

LLS

February 22-23, 2011, Oklahoma Bar Examination

QUESTION NO. 1 (Page 1 of 1)

THIS IS A 30-MINUTE QUESTION CARRYING MAXIMUM GRADE POINTS OF 100.

Joe's Metal-Working Shop was a local business which made a variety of iron and steel items. For many years, Joe's Shop produced and sold steel blocks to an art gallery, Millbank's Gallery, which used the blocks as pedestals to display art works.

Joe's Shop agreed to produce a series of steel blocks to be used by Millbank's Gallery in an upcoming exhibition. As customary, the parties entered into a written contract which stated that the purchase price was \$15,000 and described the dimensions of each block. Joe's Shop produced the blocks, but Millbank's refused to pay the purchase price. Millbank's claimed that the blocks should have had an extra, special finish and claimed that Joe himself had orally agreed to put the special finish on the blocks. In the past, Joe's Shop had used several different finishes for the blocks. Sometimes the finish type was specific in the written contract; sometimes it was not specified. Joe's Shop claimed that the blocks met the specifications in the written contract and that Joe's Shop should be paid.

Joe's Shop sued Millbank's Gallery under their written contract.

Questions:

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- A. Does the Uniform Commercial Code apply to this dispute? If so, why? If not, why not?
  - B. Is evidence of Joe's alleged oral agreement admissible?
  - C. Discuss the merits of each party's position in the lawsuit.

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QUESTION NO. 2 (Page 1 of 2)

THIS IS A 30-MINUTE QUESTION CARRYING MAXIMUM GRADE POINTS OF 100.

Alice died in June of 2010 at the age of 86 after having accumulated a sizeable estate. She is survived by two children, Jim and Susan. Alice was a resident of Oklahoma County, Oklahoma, all of her life. In 2004, Alice executed a Will (the "2004 Will") which, after providing for a cash bequest of \$5,000 to her church, divided the residue of her estate equally between Jim and Susan. The validity of the 2004 Will at the time of its execution is not disputed. In October of 2008, Alice made an appointment with her lawyer to review and discuss the 2004 Will. At the conclusion of this meeting, Alice told her lawyer that she did not wish to make any changes to the 2004 Will. Her lawyer remembers that Alice was "clearly competent" and "very decisive" during the 2008 meeting.

Alice suffered a stroke in January of 2009. After being released from the hospital, she moved permanently into Susan's home. Over the next several months, many friends and family members visited Alice. To some, Alice appeared "alert and aware". To others, Alice seemed "forgetful and confused". A nephew was impressed that Alice remembered his children's names. A sister was shocked that Alice did not seem to recognize her. According to Susan, her mom had "good days" and "bad days". Everyone agreed that Alice was "never the same" after the stroke and that her physical and mental condition declined steadily until her death.

After the stroke, Susan provided for all of her mother's needs and handled all of her mother's financial affairs. Susan opened all of Alice's mail, and took all of her phone calls. Susan made all of Alice's medical appointments and administered all of her medications. Susan consulted with her own attorney when legal issues involving Alice's affairs came up. Alice, who

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rarely left her bedroom, became totally dependent on Susan. By November of 2009, Susan would allow only occasional visits by Alice's friends. Jim was not permitted to visit his mother at all. In May of 2010 Susan took Alice to the office of Susan's lawyer where Alice signed a second Will (the "2010 Will"). Under the terms of the 2010 Will, the 2004 Will was revoked, Jim was disinherited, and Alice's entire estate was left to Susan. Alice died two months later.

Susan has now petitioned the District Court of Oklahoma County for the admission of the 2010 Will to probate. Jim was unaware of the existence of the 2010 Will until he received notice from the Court that Susan's petition to probate it had been filed. Jim is furious and wants to contest the 2010 Will.

Questions:

- A. What legal grounds should Jim's lawyer consider as a basis for contesting the 2010 Will? Discuss fully the legal and evidentiary requirements for successfully contesting the 2010 Will on each of these grounds.
- B. If Jim is successful in his contest of the 2010 Will, how should the Court divide Alice's estate? Explain fully.
- C. Discuss in detail Oklahoma's statutory requirements for the execution and attestation of a self-proved Will.

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THIS IS A 30-MINUTE QUESTION CARRYING MAXIMUM GRADE POINTS OF 100.

