

## QUESTION 1

John Debit is a certified public accountant and sole proprietor of Debit Accounting Services. At one time, Debit had a number of clients. However, five years ago, Debit was retained by Mr. Smith, the president of XYZ Corporation, for accounting services and business planning consultation. Mr. Smith found Debit's services so valuable he directed an increasing amount of work to him.

Debit, finding this relationship profitable, gradually dropped all of his other clients and closed his own office. He began spending more and more of his work day at XYZ's offices so that he would be available to receive instructions from Mr. Smith. The staff accountants at XYZ recognized that Debit was becoming the most important financial figure at the company; they eventually began to regard him as their supervisor. Debit assumed a managerial role with the staff, and became entrusted with hiring, training, disciplining, and firing accounting personnel at XYZ. At all times, however, XYZ paid for Debit's services through checks made out to "Debit Accounting Services." Debit at no time appeared as an employee on the records of XYZ, and he was not listed on any organizational chart of managers of the company.

Mr. Smith became aware several years ago that Debit had a drinking problem. In fact, a year ago XYZ paid for Debit to undergo a month-long rehabilitation program. A month ago, Mr. Smith began to suspect Debit had resumed drinking, but he has not confronted him about it.

Last week, Debit was negotiating a contract with ABC Manufacturing on behalf of XYZ. The negotiators were meeting over dinner in a crowded restaurant when Debit became irritated with the negotiator for ABC. Debit loudly called the negotiator for ABC a "moron" and a "thief" and questioned the legitimacy of his ancestry.

Yesterday, Debit visited his favorite bar after work. After consuming a number of drinks, he was preparing to leave when a new staff accountant from XYZ entered the bar. Debit went up to her, made some sexually suggestive comments, and kissed and fondled her before she could disengage herself.

At noon today, Debit left work to go to lunch and to deposit XYZ's morning receipts in the bank, as was his custom. He went to lunch where he proceeded to consume the proverbial three-martini lunch. Then he went to the bank, and on his way back to work he ran a stop sign, hit another car, and seriously injured the occupants.

This afternoon, Mr. Smith had three unwelcome visitors. An attorney representing the negotiator for ABC Manufacturing informed Mr. Smith that XYZ was being sued for slander due to the improvident remarks Debit made at dinner last week. The young female staff accountant who had encountered Debit in the bar told Mr. Smith she was suing XYZ on a civil claim for battery. Finally, a lawyer representing victims of the car crash met with Mr. Smith and informed him that he was filing a major personal injury suit and naming XYZ as a defendant.

You are general counsel of XYZ. Please answer the following questions:

1. What is the nature of the business relationship between XYZ and Debit?
2. Assuming that a court would find Debit to be XYZ's employee, would XYZ be liable to the negotiator for ABC, the young female accountant, and/or the victims of the car crash for Debit's tortious conduct?

Please explain your answers.

## QUESTION 2

John Deer is a farmer who lives and maintains his equipment in the northwestern part of Lucas County, Ohio, although his fields are all located in Wood County, Ohio. John needed money to finance his farming operations, so he borrowed \$100,000 from the Security Bank of Bowling Green, Ohio (“Security Bank”). Security Bank intended to require John to sign two security agreements at closing identifying certain specific collateral to secure the \$100,000 note. Security Agreement A specifically referred to equipment located at John’s barn in Lucas County, growing crops, all of his inventory, and proceeds thereof. Security Agreement B identified a rare art collection that John maintained at his brother’s home in Adrian, Michigan, and a truck that John kept in a garage in Fulton County, Ohio.

The closing on the loan occurred on April 1, 1998. Through oversight at the closing on the loan, John signed only Security Agreement B and never signed Security Agreement A. Immediately after closing, Security Bank filed a properly executed financing statement on the art collection in the appropriate UCC public filing offices in Michigan. It also filed a properly executed financing statement, covering the equipment located in Lucas County and the crops, with the Recorder’s Office of Lucas County and the Ohio Secretary of State. The truck was titled pursuant to a properly issued Ohio motor vehicle certificate of title, which certificate showed the “Security Bank” lien.

Six months later, in October of 1998, John moved the art collection to his uncle’s house in Defiance County, Ohio. At the same time, he borrowed \$50,000 from a friend, Harry. He signed a security agreement that gave Harry a security interest in the equipment in John’s barn, the growing crops, and the art collection now located in Defiance County, and the truck located in Fulton County. Harry’s lawyer immediately filed properly executed financing statements covering all of the collateral in all of the proper filing offices in Lucas, Fulton, and Defiance Counties and with the Ohio Secretary of State.

One month later, Security Bank became aware of Harry’s lien and also then realized, for the first time, that John had not signed Security Agreement A. Security Bank immediately got John to sign Security Agreement A on November 10, 1998.

John thereafter defaulted on his obligation to Security Bank and Harry, and both have claimed all of the collateral pursuant to the provisions of the Uniform Commercial Code as adopted in Ohio.

Do Security Bank’s security interests take priority over Harry in any of the following:

- (a) the equipment in John’s barn;
- (b) the crops;
- (c) the art collection;

(d) the truck.

Explain your answer fully.

### QUESTION 3

You are a law clerk to Judge Holmes of the United States District Court, Northern District of New State. Prior to any pretrial conference, Judge Holmes requires his law clerks to prepare a short memorandum to familiarize the judge on the likely issues and arguments to be raised in the case. Judge Holmes has assigned to you the following two cases.

1. **Cardozo et al. v. Frankfurter**

Last year, the General Assembly of New State amended its public assistance benefits legislation. The new legislation requires that a family arriving in New State from another state shall, during their first year of bona fide residency, receive as cash benefits the lesser of: 1) the level of benefits available to similarly situated New State residents of twelve months or more; or 2) the level the family would have been eligible to receive in their prior state had they not moved to New State.

