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

Stephen and Robert wish to begin a business venture. Stephen's dream is to open a small chain of "high stakes poker palaces." Robert's dream is to start a chain of "Laundromats" where people who do not own a washer and dryer can wash and dry their clothes.

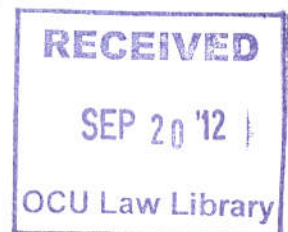
The two entrepreneurs determine that a great idea would be to combine the two business ideas and open a small chain of "high stakes poker palaces" where people can play poker and gamble while washing and drying their clothes at the same time. The locations of these "poker Laundromats" would be in local strip malls.

Jerry also has an idea for a domestic insurance business and wants to start it with Stephen and Robert. However, Stephen and Robert secretly do not care for Jerry and do not want to go into business with Jerry.

Questions:

- A. Is it permissible under the Oklahoma Limited Liability Company Act for Stephen and Robert to engage in the business of "poker Laundromats" as proposed? Explain your answer.
- B. What document(s) need to be filed and/or delivered to properly begin a limited liability company, with what official or office must the document(s) be filed and/or delivered, and what must be contained in the document(s)?

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- C. On what date(s) is a limited liability company formed, and what words or abbreviations must the company name contain? Explain your answer.
- D. State at least one statutorily enumerated power of, or for, a limited liability company under the Oklahoma Limited Liability Company Act.
- E. Assume Jerry starts a company on his own. May he begin a limited liability company in Oklahoma for the business he hopes to start? Explain your answer.

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Tom (the "Testator") and his wife were life-long residents of Marshall County, Oklahoma. They had two (2) children, to-wit: a son, Sam and a daughter, Donna. Tom's wife died when the children were young and Tom never remarried. Tom and Donna had a good relationship. After Donna graduated from college, she returned to her hometown. Tom and Donna remained close. Tom and Sam never got along. After Sam graduated from college, he moved to New York. Tom and Sam rarely spoke on the phone and Sam refused to travel to Oklahoma to visit his dad.

By March of 2010 it had been over ten (10) years since Tom had seen Sam. Tom felt abandoned by his son. On March 25, 2010, Tom took a sheet of notebook paper out of his drawer and prepared a document entitled "Last Will and Testament" (the "Will"). Except for the date of the Will, which was typed at the top of the page, the remainder of the Will was entirely in Tom's handwriting. The Will was signed by Tom at the bottom of the page, but the Will did not indicate that Tom's signature was witnessed.

Donna was mentioned by name in the Will, but Sam was not. The only relevant dispositive provisions of the Will read as follows:

"Upon my death, I leave all of my estate to my daughter, Donna. All other persons are excluded from receiving anything from my estate."

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At the time the Will was executed, Tom possessed the required testamentary capacity and no duress or undue influence was involved.

Tom died in 2011. At the time of his death, Tom's "sole and only heirs-at-law" were his children, Donna and Sam. Donna, who was the named Personal Representative, offered the Will for probate in the District Court of Marshall County, Oklahoma. In her Petition, Donna requested that Tom's entire estate be distributed to her as provided in the Will. Sam timely filed an Application seeking his "intestate share" of Tom's estate on the grounds that he (Sam) was an "unintentionally omitted heir" under the terms of the Will.

Questions:

- A. Discuss all elements of Oklahoma's statutory requirements for the validity of a handwritten Will. From the facts given, did Tom's Will meet these statutory requirements? Explain your answer.
- B. For this subpart only, assume that Tom's will is valid. Discuss fully the legal basis, if any for Sam's claim to an "intestate" share of Tom's estate. Include in your answer a discussion of whether the specific language used in the Will was sufficient for Tom to have effectively "disinherited" Sam.

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Tom's sports utility vehicle (SUV) had been acting up. It would suddenly die, without warning. On Monday, he took the car to the dealership where he had bought it, Best Autos, for servicing and repairs.

On Friday, Tom returned to Best Autos and picked up the SUV after receiving a call from the Service Technician advising that the repairs were completed.

The next morning, while Tom and his friend, Bob, were on their way to the mall for breakfast, the SUV suddenly died, in the same manner as it had before the repairs. As Tom and Bob were pushing the stalled SUV off the roadway, a truck with defective brakes collided into the SUV, seriously injuring Tom and Bob.

Soon thereafter, Bob filed suit against Best Autos for negligence, claiming that Best Autos failed to repair Tom's SUV in a reasonable and workmanlike manner and that, as a result of such negligent repair, Bob was injured. In response to Bob's Petition, Best Autos' lawyer filed a Motion to Dismiss for failing to state a claim upon which relief may be granted.