Mary and Bill had been married for several years when Mary discovered that Bill had been cheating on her. Mary and Bill got a divorce. Bill kept the house and Mary moved out. Mary was very disgusted with Bill and wanted to do something about his cheating but did not know what to do.

Mary moved into an apartment by herself in a bad neighborhood. Mary had a conversation with her mother, Sue, over what should be done about Bill's indiscretion. Mary told her mother, "Well, I know where Bill sleeps." Sue did not tell Mary what to do but, at the end of her conversation, she gave Mary a .45 caliber pistol and said to keep it for her protection. Mary took the gun and said, "I know what to do with this."

Later that night, Mary drove to her old house, got out of the car and walked around the house to where the master bedroom was located. Mary fired the gun toward the house in the direction of Bill's bed, and then quickly got in her car and sped away, exhilarated at the thought of scaring Bill for cheating on her.

No one saw or heard from Bill for days. A few nights after discharging the gun, Mary was at a local bar and, after having a few drinks, told a friend all that had happened, including shooting her husband for cheating on her. The friend realized she had not seen Bill for a while and called the local authorities, who went to the house to do a welfare check on Bill.

When the officer knocked on the door, Bill answered and asked how he could help. The officer asked if Bill was okay and Bill said yes. The officer asked if there had been a disturbance

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a few nights ago, and Bill said not that he was aware of. The officer said, "Well, we got a report that there was a shooting here several nights ago." Bill said, "There has been no shooting here." The officer asked to take a look around on the side of the house and sure enough there was a bullet hole in the side of the house. Bill said, "How did that get there?" "Are you sure you're not injured in any way?" asked the officer. Bill said, "Well, I do have this boil on my side that won't go away." The bullet had grazed Bill in his sleep and he did not feel it.

Questions:

- A. Who should the prosecutor charge and for what crimes, if any? Explain your answer.
- B. What charges will be successful? Explain your answer.
- C. Assume for this subpart only that the friend did not call the authorities. Could the friend be charged with anything? Explain your answer.
- D. Assume for this subpart only that Bill died. Explain how that would change your answer to subparts A, B or C.
- E. Assume for this subpart only that the bullet struck and killed Bill's girlfriend instead of Bill. Explain how that would change your answer to subpart D.

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THIS IS A 30-MINUTE QUESTION CARRYING MAXIMUM GRADE POINTS OF 100.

State X has experienced a marked increase in driving under the influence (DUI) and traffic arrests for the past five years. Highway fatalities have increased 100% from 28 deaths in 2005 to 56 deaths in 2010. A recent State X legislative committee study concluded that State X's highway patrol has experienced a significant increase in the median age of its state troopers during this period of time, and that the physical fitness of its state troopers has fallen to an unacceptable level.

In response to growing public concern, State X's legislature enacted a statute that requires state troopers to retire at the age of 50, regardless of years of service and the actual physical fitness of the state trooper.

Adam is a 50 year old male who has been a state trooper for over 20 years. Like many other state troopers his age or older, is in very good physical health. Adam believes the statute is unconstitutional because a younger highway patrol does not necessarily result in a more physically fit highway patrol.

Questions:

- A. Is "state action" involved? Explain your answer.
- B. Does the statute result in Adam being in a "suspect" class? Explain your answer.

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- C. Is the statute unconstitutional under the Equal Protection Clause to the U.S. Constitution or the equal treatment notions protected by the Oklahoma Constitution? Explain your answer.

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THIS IS A 30-MINUTE QUESTION CARRYING MAXIMUM GRADE POINTS OF 100.

Owen was the owner in fee simple of an undeveloped wooded tract of land identified as the Southeast Quarter (SE/4) of the Southeast Quarter (SE/4) of Section 4, Township 6 North, Range 7 West, Carson County, Oklahoma.

A gentleman named Hunter had always loved this tract of land and wanted to build a small cabin on the land next to the pond so he could watch the ducks land on the water. On September 28, 1985, Owen executed and presented Hunter with a warranty deed to the entire tract of land. The deed had no restrictions. Owen gave the deed to Hunter but the deed was never recorded. Hunter promptly built a small cabin in the middle of the acreage next to the pond. The cabin had no water or electricity but he still enjoyed living the natural life at the cabin. Unfortunately, a few short months after completion of the cabin, Owen and Hunter got into a small argument over Hunter shooting the ducks. Owen demanded that Hunter give the deed back. Hunter was so mad he tore up the deed and threw it back at Owen. Owen demanded that Hunter leave the property but Hunter refused and has continued living in the cabin on the land since 1985.