New State grants larger cash benefits to its welfare recipients than all of its neighboring states. In the five years prior to the enactment of the amendments reforming the public assistance program, New State experienced a 20% increase in its population. Nearly half of these new residents were ethnic minorities of Bor descent that came from neighboring states, which had lower cash benefits for welfare recipients than New State. When the reforms passed, 30% of the total population on public assistance in New State was of Bor descent.

In passing the legislation, the New State General Assembly stated that the primary purpose of the legislation was to prevent New State from becoming a “welfare magnet” and to encourage “work and self sufficiency over dependency.”

Edward Cardozo and his family moved from Old State, a state that borders on New State, and established residency in New State after the welfare reforms were enacted. Within their first year of residency, Edward lost his job. The Cardozos applied for public assistance benefits and qualified for \$300 per month in cash benefits, the amount they would have received in Old State. Had the Cardozos lived in New State for at least one year, they would have been entitled to \$800 per month.

The Cardozos filed a complaint against Frankfurter, the Secretary of New State’s Department of Public Welfare, challenging the new legislation on equal protection grounds. Identify the arguments that the Cardozos and Frankfurter are likely to make, the applicable criteria the court should utilize in its review, how the court should rule, and the reasons for your opinion. Assume that the proper parties have been named.

2. **Brandeis et al. v. Powell et. al.**

On January 3, 1992, Brandeis pleaded guilty to and was convicted of felony possession of cocaine. After completing his one-year sentence, Brandeis turned a new leaf. He has been drug free for seven years, has obtained his undergraduate degree in

business administration, and recently decided to go into business for himself. To that end, he purchased a successful used car sales lot in downtown Warren, New State.

In order to operate the used car sales lot, Brandeis needed and applied for a used motor vehicle dealer's license. The Bureau of Motor Vehicles denied his application based upon a 1990 statute that prohibits persons convicted of a felony from obtaining a license to sell motor vehicles for a period of 10 years after the date of the felony conviction. According to the New State General Assembly, the purpose of the statute was to "protect the public from dishonest and unscrupulous used car dealers."

Brandeis has filed a complaint against Powell, the Registrar of the Bureau of Motor Vehicles, challenging the statute on equal protection grounds. Identify the arguments that Brandeis and Powell are likely to make, the applicable criteria the court should utilize in its review, how the court should rule, and the reasons for your opinion. Assume that the proper parties have been named.

#### QUESTION 4

Stanley and Oliver Kay were subpoenaed to appear before a federal grand jury to testify about their knowledge of a matter being investigated by the United States Attorney. They decided to consult a lawyer about their legal rights to determine what each of them should do. Stanley and Oliver made an appointment with their friend, Attorney Scott, who had just begun the practice of law.

In a joint interview of Stanley and Oliver, Stanley told Attorney Scott that several of their friends had been questioned by the same grand jury. Stanley disclosed the names of his friends who had been travelling to Florida and returning home with “packages” they delivered to a woman named Rosie. Rosie gave them money for travel and expenses before each trip, and she paid them an additional \$2,500 upon delivery of each package. Rosie offered Stanley the same deal his friends had. Stanley told Attorney Scott that he began to realize that his deal was just too good to be true, and Stanley suspected the packages he picked up in Florida contained cocaine. When Stanley told Rosie that he wanted to quit working for her, she told him he had to make one more delivery or he would be sorry. Stanley asked Attorney Scott for his advice on whether he should make this “one last trip.”

Oliver told Attorney Scott he didn’t know anything about the situation Stanley described. Oliver said that he didn’t know why he was subpoenaed, except for the fact that he hangs around with some of the guys Stanley said worked for Rosie.

Attorney Scott told Stanley and Oliver that he was a new lawyer, that he wanted time to research the law, and that he would get back to them about their situation in a couple of days. After Stanley and Oliver left, Attorney Scott went into the office of his associate, Green, and told Attorney Green about the entire interview. Attorney Green told Scott that Stanley may have some criminal exposure for conspiracy to distribute cocaine and for possession and distribution of cocaine. Attorney Green advised that Stanley probably should not testify before the grand jury, and that Stanley would need a lawyer to represent him on the subpoena. Attorney Green also advised that because Oliver was not involved, Oliver probably should testify before the grand jury.

Attorney Scott telephoned his friend, Attorney Fields, to ask his opinion. During their conversation, Attorney Scott told Attorney Fields about Stanley and Oliver and what both had told him. Fields agreed with Green’s opinion.

The next morning Attorney Scott explained Stanley and Oliver’s case to his secretary and instructed her to arrange an appointment with them later that afternoon. At the appointment, Stanley and Oliver learned that Attorney Scott had talked with Attorney Green and Attorney Fields about Stanley and Oliver and what each had told Scott. Stanley became angry that Attorney Scott was discussing his business with other people, and stormed out of the office “to file a grievance” against Attorney Scott. Oliver remained and made arrangements to hire Attorney Scott to represent him since he was not offended by Attorney Scott’s conduct.

After Oliver left, Attorney Scott called his wife and told her the whole story about Stanley's case, and that Stanley was filing a grievance against him for talking to others about Stanley and what he told Attorney Scott.

Identify the ethical issues presented and give your opinion whether Attorney Scott's actions have violated the Code of Professional Responsibility. Explain fully.

## QUESTION 5

### I.

Robert Dry's 25-acre horse farm is located in Wetflats. Mr. Dry's only source of water is two wells located right next to his farm house. The wells are fed by underground or percolating waters.

Mr. Needmore owns and operates Greenacre, a 50-acre limestone quarry located adjacent to Mr. Dry's farm. In the conduct of his business of quarrying, Mr. Needmore caused the level of the water table underlying Mr. Dry's land to drop, thereby affecting the quality and quantity of his well water. In fact, the quarrying has resulted in the dewatering and pollution of the wells, and the well water is now unusable for any purpose. As a result, Mr. Dry must purchase water and have it trucked to his farm.