Questions:

- A. What arguments should be made by Best Autos' lawyer in support of the motion?

Explain your answer.

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- B. What arguments should be made by Bob's lawyer against the motion? Explain your answer.
- C. How should the Judge rule on the motion? Explain your answer.
- D. Assume for this subpart only that the motion is denied. What separate elements must the evidence establish in order for Bob to prevail? Explain your answer.
- E. With as much detail as possible, explain whether the facts demonstrate a mere "condition" or if Bob can establish the element of "proximate cause" in order to prevail.

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

Adam and Betty are the adult children and only heirs of Carter, a 57 year old widower who recently passed away after a prolonged fight with cancer. He left a Last Will and Testament. Both Adam and Betty are named in the Will as Co-Personal Representatives to serve without bond. Adam and Betty desire to retain attorney Drake to represent the estate because his telephone book advertising states that he “specializes” in probate cases.

Drake requires a non-refundable \$10,000 retainer fee to assure his availability as counsel in all probate matters. In addition to the retainer, he charges a reduced hourly rate of \$125 an hour for all legal work to be performed on behalf of the estate. Carter passed away with approximately \$1,000 in his checking account and no other monies. The rest of his estate consists of a modest home, household goods and furnishings, clothing and other personal effects and belongings, a ten year old Chevrolet pickup, a collection of five oil paintings – the value of which are unknown, and over \$100,000 in medical bills. Drake offered to accept the oil paintings in lieu of his customary retainer, and Adam and Betty agreed.

During the probate, Carter’s home was sold to cover expenses of the probate proceedings and to pay Carter’s medical bills. Adam and Betty sold the home for the sum of \$65,000. Upon Drake’s advice, the sales proceeds were placed in his trust account.

After a year goes by and the probate proceedings have not been concluded, Adam and Betty contact Drake to communicate their concerns. Drake advises that it may take six to nine

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more months due to the final preparation of Carter's individual tax returns, payment of the medical bills and the Court's schedule.

After an additional ten months go by, Betty is searching for digital cameras on her laptop when she inadvertently discovers that the five oil paintings are being offered at auction on E-Bay by a local art dealer at an opening bid price of \$5,000 per painting, and that there are current bids on 4 of the 5 oil paintings. Betty contacts Adam about her discovery, which enrages him. Adam and Betty contact Drake to make inquiries regarding a final hearing date for the probate, and the fact that the oil paintings are being sold for well in excess of the \$10,000 retainer quote. Drake advises that shortly after he accepted the oil paintings in lieu of his customary retainer, he sold them to an art dealer for \$8,500.

Identify and discuss each ethical issue presented by these facts under the Oklahoma Rules of Professional Conduct. Explain your answer.

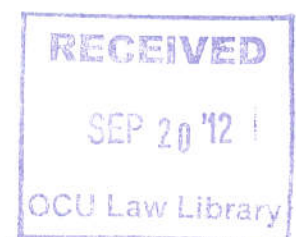


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Amy is the office manager for a small concrete business in Eufaula, Oklahoma owned by the Bradleys. As part of her job responsibilities, Amy is in charge of the company's books. Amy is a signor on the company's account and is authorized to write checks for business purposes. Barbara is the Bradley's daughter. She is on the company's payroll, although she rarely shows up for work. Over the past two years, Amy has written numerous checks to Barbara in addition to her regular pay checks. The Bradleys have recently learned about the additional money being paid to Barbara, and they are furious. They have accused Amy and Barbara of embezzling from the company and are asking the District Attorney to file charges against them.

Once Barbara finds out that her parents are pursuing charges, she goes to Amy and threatens her. She tells Amy that if Amy testifies against her, Barbara will make sure that everyone finds out about the affair Amy is having with her son's basketball coach, Coach. Barbara even shows Amy compromising pictures of Amy with Coach. Amy, overcome with guilt and grief, decides to take a handful of sleeping pills and wash them down with a bottle of vodka. Amy passes out and never wakes up.



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Questions:

- A. What crimes might the District Attorney possibly charge Amy with? What defenses might Amy have? Explain your answer.
- B. Is Barbara guilty of embezzlement? Explain your answer.
- C. With what other crimes could Barbara be charged? Explain your answer.
- D. Assume for this subpart only that Amy woke up after passing out, and Barbara decides that it is necessary to “send her a message”. Barbara drives to Amy’s home and decides to start a small fire at the home when she believes the family is out to dinner. Unbeknownst to Barbara, Amy’s husband Homer is asleep inside the home and dies as a result of the fire. With what additional crimes could Barbara be charged? Explain your answer.

