission effectively denies to the Lex Luthor Company its major source of Kryptonite. As a result, the Lex Luthor Company is being forced to reduce its production substantially with a corresponding diminution of profits.

The Lex Luthor Company has brought suit in the United States District Court against the Texarkana Corporations Commission to restrain enforcement of the Commission's order claiming that the Commission's action resulted in an undue burden on interstate commerce and discrimination against companies located outside of Texarkana.

The agency defends on the basis of:

- 1) the Tenth Amendment of the Constitution of the United States;
- 2) state sovereignty;
- 3) the state's position that it is engaged in a proprietary function and is, therefore, a market participant; and
- 4) the state's position that its actions do not constitute an undue burden on interstate commerce in violation of §8 of Article I of the Constitution of the United States.

Who should prevail, and why? Discuss fully.

QUESTION 4

Mr. and Mrs. Grand, whom you have represented in the past, come to your law office and ask you to help them get custody of their two grandsons, Bob and Alex. Bob and Alex, ages 17 and 14, are the children of the Grands' only son, Sonny. The Grands tell you that Sonny's wife, Bonnie, has filed for divorce, and that they don't believe that either parent should get custody of the children because of their respective problems. During the past few years, Sonny has been drinking heavily, and Bonnie has been abusing prescription drugs. The Grands are convinced that these substance abuse problems have had a negative impact on Bob and Alex. Sonny and Bonnie seem to pay little attention to the boys. Although both Bob and Alex were good students as children, each has had attendance problems over the past few years and the academic performance of each has shown a drastic decline. Although Bob turns 18 next year, he's just completed his first year of high school. Alex has had several minor scrapes with the law. Although the Grands have confronted Sonny and Bonnie about their substance abuse, both deny that there's a problem.

Throughout their marriage, Sonny and Bonnie have lived in a suburban community nearly 150 miles from the city where the Grands live. Despite the distance, the Grands have regularly visited their grandsons, and the boys have often spent weekends at the Grands' apartment. During the past year, due to their parents' problems, the boys have been coming to visit almost every weekend. Bob and Alex have repeatedly told the Grands that they want to live with them, but that their parents think the idea is absurd.

You agree to represent the Grands in this matter. Assume that their accusations about Sonny and Bonnie are true and that the Grands will be allowed to intervene in the divorce action, filed in an Ohio court.

- (1) Can the Grands get custody of the children? What principles will guide the court's determination?
- (2) The Grands are devoted to their grandchildren, but are somewhat concerned about the financial burden of caring for them. If the Grands get custody, will Sonny and Bonnie have to pay child support and, if so, for how long?
- (3) The Grands seem to think that the parents should not even visit with the children until they've sought treatment for their respective problems. Is the court likely to deny them visitation? What standards will guide the court's determination?
- (4) If the court were to order visitation and the Grands refuse to allow it, would the parents have the right to stop paying child support?

QUESTION 5

Andy is a well known and universally liked home remodeler and painter in Fixup, Ohio. Paxton hired Andy to restore and paint his barn during a period when Paxton and his wife had planned a vacation to Florida. The agreed price was \$8,000, payable on completion, as the barn was in very poor shape and required extensive work.

On the agreed date, Andy diligently began work. While Andy did a beautiful job of painting and restoring the structure, unfortunately it was the wrong barn. Paxton's neighbor Jones, who owned the immediately adjacent farm, had a barn that was amazingly similar to Paxton's barn and was also in equal disrepair and need of restoration. Coincidentally, Jones was also away when Andy did the work, so no one was available to stop Andy from completing his unfortunate error.

After Paxton and Jones returned, Andy discovered his error; he then went to Jones and asked Jones if he would please pay for the work. Both Andy and Jones agreed that Jones' barn now looked "brand new." At first Jones, pleased by his good fortune, refused to pay Andy because he had never even asked Andy to do the work. Andy, getting angry, suggested he might see a lawyer. Jones thought about this and the next day sent Andy the following letter which he signed:

Andy,

You are a good boy and a good worker. You made an honest mistake and I benefited well. Accordingly, if you will agree not to sue me, I will pay to you the sum of \$6,000 for the work, but not the \$8,000 that you ask. I hope you learn from this lesson to be more careful.

Sincerely,

/s/Jones

Andy agreed that \$6,000 was actually close to the fair value for the work and, accordingly, that he would not see a lawyer about suing Jones for the full value of the improvements to the barn. A short time later, however, Jones experienced a major crop failure. He also lost of all of his equipment and the barn itself in a disastrous fire for which he was not insured. Subsequently, he filed for bankruptcy. Jones listed as a debt his promise to Andy which was discharged in the bankruptcy proceeding, along with all the rest of Jones' unsecured debts. The only thing he was able to keep was the farm itself. After his discharge in bankruptcy, however, Jones still felt sorry for Andy and he wrote and signed a second letter to Andy which said:

Andy,

I still feel sorry for you every time I think of your hard work. I'll pay you \$4,500 as soon as I sell the farm.