Mr. Dry has discussed the problem with Mr. Needmore. Mr. Needmore refused to discontinue operations. He informed Mr. Dry that his beef is with mother nature and not with him. He stated that he is not responsible and, therefore, refuses to compensate Mr. Dry for any of his losses or expenses.

Mr. Dry has come to you for advice. He wants to take legal action against Mr. Needmore.

Analyze and explain the issues and applicable rules of law, the remedies available to Mr. Dry, the likely outcome of any suit that he may file, and indicate the nature of the damages, if any, that he might recover.

### II.

Messrs. Hilltop, Middlestop, and Bottom own homes right next to one another in Sunny Township. Mr. Hilltop lives to the north of Mr. Middlestop. Mr. Bottom lives to the south of Messrs. Hilltop and Middlestop.

Sunny has been less than sunny lately. In fact, the skies have been cloudy because it has rained for 17 consecutive days. The ground has become so water-logged that the rain has accumulated in puddles exceeding 2 and 3 feet in places around and about the homes of Messrs. Hilltop and Middlestop. Unfortunately, the runoff of the water naturally flows downward from the homes of Messrs. Hilltop and Middlestop and accumulates in puddles at depths of 8 and 9 feet around the home of Mr. Bottom.

Mr. Bottom has had all the rain that he can take. Tired of being flooded, he ordered 300 sandbags and placed them around his home to curtail the flow of water from the direction of the homes of Messrs. Hilltop and Middlestop. Mr. Bottom's plan worked. He stemmed the flow of water toward his home and successfully diverted the water back toward the homes of Messrs. Hilltop and Middlestop. Puddles at depths of 8 and 9 feet are now accumulating around the homes of Messrs. Hilltop and Middlestop. Now, they are experiencing flooding only because of Mr. Bottom's sandbags.

Mr. Bottom has ignored the repeated requests of Messrs. Hilltop and Middlestop that he remove the sandbags. Frustrated, Messrs. Hilltop and Middlestop have come to you for advice. They ask:

- (1) Is Mr. Bottom entitled to maintain his sandbags even if it causes the flooding of the homes of Messrs. Hilltop and Middlestop?
- (2) What corrective measures, if any, can Messrs. Hilltop and Middlestop take?

Explain the legal basis for your answers and discuss all applicable rules of law.

## QUESTION 6

Slick Sledgehammer, a very successful commercial real estate developer in the city of Paved Paradise, was excited about his plans to knock down the old town hall to build another new retail strip mall. In his search for tenants, he met Mel and Mabel Hambone who were looking for space to open their new diner and take-out restaurant. The Hambones were new immigrants to the United States, barely spoke English, and had never owned a restaurant.

The Hambones trusted Slick because he had so much experience building and leasing space to restaurants, and Slick had the only available space in town for a new restaurant. The one thing the Hambones knew they wanted in their lease was a restriction prohibiting any other restaurant from leasing space in the same mall. Slick agreed to the restriction and stated, "I have standard lease agreement forms all ready to go, and it will make things easier to use my documents." He proceeded to complete the lease form with a clause that stated he "would not lease space in the mall to any other restaurant."

Slick's standard lease form included many one-sided clauses favoring the lessor, including very onerous percentage rent payments based on the monthly income of the restaurant. The lease also provided that, although Slick was responsible for internal and external maintenance of the premises, the Hambones waived any recourse against, and would indemnify Slick for, his negligence should any damages or injuries occur. The Hambones were anxious to be located in Slick's new mall and readily executed the lease without really understanding the terms.

Slick, however, had a dilemma when he was approached by Chester Cheesecake a few weeks later to lease space in the mall for one of Chester's very successful delicatessens. Chester's place was primarily take-out food, but it would have a few tables on the sidewalk and by the counter in case any of the customers wanted to eat on the premises. Although Slick knew the Hambones meant to prohibit any other places from selling food for consumption at the mall, Slick thought he could successfully argue that Chester's place was not a "restaurant." Slick then signed a lease with Chester.

As expected, Chester's new deli was a popular place with customers streaming in all hours of the day and night. Business at the Hambones' diner was suffering, and they were barely making enough to pay their suppliers and employees. It soon became clear that the percentage rental payments were so severe that any profits they made would be owed to Slick. They could never make any money under their current lease agreement, no matter how successful they were.

To make matters worse, the glass sign hanging over the door to their restaurant had fallen down a few weeks earlier, seriously injuring one of their customers. Slick had negligently chosen the wrong size bolt to hang the sign, despite local building codes that set specific requirements for fastening and hanging signs. When the Hambones approached Slick about the lawsuit filed by their customer for injuries, Slick pointed them to the clause in the lease agreement where they waived any recourse against Slick for his negligence.

The Hambones have decided to file a lawsuit against Slick in connection with their lease agreement. Discuss fully their potential contract claims, and the likely outcomes of each.

## QUESTION 7

Wilma and her husband, Henry, and their children had been a happy family until the day Wilma negligently ran her automobile into the car driven by Driver. The accident caused injuries to both Wilma and Driver. The injuries rendered Wilma unable to return to her job. She was in constant pain, and she became a chronic complainer.

Wilma had always relied upon Henry for all financial matters, and his decisions had resulted in a substantial accumulation of assets. Fearing that Driver would sue and that their liability insurance might not be sufficient to cover all damages, Henry convinced Wilma to transfer her interest in the marital residence on Hill Street to him. He promised her that when the threat of litigation was over, he would transfer it back to her.