On May 9, 1986, Owen executed a quit claim deed to the property to Jack and Jill as tenants in common. The quit claim deed was delivered to Jack and Jill but was not recorded in the Carson County Records until June 18, 1987. Jack and Jill were so excited that they were finally going to get to build their dream home beside the pond. They began saving their money.

Years later, on November 1, 2004, Jack and Jill went to the property for the first time to scout out the perfect location for their home. That is when they discovered Hunter's cabin and Hunter sitting with his shotgun hunting ducks on the pond!

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Jack and Jill demanded that Hunter immediately remove himself from the property. Hunter refused saying that he owned the property and that they must leave. Assume that Oklahoma law applies when answering the following questions.

Questions:

- A. How many acres are involved?
- B. Was there a valid conveyance from Owen to Hunter on September 28, 1985 even though the deed was not recorded? Explain your answer.
- C. Did Hunter's destruction and return (in pieces) of the deed to Owen effectively cancel or reconvey the property back to Owen? Explain your answer.
- D. Assume for this subpart only that Jack and Jill have a valid title to the property.
  - 1. Explain what a tenancy in common is and what rights each tenant has to the property.
  - 2. What is the affect on their title that they did not record their deed for over one year? Explain your answer.
- E. Between Hunter and Jack and Jill, which party has a better claim to ownership in the property? Explain your answer.
- F. Can either Hunter or Jack and Jill sue Owen for breach of covenant? Explain your answer.

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THIS IS A 30-MINUTE QUESTION CARRYING MAXIMUM GRADE POINTS OF 100.

Tim just completed a night class in entrepreneurship. He approached his cousin Bob and asked if he can “go find deals” for Bob to invest in. Bob wanted to help Tim get started and agreed to “try it out,” but Bob made clear that he did not want his name revealed or involved in any way. Despite that statement, Bob later told Walter, a banker he knows, about his agreement with Tim.

Tim found what he considered to be a great opportunity with ABC Co but the deal required an immediate commitment, in writing, to invest \$100,000 because the deal would “be lost” if Tim couldn’t commit that day. Bob was fishing in Alaska at the time and couldn’t be reached, but Tim was sure that Bob would want the deal. So, Tim signed his own name to the commitment but told ABC Co he was doing the deal for his cousin Bob. ABC Co then took Tim’s written commitment to its bank and passed along what Tim said about this being a deal for his cousin Bob. It turned out that ABC Co’s banker was the same Walter that Bob had talked to. Based on the written commitment from Tim, and Walter’s recollection of his conversation with Bob, the bank loaned \$100,000 to ABC Co.

Over the following two weeks, Tim did two other deals in a similar manner. Bob finally returns from Alaska and Tim tells Bob what he has done. Bob decided to go ahead with the two more recent deals, but refused to do the \$100,000 deal with ABC Co or to advance any funds on that deal.

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When ABC Co was sued by its bank for \$100,000, ABC Co filed a third-party complaint against Tim, both individually and as agent for Bob, and against Bob, individually.

Questions:

- A. Does Bob have any exposure to ABC Co for the \$100,000? Explain your answer.
- B. What cause of action could ABC Co assert against Bob, and what are the elements of that claim?
- C. Does Tim have a basis for a claim against Bob regarding the ABC Co claim against Tim? If so, on what theory? Explain your answer.
- D. Assume for this subpart only that Bob had never talked to Walter. Explain whether your answer to subpart C would be different as a result.
- E. Could Bob have made an agreement with Tim to accommodate Tim's purpose but also would not have exposed Bob to any liability regarding Tim's activities? Explain your answer.

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THIS IS A 30-MINUTE QUESTION CARRYING MAXIMUM GRADE POINTS OF 100.