Sincerely,

/s/Jones

Andy was so mad he never actually responded to Jones, but still he anxiously waited for the check. If things weren't bad enough for Andy, however, two weeks later Jones died unexpectedly. The executor of Jones' estate told Andy that he wasn't sure if the estate was bound by Jones' last promise and, finally, he advised that due to the unforeseen reduction of assets the estate would pay Andy only \$2,000 after the sale of the farm scheduled two years in the future. Andy said, "Well, okay, I guess that's the best I can do." Andy then filed a proper claim against Jones' estate based upon the executor's promise. Upon hearing of this promise by the executor, however, Jones' sister, Mary, wrote a note to Andy which she signed as follows:

Dearest Andy,

I feel terrible about all of the broken promises my brother made to you regarding that barn restoration. Even though the barn and its contents were burned up in the fire and he had no insurance, I feel a moral obligation to make this right and would like to pay you the \$4,000 difference you have coming to you.

Sincerely,
/s/Mary

Andy contacted Mary to tell her that he appreciated and accepted her offer. Some time later, the estate was closed and Andy never received any payments from anyone.

Discuss the legal obligations to Andy, if any, of (1) Jones (on his two letters); (2) Jones' estate; and (3) Mary, during each phase of the story. Assume that the Ohio statute of limitations on contracts is not an issue at any stage.

QUESTION 6

Our client, Paul Pattonholder, brought a patent infringement action against Competitor, Inc. in the United States District Court. The private investigator hired by our client has reported that two current employees and two former employees of Competitor, Inc. are willing to speak to us about the case as long as we are willing to do so without informing Competitor, Inc. or its counsel.

One of the current employees, Mike Manager, is a senior management employee who is in charge of patents for Competitor, Inc., and he wants to “clear his conscience.”

The other current employee, Sally Snitch, a waitress in Competitor, Inc.’s cafeteria, wants to give information about Competitor, Inc.’s plan to infringe on our client’s patent which she overheard at a luncheon meeting between the president of Competitor, Inc. and another person. Sally heard the other person warn the president that infringing on another’s patent could result in an expensive lawsuit.

Fred Former, the former employee of Competitor, Inc. who supervised the actual infringing on our client’s patent, may be willing to meet with us even though his personal attorney is adamantly opposed to any meeting. Fred’s information includes his discussions with the general counsel of Competitor, Inc. about the patent infringement case with our client, and Fred’s personal knowledge of the patent infringement. Fred Former also has a letter prepared by counsel for Competitor, Inc. to the president of Competitor, Inc. In that letter, the president was warned by corporate counsel that the company’s infringement on the patent was illegal and ill-advised because of the potential for a substantial, adverse damage award.

The other former employee, Sam Secretary, is willing to meet with us, but he wants to know if he has done anything improper by typing notes of the president of Competitor, Inc. describing how to infringe on the patent “without being caught.” He is willing to tell what he knows, and he is willing to do whatever we believe is the right thing for him to do.

As the new associate of the law firm, you have been asked for your ethical opinion in the following: (1) whether we should speak to the four witnesses; (2) what obligations, if any, do we have to counsel for Competitor, Inc.; and (3) what obligations, if any, do we have to the prospective witnesses if we speak with them. Be specific in your recommendations and explain the reasons for them.

QUESTION 7

Jay spent all afternoon enjoying some beers with his buddies at the Dew-Drop Inn Tavern in the town of Crestline, Ohio. When he looked outside and realized that the sun was setting, Jay knew that he should head for home, due west down Ohio State Route 30. As Jay sped out of the Tavern's parking lot in his red pick-up truck, he was in a hurry to get through the construction zone on the road just past the only traffic light between him and his back door at home.

Jay had trouble seeing the traffic signal as he approached the Mill Road intersection. There was little traffic on the road. As he squinted into the setting sun toward the stop light, he thought his light might only be yellow, but he knew that he really was taking a chance. He never saw the Ohio Highway Patrol car parked in the gas station at the Mill Road corner. He slowed the truck to look out for crossing cars, saw none, and went straight through the intersection.

After making it through the Mill Road intersection safely, he saw no traffic ahead in the single-lane construction zone with the "30 miles an hour limit" and "construction zone-double fines" signs. He never saw the Ohio Highway Patrol trooper behind him, pacing the 40 m.p.h. speed of his pick-up from the intersection.

The trooper finally stopped Jay's pick-up as the red pick-up pulled off the single lane State Route. Jay heard the siren, saw the Ohio Highway Patrol car flashing lights, and pulled over on the berm. Jay thought that he could pass the trooper's field sobriety tests. Jay miscalculated this time. An hour later, at the Ohio Highway Patrol post, Jay took the requested Breathalyzer test. The properly conducted test produced a reading of .14 percent blood alcohol content, well over the Ohio statutory limit for alcohol intoxication. Jay made no admissions to the Ohio Highway Patrol.

Jay was cited in Crestline Municipal Court for violating Ohio laws by (1) running a red light, (2) violating the construction zone speed limit, and (3) driving a motor vehicle while under the influence of alcohol. After plea negotiations failed, Jay and his attorney, Jeni, chose to try all the charges to the court.