As months passed, Henry got tired of listening to his wife's complaints about her aches and pains, and he sought solace with his sympathetic neighbor, Gloria. Henry decided to leave Wilma and he found a modest house on Dale Street to buy. He discussed with Gloria that he wanted to buy the Dale Street property with funds his wife did not know he had. He proposed putting the property in Gloria's name in order to conceal it from Wilma. Gloria agreed that if he did so, she would transfer the property back to Henry after he obtained a divorce. He bought the home and instructed the closing agent to put the deed in Gloria's name.

Henry persuaded Wilma that the marriage was over and that they should get a dissolution. In their separation agreement, provisions were made for spousal support for Wilma and child support for the children. In addition, Henry agreed in the separation agreement to name Wilma and the children as beneficiaries on his existing \$100,000 life insurance policy as long as he had an obligation for spousal and child support.

Driver sued Wilma, and Wilma's automobile liability insurance company settled the suit within the policy limits. Wilma then asked Henry to convey her interest in the Hill Street residence back to her. He refused.

Wilma filed a lawsuit against Henry to set aside her deed to him, and for partition (Suit 1).

Henry prepared a deed for Gloria to sign in order to convey the Dale Street house to him. Realizing that Henry was not going to marry her, Gloria refused to sign the deed and filed an eviction action against Henry. Henry counterclaimed and demanded an order finding the Dale Street property to be his (Suit 2).

While these cases were pending, Henry died and Wilma discovered that Henry had changed the beneficiary of the life insurance policy to his brother, Bob. Wilma sued the life insurance company, Henry's estate, and Bob for the life insurance proceeds (Suit 3).

The administrator of Henry's estate was properly substituted for Henry in Suits 1 and 2.

Assume all facts given above can be shown by admissible evidence.

Discuss:

1. Each party's arguments in Wilma's suit against the administrator.
2. Each party's arguments in the administrator's suit against Gloria.
3. Wilma's arguments for the insurance proceeds.

Who should recover what?

## QUESTION 8

Smith is a law professor at the local university. Typically, he teaches first year contracts and torts. Smith is regarded as a notoriously challenging exam writer and grader. As an example, on one recent contracts exam, Smith instead wrote the fact pattern as a tort. Smith later explained that he did so “just to see the applicants sweat.”

Following one exam, a disgruntled student filed a complaint against Smith with the law school’s academic affairs office alleging that Smith’s question and grading were unfair. In honoring its general obligation to promote fairness, the law school appointed an independent investigator to look into the claims. The investigation uncovered various unrelated and unexpected matters that led to a criminal referral to the local prosecuting attorney. Ultimately, an indictment alleging obstruction of justice and perjury was returned against Smith. The obstruction charge related to Smith’s destruction of his question’s answer key after it had been subpoenaed by the county grand jury. Smith claimed he accidentally shredded the document thinking it was something else. The perjury charge related to Smith’s denial under oath before the same grand jury that he had destroyed the answer key intentionally.

The prosecutor wishes to introduce the following evidence at trial against Smith. For purposes of this entire question, you may assume these facts are undisputed.

- I. Several persons are willing to testify that Smith is not well regarded in either the legal or non-legal community, and that he has a general reputation as a bully and a liar. On the advice of his attorney, Smith does not testify at his own trial. (A) Is any of this testimony admissible? (B) Is there any difference if Smith first testifies in his own defense? Explain all answers fully.
- II. On a prior occasion when Smith was investigated for alleged unfair grading, he claimed to have “accidentally” shredded that answer key as well. Is this evidence admissible? Explain fully.
- III. Smith’s former attorney is subpoenaed by the prosecutor to testify concerning a confession by Smith to the former attorney. Consistent with that attorney’s practice, the confession was contemporaneously transcribed by the attorney’s secretary.
  - (A) Can Smith’s former attorney be compelled to testify?
  - (B) Is there any difference if the confession took place in the presence of an unknown third person while all three sat together in a sauna at a local health club? Explain all answers fully.

## QUESTION 9

On the evening of November 13, 1998, local police found six members of a family murdered in their home in the community of Utopia, Ohio. Two days later, the police arrested a suspect whom they believed committed the killings.

At a press conference, the police released the name of the suspect to the media. The killings immediately attracted widespread news coverage by local, regional, and national newspapers and radio and television stations. News accounts heavily reported that the suspect had numerous felony convictions. The suspect was subsequently indicted on six counts of aggravated murder with death-penalty specifications.

Prior to trial, the prosecution filed a motion that the trial should be closed to the public due to the extensive publicity surrounding the killings. Over the defense counsel's objection, the trial court granted the motion for closure citing the necessity of fairness.

During jury selection, the members of the panel, despite reservations concerning defendant's innocence, said that they felt they could be fair. The trial judge did not conduct any further inquiry of the jurors, nor did the judge allow counsel the right to question the panel. Defense counsel, by motion, requested that the entire jury panel be removed. The trial judge denied the motion.

Trial commenced on December 13, 1998. During the noon recess, a TV reporter interviewed the trial judge. Several jurors, standing nearby, watched the live broadcast. The trial judge was asked whether there existed a possibility that the defendant could be acquitted. The judge replied:

In my opinion, that guy doesn't have a snowball's chance in hell to beat this rap. No one is going to believe his alibi.

Defense counsel, having witnessed the interview, immediately moved for a mistrial. The motion was denied. The trial judge ruled his comments were harmless since the jury alone considers guilt or innocence. The prosecution was concerned about the interview and began "plea bargain" negotiations. The prosecution offered to remove the death-penalty specifications if the defendant pled guilty to the killings. Defense counsel pressured his client by stating, "Take the plea. The cards are stacked against you. No one is going to believe you." Defendant reluctantly agreed.

The entire record of the guilty plea proceeding is as follows:

THE COURT:

“Son, it’s in your best interest that you’re admitting the killings or otherwise you’re going to fry. I find you guilty. Sheriff, send this snake to the pen.”