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Jimmie Phipps, a citizen of the State of Oklahoma, filed suit in the United States District Court for the Northern District of Oklahoma against Spanco, a corporation organized under the laws of the State of Missouri with its principal place of business in the State of Illinois. Phipps alleged that the matter in controversy exceeded the sum of \$75,000, and that the federal district court could exercise subject matter jurisdiction and venue was proper. Spanco did not contest jurisdiction and venue, and answered by general denial, with the additional defense that the plaintiff's claim was barred by Missouri law.

The complaint alleged that on January 22, 2011, Phipps purchased 550 shares of Spanco, primarily as a result of reading an article published in the *Tulsa Chronicle*. The article was reprinted in the Opinion section of the *Chronicle* from a syndicated national columnist working in Washington, D.C. The article detailed numerous advances in cardiovascular surgery that Spanco had developed and for which it received recognition in the *New York Journal of Medicine*. At the time of purchase by Phipps, through his broker at Simon Blakely Corp. in Tulsa, Spanco was selling at \$135 per share. By May 1, 2012 the shares had plummeted to \$1.25 per share, primarily in light of the fact that the *New York Journal of Medicine* reported that the initial data it had received from Spanco was incomplete and inaccurate in several material respects. Phipps sued Spanco, not on the basis of federal or state securities law, but on theories of fraud and negligent misrepresentation.

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Phipps determined that the law of Oklahoma was more favorable to him than Missouri law. He therefore proceeded to plead and prosecute his claims under Oklahoma law, but Spanco responded with a motion for summary judgment based on Missouri law. The choice of law dispute involved Phipps' claim that he was harmed in Oklahoma, but Spanco countered with the argument that the alleged misconduct, if any, arose from "accounting issues" that originated and occurred entirely in Missouri. Spanco claimed that Oklahoma law was irrelevant to its financial affairs and operations because it filed periodic reports, with the assistance of a public accounting firm, to the Securities and Exchange Commission in Washington, D.C. Spanco further contended that if Oklahoma law were applicable, Spanco potentially could be required to comply with the laws of all fifty (50) states, and the laws of foreign countries, depending on the residence of investors such as Phipps.

Under these circumstances, *you as federal district judge*, must determine whether Missouri or Oklahoma law applies – or alternatively whether you should apply federal law in light of the fact that Phipps filed in federal district court and may have used "artful pleading" to avoid the pleading and proof requirements of the federal securities laws.

As a federal district judge, what law do you apply to determine the viability of Phipps' claims for fraud and negligent misrepresentation, and what are the bases for your decision? Explain your answer.

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You have been retained by the Trustee appointed to handle the Chapter 11 bankruptcy of Talking Pineapple Company (“TPC”), a manufacturer of decorative plastic fruits and foliage. TPC entered into bankruptcy on January 1, 2012, after TPC was insolvent, undercapitalized, and unable to make debt payments. The Trustee has provided you with TPC’s accounting records and other various documents about the business of TPC. During the course of your review, you develop the following timeline of events:

On October 16, 2007, TPC transferred \$45,000 to its controlling shareholder, Jim Hare (“Hare”), for an art collection appraised at \$2,500. (Transfer 1)

For the fiscal year ending December 31, 2010, TPC had \$400,000 in revenues.

On April 21, 2011, TPC signed a contract (the “Purchase Agreement”) to purchase all the shares of Crow Company, a plastic flower manufacturer, for \$800,000. Industry experts estimated that this was a bargain price for Crow, a company with valuable manufacturing facilities that would complement the business of TPC. The closing for the purchase of Crow (the “Purchase”) was set for August 10, 2011.

On July 1, 2011, a report was issued and received extensive press coverage about dangerous health hazards associated with decorative plastic fruit. The plastic fruit market promptly deteriorated in response, and analysts did not expect the market to recover. Internal and industry projections were not favorable for TPC.

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On August 1, 2011, Hare decided to splurge with TPC money before the Closing. At his direction, TPC paid \$100,000 to Tortoise Jams Company, a party planner, for a celebration of Hare's daughter's sixteenth birthday. (Transfer 2)

TPC closed on its Purchase of Crow on August 10, 2011. At the time of closing on August 10, 2011, TPC signed a loan agreement with Ninja Bank for \$1 million to cover the Purchase and associated fees. TPC pledged its real estate assets as collateral for the loan, and Ninja Bank filed a financing statement on October 15, 2011, perfecting its security interest. (Transfer 3)

Also at closing on August 10, 2011, TPC made a transfer of \$800,000 to the outstanding shareholders of Crow in exchange for their shares, according to the price set in the Purchase Agreement and its terms. (Transfer 4)

On November 30, 2011, Moose Plastics Company ("Moose"), a petrochemical producer that supplied TPC with its raw materials, demanded, and received, full immediate payment for all its outstanding invoices, totaling \$120,000. (Transfer 5)

On December 7, 2011, TPC had a plant accident that harmed the equipment needed to produce its products. TPC agreed to buy replacement parts from Owl Co. for \$50,000 on December 8, 2011, and those parts were delivered immediately. TPC gave Owl Co. a check for

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\$50,000 instead of cash. Owl Co. was not able to deposit the check until December 9, 2011.