I. In preparing carefully for his first bench trial, Prosecutor Pete obtained a certified copy of the Crestline Ordinance establishing that Ohio State Route 30 through Crestline is a public highway with a traffic control signal at the Mill Road intersection.

The prosecutor asks the Crestline, Ohio Municipal Court judge at trial to take judicial notice, based on the Ordinance, that State Route 30 through Crestline within the Court's jurisdiction is a public highway with a traffic light controlling the Mill Road intersection. The defense attorney objects that Pete had not given her advance written notice. How should the judge rule and why?

II. The prosecutor further asks the court to take judicial notice that the posted construction zone signs satisfied the applicable Ohio statute's requirements for such construction zones. When the defense attorney objects, the judge responds that she doesn't need to refer to the Revised Code because she is personally very familiar with the signs along that stretch of State Route 30 in the construction zone. Is this knowledge an adequate basis for the trial judge to take judicial notice of this fact? Why or why not?

III. The prosecutor asks the judge to take judicial notice that the Ohio statute setting the 30 m.p.h. speed limit for construction zone applies, after providing proof that this construction zone was established by law in conformity with the statute. May the judge properly decline to take judicial notice of the fact and require further proof?

IV. The prosecutor asks the judge to take judicial notice that Jay's properly conducted breathalyzer reading, with a proven scientifically reliable test, over the .10 percent statutory limit requires a finding of guilt on the DUI charge. The defense attorney objects that the reading is only a presumption that shifts the burden. The prosecutor rejoins that if it's a presumption, it's conclusive. How should the judge rule and why?

V. When the prosecution rests, defense attorney Jeni wants to provide evidence that the sunset obscured Jay's vision at the stoplight, but she doesn't want to call Jay to testify and has no other witness. How can she do so? Since the judge knows the locale well, can the defense call the judge as a witness? Can she do it any other way?

QUESTION 8

Indigestion, Ohio has enacted a municipal ordinance classifying used cooking oil as specialized waste and providing that:

No person, including owners and operators of restaurants, may deposit, dump or place used cooking oil anywhere except in an orange container provided by the city. Owners and operators of restaurants shall report all leaks in the orange containers to the City within twenty-four hours after they are discovered so that they may be repaired by the City. Whoever violates this ordinance shall be liable in money damages for the costs of clean up and injuries resulting to person or property.

The floral shop owned by your client, Ms. Flower, had been situated next to Greasy George's Restaurant for ten years. For the past three years, Tom Trash, an employee of the restaurant, has been solely responsible for placing the restaurant's used cooking oil in the city-provided orange container.

About two years ago, Mr. Trash asked Ms. Flower to go out on a date with him. She refused and laughed at him. Mr. Trash said that he would get even some day. About a year after Ms. Flower had rejected Mr. Trash's offer of courtship, rose bushes planted in the rose garden in the rear of her building began dying. During the following months more rose bushes died, forcing the floral shop to close.

Ms. Flower called in a rose and soil expert to investigate. The expert discovered that the soil was contaminated with used cooking oil which caused the rose bushes to die.

Being suspicious that Greasy George's Restaurant was the cause of the contamination, Ms. Flower walked over to the orange container behind Greasy George's Restaurant to verify that it contained used cooking oil. As she approached the orange container, she saw a small puddle of used cooking oil immediately in front of it. Ms. Flower attempted to jump over the puddle. Unfortunately, she misjudged her jump, landed in the puddle, and fell breaking her arm.

After being questioned by police, Mr. Trash confessed that for two years he had been secretly dumping portions of the restaurant's used cooking oil throughout Ms. Flower's rose garden as revenge for Ms. Flower's rejection of him. He further admitted that the owner of the restaurant had no knowledge of his activities. After being informed of Mr. Trash's confession, Greasy George immediately fired Mr. Trash because of what he had done to Ms. Flower's roses.

Ms. Flower has recently learned that the owner of Greasy George's was aware that the orange container had a hole in it and needed repair, at least seven days before she slipped and fell. The owner intended to report the leak to the City, but he had not done so as of the date of Ms. Flower's fall.

Your client, Ms. Flower, wants to sue the owner of Greasy George's Restaurant for her personal injuries and for the loss of her roses. You have been asked your opinion as to the likelihood of success of Ms. Flower's claim against the owner of Greasy George's, and what defenses, if any, are likely to be raised by him. Please give the reasons for your opinions.

QUESTION 9

Mrs. Jones wanted to purchase a swim club located on a five-acre parcel of property, upon which she planned to add tennis courts. Believing that the price would be higher if the owner, Mr. Club, was aware of Mrs. Jones' interest, she requested Mr. Dealer to act for her to: (1) contract to buy the swim club; (2) hire a contractor to provide only the labor to construct the tennis courts because Mrs. Jones wanted to provide the materials; and (3) hire lifeguards. Mrs. Jones agreed to pay Mr. Dealer a \$30,000 fee the day the swim and tennis club opened.