A third year law student went to Oklahoma City to interview for a job with Sam Stern, an Oklahoma lawyer. The sign on the door read:

Sam Stern, Esq.  
Attorney and Counselor at Law  
Certified Divorce and Personal Injury Specialist  
Never Settle for Second Best

Inside was a scene of chaos: telephones ringing, files stacked around randomly, and clients waiting. As the student sat in the waiting room, he could tell that the receptionist was discussing the scandalous details of one of the divorce cases in the office with a caller who had reached her on her personal cell phone. Finally lawyer Stern arrived. As he breezed by on the way to his inner office, the receptionist said, "Mrs. Barnes is holding for you on two, she said she hasn't been able to talk to you about her personal injury case for months." The lawyer paused, seemed to think about that for a second and said, "Take a number and tell her I'll get back to her this afternoon." The student watched as the receptionist wrote up a message and placed it on an old fashioned spindle already overflowing with messages.

Apparently reminded that he had a law student waiting for an interview, Sam Stern burst back out of his office and said, "Come with me, I'm late for a deposition. We'll talk in the car." He paused and asked his receptionist, "Can I have a check on the office account so I can take this young man to lunch?" When told that the balance was too low, he responded, "There's plenty of money in the trust account, give me one of those checks – I'll pay that account back when the Jones fee comes in."

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His receptionist paused, started to say something, but then handed him a check on his trust account. "One other thing before you leave: Judge Brown is holding on line one. He wants to appoint you to serve as guardian ad litem in a divorce case." As he went through the door, Mr. Stern yelled, "I'm not going to take any of those low paying appointments anymore. Tell him I've got a conflict – I'll think of something before I see him again."

In the car on the way to the deposition, the student overheard the lawyer make two calls on his cell phone. The first call was to Linda Larue. It was clear from the lawyer's side of the conversation that the lawyer represented Linda's husband in a divorce action and he was urging her to sign a settlement agreement. He ended the call by saying, "Have your lawyer call me."

The second call was to his receptionist. He said, "Tell Mrs. Smith I have decided to take her divorce case, but she is hard to work with so I want at least \$50 an hour more than my regular rate. No, on second thought, write an engagement letter and tell her my fee will be \$400 an hour. I'll earn every penny of that."

The lawyer pulled into a parking place near the office where the deposition was to occur. He commented as he got his briefcase out of the car, "This is a partition case and I don't know anything about partition cases. I am on the slow side of this case and I am just trying to stall." When the deposition was over, the lawyer took the law student to lunch. The law student decided not to take the job.

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Identify and discuss each violation of the Oklahoma Rules of Professional Conduct. Also briefly answer the question of whether the Rules require the law student to report any of these violations.

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Janet and Fred have a valid common law marriage. Fred has been considering filing for divorce against Janet due to her failure to obtain employment, going as far as having an attorney draft a Petition of Dissolution of Marriage. On October 1, Fred instructed his attorney to file the Petition on October 8.

On October 3, Janet informed Fred that she had a job interview at the Big Mart Food Warehouse and she asked him to accompany her to the Big Mart store for her interview. Fred had no other reason to be at Big Mart and had never been there before, but he wanted to be supportive of Janet. While at Big Mart, Janet started to walk down the cereal aisle toward the manager's office where the interview would take place. Mr. Able, an employee of Big Mart, was operating a fork lift on the adjacent aisle while listening to music on headphones, which was a violation of Big Mart policy. Mr. Able had been warned by the manager to not listen to headphones while working, but had ignored these warnings.

While placing products on the top shelf of the adjacent aisle, Mr. Able knocked over a pallet of cereal onto Janet, hitting her in the head and causing her to lose consciousness. At the time, Fred was standing next to Janet; he saw the pallet start to fall and moved out of the way. Fred was traumatized by the incident and has made an appointment to see a therapist. Janet will need ongoing physical therapy and treatment for her injury, but she is expected to make a full recovery.

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After all of this, Fred decided that he really did love Janet and told his attorney not to file the Petition.

Questions:

- A. Is Big Mart liable for the actions of Mr. Abel? Explain your answer.
- B. What tort claims, if any, does Janet have against Big Mart? Explain your answer.
- C. What tort claims, if any, does Fred have against Big Mart? Explain your answer.
- D. What defense does Big Mart have to any tort claim that Fred might assert?  
Explain your answer.



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THIS IS A 30-MINUTE QUESTION CARRYING MAXIMUM GRADE POINTS OF 100.