Following sentencing, you were retained as attorney for the defendant. You have filed your appeal. At oral argument, the appellate panel asks the following questions:

- (1) Was the trial court’s ruling in granting the prosecution’s motion for closure constitutionally permissible?
- (2) Was the trial court’s ruling denying the motion for removal of the jury panel proper?
- (3) Was the defendant’s motion for mistrial properly overruled?
- (4) Was the guilty plea valid?

Please explain your answers in detail.

## QUESTION 10

Paul and Paula Plains have lived in Defiance, Ohio ever since they purchased their home in 1980 for \$80,000.

In 1992, with proper governmental permits, Defiance City Council constructed a waste water treatment plant on its own property almost next to the Plains' property. The Plains first noticed an awful odor from the plant in 1994. The odor was particularly bad when the weather was hot and humid. The condition of the plant became "deplorable," according to a 1997 E.P.A. report, which found that its operations violated numerous bacterial and suspended solids regulations. One of the plant's catch basins had been idle for the last four years and had become septic, emitting gas which caused noxious odors.

Complaints to the City by the Plains did no good until the 1997 E.P.A. citations, but the City then apologized for its neglect and began to remedy the violations. The Plains hired an environmental engineer, who conducted extensive air chemical testing on their property. The engineer could not discern any particulate deposits or residue matter on Plains' property from the water plant, although she found transient and recurrent air circulation pollution on the property. No other source was identified to explain this odor problem.

In 1998, the Plains listed their home for sale at \$60,000, but every prospect who has come to inspect it has looked at their browning shrubs and smelled the odor, then left quickly. The Plains believe that they can sell their house only at a large loss. A recent qualified appraisal set the market value for the Plains' property at no more than \$50,000, because of the recurring odor.

The Plains came to you as their attorney. The Plains want to file a civil action in trespass, nuisance, and strict liability to make the City of Defiance close down the plant. Your research indicates that the E.P.A regulations do not bar Ohio common-law claims. You can ignore any special Ohio nuisance statutes, periods of limitations, or sovereign immunity issues. Because the City of Defiance has obtained all regulatory licenses, no strict liability claim exists for absolute public nuisance.

Please write a letter to the Plains, advising them whether they have actionable Ohio civil claims for relief for trespass or for any type of nuisance against the City of Defiance. What remedies, if any, are available? Explain fully.

## QUESTION 11

Yesterday, a jury in an Ohio common pleas court rendered a verdict in the amount of \$200,000 against your client, Roofer. Roofer had breached a contract to supply roofing shingles to the plaintiff Mall. Mall had sued your client and demanded \$75,000 for its failure to supply roofing shingles.

Mr. Jones, a witness for Roofer, was very unappealing. He testified in a derogatory manner, used profanity, lost his temper, and he was disrespectful to the trial judge. Mr. Jones's poor demeanor was in sharp contrast to the professional demeanor of the representative of Mall who testified that, due to Roofer's failure to supply the shingles, Mall had to purchase substitute shingles for an additional \$75,000. You believe the case was lost when the jury heard the representative of Mall testify that Roofer refused to supply the shingles after the company realized it was not going to make any profit on the contract.

This morning, you received a phone call from a representative of a potential new client, Mr. Smith, the President of New Shingle. He told you he had just read a newspaper article about the Roofer verdict and saw your name. He needs an attorney to defend his company in construction litigation. He informed you that he just learned that Building had been awarded a default judgment against New Shingle in the amount of \$25,000 last week.

Mr. Smith explained that, about 12 months ago, he received some papers from the court regarding this matter. At that time, he called the lawyer for Building, who told Mr. Smith he was being sued for \$25,000 for faulty shingle installation at Building. In the same call, Mr. Smith told the lawyer for Building that he would send his workers out to repair the roof because he was sure it would only take a couple of hours and could not possibly cost \$25,000. The attorney for Building said that would be fine and that he would call Mr. Smith back if the repairs did not resolve the problems.

New Shingle workers immediately went to Building and completed the repairs. Mr. Smith told you he heard nothing further from Building or its attorney until today, and that he had not received any other papers from the court.

Mr. Jones, the president of Roofer, wants to know what can be done to overturn the jury verdict against his company. Mr. Smith, President of New Shingle, wants you to overturn the default judgment against his company so he can "get his day in court."

1. You advise Mr. Jones you have decided to file a Motion for a New Trial on behalf of Roofer. What are the bases of the motion and how should the court rule on it?
2. You advise Mr. Smith you have decided to file a Motion for Relief from Judgment for New Shingle. What are the bases for the motion and should it be granted?

Explain fully.

## QUESTION 12

On May 20, 1987, Gilbert Green, age 18, and Mary Smith, age 17, went to the Probate Court of Reese County, Ohio and applied for a marriage license. Mary was going to turn 18 on June 1, 1987, and their plan was to get married in late July without telling Mary's parents since they did not want her to marry Gilbert. The Probate Court of Reese County issued a marriage license to Gilbert and Mary on June 10, 1987.

In late July 1987, Gilbert and Mary went to the local judge of the Reese County court for the marriage ceremony. The judge, however, refused to solemnize the marriage since Gilbert and Mary failed to bring the marriage license which had been issued by the probate court.

Gilbert and Mary were unable to locate the marriage license over the next several months. After failing to locate the license, Gilbert asked his brother, Jack, to solemnize the marriage. Jack was the Mayor of the City of Jamestown, of James County, Ohio, which is located in the northern part of the state. After Gilbert assured Jack that a license had been issued in June, Jack thereafter solemnized the marriage during a visit to Reese County on October 8, 1987.