(Transfer 6)

TPC filed a petition for bankruptcy on January 1, 2012.

Questions:

- A. Discuss the six transfers made by TPC and determine which, if any, the Trustee might be able to recover in avoidance actions. Include in your analysis any facts that might help or hurt the Trustee's claims. If any of the transfers are not avoidable, discuss why they are not avoidable. (80%)
- B. At bankruptcy, TPC had an active contract with Horse Inc. ("Horse") for repair and maintenance of TPC's manufacturing equipment. Under the contract, Horse provided routine maintenance and repairs, and TPC paid Horse monthly. The contract provided that it would automatically terminate in the event of either party declaring bankruptcy. TPC was four months behind in payments to Horse, but the contract was not set to expire until 2014. Did the contract automatically terminate upon the filing of the bankruptcy petition? What are the Trustee's options for that contract going forward? Explain your answer. (20%)

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Scissorhands Sally, a cosmetologist, has a successful business and charges the lowest prices in a Tri-County area. However, the Director of the Board of Cosmetology determined that Sally's business needed to be closed after receiving at least 20 anonymous complaints about her business being very dirty.

The Director sent a team of investigators to Sally's business location Friday night, May 1st, after she had closed. The investigators cut the lock and entered Sally's business. They viewed hair on the floor, various cosmetics uncapped, and equipment including scissors and combs, on various table tops and not in disinfectant such as Barbisol. Investigators also noted the water was disconnected with plumber's equipment all over the floor.

The investigators posted a Notice on the front door stating "**This Business is Closed by Order of Board of Cosmetology and reopening prior to further Order may result in Suspension of on-site Cosmetologist's License.**" At 9:00 o'clock a.m. the following day, Sally was personally served by a private process server a Notice of Hearing issued by the Board of Cosmetology stating a hearing would be held before the Board of Cosmetology May 8<sup>th</sup> at 9:00 o'clock a.m. to determine whether Sally's license should be permanently revoked on the grounds she violated the terms of her license.

At the hearing, Sally appeared in person and requested a continuance on grounds her plumber and other witnesses needed more notice to be able to appear on Sally's behalf. The



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hearing examiner denied Sally's request for a continuance and proceeded to conduct the hearing. Sally again protested continuing with the hearing, stating she had no attorney to represent her and requesting she be appointed an attorney to represent her in this matter. No ruling was made by the hearing examiner on this request and the hearing proceeded.

The final order issued by hearing examiner revoked Sally's Cosmetic License and permanently closed Sally's business.

Sally, the day after receiving the written final order in the mail, comes to your office for legal advice on the above matter.

Questions:

- A. Analyze the legal arguments that should be made on Sally's behalf, and how the Board would likely respond to those arguments. Explain your answer.
- B. Discuss the procedure you would suggest that Sally use to contest the Board's actions. Explain your answer.
- C. Describe the likely outcome of the matter. Explain your answer.

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Fred inherited a farm three miles outside of town from his parents. Fred's farm was conveniently located on State Highway, and Fred farmed the land himself for many years. When he retired, he leased his farm to Tenant for a reasonable fee, but Fred made less in rental income than he netted while actively farming.

Over the years, various businesses and industry moved onto nearby tracts along State Highway as the nearby town prospered during the oil boom. Property with highway frontage was particularly in demand. In fact, a trucking company offered to purchase Fred's farm at one time for much more money that Fred had thought the land to be worth. But Fred wanted to keep the farm in his family and he refused to sell. The same company then purchased a tract with highway frontage adjacent to Fred's farm for a premium price and built a large truck repair shop and equipment storage yard. One year later a large industrial park was built on the other side of the highway.

Unfortunately, as more and more buildings and parking lots were built around Fred's farm, a nearby creek would occasionally overflow its banks after a hard rain, causing standing water to accumulate near the highway. Although the water had not yet pooled on the highway, engineers for the State Highway Department anticipated that the condition would cause the highway to flood at some point in the future.



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The Highway Department conducted a study and proposed two options: (1) build a large bridge to move the highway up and over the creek, allowing the creek to maintain its natural path or (2) divert the creek to flow across Fred's farm and then under the highway at an existing bridge location, in which case, after heavy rains, the creek would flood onto Fred's land and not onto the roadway. The Highway Department estimated that building a new bridge would cost the State six times more than diverting the water across Fred's farm.