Alan, Bob and Carl have been engaged in a joint venture called ABC Windy ("Windy"), a business of development and construction of wind farms. They have no formal written agreement regarding Windy. Windy has acquired equipment valued at \$50,000, owned in Windy's name. Alan, Bob and Carl need \$250,000 in new money to grow the business.

Alan, Bob and Carl have heard that a different business entity might be better for their purpose. They want to contribute the equipment of Windy and their personal knowledge and skills to the entity in exchange for a 20% ownership interest, each, in the new entity. They want to sell the other 40% interest to raise all the new money needed from investors. Three potential investors are interested. One is the Trustee of an Irrevocable Trust and this would be a permitted investment under the Trust, within the discretion of the Trustee. Another investor is Marie, an individual, who is an Oklahoma resident. The third potential investor is a South American corporation called Oily\$Co. None of the potential investors want any personal risk related to the business. None of the potential investors want the income of the new entity to be taxed at the entity level. Alan, Bob and Carl want to retain control of the operation of the business. The Trustee and Oily\$Co want to be informed about company affairs, but not directly or actively involved in management; Marie wants to be actively involved in overall management, but not in the daily operations of the business.

Alan, Bob and Carl come to you for advice.

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THIS IS A 30-MINUTE QUESTION CARRYING MAXIMUM GRADE POINTS OF 100.

Questions:

- A. Could an Oklahoma corporation accomplish the intent of all the interested parties? Explain your answer.
- B. Could an Oklahoma limited liability company accomplish the intent of all the interested parties? Explain your answer.
- C. Could an Oklahoma limited partnership accomplish the intent of all the interested parties? Explain your answer.
- D. Could an Oklahoma general partnership accomplish the intent of all the interested parties? Explain your answer.
- E. What form of entity would you recommend, and why?

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THIS IS A 30-MINUTE QUESTION CARRYING MAXIMUM GRADE POINTS OF 100.

Stadium Vision, Inc. (“SVI”) is an Oklahoma corporation with its principal place of business in Tulsa, Oklahoma. SVI manufactures, designs, and installs large high definition televisions in stadiums throughout the United States.

Acme General Contracting (“AGC”) is a Texas corporation with its principal place of business in Dallas, Texas. AGC is a general contracting company that specializes in constructing stadiums, and AGC was the general contractor for a new football stadium in Arlington, Texas.

Representatives of AGC flew to Tulsa to meet with SVI and negotiate terms of a contract for the manufacture and installation of four large high definition televisions at the new stadium in Arlington. During the meeting, the parties finalized and executed a written contract which included certain warranties, but SVI waived the implied warranties of merchantability and fitness for a particular purpose.

The televisions were manufactured at SVI’s facility in Tulsa and then shipped in sections to Arlington for final assembly and installation. However, the televisions suffered from numerous electrical and structural problems, which SVI technicians unsuccessfully attempted to remedy.

AGC filed a lawsuit in Tulsa County District Court seeking money damages under Texas law for breach of express warranty and breach of implied warranties of merchantability and fitness for a particular purpose.

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THIS IS A 30-MINUTE QUESTION CARRYING MAXIMUM GRADE POINTS OF 100.

You are the judge assigned to the case and you know that jurisdiction and venue in this case are proper in your court. SVI has now filed a motion for summary judgment on the implied warranty claims, contending that the waiver language in the contract is valid under Oklahoma law. You know from a prior case that Oklahoma law indeed would recognize the waiver, but that the contract language waiving the implied warranties did not meet the requirements for such a waiver under Texas law. From your review of the parties' contract, you notice that it lacks a choice of law provision.

Determine which state's law applies, and rule on the summary judgment motion. Explain your reasoning.

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THIS IS A 30-MINUTE QUESTION CARRYING MAXIMUM GRADE POINTS OF 100.

The residents of Any County, Oklahoma needed an OB/GYN physician so they don't have to travel 50 miles to obtain those services. Charity Hospital, which is located in Any County, decided to help recruit an OB/GYN physician by providing a one-year loan to a physician willing to come to Any County. Under the arrangement, if the physician stays in Any County for four years, the entire amount of the loan will be forgiven. However, if the physician leaves before the four years is over, the physician will be required to repay a pro-rata portion of the loan.