Mr. Dealer approached Mr. Club and, being careful not to disclose that he was working for another, executed a written contract for the purchase of the club and five acres. Mr. Club verbally agreed to give Mr. Dealer a membership worth \$10,000 to the Fancy Golf Club if the sale closed. Mr. Club also offered to sell Mr. Dealer the swimwear store located on property next to the swim club. He represented that the swimwear store was a great business to own in tandem with the swim club due to the cross marketing. Mr. Dealer and Mr. Club agreed to the sale of the swimwear store and executed an additional contract.

Mrs. Jones paid for the club and took title to the property. Thereafter, and unbeknownst to Mrs. Jones, the sale of the swimwear store consummated with Mr. Dealer taking title in his name. He also received the membership to the Fancy Golf Club.

Thereafter, Mr. Dealer solicited bids for the "labor only" to construct the tennis courts. Included in the package given to bidders, Mrs. Jones provided a letter that read in relevant part: "I have asked Mr. Dealer to do what is necessary to assist me in having the tennis courts constructed." The lowest bidder, Mr. Builder, offered to provide both the labor and the materials. The offer was accepted by Mr. Dealer who signed the contract as agent for Mrs. Jones. Mrs. Jones was unaware of the contract with Mr. Builder and did not know that the materials were being provided by Mr. Builder.

Mr. Dealer advertised for lifeguards. Although not qualified as a lifeguard, Ms. Manager applied for a job as a general manager. Mr. Dealer hired Ms. Manager as a general manager and agreed to pay her \$500 per week. A contract was signed by Mr. Dealer, in his individual capacity, and by Ms. Manager. Mr. Dealer agreed orally that if Ms. Manager stayed for six months, she would receive a \$500 bonus.

The day before the grand opening, Mrs. Jones visited the club. Mr. Dealer introduced her to Ms. Manager and showed Ms. Jones the written six-month contract that hired Ms. Manager as general manager. Ms. Manager was to start the next day. Mr. Dealer did not tell Mrs. Jones about the \$500 bonus. Mrs. Jones said it was nice to meet Ms. Manager and left to visit the swimwear shop. She discovered upon arrival that it had just been purchased by Mr. Dealer and that he had received a free golf club membership. The swim club opened the next day.

1. Will Mr. Dealer be successful in a suit against Mrs. Jones for the \$30,000 fee? Does Ms. Jones have any claims against Mr. Dealer? Explain.
2. Is Mr. Builder's contract enforceable in a suit against Ms. Jones? Explain why or why not.

3. Will Ms. Manager be able to enforce her written and oral contracts against Mrs. Jones? Explain why or why not.

QUESTION 10

The Tattler, a grocery store tabloid, reported last Friday that international track star and Olympic gold medalist Speedy Goldenfeet will be barred from international track and field competition for the next two years. The publication quotes extensively from an internal memorandum prepared by Dr. I.M.A. Novice, who conducted mandatory urinalysis after Speedy's victory two weeks ago in the Los Angeles Classic. Novice, in his confidential report to the American Track & Field Committee (the "Committee"), concludes that Speedy's urine showed traces of Nandrolone, a prohibited anabolic steroid with a half life of nine months. Under the Committee's published rules, any athlete found to have abused Nandrolone will be prohibited from participating in competition for two years.

Speedy, upon learning of the published story, consulted with Dr. Nobel, a leading authority on steroid testing. Dr. Nobel developed the protocols employed by Dr. Novice in testing Speedy's urine. After extensive follow-up urine and blood work, Dr. Nobel has found no indications that Speedy used Nandrolone or any other prohibited substance. Dr. Nobel is prepared to testify that Novice's conclusion "is the result of negligent testing technique and is demonstrably wrong."

The Tattler is published in Florida by a Delaware corporation and has widespread distribution throughout the Southern, Southwestern and Western states. The only supermarkets in Ohio carrying *The Tattler* are three affiliated AGI groceries located in Portsmouth, Gallipolis and Circleville. A total of 19 copies of last Friday's edition were sold in these three stores, although the readers of *The Tattler* are consistently loyal: an average of 20 copies of *The Tattler* have been sold in these stores on a weekly basis for the last four years. The copies of *The Tattler* distributed in Ohio were printed in Kentucky and delivered to the three Ohio grocery stores by an independent magazine distributor operating out of Louisville.

Dr. Novice is a teaching fellow at Los Angeles University. He performed his tests in the school's laboratory, acting as an independent contractor for the Committee. He mailed his confidential report to the Committee's headquarters in Chicago. He claims to have no idea how *The Tattler* obtained a copy.

The Tattler's story was subsequently republished verbatim in Ohio by *Buckeye Track & Field*. This Columbus-based publication has a paid circulation of 89 readers, most of whom are residents of Ohio. *Buckeye* attributed the story to *The Tattler*.

Following publication of *The Tattler* story, Speedy was notified that his three primary endorsement contracts were being canceled, resulting in loss of annual income in excess of \$100,000. Two appearance fee guarantees for upcoming track and field competitions were also canceled.