The Highway Department offered to compensate Fred in exchange for a water flowage easement across a portion of his farm. The State explained to Fred that he would continue to own the land, subject to the water flowage easement. Although the State's proposal would cause Fred's land to be unsuitable for commercial or industrial development, some of the land could still be cultivated and the rest used as pasture land. Fred refused to grant the easement, and the State filed a condemnation ("eminent domain") action seeking the desired water flowage easement across Fred's farm. Fred hired you to oppose the State's efforts.

Questions:

- A. What authority does the State have under the federal constitution to take an easement over Fred's land without his consent? Explain your answer.
- B. What constitutional protections does Fred have in this case? Explain your answer.

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- C. Can the State lawfully exercise its eminent domain power under these circumstances? Explain your answer.
- D. How does your answer to subpart C change if the State is seeking the easement to prevent imminent flooding of the nearby town, rather than to avoid possible future flooding of the highway? Explain your answer.
- E. If the State succeeds in obtaining the easement without Fred's consent, is Fred entitled to compensation for the land encumbered by the easement and if so, how should such compensation be calculated or determined? Explain your answer.

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Abundant Power, Inc. ("API") is a for profit corporation that is in the business of generating and selling electric power to various rural electric cooperatives throughout the State. API is governed by its Board of Directors. Its President/CEO is Bill Base, who has been employed by API for the last fifteen (15) years in various positions.

API recently announced its intention to build a new clean coal power plant near Lake X, which is the primary water source for approximately 100,000 residents. The "Citizens Against Coal Plants Coalition" ("CACP") sues API to enjoin construction of the plant. The law firm of Dunn, Echols & Finch, P.C. ("DEF") is retained to represent API in the lawsuit. DEF has represented API in various matters for over ten years. CACP is represented by the law firm of Haas, Ister & Jay, P.L.L.C. ("HIJ").

Gary Gaston is an attorney who worked as an associate for DEF until shortly before CACP filed its lawsuit against API. During his employment with DEF, Gary Gatson assisted in handling various corporate compliance matters for API; however, he never represented API in litigation matters. Gary Gaston is hired by HIJ during the CACP case.

During discovery, CACP procures evidence which tends to implicate President/CEO Bill Base in attempts to bribe certain state officials to obtain the necessary permits for the coal plant, and CACP divulges that information to the District Attorney's office. As the result of a multi-county grand jury indictment, Bill Base is arrested and charged with several felony counts during

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the course of the civil litigation with CACP. As a result, API terminates Bill Base's employment.

Bill Base files a lawsuit against API for breach of employment contract and wrongful termination. API retains DEF to represent the corporation in defending the lawsuit.

Identify and discuss each ethical issue presented by these facts under the Oklahoma Rules of Professional Conduct. Explain your answer.

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Blackacre is an unimproved forty acre tract of timber land in McCurtain County, Oklahoma. In January, 1995, Sam, the sole owner of Blackacre, asked John Doe, a single person, if John would be interested in purchasing Blackacre. John and Sam visited Blackacre on January 31, 1995.

During their visit, Sam and John discovered that Steve had, without permission from Sam, constructed a small cabin on Blackacre, and had been living on Blackacre since July 1, 1994. Sam told Steve that Steve should immediately vacate the property and never come back. John, a more kind-hearted soul, told Steve that John was planning on buying Blackacre from Sam, and that John would give Steve one (1) year from today within which to vacate the premises. John bought Blackacre from Sam on February 1, 1995.

In 2005, John married Jane. Following their marriage, John desired to add Jane to the title of Blackacre. In 2006, John and Jane executed a warranty deed whereby they conveyed Blackacre to "John Doe and Jane Doe, as tenants in common". The deed was properly acknowledged and recorded in the office of the County Clerk of McCurtain County, Oklahoma.

One month later, the above deed was re-recorded in the office of the County Clerk of McCurtain County, Oklahoma. The re-recorded deed contained certain alterations. Following the names of the grantees, John Doe and Jane Doe, the words "as tenants in common" had been struck through and the words "as joint tenants" had been added to the re-recorded deed. In addition, beside these alterations appear two sets of the initials "JD".

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In 2009, John and Jane were legally divorced. In the divorce decree, no mention was made of Blackacre. In 2010, John died intestate survived by his two sons, George and Harry.

Steve never vacated Blackacre and has continuously lived in the cabin on Blackacre since July 1, 1994. After he purchased Blackacre in 1995, John never visited Blackacre again.

In 2010, George was properly appointed personal representative of the Estate of John Doe, deceased, by an Oklahoma court. George, the Personal Representative of the Estate of John Doe, deceased, initiated a quiet title suit against Jane and Steve claiming ownership by the Estate of John Doe, deceased, of all right, title and interest in Blackacre. Jane answered the petition claiming all right, title and interest in Blackacre. Steve answered the petition claiming all right, title and interest to Blackacre.