Dr. Delivery agreed to take the Charity Hospital up on the offer. He leased a home in Any County and signed an agreement with Charity Hospital for the loan. As part of the loan agreement, Dr. Delivery gave Charity Hospital a security interest in all of the accounts receivable that will be generated from his practice of medicine in Any County. Charity Hospital filed a financing statement covering these accounts receivable with the Oklahoma County Clerk's office on March 1, 2010, and Dr. Delivery commenced his medical practice in Any County on July 1, 2010.

Dr. Delivery entered into a four year lease with Charity Hospital for some office space in a medical clinic building it owns. He purchased \$40,000 worth of equipment and furnishings to set up his new office from Medi-Equipment, Inc. Medi-Equipment, Inc. provided financing to Dr. Delivery for the purchase over a four year period, and took a security interest in the

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equipment and furnishings. Medi-Equipment filed a financing statement with the county clerk's office in Any County, Oklahoma.

After practicing medicine in Any County for 18 months, Dr. Delivery decided he wanted to leave. By this time, he had spent all of the Charity Hospital loan proceeds and his practice income primarily on travel, and had incurred a number of additional unsecured debts, leaving him insolvent. Last week, Dr. Delivery sold the equipment he bought from Medi-Equipment, Inc. to Dr. Childs, a totally unrelated OB/GYN physician practicing in another community, for \$20,000 in cash. Yesterday, he shut down his practice and instructed his attorney to file a voluntary Chapter 7 bankruptcy on his behalf.

Questions:

- A. What rights will Charity Hospital have in the bankruptcy against Dr. Delivery and his assets in connection with the loan agreement and pledge of accounts receivable?
- B. What rights will Medi-Equipment, Inc. have in the bankruptcy regarding the equipment it sold to Dr. Delivery and its loan to Dr. Delivery of the purchase price?
- C. What rights will Dr. Childs have in the equipment she purchased from Dr. Delivery?

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THIS IS A 30-MINUTE QUESTION CARRYING MAXIMUM GRADE POINTS OF 100.

David is a sole practitioner in rural Oklahoma. In practice for approximately 10 years, he handles a variety of cases. Approximately 20% of his practice is criminal defense, although he has never handled a murder case. One day, as David was leaving the office for the day, an old face raced in his door. David's old college roommate, who he hadn't seen in years, frantically said he was in some trouble and needed David's help. He handed David a .38 caliber pistol and a duffle bag and begged David to hold the items for him, so David locked the items in his office safe.

The roommate then gave David a wad of money from his pocket, asked David to represent him on any charges he may face, and offered him \$50,000. David asked what happened and the roommate said, "The stupid guy tried to be a hero." He promised that if David could keep him out of jail, he would pay an additional \$50,000. David continued to ask questions, but the old friend said there was no time. Times were tough financially and David needed the retainer so he quickly puts together a contract providing for a non-refundable \$50,000 fee and a contingency fee of another \$50,000. Both men sign. When the roommate said he needed a place to lay low, David gave him the keys to his lake cabin. David's newest client quickly left.

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David took the \$50,000, deposited \$40,000 into his checking account and used the rest to catch up on his overdue mortgage at the bank. At home, he told his wife about his good fortune and the oddness of the encounter. After dinner, David sat down to watch the news. The lead story detailed a robbery of the local jewelry store which resulted in the shooting death of the store owner. Store security video set David's heart racing. It's clear to him that the figure in the video is wearing the same kind of jacket his old roommate wore into his office.

Just before bed, the phone rang. The local police was following up on a tip that a man fitting that description was seen entering David's office. Panicked, he played dumb. David decides to let the friend hang at his cabin for the weekend and plans to surrender him to the authorities on Monday.

Questions:

- A. Discuss any ethical violations David may have committed.
- B. What criminal charges could David face and does his attorney-client relationship protect him from any possible charges? Explain your answer.



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THIS IS A 30-MINUTE QUESTION CARRYING MAXIMUM GRADE POINTS OF 100.

Arbor University is a coeducational research state university. It is the largest of three (3) public universities located within the state and has an average enrollment of 36,000 students per year.

Bonnie Bay was hired by Arbor University as a Political Science professor. She had a written employment contract guaranteeing her one (1) year of employment with Arbor University and stating she would not be subject to termination absent good cause. At the time of her hiring, Bonnie Bay was given Arbor University's faculty handbook which expressly provides that employment of University faculty would be continued as long as performance was satisfactory. Bonnie Bay was not tenured.