Speedy needs action now or his career will be ruined. The Senior Partner of your law firm is bringing a defamation action on his behalf. Your assistance is needed in analyzing the jurisdictional issues involved in deciding whether Speedy can bring suit in United States District Court in Columbus, the city of his residence. Senior Partner is legendary for demanding a clear explanation of the underlying statutes, rules and constitutional principles upon which you base your conclusions, so identify each and explain its application in answering his inquiry.

Please advise Senior Partner:

- (1) Whether and under what circumstances subject matter jurisdiction exists in Speedy's forum of choice over the potential defendants;
- (2) Whether personal jurisdiction is attainable over *The Tattler* in that Court; and
- (3) Whether personal jurisdiction is attainable over Novice in that Court.

QUESTION 11

United Development Company is in the business of acquiring vacant tracts of land for future real estate projects.

United Development viewed a site 30 miles from downtown Cleveland, Ohio and thought it would be advantageous to acquire a 100-acre section for a potential residential development. United Development told its land acquisition department to inquire about the possibilities of purchasing the 100 acres.

After some negotiations, the land acquisition department reported that the 100 acres were for sale. The 100 acres consist of five separate tracts known as Tract Nos. 1, 2, 3, 4, and 5. The potential sellers of the five tracts of land, claiming to be the owners, gave United Development copies of the titles and other information concerning the five tracts.

Tract No. 1

This tract consists of 20 acres and has been owned by the Adams family for 75 years. In 1965, Al Adams conveyed his 20 acres to “his son, Bubba, for life, and upon his death to Bubba’s son, Tom.” Earlier this year, while Bubba was still living, Tom conveyed “all my right, title and interest in Tract No. 1 to my grandfather, Al Adams.”

Al Adams has offered to sell Tract No. 1 to United Development.

Tract No. 2

This tract consists of 20 acres. In 1970, Baker, a gentleman farmer, transferred this acreage “to Shark Woods and his heirs so long as the land is used solely for farming purposes.”

In 1971, Shark built a golf driving range on the land and ran it for ten years. Baker died in 1978, over seven years after he learned about the golf driving range. Baker had one son, Bobby, who inherited his father’s estate under his father’s will. In 1980, Shark closed down the driving range and grew tomatoes on the land. Recently, Shark announced his plans to build a country club with a golf course on the land in a year.

After this announcement, Bobby sent Shark a certified letter stating that he owned the land again because Shark had used the land for non-farming purposes. Bobby began to advertise the sale of this land.

Tract No. 3

This tract consists of 20 acres. In 1975, the owner conveyed the land to “Abel for life, then to Batt for life, then to Colt.”

In 1985, Colt mortgaged “all his right, title and interest” in the land to The Bank as security for a loan. Both Able and Batt died in 1993. In 1994, Colt defaulted on his loan and The Bank declared the loan in default and instituted a foreclosure action. The trial court set the final hearing on the foreclosure action in the next two days. The Bank and Colt have offered United Development the property for sale.

Tract No. 4

This tract consists of 20 acres. In 1985, Ed conveyed this land “to Jim for life and then to Carl and his heirs if Carl marries Donna.” Jim is ninety-five years old and Carl remains a bachelor. Carl heard that United Development is paying “big bucks” for the property. Carl contacts United and attempts to sell the property.

Tract No. 5

This tract consists of 20 acres. In 1980, Julie conveyed the acreage “to Beverly for life, then to my heirs at law.” Julie, age 84, never married. Beverly is deceased. Julie’s only heir, Doris, wishes to sell the property.

As United Development Company’s attorney, discuss the property interests revealed by the various titles and advise your client whether it will acquire good title from the sellers.

Explain fully.

QUESTION 12

Erma Employee, the bookkeeper of Clean Car Company (“CCC”), went to Big Bank on June 1, 1997, and asked the teller for a cashier’s check in the amount of \$10,000 payable to “Creditor Co.” Erma wrote a check for the amount of the cashier’s check drawn on a CCC account at another bank. Erma signed her name to the check, gave it to the teller, and Big Bank issued the cashier’s check as requested. Later that day, Erma mailed the cashier’s check to Creditor Co.

On June 2, 1997, the owner of CCC (“Owner”) had a nasty telephone conversation with the owner of Creditor Co., who happened to be his brother, about an unrelated subject, and decided that this brother could wait for his \$10,000. Owner told Erma not to make any payment on the account, to which Erma replied that she had sent a check the day before. Owner told Erma that he had never authorized her to send that check, that he didn’t care that Erma was married to his brother, and that she should stop payment on the check immediately.

Erma called Big Bank and explained the situation. The teller agreed to refuse payment on the check. Creditor Co. presented the check for payment at Big Bank and payment was refused. The owner of Creditor Co. was furious. He told Big Bank that the money was to be used for the down payment on a loan at a very low interest rate, and that the commitment would expire on June 3, 1997. He even said he would take care of any problems Big Bank had if it paid the check. Big Bank again refused payment.

Owner later admitted that Erma did the right thing in signing and sending the check to Creditor Co., and Owner blamed the entire problem on Big Bank.