The case was tried in December, 2010. At the trial, the above deed and the above re-recorded deed were admitted into evidence. Additionally, Sam testified as to the specifics of the conversation between Sam, John and Steve on January 31, 1995.

You are the judge presiding over this quiet title suit. In your trial court order and decree, you should (a) fully state and analyze the legal positions of the three parties, George as Personal Representative of the Estate of John Doe, deceased, Jane and Steve, (b) fully describe the strengths and weaknesses of each party's claim to Blackacre, and (c) give your decision as to the ownership of Blackacre under Oklahoma law by fully explaining the reasons for your decision.



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Alan Able comes to your office and relates the following facts. Thirty years ago, he and his friend Bob Baker bought a piece of real estate, on which was built a commercial building. The property was conveyed to them as "Alan Able and Bob Baker, tenants in common". At the time of the conveyance, a grocery store was operating in the building. For the next twenty years, the rent was paid on time and Alan and Bob split the net profits evenly.

Ten years ago, the grocery closed. Alan and Bob decided that they were tired of their jobs and, since the grocery had abandoned all of its equipment in place, they decided to go into the grocery business. Alan wondered how they would get the money for start up costs, and Bob told him, "Don't worry. I can take care of it." The next week Bob showed up with \$100,000, told Alan that he had borrowed it from Charlie Cutthroat, and advised that they had to give Charlie 1/3 of the profits until the \$100,000 had been repaid, plus interest.

For eight years, Alan and Bob worked daily running the grocery store. Charlie never lifted a finger, other than to show up once a month, examine the books, and take 1/3 of the profit. Two years ago, Bob died. His wife Doris was appointed by the court as executor of Bob's estate. Alan continued to run the grocery store, and Doris occasionally came in and helped. Alan gave Doris half the profit each month but stopped paying Charlie.

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Last week, Doris and Charlie each separately visited Alan. Doris demanded that the business be sold, and that she get half the money. Charlie also demanded that the business be sold, but he demanded 1/3 of the money since he was also a partner.

Alan seeks your advice, and informs you that ten years ago Bob signed a promissory note to Charlie, and that there is still \$10,000 due according to the terms of the note.

Questions:

Answer all the questions using Oklahoma Law:

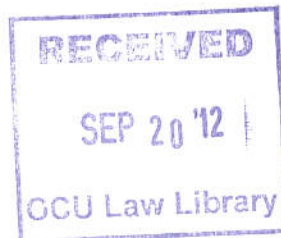
- A. At the time Alan and Bob went into the grocery business, was there a partnership?  
If so, who were the partners? Explain your answer.
- B. What rights and remedies does Alan have with regard to Doris? Explain your answer.
- C. What is Bob's obligation, individually or otherwise, to Charlie? Explain your answer.

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

On July 4, 1976, Husband and Wife married in Creek County, Oklahoma. Prior to the marriage, Husband owned, free and clear of any indebtedness, a 1969 Chevy Camaro. Husband never drove the Camaro, hoping to someday cash in on the car's mint condition. In 2010, Wife lost her job, and Husband begrudgingly was forced to sell the Camaro. The Camaro sold at an auction for a whopping \$110,000, all of which was due to its rarity. Husband and Wife opened a new checking bank account. Husband deposited all \$110,000 into the new checking account. Husband and Wife started immediately writing checks for various living expenses and family vacations out of the new checking account. Wife advises you that the account is a joint tenancy account under the name of both Husband and Wife. She also advises you that Husband and Wife have been making additional deposits into this account, which currently has a balance of \$50,000.

In 2000, Wife's father passed away. Wife inherited a piece of real property and \$100,000 certificate of deposit from her father's probated estate located in McCurtain County in the Southeastern part of Oklahoma. The "Hunting Lodge Property" contains 1,000 acres and a small shack in McCurtain County. The real estate is worth \$1,500,000. Using the interest on the certificate of deposit titled solely in her name, Wife paid the taxes every year on the Hunting Lodge Property. Wife never visited the Hunting Lodge Property after she inherited the property. She would never convey the Hunting Lodge Property to Husband because she knew he would



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think he could then hunt on it and Wife does not believe in the hunting of wild animals! The Hunting Lodge Property was titled in Wife's name exclusively. However, Husband and Wife's Brother (hereinafter referred to as "Brother") make hunting trips every year to the Hunting Lodge Property during deer, pheasant, and other gaming seasons after telling Wife they are going to an Auto Auction in Las Vegas. Husband and Brother made wildlife management decisions and improvements to the Hunting Lodge Property because they wanted an exceptional hunting experience on the property.