Bonnie attended an anti-war rally held on campus where she allegedly made certain controversial and derogatory statements concerning the U.S. Government and its war policies. Her statements at the rally were videotaped by a news camera crew. For the ensuing two (2) days, edited portions of the videotape were aired on several local newscasts. The videotape quickly made headline news throughout the country and was the topic of various national television and radio talk shows. The University was soon inundated by correspondence from not only its faculty and students, but people all over the country who were calling for Bonnie Bay's immediate termination for conduct unbecoming of a university professor.

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Under increasing pressure, Arbor University terminated Bonnie Bay effective immediately. She was informed of the termination by written letter, without the opportunity to be heard before the University's administrative board.

Bonnie Bay filed a lawsuit alleging, among other things, that Arbor University illegally terminated her employment in violation of her due process rights.

Questions:

- A. Explain whether or not Bonnie Bay has a property interest in her employment with Arbor University that is protected by the Due Process Clause.
- B. Explain whether or not Bonnie Bay's due process rights were violated by Arbor University for terminating her employment without a pre-termination administrative hearing.
- C. Assume for this subpart only that Arbor University had provided Bonnie Bay an opportunity to be heard at a pre-termination administrative hearing. What basic due process hearing requirements should she have been provided?

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THIS IS A 30-MINUTE QUESTION CARRYING MAXIMUM GRADE POINTS OF 100.

Al married Betty. During their marriage, they had two children, Carl and Debbie. Al executed a Will leaving his entire estate to his wife, Betty, if she survives him and if not, equally to his two children, Carl and Debbie.

After Betty died, Al married Ellen. Al and Ellen had two children, Frank and Gayle. Al died at the ripe old age of 90, and is survived by his widow, Ellen and four adult children, Carl, Debbie, Frank and Gayle.

Al never made a new Will. Ellen produces the Will at your office and seeks your advice.

Questions:

For all of the questions below, assume that (i) the Will was properly executed, (ii) the Will is not subject to a successful attack based upon fraud, duress or over reaching, (iii) Al's entire estate was held solely in his name, (iv) Al and Ellen did not have a prenuptial agreement, and (v) the property acquired during Al and Ellen's marriage was acquired through joint industry even though it was held solely in Al's name.

- A. Is the Will valid, since Al's first wife died and his two later children, Frank and Gayle are not named in the Will? Explain your answer.
- B. Assume for this subpart only that the Will is valid. Does the Will have to be offered for probate? Explain your answer.

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THIS IS A 30-MINUTE QUESTION CARRYING MAXIMUM GRADE POINTS OF 100.

- C. What rights does Ellen have as a widow and subsequent wife? Explain your answer.
- D. What rights to inherit do Carl and Debbie have in Al's estate? Explain your answer.
- E. What rights to inherit do Frank and Gayle have in Al's estate? Explain your answer.

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THIS IS A 30-MINUTE QUESTION CARRYING MAXIMUM GRADE POINTS OF 100.

In 1960, Bob Bailey purchased one hundred sixty (160) acres located along Highway 51 just outside of Stillwater. In 1965, Bailey sold forty (40) acres to Jim Johnson. Bailey granted Johnson an easement over the remainder of his property to provide direct access to Highway 51.

Bob Bailey, Jr. inherited the remaining one hundred twenty (120) acres after his father's death in 2009, and recently contracted to sell the property to a local developer. The developer plans to build commercial offices and is unwilling to close the transaction unless Johnson's access easement is removed. Bob Bailey, Jr. sued Johnson in the District Court of Payne County seeking to cancel the easement.

Johnson is a resident of the State of Kansas. Bailey's lawyer served Johnson by publication notice. According to the publication notice, Johnson's answer was due August 31, 2010. Johnson failed to answer and judgment was entered in favor of Bailey on September 1, 2010. Bailey's lawyer mailed a copy of the Journal Entry of Judgment to Johnson's Kansas address on the same day and filed an Affidavit of Mailing with the Clerk.