What is the liability of Erma Employee and the Owner of CCC on the check written to Big Bank? What is the liability of Big Bank for its refusal to pay the cashier’s check? Discuss fully.

QUESTION 13

Mother and Paul, her 17 year old son, began living, on a temporary basis, in Neighbor State two months ago at the time of Mother's marriage to Husband. Prior to the move, they lived in Home State, where Paul was receiving welfare benefits from the Home State Welfare Department. The intent of the family was to quickly wind up Husband's affairs in Neighbor State, then return to Home State where the family would continue to reside, and Paul would enroll in Home State University. After Paul's application to Home State University was mailed from Neighbor State a month ago, Husband died unexpectedly. Mother and Paul were left destitute and moved back to Home State.

Husband had been a qualified social security wage earner his entire working life. Mother believed that she and Paul would have social security survivor insurance benefits on which to live. She also believed that Paul would continue to receive his welfare assistance from the Home State Department of Welfare. As Mother and Paul quickly learned, their futures were not quite so settled.

Paul learned that his public assistance has been terminated based upon incorrect facts that had come to the attention of the Home State Department of Welfare. According to the notice that Paul received, although the true facts easily could be established through an evidentiary hearing, an opportunity to do so would be available only after the welfare payments were discontinued.

Soon after receiving a termination notice from the Home State Welfare Department, the Social Security Administration informed Mother that she was being denied social security benefits notwithstanding Husband's status as a social security qualified wage earner. The letter explained that because Mother had been married to Husband for only two months prior to his untimely death, federal law precluded benefits. The letter went on to explain that, according to a federal statute, Mother needed to have been married to Husband for at least nine months to qualify for social security survivor insurance benefits.

Finally, Paul just learned that Home State has an administrative rule defining "resident" and "nonresident" for purposes of fixing tuition at Home State University. That rule defines a "resident" to include only those who reside in Home State at the time of application to Home State University. Tuition for Home State residents is less than half the tuition charged for nonresident students to attend Home State University. Paul did not have a Home State address at the time of his application, and he was told by the Home State University Bursar that Home State University must consider him a nonresident and ineligible for the lower tuition available to Home State residents. The determination under the administrative rule is final and there is no right of appeal.

Mother consults your law firm as to Mother's and Paul's grounds for challenging the decisions by the Department of Welfare, the Social Security Administration, and Home State University. As the law firm's newest associate, you have been asked to identify the relevant constitutional issues, the probable outcomes, and the reasons for your opinions.

QUESTION 14

Edison Gates (“Edison”) had finally perfected the technology he had been developing for the past ten years that would enable a lawyer to generate legal documents while driving a car by dictating into the steering wheel. Assured of the success of this new project, he excitedly approached ten of his wealthiest friends to invest in his new Ohio company, Briefs and Byways, Inc. (“B&B”). Edison retained a controlling interest in the company, owning 60%, with the other 10 shareholders each owning 4%. Edison remained the dominant person in the management of the company, and he was a director along with his college computer technology professor and his accountant. Neither of them was a shareholder in the company.

The company was extremely successful, and it paid substantial dividends each year for the first five years of operation in the amount of \$1 million per year. By the end of the fifth year, B&B had assets of \$15 million, net profits of \$3 million per year, a surplus of \$10 million against liabilities of \$4 million, and stated capital of \$1 million.

After five years of such success and profits, Edison (with the concurrence of all the other directors) eliminated the payment of dividends. He had decided to lower prices so that all lawyers could install the B&B technology in every car they owned. His position was that the shareholders had made enough money, and that lawyers deserved a break. At the same time, he wanted to kick off his new marketing campaign that would give the company a unique image, by investing in expensive antique cars in which the B&B technology could be installed and demonstrated around the country. It also enabled him to fulfill a life-long dream of owning and showing classic antique cars around the country with the jet-set crowd. Edison began spending all of the company’s reduced net profits on this new marketing campaign, including acquisition of expensive vehicles, related maintenance, repair, and travel expenses.

After receiving threats of a lawsuit from the minority shareholders, Edison decided after one year to revise his dividend policy, and on March 30, declared the usual dividend of \$1 million, payable on April 30. On April 15, however, Edison received some surprising news from his Chief Financial Officer. It seems that the CFO had erroneously calculated the company’s tax liabilities for the past six years. The IRS had been auditing the books, and the company now owed \$12 million in back taxes and penalties, payable immediately out of the company’s surplus account of \$10 million. Without discussing the matter with the board of directors, Edison glumly authorized the payment of the tax liability, penalties, and the declared dividend, and went to work on devising a new, and less expensive, marketing campaign to rebuild his now insolvent company.

The minority shareholders have hired an attorney to pursue any causes of action against Edison regarding payment of dividends. Please identify and fully discuss the propriety of Edison’s decisions regarding the payment of dividends, the potential claims of the shareholders, and the probable outcome of each claim.