Wife found out about Husband and Brother's hunting trips to the Hunting Lodge Property, and is now demanding a divorce. Wife came to your office stating that Wife and Husband mutually agree on all aspects of the divorce except for the property division for (a) the \$50,000 balance left in the new bank account, (b) the Hunting Lodge Property, and (c) the \$100,000 certificate of deposit. Explain how an Oklahoma Court will divide these pieces of property:

- A. \$50,000 in the new Bank Account
- B. Hunting Lodge Property
- C. \$100,000 certificate of deposit

QUESTION NO. 14 (Page 1 of 2)

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

John lives in rural Oklahoma. Earlier this summer, John applied herbicide to his ranch to control briars and weeds. John's neighbor (Neighbor) has sued him claiming that the herbicide drifted and contaminated his garden. Neighbor alleges that he unknowingly inhaled the drifting chemicals during the application process and later ate contaminated vegetables. Although he has no current symptoms, Neighbor claims that the exposure will cause him to develop cancer and is seeking in excess of \$1,000,000 for future pain and suffering and medical expenses.

Your firm has been hired to defend John. Your senior partner directed you to discover as much information as possible regarding Neighbor's experts and their opinions. You have submitted a written Interrogatory requesting that Neighbor's lawyer provide the names of all experts retained and detailed information regarding their opinions and qualifications, as well as a Request for Production requesting copies of all written documents shared between Neighbor's lawyer and his experts including correspondence and emails. Neighbor's lawyer identified two experts but objected to the remainder of your discovery requests.

Questions:

- A. Neighbor's lawyer identified Jack Black as an expert who will testify at trial, but objected to the remainder of the interrogatory (as it related to Black) on the basis that Neighbor has no knowledge of Black's prior experience or specific opinions, and suggests that a deposition is the only proper method to discover the requested information. Is the objection valid? Explain your answer. (20 points)

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- B. Neighbor's lawyer identified Dr. Noah Itall as an expert, but objected to the remainder of the interrogatory (as it related to Itall) and refused to disclose any information regarding facts known or opinions held by Dr. Itall on the basis that Dr. Itall will not be called to testify at trial. Is the objection valid? Explain your answer. (20 points)
- C. Neighbor's lawyer filed a short Response to the Request for Production stating "Objection. The only responsive documents are emails exchanged with Neighbor's experts and are privileged trial preparation materials". Is the objection valid as to emails sent to Black? Is the result different as to emails exchanged with Dr. Itall? Explain your answer. (25 points)
- D. Assume for this subpart only that you have now taken the deposition of Jack Black and Black offered opinions which support Neighbor's claims as described above. Although Black is very persuasive, you established in the deposition that (i) Black does not have any medical training and (ii) Black's opinions are not based upon the application of any specific principles or methods but rather his "educated beliefs".
1. Can you prevent Jack Black from offering his "opinions" to the jury? Discuss the substantive basis for your objections. (25 points)
  2. Identify a pre-trial procedural tool available to raise your objections. Explain your answer. (10 points)

QUESTION NO. 15 (Page 1 of 4)

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

Raymond owns a tee shirt manufacturing business in Tulsa, Oklahoma. One of his customers is Lydia's World, a small retailer in Oklahoma City.

In February, Raymond visited Lydia's and took orders for the summer. Lydia's order was for the delivery of 1,000 tee shirts made of 100% cotton at a price of \$6 per shirt. Before arriving at Lydia's World, Raymond visited another customer and spent more time than planned due to the complexity of that customer's order. In his rush to make it to Lydia's on time, he left his blank order forms at the office of the prior customer. But Raymond was not concerned with taking Lydia's order without an order form since he had dealt with Lydia before and had no reason to think she would not honor their verbal agreement.

After returning to his office, Raymond found a fax from Lydia. In the fax, she confirmed the order and all pertinent details. The fax from Lydia, however, deviated from Raymond's memory of their conversation in that Lydia put a price of \$5 per shirt on her confirming fax as opposed to the \$6 per shirt Raymond recalled. Raymond remembered that he and Lydia had negotiated back and forth about the price due to a logo, an embroidered "L" for Lydia's, which Lydia wanted on the pocket of each shirt. Lydia sent a cashier's check to Raymond the very next day for the price of the items at \$5 per shirt. Raymond shipped the shirts thinking he and Lydia would be able to work out the price issue later. However, Raymond waited 2 weeks before calling Lydia about the discrepancy. When he called, Lydia was out and he chose to send her a fax indicating politely that his memory of their conversation was that they had negotiated a price of \$6 per shirt as opposed to \$5 and requested that she send a cashier's check for the difference.