Johnson walked into your office on October 10, 2010 and provided you a copy of the Judgment, which he received by mail on September 3, 2010. You immediately call Bailey's lawyer to discuss possible resolution. Bailey's lawyer described the circumstances and pointed out that Johnson was properly served by publication notice and failed to answer. He explained that publication service was proper because (i) Bailey's suit for "quiet title" (based on

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THIS IS A 30-MINUTE QUESTION CARRYING MAXIMUM GRADE POINTS OF 100.

of the easement) did not include any claim for monetary damages and (ii) Oklahoma law does not allow for service of a Summons and Petition by certified mail or private process server outside the boundaries of the state. He further commented that Johnson is not relieved of the obligation to read legal publications in the local paper simply because he lives in Kansas.

Bailey's lawyer further stated that more than thirty (30) days has passed since he filed and mailed a copy of the Judgment to Johnson, and asked why Johnson waited until his appeal time had expired before taking action. Regardless, he told you that the Judgment is now "final" and that his client is unwilling to reopen the case.

Johnson tells you that his property is worth nearly \$250,000. While he does have access along a dirt road and has never used this easement, Johnson claims that loss of direct access to Highway 51 will diminish the value of his property by over \$100,000. He asks you the following questions:

- A. Was publication service proper? Explain your answer and specifically address the arguments advanced by Bailey's lawyer.
- B. Can Johnson attack the judgment? If so, how and on what grounds? Explain your answer and specifically address the effect of Bailey's contention that the judgment is "final" and Johnson's appeal time has expired.

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THIS IS A 30-MINUTE QUESTION CARRYING MAXIMUM GRADE POINTS OF 100.

- C. Assume for this subpart only that the judgment is vacated by agreement or otherwise.
1. Does Johnson have the right to a jury trial on Bailey's claim to cancel is easement? Explain your answer.
  2. Does Johnson have the right to remove the action to the United States District Court for the Western District of Oklahoma? Explain your answer.

QUESTION NO. 16 (Page 1 of 2)

THIS IS A 30-MINUTE QUESTION CARRYING MAXIMUM GRADE POINTS OF 100.

Penny Pauper comes to you today seeking advice regarding a potential divorce from her husband, Adam Rich.

Penny and Adam were married on August 13, 2005 in Jamaica. Penny had a child, Mary who is 8 years old now, with her first husband. Adam had no children at the time of their marriage. Adam and Penny have two children together – Tom, age 3 and Amy, age 18 months.

Adam is a stock broker and makes \$150,000 per year. Penny is a speech therapist that only works 10 hours a week since having more children, and she makes \$15,000 per year.

Adam's parents are a very prominent and wealthy family in the local community. Penny explains to you that they were not happy about the marriage because Penny had been married previously. Penny asks you to review a prenuptial agreement dated August 12, 2005 that she says was presented to her for the very first time after the rehearsal dinner. She signed the prenuptial agreement, in the presence of Adam's father and his attorney, without advice from counsel. The prenuptial agreement provides that Penny will get \$10,000 in the event of a divorce within five years of the date of marriage, and \$50,000 in the event of a divorce afterwards.

In 2004, Adam's maternal grandmother passed away and left him \$1,000,000. In September 2005, Adam used \$400,000 of his inheritance to buy what Penny described as her "dream home" in Owasso (Tulsa County), although only Adam's name was placed on the deed. The following year, Adam's paternal grandfather passed away and left him \$500,000 cash and



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THIS IS A 30-MINUTE QUESTION CARRYING MAXIMUM GRADE POINTS OF 100.

real estate worth \$2,000,000 then but is now estimated to be worth \$3,500,000. Adam deposited the \$500,000 from the inheritance in a joint checking account that he and Penny opened the week after they were married.

Penny says that the first three years of their marriage were great, but sometime in 2008 Adam began spending more time in casinos playing slot machines and black jack. Penny claims to have evidence that Adam has withdrawn \$300,000 in the past two years from their joint checking account using ATM machines in casinos. About a year ago, Penny discovered that Adam was having an affair with his high school sweetheart. For the past 45 days, Adam has been living with her in Sapulpa (Creek County). After Adam moved out of the house, Penny found a receipt dated December 20, 2010 for a \$25,000 diamond and ruby ring, an apparent gift for Adam's high school sweetheart. The ring was paid for from their joint checking account.

Please advise Penny with regard to the following issues:

- A. Alimony
- B. Child support and custody of each of the children
- C. The prenuptial agreement
- D. Division of the marital and inherited property
- E. Potential venues for the divorce