QUESTION 15

You are an Ohio Court of Appeals judge. You will write the court's decision in an appeal from a criminal conviction for attempted murder. The defendant-appellant, Dawn Daly, presents three separate Assignments of Error, each properly preserved for appeal:

1. The trial court erred in allowing Dawn's husband, Victor, the victim of her alleged attack, to testify against her in violation of the Ohio statutory spousal testimony privilege;
2. The trial court erred in excluding her alibi witness, her sister Denise, from testifying that Denise had seen Dawn all day long at a family picnic on the day of Victor's stabbing, because Denise's serious visual impairment and prior mental incompetency purportedly made her entirely incompetent as a trial witness;
3. The trial court erred in allowing the prosecution to impeach the defendant's trial testimony with Dawn's pre-trial statements to a psychiatrist who had interviewed her while Dawn was in jail.

The relevant trial evidence is as follows. Dawn, the defendant, is charged with beating Victor, her husband, unconscious with a ball bat during a domestic dispute. Defendant testified at trial that she had been at the family picnic ten miles away from their apartment all that day until after dark, and she hadn't seen Victor all day long. She filed a timely notice of alibi prior to trial.

The trial court also required Victor to testify against Dawn. He testified that he remembered waking up after taking a long nap in their apartment after coming home from the family picnic. He remembered hearing Dawn yelling something at him. He could positively identify Dawn as his assailant. Dawn's trial counsel vigorously objected to this testimony based on the Ohio statutory spousal privilege, which allows no exceptions, but the trial court allowed the jury to hear this testimony.

On the second assignment of error, the trial court *in camera* accepted the prosecutor's proffer of Dawn's sister Denise's medical records (1) that her long-standing glaucoma condition caused her to have a serious visual impairment, and (2) that three months before the family picnic, she had been adjudicated as mentally incompetent by the local Probate Court, and she had been involuntarily committed for two weeks to a mental health facility. The trial court declined to interview Denise *in camera*, which defense trial counsel requested. Defense counsel argued that Denise would testify that she saw the defendant, Dawn, all day long and around sunset at their family picnic the day of Victor's beating.

Finally, the trial court allowed the prosecution to present a psychiatrist's rebuttal testimony as to Dawn's pretrial statements made during court-ordered interviews with the psychiatrist. Dawn had testified at trial that she spent all day at the family picnic until dark, but Dawn had previously told the psychiatrist that she left the picnic late that afternoon to find Victor, who had left the picnic grounds, because she wanted money from him. The psychiatrist testified that Dawn was lucid, fully-oriented and competent to assist in her own defense during that interview. Dawn's trial counsel specifically objected that the psychiatrist had not given Dawn any *Miranda* warnings, but the trial court had allowed the jury to hear the psychiatrist's rebuttal testimony.

Write the Court of Appeals draft decision, applying Ohio law to these trial rulings separately as to each Assignment of Error (as required by the Appellate Rules).

QUESTION 16

Watermark Company is a wholesaler of greeting cards, stationery and gift wrap. It sells its products on account to retail stores throughout Ohio. In order to protect itself, Watermark requires its customers to sign a security agreement and to provide signed and filed UCC financing statements with regard to the following collateral:

All greeting cards, stationery, gift wrap, and all other current and hereafter acquired inventory, and all proceeds thereof.

You have been contacted by Sally Card, who advises you that she recently closed a store where she sold stationery, greeting cards, gift wrap and other paper products to the public. She conducted her business as a sole proprietorship under the name "Paper Your World." Her primary supplier was Watermark, and she owed Watermark \$75,000 at the time that she closed the store.

At the time that Watermark began selling its products to Sally, she signed a security agreement and UCC financing statements granting Watermark a security interest in the above collateral. The UCC financing statements were then filed with the Secretary of the State of Ohio and in Knox County, Ohio, where the store was located. She gives you a copy of the security agreement and points out the following language to you:

In the event that the Debtor defaults in any payment due to the Secured Party, the Secured Party shall have the right to require that the Debtor deliver the collateral to the Secured Party for disposition at public or private sale. The Secured Party shall then sell the collateral in accordance with the laws of the State of Ohio and apply the net sale proceeds to the account of the Debtor. The Debtor shall remain liable to the Secured Party for any remaining unpaid portion of the indebtedness owed to the Secured Party by the Debtor.

Sally then shows you a complaint that has been filed by Watermark in the Court of Common Pleas of Knox County. In that complaint, Sally is being sued by Watermark for \$75,000. Sally tells you that she delivered all greeting cards, stationery, gift wrap and all other inventory to Watermark at its request after the store closed, and Watermark sold that collateral last week at a public sale for net proceeds of \$10,000. Sally did not receive any notice from Watermark of the time and place of the public sale, and she tells you that she contacted two former competitors who advised her that they would have bid "at least \$75,000" for that inventory at the public sale. Sally also tells you that there was \$2500 in cash in the cash register when she closed the store. Sally took that money and purchased a new bridal gown with it as she is to be married within a few weeks.

Sally asks you the following questions:

1. Does Watermark have a properly perfected security interest under Ohio law?
2. What should she do about the claims being asserted against her by Watermark in the litigation?
3. Can she keep her new bridal gown?