Following the marriage ceremony, Gilbert and Mary lived together in Reese County for the next 11 years. Mary utilized Gilbert's surname of Green and the couple began to file joint income tax returns. They opened a joint savings account titled in the name of "Gilbert and Mary Green." Gilbert also obtained family health insurance through his employer.

Beginning in early 1998, problems began to develop in the relationship between Gilbert and Mary. Gilbert began to drink heavily and was fired from his job. This caused them to lose their health insurance. Shortly thereafter, he was involved in an automobile accident in which another driver was at fault. Mary withdrew \$3,000 from their joint savings account to pay for Gilbert's medical bills.

Mary was subsequently hospitalized due to exhaustion in June 1998. Gilbert refused to sign any of the hospital paperwork when Mary was admitted to the hospital. Upon discharge, Mary's hospital bill totaled in excess of \$25,000. The hospital bill is still outstanding.

While Mary was hospitalized, Gilbert began to gamble large sums of money at the river boat casinos. After exhausting all of their savings, Gilbert obtained a \$5,000 cash advance on Mary's credit card to fund his gambling habit. Mary had obtained the credit card in her sole name; however, she had listed Gilbert as an authorized user of the card. Just prior to exhausting the \$5,000, Gilbert finally hit a large jackpot (\$400,000) on the casino slot machines. Shortly after hitting the jackpot, Gilbert moved out of the house and told Mary that the relationship was over.

Mary has been unable to make any payments to either the hospital or the credit card company. Gilbert has told Mary that “neither the hospital nor the credit card company will collect a penny from me because I didn’t sign anything.”

Gilbert has also told Mary that he has spoken to a lawyer who says that the 1987 marriage was never valid in the first place, and that, as a result, she is entitled to nothing. Mary is also aware that Gilbert plans to file a lawsuit for the injuries he sustained in his automobile accident.

Mary has approached you regarding her marital status and her debt problems and is seeking answers to the following questions:

- A. What grounds, if any, does Gilbert have to challenge the validity of the marriage?
- B. On what grounds can Mary assert that a lawful marriage exists?
- C. Are Gilbert, Mary, or both liable for the debts owed to the hospital and to the credit card company?
- D. Does Mary have any rights to the proceeds from Gilbert’s lawsuit or his gambling winnings?

Explain your answer fully.

## QUESTION 13

Plaintiffs A, B, C, D, E, and F are various organizations and individuals in the Redson, Ohio metropolitan area. Plaintiffs brought an action in the District Court for the Southern District of Ohio, against the town of Whitesford, an incorporated municipality adjacent to Redson, and against members of Whitesford Zoning and Planning Board. Plaintiffs claim that the town's zoning ordinance, by its terms and as enforced by the defendant board members, effectively exclude persons of low income from living in Whitesford, in contravention of plaintiffs' First, Ninth, and Fourteenth Amendment rights and in violation of 42 U.S.C §1981, 1982, and 1983.

In particular, plaintiffs allege that the ordinance allocates 99% of the town's vacant land to single family detached housing. Plaintiffs allege that, by imposing unreasonable requirements relating to lot size, set back, floor area, and habitable space, the ordinance increases the cost of single family detached housing beyond the means of persons of low income. Plaintiffs also allege that, in furtherance of exclusionary zoning, the Whitesford Zoning and Planning Board has acted in an arbitrary and discriminatory manner by delaying action on proposals for low cost housing, by denying proposals for arbitrary reasons, and by refusing to grant variances for low cost housing prospects.

With respect to each plaintiff, the complaint states as follows:

A is a person of low income who alleges that he has been injured by the ordinance because it prevented him from owning property in Whitesford due to the high cost of single family residences.

B is a taxpayer of Redson, who alleges he is economically injured by having to pay higher taxes in Redson due to Whitesford's refusal to allow construction of low income housing which requires Redson to assume a greater tax burden for such housing.

C is an organization that has 20% of its membership composed of permanent residents of Whitesford who allege they are denied the benefits of living in an integrated community that includes persons of low incomes.

D is an organization composed of member firms engaged in the development and construction of residential housing in the Redson area, including Whitesford. D alleges that the zoning restrictions, and the refusal to grant variances for low cost housing, has deprived its members of substantial business opportunities and profits. D seeks (1) damages of \$750,000, and (2) declaratory and injunctive relief.

E is an individual who, five years ago, applied for a zoning variance to allow construction of a housing project designed for persons of low income. The application was rejected.

F is an organization that recently filed an application for a zoning variance to allow construction of a housing project for persons of low income. Because of the pending lawsuit, the Zoning and Planning Board has not yet denied the application, but F has been assured that the application will be denied.

Defendants have moved to dismiss the complaint of the plaintiffs upon the ground that the plaintiffs failed to allege sufficient facts to demonstrate that each is a proper party to invoke judicial resolution of the dispute and the exercise of the court's remedial powers. The defendants reason that the complaint should be dismissed for failure to state a claim upon which relief can be granted.

As the new law clerk for the trial judge, you have been asked to prepare a memorandum including an explanation of the applicable legal principles. State how the court should rule as to each plaintiff, and the reasons for your opinions.

## QUESTION 14

Ann Homeowner, a friend from high school, recently came to your law office to seek legal advice. She and her husband Bill live in a large “fixer-upper” in the city of Anytown, U.S.A. Bill Homeowner, a carpenter by trade, has done most of the repair work himself.

Last week, Bill was in the process of running underground electrical, natural gas, and phone lines to the newly-constructed unattached garage. After digging a foot-wide trench from the house to the garage, he realized that he did not have enough pipe to run the gas line. He left the trench open, hoping to complete work in the next day or two. Because the trench was inside the fenced back yard, he saw no reason to worry about leaving it uncovered.