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

- A. In an action by Raymond to recover the additional cost per shirt, who should prevail and why? Explain your answer. (25%)

The shirts from Raymond were delivered to Lydia's World in 4 large boxes; 250 shirts per box. Before putting them on the floor, Lydia inspected the shirts and found the first 2 boxes to be in conformity with the order she had made. However, the last two boxes contained shirts that were made of an 80/20 cotton/polyester blend. Raymond knew this when he shipped the order. Unfortunately, he had trouble meeting Lydia's order for 100% cotton shirts because of a very large order he had received from a much bigger customer who also wanted 100% cotton shirts. Raymond did not think Lydia would mind since the 80/20 shirts were just as good as the 100% cotton shirts. He considered the difference a trivial detail. And, if she did object, he would remake the shirts for her since he knew he had more all cotton fabric on order which should be arriving any day. He was already late in shipping the goods and simply did not want to delay shipment any longer over a minor detail.

After inspecting the shipment, Lydia decided to go ahead and put the first two boxes on the sales floor. Sales were very slow throughout May, including Memorial Day. As a result, Lydia became concerned that she might not be able to sell as many shirts as she originally ordered. Lydia returned the two boxes of 80/20 blend shirts she had not yet put on the sales floor. She boxed them up and returned them to Raymond without further communication except



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

for a note asking for a refund of  $\frac{1}{2}$  of her payment. She returned the shirts on June 1st, right after the disappointing Memorial Day Sale.

- B. As Lydia's attorney, what do you tell her concerning her right to reject the nonconforming goods and the likelihood of success in a suit against Raymond for a refund of the price of the goods? Would Lydia prevail on an argument that she rejected a "commercial unit" as allowed by the UCC since she only rejected two boxes of the goods shipped by Raymond? Explain your answer. (50%)

Because he wanted to keep Lydia as a customer, Raymond agreed to accept the return of the shirts. And, being a good salesman, Raymond talked Lydia into buying 300 specialty tee shirts for the 4<sup>th</sup> of July promotion her mall was running. These were to be very high quality shirts with an embroidered "L" for Lydia's on the pocket, and were to be made of fine, Egyptian cotton. Delivery was to be made by June 14. Raymond and Lydia signed an order form memorializing their agreement. As Raymond was leaving, Lydia became concerned about Raymond's ability to meet the June 14 deadline. If the order was late, she would not have much time to sell the specialty shirts before the 4<sup>th</sup> of July. She reminded Raymond of their prior agreement on special holiday merchandise for Christmas, Valentine's Day and other holidays wherein they agreed that if the order wasn't delivered on time, Raymond would cut the order in  $\frac{1}{2}$  and provide her a 20% discount on the remainder. Prior agreements of this type were reduced

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

to writing. However, Raymond was walking out the door and they did not take time to alter the order forms to reflect this part of the agreement. And, Raymond had always met his prior obligations on holiday deliveries.

Unfortunately, Raymond had trouble with his supplier of Egyptian cotton. As a result, the order was not delivered to Lydia's until June 21. Summer sales had been very slow. Therefore, Lydia sent half the order back and requested that Raymond honor his agreement to give her a 20% discount on the remaining half. Raymond refused and demanded full payment for the entire order. Because of the special embroidering, Raymond could not sell the shirts to anyone else. Sara, Lydia's sales associate, overheard the prior conversation and told you, Lydia's attorney, that Raymond had in fact agreed as he was leaving the store to cut the order in half and give Lydia a discount if the order was not received on time. She also confirmed that this had been the nature of prior agreements concerning holiday merchandise.

- C. As Lydia's attorney, what do you tell her concerning the effect of her agreement with Raymond to cut the order in half and get a 20% discount on the remaining half if the order was not received on time? Explain your answer. (25%)

QUESTION NO. 16 (Page 1 of 1)

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

Many years ago, Sally executed a will in a lawyer's office. By the terms of the will, she left all of her property to her husband Harold, if he survived her. If Harold failed to survive her, then her property was to go to her three sons in equal shares.

In the years that passed following the execution of the will, Sally and Harold divorced. Her oldest son William died and was survived by his wife Olga and no children. Her middle son Michael died and was survived by his wife Lou Ann and two children Amber and Adam. Her youngest son Yance moved away from Oklahoma.

In Sally's old age, she was cared for by a nephew, Nick, and a home healthcare nurse, Belinda. One day Sally told Nick that she wanted to change her will to leave all of her property to him. So, Nick took Sally to see a lawyer. On the way to the lawyer's office, Nick persuaded her to include Belinda in her will. Sally met with the lawyer for about one hour.

Following their meeting, the lawyer drafted a will. By the terms of the will, Sally left her car to Belinda and the rest of her property to Nick.

The lawyer sent the draft of the will to Sally's home, together with a cover letter asking her to review the draft. When the draft arrived, Sally, Belinda and Sally's neighbor, Tillie, were at the home. Sally signed both the cover letter and the draft without reading either. She then asked Belinda and Tillie to sign her will as witnesses. They did so.

Sally died two days later.

Identify and discuss each of the legal issues raised by these facts, and determine who should receive what portions of Sally's estate. Explain your answer.