What is your response to each question and what law exists to support your position?

QUESTION 17

Shortly after his wife's death in 1990, Harry came to your law office in Columbus, Ohio for the purpose of preparing a new will. Harry and his spouse had no children, and, as a result, Harry had you prepare a will ("Will") which contained the following dispositive clause:

I specifically give and bequeath my 1916 Model T Ford to my life-long friend and neighbor, Joe. I specifically give and bequeath my coin collection to my other neighbor, Ned. I furthermore specifically give and bequeath my residence at 22 Elm Street, Columbus, Ohio, to my sister, Sarah. I give the rest and residue of my estate in equal shares to my nephews, Bill and Frank.

The Will was properly signed and witnessed on June 15, 1990, and placed in your office safe.

Harry continued to reside on Elm Street. He also continued to drive the Model T Ford until 1996, when he had a stroke which caused Harry to suffer from severe physical problems. Mentally, however, he remained alert and coherent. As a result of his physical disabilities and since he could no longer drive, Harry sold the Model T Ford and placed the proceeds from the sale into a Certificate of Deposit at the local bank. On the back of the Certificate of Deposit, Harry wrote that the deposit included the proceeds from the sale of his vehicle.

Shortly after Harry's stroke, his nephew Bill visited for the first time in ten years. After Bill's visit, Harry calls you and asks you to bring him his original Will which he signed in 1990. Harry tells you that Bill has tried on several occasions to borrow money from him and that he has tried to convince Harry to execute a new will leaving everything to Bill. You take the Will to Harry's residence and review it with Harry. Harry is very unhappy with Bill and expresses a desire to disinherit Bill. You indicate that Harry ought to consider the matter overnight and that you will again review the Will with him tomorrow.

After you leave, Harry writes a note on a separate sheet of paper which states:

I wish to disinherit my nephew, Bill, from my 1990 Will. All other provisions are to remain the same.

Harry then calls his next door neighbor, Janet, and asks Janet and her 16-year old daughter, Jane, to come over to his house to witness his signature. Janet and Jane come over to Harry's house and watch Harry sign and date the above note. Janet and Jane then both sign the note as witnesses. Later that night, Harry suffers a massive stroke and dies.

While traveling together to attend Harry's funeral three days after his death, Harry's sister, Sarah, and his neighbor, Ned, are killed in an automobile accident. Sarah is survived by one son, Sam. Ned is survived by a daughter, Nell. The original Will provided that Sam is to serve as the executor of the estate. Sam has asked you to represent him as the executor and has asked you to prepare a memorandum analyzing the following questions:

1. What is the legal significance, if any, of Harry's note?
2. Who is entitled to receive the following:
 - (a) Harry's residence on Elm Street;
 - (b) Harry's coin collection;

- (c) The proceeds from the sale of Harry's Model T Ford which were deposited into the Certificate of Deposit; and
- (d) The residue of Harry's estate?

Analyze and answer the above questions and explain the legal basis for your response.

QUESTION 18

Your client, Alan Able, comes to your office late in the afternoon in an agitated state. Alan is the owner of three night clubs in Plain City.

Alan reminds you that over a year ago he entered into three written contracts with three entertainers, Charley Comedian, Sally Singer, and Debbie Dancer, to perform at his clubs next week. Each entertainer is to receive \$10,000 per night for a one week engagement. Now he has problems with all three contracts.

Charley Comedian has contracted to perform at the Comedy Club. Unfortunately, an ordinance has just gone into effect in Plain City which totally bans the use of “profanity” or “foul language” in public establishments by making such activity a criminal offense. Charley has learned of this ordinance, and he refuses to perform in Plain City because of the ordinance. He says he cannot perform his act without using profanity. Alan points out that the agreement with Charley is silent on this point.

You tell Alan that Charley’s performance should be protected by the First Amendment and you believe that the courts will make short work of this problem. In response Alan screams, “He is supposed to start next week, and he won’t come here if there is any possibility of arrest!” Charley also demands to be paid in full even though he refuses to perform.

Alan then tells you that Sally Singer has contracted to perform at the Song Club. Unfortunately, Sally has just discovered that the Song Club is very drafty and that nothing can be done in time to make the club less drafty. Although Sally is in good health otherwise, she is easily made ill by and indeed has been hospitalized on several occasions as a result of performing in drafty facilities. Her fax informing Alan of this is accompanied by a letter from her physician confirming that Sally is very susceptible to bronchial pneumonia, which is caused by drafts, and he has instructed Sally to stay out of drafts. The contract is silent on this matter. Alan tells you that Sally is demanding payment in full even though she refuses to perform.

Finally, Alan tells you that Debbie Dancer contracted to perform at the Dance Club, but the Dance Club burned down last night. When Alan contacted Debbie’s agent to inform him that the Dance Club no longer exists, Debbie’s agent told Alan that Debbie expects to be paid even though she won’t be required to perform. Again the contract is silent on this point.

What advice do you give Alan with respect to each contract with each performer? Will Alan be required to pay Charley, Sally, and Debbie even if they do not perform?