Just after Bill left for work the next day, his ten-year-old neighbor, Kyle Neighbor, who’s always watching Bill work on the house, climbed the fence to see what Bill was doing. He climbed to the top of the fence, but couldn’t see Bill anywhere. Just as he was about to climb back down the fence, he fell into the Homeowners’ back yard. The Homeowners’ dog, whom Kyle has been teasing for years, ran over and bit Kyle on the leg.

At about the same time, the mail carrier arrived with the Homeowners’ daily mail. Because the regular carrier was on vacation, Jim Carrier, a temporary carrier, was filling in for her. As he approached the Homeowners’ mailbox at the edge of their front porch, he could see that there was a hole in one of the porch steps and that it was undergoing repairs. Although the Homeowners had told their regular carrier to slip the mail in the side door, the temporary carrier had received no such instruction. Carrier attempted to reach the mailbox by stepping over the construction area, but he tripped and sustained minor injuries.

Just then, Carrier heard Kyle’s screams from the back yard. He ran around to the other side of the house, found the gate, and entered the back yard. Focusing his attention on Kyle on the other side of the yard, he did not notice the trench Bill had dug. As he attempted to reach Kyle, he fell into the trench, twisting his ankle.

That afternoon, three fourth graders approached the Homeowners’ property on their way home. The Homeowners were aware that children often climbed the tree in their yard when they were not home. Whenever they did see kids climbing it, they asked them to leave the yard.

As one of the children, Erica Climber, was climbing onto a large branch, the branch broke and fell to the sidewalk, causing Erica to fall and break her leg. Her parents, Mr. and Mrs. Climber, ran to the Homeowners’ when they heard that Erica had been injured. When they arrived, they noticed a large dead branch on the sidewalk. The Climbers were furious that the Homeowners had not trimmed this dead branch from the tree, particularly when a local ordinance requires property owners to keep all trees near the sidewalk “trimmed and free of decaying limbs or limbs that obstruct the sidewalk.”

Ann wants your advice regarding the Homeowners' potential liability for the injuries sustained by Kyle Neighbor, Jim Carrier, and Erica Climber. Anytown is in a common law jurisdiction. Discuss the standard of care that the Homeowners owed to each victim and whether they satisfied that standard. Do not discuss defenses to liability.

## QUESTION 15

Your client, Lester Investor, has approached you with a problem he has just discovered. It seems that among Lester's many investments are common stock, "Mortgage Bonds," and "Subordinated Debentures" in XYZ Corporation. He has just received notice that a judge has put XYZ into receivership and ordered the corporation liquidated. Lester wants to know what his rights are and what the chances are of getting his money back.

In the course of investigating Lester's problem, you discover the following facts:

1. Lester purchased 100 shares of Common Stock in XYZ a year ago at \$100 per share.
2. Lester holds 50 "XYZ Mortgage Bonds," which were issued by XYZ to finance construction of its office building. These bonds have a total current redemption value of \$50,000. The total owed to all holders of XYZ Mortgage Bonds is \$5,000,000.
3. Lester holds 50 "Subordinated Debentures" issued by XYZ, which also have a current total redemption value of \$50,000. The total owed to all holders of XYZ Subordinated Debentures is \$5,000,000.
4. XYZ owes its general creditors \$5,000,000.
5. XYZ is an Ohio corporation. Its Articles of Incorporation include, in relevant part, the following clause:

The Board of Directors is authorized to issue two classes of equity shares in XYZ Corporation. The Board may issue up to 100,000 shares of Common Stock. The Board may also issue up to 10,000 shares of Preferred Stock. In the event of a liquidation, Preferred Stock shareholders shall have preference with regard to distribution of the corporation's assets.
6. The Board has issued all 100,000 shares of its Common Stock, and all shares are outstanding.
7. Until recently, Preferred Stock had never been issued. At a Board Meeting six months ago, the Board issued each of its ten Directors 1,000 shares of Preferred Stock with a stated value of \$500 a share. The Board resolution authorizing the issue noted that the stock was being issued to the Directors "in consideration of their future services to the corporation over the next two years."
8. XYZ has become insolvent due to gross mismanagement. After selling XYZ's office building for \$6,000,000, and liquidating all of its accounts, the receiver has \$10,000,000 available for distribution.

In your answer, discuss the nature of Lester's interest in each of his three investments in XYZ Corporation, and what likelihood he has of recovering money on each type of investment. Please do not discuss bankruptcy law in your answer.

## QUESTION 16

In 1990, William Mace contacted you for the purpose of preparing a will. At William's request, you prepared a will which contained the following provisions:

- Item I            I give and bequeath the stock in my business, Mace Delivery Service, Inc., to my beloved wife, Betty Jo.
- Item II           I specifically give and bequeath my real estate at 35 North Park Road, Shaker Heights, Ohio, to my sister, Helen.
- Item III          I give and bequeath my stamp collection and my First Bank Certificate of Deposit to my friend, Ted.
- “Item IV         I give all of the rest, residue, and remainder of my property to my sole child, Junior.
- “Item V          I name my friend, Ted, to serve as executor.

The will was properly signed, acknowledged, and witnessed on August 15, 1990, and was placed in your office safe.

In 1992, William and Betty Jo began to have marital problems. After Junior graduated from high school later that year, William and Betty Jo agreed to dissolve their marriage. The dissolution decree contained a complete property settlement entitling each party to keep all property in their respective names.

In 1993, William's investment representative, Alex, suggested that William should consider converting his low yielding First Bank Certificate of Deposit into higher yielding investments with Alex's employer, Broker Services. Taking Alex's advice, William cashed in his First Bank Certificate of Deposit and invested the money in mutual funds with Broker Services. The mutual funds did extremely well over the next several months. To show his appreciation, William sent a short note to Alex which stated as follows:

Thank you, Alex, for the sound advice. As a token of my appreciation, I have decided to give you my valued stamp collection upon my death.

/s/ William

In the spring of 1994, William fell deeply in love with Jane. William and Jane lived together continuously beginning in 1994; however, they never married. William continued to operate and expand Mace Delivery Service, Inc. until August 1, 1998, when he was hospitalized after suffering a stroke causing partial paralysis. Although heavily medicated, William remained mentally alert and was able to communicate coherently while in the hospital.

Wishing to provide for Jane in the event of his death, William called a nurse to his hospital room. At William's request, the nurse transcribed and dated the following note:

August 2, 1998

As a result of my deep and enduring love for Jane, I have decided to make provisions for her. Therefore, upon my death, I wish to give to Jane all of my real and personal property.

Unable to sign his full name because of his health, in the nurse's presence William placed a "W" on the note just beneath the last sentence. At William's request, the nurse signed the note as a witness. William then asked the nurse to take the note to William's doctor to ask him to sign as an additional witness. The nurse took the note to the doctor's office and, at the nurse's request, the doctor also signed the note. Two days later on

August 4, 1998, William suffered a massive heart attack and died in the hospital.

Ted, in his capacity as the executor, has contacted you and has provided you with the note from William to Alex and the note transcribed by the nurse. Ted has also informed you that William's sister, Helen, died in 1995 and that she is survived by one child, Susan. Ted has asked you to respond to the following questions:

1. What is the legal effect, if any, of William's note to Alex?
2. What is the legal effect, if any, of the note that was transcribed by the nurse?
3. Who is entitled to receive the following property:
  - A. The stock in Mace Delivery Service, Inc;
  - B. The North Park real estate;
  - C. The stamp collection;
  - D. The Broker Services mutual funds?

Explain your answer fully.

## QUESTION 17

Sally was the bookkeeper at Happy Valley Assisted Living Facility (“Happy Valley”). Happy Valley had a policy of requiring residents, upon admission to the facility, to execute an assignment of pension benefits to Happy Valley. The assignment allowed Happy Valley to receive the residents’ pension checks and use the funds to pay the monthly expenses of the residents.

Without the knowledge of Happy Valley management, Sally arranged for two residents of the facility, Ron and Rhonda, to give to Sally their monthly pension checks. Ron’s checks were made payable to “Ron” and Rhonda’s checks were made payable to “Happy Valley Assisted Living and Rhonda.” Sally had Ron and Rhonda endorse each check by signing his or her name on the back. No restrictive or other endorsements were made on the checks.

Each month Sally cashed Ron and Rhonda’s checks at Solid Savings Bank or deposited them into her personal account with Solid Savings Bank. Sally did, however, misplace one of Ron’s checks which was dated “2-1-98”. She found the check in December 1998 and altered the date on the check to “12-1-98” and then cashed it.

Once her scheme was discovered, Sally left the country. Happy Valley sued Solid Savings on the basis that Solid Savings had converted its property by cashing checks with forged, unauthorized, or incomplete endorsements, or which had been fraudulently altered. Solid Savings claimed it was a holder in due course and not liable to Happy Valley.

Will Happy Valley recover from Solid Savings for Ron and/or Rhonda’s checks? Why or why not? Discuss fully.

## QUESTION 18

On March 1, 1998, Alan received a letter in the mail notifying him that his Uncle Bob had recently died and left him several gold coins as an inheritance. The letter stated that the coins were being held at a law firm for Alan. Alan was ecstatic, as he had been struggling financially, and he was about to be evicted from his apartment that very day.

Alan asked his neighbor, Fred, if he could borrow Fred's car to drive to the law firm to retrieve his inheritance. Fred agreed to let Alan borrow his car if Alan would promise to drop a package off at a private delivery service on the way. Alan agreed and drove first to the private delivery service to drop off Fred's package. No parking spots were available in the parking lot, so Alan parked in a nearby alley despite a "No Parking" sign. When Alan left the delivery service he noticed that the car's hubcaps were missing. Alan saw no one who could have taken the hubcaps. Hot with frustration, Alan removed his leather jacket and put it in the back seat of Fred's car.

Alan then drove to the law firm and left the car with a complimentary valet service. When taking the keys to the car, the valet handed Alan a numbered ticket. At the law firm, the executor of Bob's will explained to Alan that the coins were actually in a safety deposit box at The Best Bank. He handed Alan a key to the safety deposit box.

Alan picked up the car from the valet and noticed a small scrape and a dent along the driver's side door that he did not believe were previously there. He also noticed that his leather jacket was missing. The valet informed Alan that the car must have already been scraped and denied any liability for the missing jacket. The valet told Alan to read the ticket he had received. The ticket read:

We are not responsible for any damage to your vehicle or any personal property contained therein.

Alan decided to leave this fight for another day and drove to The Best Bank to obtain the gold coins. Alan was led to the vault containing the safety deposit boxes. Upon opening the safety deposit box, Alan discovered that it was empty.

Ten days later, Fred saw Alan on the street and told Alan that he expected Alan to pay for the hubcaps and to pay for the scrape and dent that Fred had discovered. Moreover, Fred said, his package never reached its destination and it had not been returned in the mail.

- (1) If Fred sues Alan, is Alan liable to Fred for any of the following: (a) the value of the missing hubcaps, (b) the cost to repair the scrape and dent on the car, or (c) the value of the missing package?
- (2) If Fred sues the law firm's parking service, is the parking service liable to Fred for the cost to repair the scrape and dent on his vehicle?

- (3) If Fred sues the delivery service, is the delivery service liable to Fred for the value of the missing package?
- (4) If Alan sues the law firm's parking service, is the parking service liable to Alan for the value of his missing jacket?
- (5) If Alan sues The Best Bank, is The Best Bank liable to Alan for the value of the missing coins?

Discuss each answer fully.